

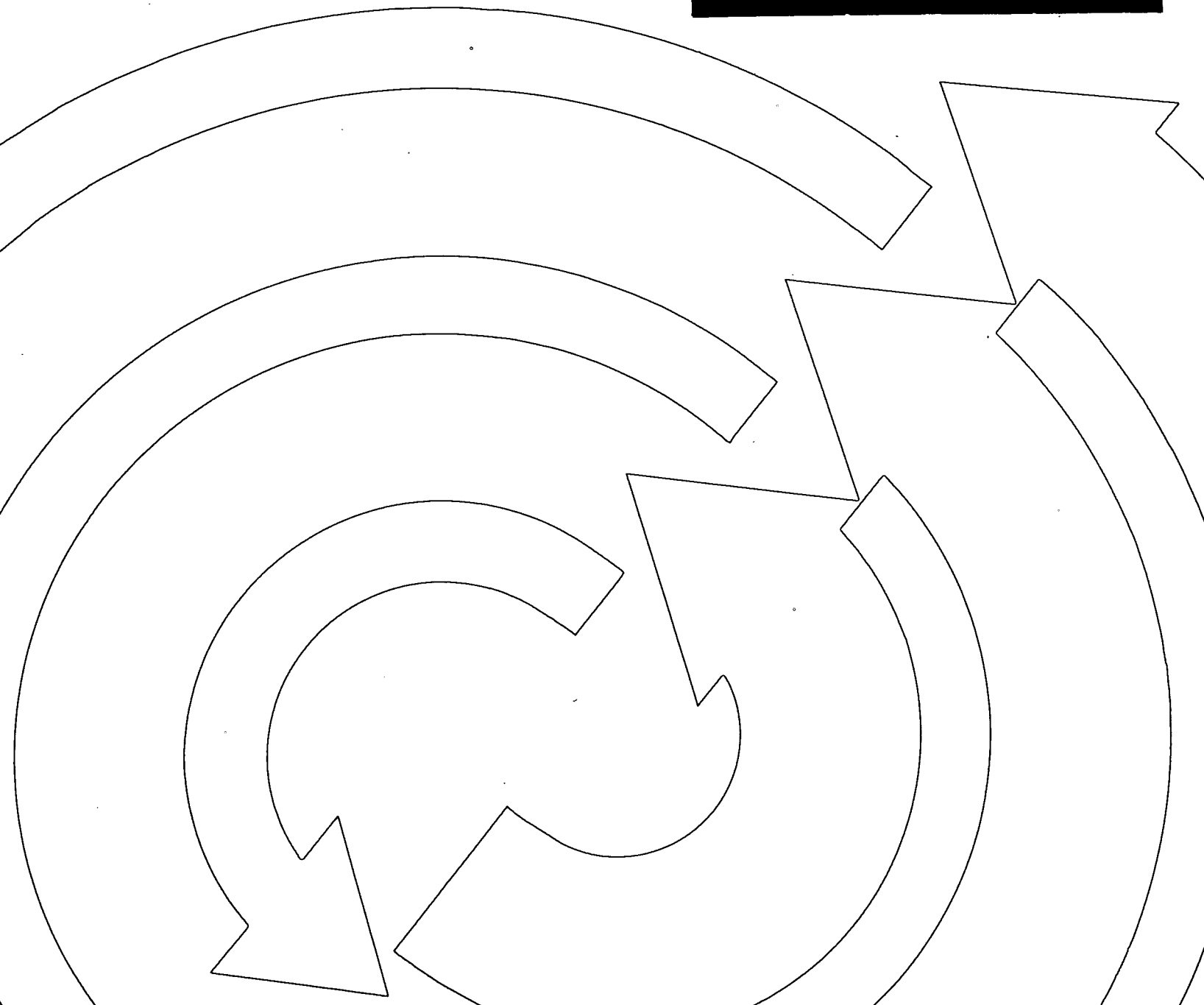


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THE DYNAMICS OF INFORMAL PROCEDURE:
THE CASE OF A PUBLIC HOUSING
EVICTIION BOARD

by
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THE DYNAMICS OF INFORMAL PROCEDURE:
The Case of a Public Housing Eviction Board

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THE DYNAMICS OF INFORMAL PROCEDURE:

The Case of a Public Housing Eviction Board

At first blush, "informal procedure" sounds like an oxymoron, for procedural rules more than anything else seem to give law its formal qualities, and our image of informal justice is a picture of justice unencumbered by the need to comply with procedural rules like discovery rules or rules of evidence. Yet the fact that a tribunal is informal and that it doesn't follow familiar legal rules of procedure does not mean that it is ruleless. Legal rules may in fact structure much of what goes on in informal tribunals, for they may specify actions that the tribunal must or may not take, and practical experience may give rise to procedural routines that are honored at least as regularly as the procedures specified in those formal rules that in theory order behavior in ordinary courts.

Indeed, informal procedures like formal procedural rules are typically adopted with specific substantive goals in mind. Thus the small claims court was conceived as a forum in which procedural rules were relaxed so that plain folk such as tradespeople, lodging housekeepers and wage-earners would be allowed to use the machinery of law.¹ This does not mean, however, that the substantive goals that informality aims at will be achieved. The very informality of small claims courts may mean that some individual plaintiffs do not effectively make out viable legal cases. (O'Barr and Conley, 1985) Indeed, some have argued that informal procedures generally may serve to extend state control over the working class and poor while denying these classes the full benefit of their legal rights.²

¹ See, e.g. Smith (1919); Cayton (1939:205:57); for a general discussion of the history and practice of small claims courts see Yngvesson and Hennessey (1975).

² These are, for example, themes in a number of the essays in Abel (ed.) (1982). See especially Abel's essay in Volume 1 at page 267, "The Contradictions of Informal Justice."

Evictions in Hawaii

In this paper, I propose to look at an informal legal tribunal - the Hawaii Housing Authority's (HHA) eviction board - and I shall ask how the decision to process cases informally affected both board action and the implications of that action. I shall identify forces that shaped the board's informal procedures and point to outcomes that were shaped by them in the sense that different outcomes might have been expected had eviction cases in the system I studied been heard by a formal court. A basic point that emerges from the analysis is that adjudicative outcomes are patterned but different outcome patterns may be produced by informal procedures that appear to change little over time. Patterned outcomes reflect the interaction of recurrent facts with substantive norms and will change if either changes over time. Changes in the quality of cases heard or the norms governing them may themselves be resultant of or facilitated by the use of informal procedures.

My research findings are based on two trips to Hawaii, one for three months in the summer of 1969 and the other for ten weeks during the summer of 1987. During both trips I interviewed every sitting eviction board member and all past eviction board members I could identify who were still in the islands. I also interviewed virtually every current and past Authority official with important management responsibility in the housing area since the board's inception, which is to say the Authority's Executive Directors, its Assistant Executive Directors in charge of housing, its Supervising Public Housing Managers, its representatives to the eviction board, its project managers, and some of its assistant project managers.³ These interviews generally lasted between thirty minutes and two hours with most being in the hour to hour and a half range. The 1987 interviews were taped and transcribed. I also reviewed during both trips the minutes of the HHA's Commission, searching for matters relating to evictions, and I examined

³ The spacing of my two trips to the field allowed me to interview virtually everyone who had held these roles between 1957 and 1987. A few people were deceased; a few had left the islands; I did not seek to interview every assistant project manager, and I also neglected several project managers who served briefly in the early 1970s. Some people were interviewed on both my trips to the island, but most were interviewed only on one occasion.

a number of the Authority's internal operating memos and other records with the same end in view. In addition, I or a research assistant read the file for virtually every case that had ever appeared on the eviction board's docket from its inception in December 1957 through December 1985. Information on case characteristics, board actions and tenant characteristics were coded from these files. The pre-1969 data collected in 1969 were analyzed in 1970 and 1971 (Lempert, 1971) and I have drawn from these analyses here. The analysis of the 1966-1985 data collected in 1987 is still in an early stage. In addition, in 1987 I talked with a number of lawyers and paralegals who had represented tenants before the eviction board or in court, with Honolulu Area HUD officials with oversight responsibility over the eviction board, and with people who had played leadership roles in the HHA's tenant union. These interviews lasted between about ten minutes and an hour and a quarter, depending on the information the interviewee could provide. With the exception of one or two lawyers, these groups did not exist in 1969. Finally, with the aid of research assistants I reviewed mentions of the HHA in Hawaii's two major newspapers for the years of my study, and I reviewed all changes in state and federal public housing legislation relating to rent collection from the start of federally assisted public housing, in the late 1930s, through 1986.

The one major group that is largely missing from this study is the tenants of the HHA. The time and money that I had available for this research did not allow me to canvass this group and my organizational interests made it less important for me to do so than it would have been had I been attempting a full ethnographic portrayal of the eviction process. I did, however, attempt to get some feel for the tenant's view of the process by talking with tenants who had served on the eviction board and with a few former public housing tenants whom I haphazardly encountered. I also asked lawyers who represented tenants about tenants' views of the board. In addition, in both 1969 and 1987 I sat in on every eviction hearing held while I was in the islands and so observed tenants caught up in the eviction process.

The eviction board I examine deals with cases that arise on the island of Oahu (which includes the city and county of Honolulu) in the publicly-aided housing projects of the Hawaiian

Housing Authority (HHA). In order to evict tenants from its projects, the HHA must first secure an eviction order from its eviction board. When an eviction order is sought the tenant is notified of the hearing date, the reason for the action and his or her right to be accompanied by a legal counsel or some other spokesperson. Once before the board the tenant hears the Authority's case, can question Authority witnesses, tell her own story, present witnesses, make legal arguments and plead for mercy. The board decides whether an eviction order is justified, and if it is justified whether to issue it immediately or give the tenant a chance to correct the lease violation. About three-quarters of the cases the board hears involve only non-payment of rent,⁴ and these are the focus of most of what I have to say in this paper. In these cases the lease violation is clear and under the general principles of Hawaii landlord-tenant law the Authority has a right to an eviction order if the tenant has not cleared the debt by the time of the hearing. However, for almost the entire period under study the Authority and the board have treated these cases as if there were an outstanding issue: whether to give the tenant a second chance and, if so, on what conditions.

The rights the HHA accords tenants seem commonplace today, for similar hearing rights are mandated by HUD grievance procedures⁵ and in some circumstances by due process.⁶ But the HHA's eviction board existed for more than a decade before federal law guaranteed hearing

⁴ Other causes include a variety of lease violations which I lump together as "trouble cases" and, at one time, over income. Trouble cases involve such things as fighting with neighbors, opening one's unit to unauthorized guests, parking more than one car or a car which doesn't work in a housing project lot and keeping pets. Some of the trouble cases involve a non-payment charge as well. Over income cases involved families who exceeded the project's income limits for continued occupancy. The requirement that these tenants be evicted was first relaxed by HUD, when in the early 1970s regulations were passed that allowed over income families to remain in public housing if they could not find decent, safe and sanitary housing on the outside, and later abolished. The proportion of cases commenced by subpoena that involve non-payment is even higher than 75% since many tenants charged with non-payment either clear their accounts or vacate before a hearing can be held. In the early 1980s non-payment cases were apparently given a special priority and in a number of years the proportion of cases brought for non-payment exceeded 80 percent.

⁵ HUD announced requirements for tenant grievance proceedings in Circular that it distributed in 1971, but the final rules mandating such proceedings and specifying the form they had to take were not promulgated until 1974. Since 1978 a grievance procedure has been available to HHA's tenants, but they seldom resorted to this procedure when threatened with eviction, and it need not concern us in this paper.

⁶ Thorpe v. Housing Authority of the City of Durham, 336 U.S. 670 (1967).

rights to all tenants in federally aided public housing, and over the years it has remained unique in both its powers and its composition.

With respect to evictions, the powers of the HHA's eviction board are similar to those of a circuit court. The board has the same authority to administer oaths, compel the attendance of witnesses, subpoena documents and examine witnesses as a Hawaiian circuit court judge. Moreover, its eviction orders may be executed by the sheriff or by an official appointed by the Authority as if they were the orders of a circuit court.⁷ Thus, a tenant evicted by the eviction board will find her belongings physically removed from her apartment if she does not move voluntarily or successfully appeal.⁸

When the eviction board began hearing cases in 1957, it consisted of three Authority officials, the HHA's Project Engineer, its Comptroller and its Assistant Executive Director. I call this the internal board. Since that time the board has undergone three major changes in composition. In 1960 the internal board was replaced by a five member board of citizens, many of whom were otherwise active in efforts to aid the poor. In 1970 two tenants were added increasing the board's size to seven. In 1979 a second seven member panel was created so that weekly meetings could be held without unduly burdening the volunteer members. The panels seldom get together and never meet jointly to hear cases, so over the past decade the HHA has had, in effect,

⁷ A tenant may appeal an order of the eviction board to the HHA's board of Commissioners if new facts or evidence which "could not have been presented and were not available" for presentation to the board becomes available. If the Commissioners decline to hear a review because there is no such new evidence or if they review a case and affirm the board's decision, the tenant may then appeal to a Circuit Court. The judicial review follows the general pattern of judicial review of administrative action. It must be based on the record of the case below, although the court may order the Authority to reopen the case and take further evidence. Review of the board's decision is confined to questions of law and the question of whether the decision below is "clearly erroneous" given the record as a whole. Before 1981 the "new facts or evidence" standard did not apply to Commission appeals, and the Commissioners often heard appeals "de novo." From 1981 until early 1984 the Commission would hold hearings to determine whether the requisite new facts existed. In 1984 the power to make this determination was delegated to the Executive Director. This gave the management staff effective control over the conditions under which defendants are allowed to appeal, and the staff exercises this power so that appeals ordinarily are heard only where the staff is willing to allow the tenant to remain in housing.

⁸ A HUD grievance panel, by contrast, is essentially an arbitration panel which cannot terminate any tenant right. While a Local Housing Authority is bound by any adverse determination of a grievance panel, the tenant retains all prior rights including the right not to be evicted without appropriate legal action, which in the case of the HHA means a hearing before the eviction board.

two eviction boards. The board composition has also changed gradually as new members replaced people who moved, resigned or retired. Until recently there was no effort to hold board members to fixed terms, and while some members quit after a year or less, most served several years and some served for ten years or longer. When the second eviction board was added in 1979 the old panel was split and four new members were added to one group and three to the other. The infusion of new members may have been as important a change in the board's composition as the creation of the second panel.

The HHA's management of the eviction process has also changed over time. Until 1979 the person in charge of presenting the Authority's case to the board was an Authority official, usually the Supervising Public Housing Manager (SPHM), who had many duties other than overseeing evictions, most of which were seen by him and others as more central to his role. In 1979 the Authority created a new staff position with the general responsibility of overseeing the eviction process. This includes approving managerial requests for eviction, prosecuting cases before the eviction board, and handling appeals to the HHA's Commission. The first person to fill this position was not a lawyer but the two people who succeeded him have been.⁹ At the same time this position was created a full time secretary/administrative assistant was assigned to this area. The woman who has handled this position from its inception ensures that cases forwarded by the project managers are promptly processed, checks to be sure that subpoenas are served in a timely fashion and speeds the paper work necessary to ultimately evict after a decision has been reached by the board. In addition she serves as the eviction board's secretary, and is the only member of the Authority present during their deliberations. She also processes appeals after board decisions, and is an informal advisor to numerous tenants who call her, sometimes in a state of panic, after receiving an eviction notice or being told by the board that they are evicted. Her efficient performance is as important to the efficacy of the HHA's eviction process as any other single factor.

⁹ I shall treat the situation as it existed in the summer of 1987 as if it were the present situation. There have been some dramatic changes in the Authority since then; one of the less dramatic has been a change in the Authority's representative to the eviction board.

Associated with these changes have been changes in case outcomes. To put it simply, for most of its existence the Independent board was far less likely to evict than the board that had been composed of Authority officials. Recently, however, the independent board has been more prone to evict than at any prior time in its history to the point where it votes to evict a greater proportion of tenants owing rent than did the internal board. One task of this paper is to suggest that the informality of eviction hearings may have contributed to such radical changes in outcome. But this is getting ahead of the story I wish to tell. First, more basic matters deserve attention.

Informal Justice

As Abel notes, when we speak of institutions of informal justice, we are nonetheless speaking of legal institutions - bodies that "declare, modify, and apply norms in the process of controlling conduct and handling conflict." (Abel, 1982) What makes legal institutions informal is, to paraphrase Abel, that to some degree they have at least some of the following characteristics: a non bureaucratic structure, relatively little differentiation from the larger society, minimal use of professionals, and a tendency to eschew official law in favor of substantive and procedural norms that are vague, unwritten, commonsensical, flexible, ad hoc and particularistic. These characteristics combine to give such institutions a naturalistic rather than a legalistic tone. Parties before them feel less removed from the world of ordinary discourse than they do in more formal or legalistic tribunals. They speak on their own rather than through professional intermediaries; they address their judges as people and are directly addressed by them; the expected mode of conversation is ordinary English or folk variants, so if specialized legal language is used its meaning is explained, and charges and excuses are advanced and discussed in a common sense way. A tribunal, however, need not have all these characteristics to be informal, and a tribunal might have many of them and still appear formal, for Abel's list does not constitute the defining conditions of informality, but rather a set of parameters that need not

move together.¹⁰ Thus a tribunal may make minimal use of professionals but explicitly rely on official law. It may employ common sense procedural norms, but they may be applied routinely rather than in an ad hoc fashion, or in ways other than procedure the tribunal may be relatively differentiated from the larger society.

Yet we, and here I mean not just social scientists but also, I believe, litigants tend to categorize tribunals as formal or informal rather than think of them as distributed along a continuum. In a world of variation how is such categorization so easily accomplished. The answer, I think, lies in Goffman's (1974) concept of keying.¹¹ Certain features of a situation - keys¹² - can transform what is going on for both participants and audience by altering the frame in which the activity is perceived. Thus what is in fact a trial with legally binding and consequential results can be transformed in the eyes of both participants and observers into an informal hearing or even "informal justice."

I hypothesize but, since the question is empirical, cannot prove that there are several keys to informal justice. One is a procedure in which the participants are allowed to and tend to follow the rules of ordinary conversation and story telling, what Goffman (1974) calls "informal talk." A second is that one or more persons who lack legal training is obviously in charge. A third is the tribunal's own characterization of itself - as an informal forum or as an official court of law. In addition there are a set of factors that are such powerful cues to the likely existence of these keys

¹⁰ Abel noted this in a letter commenting on an earlier version of this manuscript dated April 27, 1988.

¹¹ I am indebted to Shelly Messinger for calling my attention to the implications of Goffman's Frame Analysis for my work and noting that informal justice is a transformation of a transformation. Goffman argues that keying transforms a naturalistic experience - a strip of activity - into something else. The institution of a court is one product of such keying, for we recognize that argument in court is not ordinary argument but is instead a stylized or ceremonial argument that has its own special set of rules and consequences. Particular cues like the presence of judges and lawyers, allow us to recognize that we are in court. To perceive an informal tribunal is to recognize first that we are confronting a court and then by reference to certain keys to realize that it is not precisely a court (in the usual sense of the word) that we are confronting, but an informal tribunal. In this sense, identifying an informal tribunal involves a transformation of a transformation.

¹² Goffman would use the term "cue" where I use the term "key." A "key" for Goffman is a key in the sense of a musical key, which specifies the mode or form that a particular strip of activity is perceived (heard, in music) to be in. I am using "key" in the sense of "key features", like key signatures, which lead us to perceive the key - in Goffman's sense - of a strip of activity. I believe this usage extends but is consistent with Goffman's analysis.

as to serve as keys themselves. These cues involve the location of the tribunal (e.g. in a courthouse or a storefront), the place of the hearing (e.g. in an ornate courtroom or in a plain meeting room), the dress of the participants and the like. Ordinarily, those features that are key to the perception of an informal tribunal vary together, but they need not do so. Where they do not - and to the degree they do not - participants are, I expect confused about whether they are before an informal tribunal or an ordinary court. The confusion may be resolved by contrasting the characteristics of the tribunal in question with the experience or image of recognized courts. Thus one litigant may respond to a tribunal that presents mixed keys by drawing on experience to say "this is just like a court," while another contrasting the tribunal with a different experience or an unexperienced image of high legalism may feel that his case is being handled informally.

I do not claim that my list of those keys that trigger an informal frame is exhaustive, and it is possible that I have missed a key as important as those I mention. However, the exclusion of several factors on Abel's list is intentional, for I do not think that they serve as important keys as to how we frame our perceptions of a tribunal. Among those factors intentionally excluded are the bureaucratization of the court structure (apart from the hearing itself), the differentiation of the tribunal from the larger society, and a tendency to eschew official law. Thus, I make the empirical prediction that even if a tribunal were at the formal (or legalistic) end of each of these dimensions, if it were at the informal end of the dimensions that are the hypothesized keys to the informal frame participants (as well as most social science observers) would regard the tribunal as informal. Conversely, a tribunal which employed professional lawyer-judges, which strictly followed rules of evidence and which announced at the start that it was a court of law would be regarded as a formal court no matter what its status on the excluded dimensions. When the listed keys to a tribunal's formality were mixed, participants would, if this perspective is correct, resolve the issue not by reference to the tribunal's position on omitted dimensions, but by looking to the exact mix of key characteristics¹³ and the contrast between the tribunal's positions along these

¹³ It may be that the keys themselves are lexically ordered. A tribunal's self-characterization might be more important in determining whether it is regarded as informal than whether evidence is presented conversationally, and this in turn might be more important than whether the presiding judge is a lay person or professional.

dimensions and images of formal and informal courts. Both judgments of informality and the keys to framing a tribunal as informal may be culture specific, which means that judgments may vary within a multicultural society. The researcher's perspective (and my perspective here) is most commonly shaped by the comparison with the image of the formal western court. This biases judgments about the character of particular alternative tribunals in the direction of informality.¹⁴ Culture specificity also means that we probably err when we classify certain tribunals in less developed societies as informal. What are keys for us may not be for those who live in the society we observe. Thus, the Kpelle (Gibbs, 1963) may have regarded their moots as a formal proceeding and the Lozi almost certainly regarded their kutas in this way (Gluckman, 1955).

The phenomena of keying does not mean, however, that Abel is wrong when he lists variables that do not key perceptions of informality as constituents of ideal-typical informal justice. Social scientists may define types to serve their purposes. Not only is there reason to suppose that measures of the informality of tribunals on Abel's excluded dimensions will be correlated across tribunals with measures of informality on the key variables, but the image of what informal justice is about and conclusions regarding its faults and virtues often assume the states on these dimensions that Abel posits as characteristics of informality. What is important to remember, however, is that if the key variables determine perceptions of informality, assumptions about the situation of "labeled informal" tribunals on the excluded dimensions are weak ones. Even if there is an empirical correlation, this correlation unlike the empirical correlation between key variables did not play a part in the labeling decision. There may in fact be no correlation, but the tribunal will still be considered informal.

Whether the keys are lexically ordered and, if so, what that order is are empirical questions that I cannot answer based on the research reported here or on what I know of the literature.

¹⁴ One contribution of a number of the authors in The Politics of Informal Justice (Abel, 1982) is to remind us that for many purposes the appropriate comparison is with officially formal courts as they in fact behave. One reason why institutions of informal justice may paradoxically extend state control is because they are in fact more formal in their treatments of cases than the procedures that the formal legal system would otherwise employ. Contrast, for example, the lecture that a police officer might give a youth who persisted in playing loud music at 1:00 a.m. with the hearing that might occur if the case were diverted from a formal court (which would never in fact have time to concern itself with such a trivial offense) to an informal tribunal. (See e.g., Felstiner and Williams, 1978).

There is one final, general point I wish to make before examining the situation of the eviction board. This is that in discussing informal justice, or informal tribunals the natural contrast is with formal justice and formal tribunals. Indeed, this is the language I have used to this point. Yet I do not think that "formal" is the appropriate opposing concept. Formal, by itself has little meaning for it applies to organizations, ceremonies, abstract models and other non-legal phenomena. Therefore the contrast formal-informal has no meaning apart from a concrete context. While one might give the term "formal" meaning as a modifier of "tribunal" or "justice" (indeed we know what a formal tribunal is and can contrast it with an informal one), "formal" already has a well known meaning within the Weberian tradition of the sociology of law (see e.g., Weber, 1968; Trubek, 1972; Kronman, 1983) and a well-known opposite which is not "informal" but "substantive." For this reason I propose that in contrast to informal tribunals we speak of ones that are "legalistic" in the sense of being infused with legality. Thus the opposite poles of those features that are keys to informality are ways of proceeding that hew to specific legal rules, persons in charge with specialized legal training, an announced self-conception as a place where legal rules hold sway and the physical structures, dress and the like that we associate with the "majesty of the law."

The Eviction Board's Characteristics

The eviction board I studied would be characterized by most observers, and I believe by most participants, as informal rather than legalistic. Indeed, in an eviction process that is bureaucratically organized from the time a project manager first learns by computer printout that a tenant did not pay his rent until the sheriff, if necessary forcefully escorts the tenant out of her apartment, the eviction hearing is an oasis of informality. The room in which the eviction hearing is held has none of the dignity of a courtroom. It is a long, narrow room, perhaps thirty feet by fifteen feet dominated by a long, narrow table. It's well lit, but its walls are bare. There is nothing particularly cheerful or gloomy about it. At one end, the end farthest from the door

through which the parties enter, the board chair sits with the members of the board arrayed next to him along both sides.¹⁵ At the other end, the tenant and the tenant's representative, if any, sit. Near them on the side of the table to their left will be the manager who has instituted the eviction action and is ordinarily the Authority's principal witness, while along the side of the table to their right sits the board secretary, who tapes the hearing in case a transcript is necessary, and the Authority's hearing officer, who presents the Authority's case. Witnesses, in the occasional case where they are present, occasionally sit along the side of the table, sometimes displacing the Authority's representatives in the direction of the board members, or more commonly back from the table in chairs along the walls. The room and seating arrangements looked the same in 1987 as they did in 1969. I didn't see them in 1957 or 1960, but I expect they looked the same then as well.

The board members may appear casually dressed¹⁶ and the tenants almost certainly will; T-shirts are not uncommon. Ordinarily overt legalism creeps into the procedure only briefly at the outset - when witnesses are sworn, the tenant is alerted to his right to counsel and asked to waive it, and the Authority's prosecutor asks the tenant to verify his signature on the lease, and reads the lease section(s) that has been allegedly violated - and at the conclusion where the legal implications of the board's decision is explained to the tenant and the tenant is told of any appeal or other rights he might have.¹⁷ But also at the outset the tenant is told that the people who will decide her fate are citizen volunteers - including two tenants - and that proceedings before the board are informal with no rules of evidence. At the conclusion of the case the tenant may be

¹⁵ Currently the chair of one panel prefers to sit closer to the tenant along the same side of the table as the project manager.

¹⁶ This doesn't have the same significance in Hawaii as it might on the mainland, for even high level bureaucrats, like the head of the HHA, are often found in short sleeved shirts without jackets or ties.

¹⁷ On rare occasions the board chair may make a "legal" ruling during the course of a trial as when a tenant remembering some television show objects to an item of evidence or requests a postponement in the middle of a case because the tenant suddenly realizes that it would help him if a certain witness were present.

Most reports of informal hearings do not focus on the legalistic aspects, but very often they are an essential part of the proceeding because they help establish or protect the jurisdiction to proceed informally. Thus before proceeding to small claims mediation, parties may be alerted to their right to a judicial hearing and pressed to waive it or, as in the eviction board, parties may be alerted to their right to counsel and asked to waive it.

casually asked if she has any questions, and the implications of the decision for the actions she may or must take will be explained in simple terms.

The case discussion itself is almost always orderly and follows lay rather than legalistic modes of presentation.¹⁸ This, ironically, is mandated by formal law. When the Authority adopted regulations regarding the eviction process in accordance with the Hawaii Administrative Procedure Act, one of the regulations it adopted was "Hearings shall be conducted in an informal manner unless otherwise required by law."¹⁹ The prosecutor asks the manager to verify the violation and asks the tenant to explain it. They do so in their own words. If the tenant doesn't spontaneously try to excuse his violation the prosecutor often asks the tenant if she has any excuse, and the board members will ordinarily inquire further into the causes of the offense and what can be done to correct it. Whether or not the tenant questions the rule he has allegedly violated, the board chair is likely to justify it, and some board members are prone to give paternalistic lectures on the virtues of conforming to the Authority's rules or the tenant's moral failure in not doing so. Individual conversations - almost as if no one else were present - can occur between the tenant and a board member or the tenant and the manager; on rare occasions the latter have involved screaming accusations by the tenant. Usually the manager also has a chance to talk directly to the board as the hearing officer prosecutor will seek the manager's recommended disposition before resting the Authority's case and will ask the manager in the course of the hearing about the tenant's general behavior. By contrast with the two to five minute hearings that one reads about in the literature on housing courts, small claims courts, traffic courts and even misdemeanor courts, the most routine eviction cases are seldom disposed of in less than 20 minutes time, and hearings of half an hour or longer are not uncommon. An observer gets no feeling of assembly line justice, and the tenant accounts for a good portion of the

¹⁸ Often even the presence of a lawyer does not lead to heightened legalism. Board members report feelings of both impatience and annoyance when it does.

¹⁹ Chapter 501 17-501-2(c), Title 17, Hawaii Administrative Rules (effective Jan. 1, 1981).

conversation. In these respects the eviction proceedings in 1958, 1969, and 1987 were generally similar.²⁰

Few legal rules are cited when the parties leave the room and the board discusses the case.²¹ The board decision making follows upon conversation not all of which is directed at issues in the case. For example, I witnessed a case in which the tenant's fecundity was discussed. More relevant conversation might include a discussion of the tenant's truthfulness, speculation about whether there is a grudge between the tenant and manager or about whether the manager did everything he could to help the tenant or a dispute about what the decision-making options are. Occasionally a dispute over decision-making options will be about the law, as when the board members argue over whether they have the legal authority to impose a particularly creative solution.²² Here the board's secretary might be asked for an opinion. Where precedent is cited, it is not ordinarily to make a point of law but rather to argue for an exercise of discretion as where a board member supports a suggested disposition by pointing out that two months ago a case that was factually similar to the case being debated was treated in the suggested way.

Sometimes even the ultimate decision seems haphazard. For example, a debate about the proper outcome might be decided after it is suggested that since one member had won the last such debate, he should lose this one, or the board will accept one characterization of how a case should be disposed with so little concern that one suspects that if another characterization had been advanced it would have been adopted. Informality is further evidenced in conversation that

²⁰ I observed hearings in 1969 and 1987. I had access to transcripts from the early years of the board.

²¹ Until 1969 the Authority's representative to the board remained in the room with the board members while they deliberated. This practice was discontinued in response to comments I made when I was invited by the HHA to report on my research and critique its eviction process. In 1987 only the Eviction Board secretary, who will typically have been silent throughout the hearing, remains in the room during the board's deliberations. If my observations were not contaminated by my presence (and discussion with board members suggests they were not), she does not take part in the deliberations, but may answer questions if asked or, on rare occasions, volunteer information when the board discussion indicates that the members are confused about some factual or legal issue.

²² For example, in one case I observed the Authority sought to evict an elderly woman who on three occasions had forgotten she was cooking down beans on the stove and left her unit leaving the pot to boil dry and the beans to burn. The Authority was worried that she posed a fire hazard to her elderly neighbors. The board wondered during its deliberations whether they could order the stove removed from the woman's apartment and a microwave installed.

does not relate to the case. Some cases are easily disposed of, but the board senses that it would appear unseemly to reach an instant decision. Thus after the decision has been reached conversation may ensue for another five or ten minutes about the travels of a board member or, as in several meetings I attended, plans for an upcoming party.

Thus both the presentation of the party's cases and the decision making process proceed with little attention to the constraints that officially rule an ordinary court of law. People talk to each other and consider cases in plain English. While there are references to rules the tenant has allegedly violated, the scope of discussion extends far beyond the issue of whether a rule has been violated. (Indeed, in non-payment cases which make up the bulk of the caseload, the fact of a rule violation is almost never in dispute.) Non-legal perspectives on misfortune and responsibility enter into the discussion at both the case presentation and decision stages. Those with no business before the tribunal almost never observe the process, and those who have business before the tribunal are usually only the parties. Witnesses, except for the project manager on behalf of the Authority, are seldom present and lawyers or other defense representatives are also unlikely to appear, although over the years several Legal Aid lawyers and paralegals handled more than one case before the board and one appeared so often as to qualify as a repeat player. What follows from this? What patterns of behavior can informal procedures allow or facilitate?

Disenchantment and Circumvention

Informal procedures to the extent that they invite non-legalistic decisions are likely to be unattractive to parties who have the law on their side and the resources to prove this in formal legal action. This was essentially the situation of project managers seeking to evict tenants for non-payment of rent. At the same time the informality of a tribunal may make it easier to avoid than a formal court that is known to present a legal barrier to arbitrary action. Thus informal tribunals can both motivate and facilitate their own circumvention.²³

²³ Formal tribunals can do the same, but ordinarily the circumvention must be cooperative as in plea bargaining or the choice of an ADR forum.

In the late 1960s a number of project managers who came to view the board's leniency as intolerable developed "bluff systems" to get tenants to leave without a hearing.²⁴ The key to every bluff system was that eviction actions are needed only when tenants do not vacate voluntarily. Thus some tenants told they had to vacate for a lease violation left without taking advantage of the hearing that very likely would have given them a chance to correct the lease violation and remain in housing. To encourage more tenants to do this, several project managers drafted legalistic-sounding lease termination notices designed to get tenants to think that they had no choice but to move. Form One is an example of the standard notification in use at one project, and Form Two is an example of a specific communication when a tenant questioned his status.

If the forms didn't induce tenants to leave, other tactics involving misleading information were used. Tenants might, for example, be told that they would be evicted immediately if they were brought before the board but that they could have four to six weeks to find new housing if they signed a vacate notice and agreed to move voluntarily. One project manager bragged to me that using this and other tactics, he had "evicted" seventeen tenants in a row without bringing one before the board. When one tenant he was trying to evict asked him if the HHA had an eviction board, he replied, "It does, you're looking at him." Another manager carried things further.

²⁴ At this time the Authority grouped its projects on Oahu into 5 major management areas. Each area which might consist of a number of separate projects typically totaling between about 800 and 1200 units was the responsibility of a single housing manager. The managers had great discretion in how they ran their project and collected rents extending even to the choice of collection agencies to pursue tenants who had left housing with outstanding rent debts. The basic management structure remains intact today except a sixth area to handle rent supplement families has been created and certain projects are not in any area but under private management contracts. Area V is also the responsibility of a private management company, but for our purposes it may be treated like any of the major areas. Virtually all cases the board hears come from the five major areas.

If the Authority's area structure has changed little over the years, its rent collection procedures - particularly in the amount of discretion delegated to project managers - has changed substantially. A computer print-out of each tenant's rental status coupled with the fact that tenants for more than a decade have paid their rent at banks rather than at the project offices means that the supervising public housing manager (SPHM) - the central office staff member who is the direct supervisor of the project managers and the direct subordinate of the head of housing - knows which tenants have not paid their rent as soon as the project manager. When tenants miss payments, follow-up procedures including the notices sent, are now to a large extent standardized. Where project managers were once allowed and perhaps encouraged to "work with" tenants behind in their rent, managers today must justify decisions not to start eviction proceedings against tenants six weeks or more behind in their rent.

Form One

NOTICE OF TERMINATION OF DWELLING LEASE

This is to notify you that Dwelling Lease No. _____, dated the _____ day of _____, between the Hawaii Housing Authority, as Lessor, and _____, as Lessee, for Unit No. _____, _____, has been terminated on _____, for failure to renew your Lease according to the Lease provision.

This means that you have waived your right to live in the apartment on _____, and we are entitled to take possession of the apartment on _____.

Therefore, demand is being made upon your family to move out of the apartment peaceably not later than _____. If you fail to move out, the management will take such steps to regain possession of the apartment as it deems necessary and appropriate.

This action is in accordance with the provision of the Lease which you signed with us.

HAWAII HOUSING AUTHORITY

By _____

Dated at Honolulu, Hawaii

this _____ day of _____.

Received by: _____

Served by: _____

Date served: _____

Form Two

April 30, 1969

Dear _____

This is to acknowledge your undated letter received on April 28, 1969.

Your monthly rent payments were delinquent for the past six months. During these months, we forwarded your rent reminders and also made home visits, but no improvement was made to pay your rent on the due date.

On April 22, 1969, we found your son, _____ sleeping in the vacant unit next to your unit, _____. He claimed that he did not have the house key to _____, yet your ex-daughter-in-law set up quarters in your unit, without authorization. This is in direct violation to covenant "G" of your Dwelling Lease.

In the past you have violated several covenants, rules and regulations of the Authority such as: delinquent rental payments, unauthorized persons, nuisances, dogs in your unit, inoperative vehicles, etc. This shows that you are no longer interested in living in the project with your flagrant violations.

Therefore, due to the severity of this case, we are allowing you until Tuesday, May 20, 1969, to surrender your unit. If any violation happens from this date to May 20, 1969, we will evict you and your family from the premises.

If you have any question regarding the foregoing, please notify the undersigned immediately.

Very truly yours,

Public Housing Manager

Occasionally he would call a friend (also a project manager), give the tenant the telephone, and tell the tenant that he was talking to the chair of the eviction board.

These tactics took advantage of the fact that tenants were ignorant of their rights and of the legal hurdles the Authority had to clear when it sought to evict. While ignorance about such an important matter may seem surprising, people are often unaware of their legal rights in dealing with acknowledged authorities. This has been found to be true not only of welfare recipients (Project, 1969) but also of people whom one might expect to be more legally sophisticated such as landlords confronting housing inspectors (Ross and Thomas, 1981) and industrial managers dealing with pollution control officials. (Hawkins, 1984) While the informality of the board's procedures had no direct effect on tenant ignorance or the manager's ability to circumvent the board, I think it had important indirect effects.

Although I cannot test the hypothesis, I think that in the late 1960s and early 1970s when bluff systems flourished the informality of the board's procedures contributed to the apparent low visibility of both the right to a hearing and the favorable outcomes that tenants could expect.²⁵ Since the hearings seldom involved lawyers there were no professionals to keep track of what was occurring or spread information in a client population. Because the board didn't seem like a court, tenants who told their neighbors about their experience, before the board may not have conveyed the impression that in appearing before the board they were exercising a legal right. Indeed, the experience of tenants who received deferred eviction orders was designed to convey the sense that withholding eviction was an act of grace.²⁶ Certainly both the manager who would ask his friend

²⁵ Some managers complained that the board's leniency was well known on the projects and made it more difficult for them to collect the rent. The rent payment evidence that I collected did not support this thesis as a general matter, and widespread knowledge of board leniency is inconsistent with the working of the bluff system. I did not interview tenants in 1969, but in 1987 I talked to a number of tenants, including some who were in housing in 1969. These conversations suggest that at least until recently there was among the tenants a rather low level of awareness of eviction board activity.

²⁶ Which it was in the sense that an eviction could have been legally ordered whenever a tenant was behind on his rent. But behaviorally, withholding evictions in such cases was the usual disposition and while tenants had no legal right to this outcome, they did have a legal right to a hearing in which second chances were the normal disposition. The informal procedures lent themselves to emphasizing the "by grace" nature of this outcome while disguising the fact that it was a usual result. Thus before telling a tenant that he was to be given a chance to clear his rent debt, the board might lecture the tenant on his moral responsibility to "keep current" and would emphasize how lucky the tenant was that the board in this instance would act leniently. Interestingly similar practices

to impersonate the board chair and the friend would have thought differently of the enterprise had the need been to impersonate a judge. And the opinions of informal tribunals are not recorded, nor are records of their dispositions ordinarily compiled.

Even more importantly, the board's procedures helped create the conditions that led the managers to attempt to avoid board hearings. This is not just because they resulted in lenient outcomes, but it is also and in large measure because of the kinds of conversations they allowed. In ordinary court, the managers would simply have presented evidence of the lease violation. Evidence of how the managers worked or did not work with tenants would probably have been declared irrelevant and even if a court was willing to hear such evidence, it would have been elicited by the opposing party's lawyer in an acknowledged adversarial confrontation. Since the setting was not designed for conversation the manager would not have been expected to respond to most of the tenant's complaints, and the judge, except in his rulings, would indicate neither agreement nor disagreement with them.

In the eviction hearings of the late 1960s evidence of the managers' efforts were often central. On some few occasions tenants actually interrupted the manager's testimony to dispute what he was saying. More often they would blame the manager or staff for some failure, real or imagined. When they did blame the managers their accusations were not filtered by an attorney seeking to effectively present a case, but were in the tenant's own words and directed to the person sitting next to them. Even more hurtful from the managers' perspective, was the fact that the board members took such complaints seriously and asked the managers to comment on them. Indeed, when a tenant did not complain, some board members took it upon themselves to ask the manager what he had done to help the tenant, a kind of judicial intervention that would be less likely the more legalistic the proceedings. The result according to several managers was that when they took a case to the board, they felt that they rather than the tenants were on trial. Thus the informality of the eviction process allowed the proceedings to develop in ways that

apparently characterized another informal tribunal, the pre-Gault juvenile court. See, e.g. Wheeler *et al.* (1968) and Shari Diamond tells me that she observed similar behavior by lay magistrates in England.

created substantial stress in most managers and so was a major impetus toward the development of ways to "evict" tenants without bringing them before the board.²⁷

In 1987 when I returned to Hawaii the situation was entirely different. The bluff system had disappeared²⁸ and the managers spoke highly of the eviction board. Several factors may have contributed to the disappearance of bluffing, and some might have been sufficient by themselves. First, but least likely, the formation of a tenants union in 1970, the appointment of two tenants to the eviction board in the same year, and the increased availability of legal aid at about the same time might have increased the tenants' awareness of their rights.²⁹ Second, there

²⁷ The one manager (of 5) who was active in 1969 who did not attempt to bluff tenants out and seemed least bothered by the board's actions was the one who most saw the board's role - if not its procedures - as legitimate because of its legal position. He believed that it had its job to do and he had his, and if the board decided to give a tenant a second chance the decision was not his responsibility and did not reflect any failure on his part. It may also be the case that this manager's work with tenants was ordinarily so considerate and careful that the adequacy of his performance in this respect was seldom called into question by the eviction board.

Several former managers who had moved up the hierarchy into supervisory positions on the HHA's central office staff seemed closer to this manager than to the others in the view which they reported taking of the board while they were project managers. Perhaps their perspective on the board reflects one of the qualities which led to their promotion, or it may be that from the vantage point of central office staff they misremembered their attitudes toward the board when they were managers. Also the managers' negative reactions to the board were considerably exacerbated after a liberal minister who saw himself as an advocate for the poor was appointed. This minister, several managers told me, assumed that the responsibility for the tenant's failing lay with the system - which is to say the manager - and would ask questions accordingly. With one possible exception, the managers who had been promoted to central office positions had not had to bring cases to a board that included this man. Indeed, in 1969 many of the managers spoke rather fondly of the board as it had existed in 1964 when the pattern of evictions was essentially the same as it was in 1969 but the quality of the discourse apparently differed, thus confirming the hypothesis that the type of conversations that informality allowed played a big part in the managers' reactions to the board and in the motivation for their efforts to circumvent it. Similarly in evaluating individual board members, the managers referred not to their decisions but to the style of their conversation. "Tough" (in conversation with the tenant) was the recurring word of praise.

²⁸ One way of encouraging tenants to leave without a hearing was acknowledged, but it involved truth telling rather than bluffing. In 1985 the Authority amended its regulations so as to bar anyone who was evicted from public housing from ever again being rehoused in an Authority project. Project managers alerted tenants to this rule and some tenant moved "voluntarily" to avoid its force. Since the probability of eviction in 1987 was much higher than it had been in 1969, these tenants, unless they could have paid back their rent debts, were unlikely to have forfeited a valuable right.

²⁹ It appears that this was not very important because the rate of subpoenaed tenants who vacated without a hearing does not diminish until about 1978 which is after the period of greatest vitality of the HHA's Tenant's Union and the period of the most aggressive involvement of Legal Aid in the Authority's eviction processes. The bluff system was designed to - and apparently often did - get tenants to move without any legal process. However tenant responses after being subpoenaed might reflect a manager's past or continued efforts to bluff them out - i.e. they may have been convinced that legal process meant the jig was really up. Treating the proportion of tenants who vacated after being subpoenaed but before their hearing as a proxy for the relative amount of pre-subpoena bluffing we find that the proportion of subpoenaed tenants vacating without a hearing is 10.8% in the period 1964-74 and about 5.3% from April, 1982 through 1985. The rate peaks at 15.8% in the period 1975-1977, but the figures

was substantial turnover in the managers. The two managers most prone to bluff and most extreme in their willingness to create false impressions left their positions in the early 1970s. Also in the 1970s and '80s a number of male managers were replaced by women, several of whom had social work backgrounds. Even the women who had been managers longest reported never having attempted to bluff tenants out. Third, the administration of rent collections and evictions became more bureaucratically formal. The notices to be sent tenants were standardized and in conformity with HUD regulations notice of a right to a hearing was included when the Authority threatened to terminate a lease. Also rent payments came to be made at banks rather than project offices, thus eliminating a chance for tenant-manager interaction and an opportunity for bluffing. Finally, the impetus to bluff disappeared. Not only did the pattern of board decisions change so that evictions in non-payment of rent cases became the norm rather than the exception, but the quality of the conversations that occurred at the hearings changed as well. These changes may themselves reflect implications of informal procedures, a possibility I examine below. One point is clear: hearing procedures that changed little between 1969 and 1987 yielded very different outcomes. For a long time both the project managers and the Honolulu HUD office thought that such a change could be realized only by abolishing the eviction board.³⁰ But the potential for dramatic change in board decision making was there all along.

for this period reflect the fact that the Authority's eviction procedures were being challenged by a Legal Aid class action during this period which may have led the Authority to encourage managers to try to deal with tenants without bringing them before the board, and at one point led to the formal cessation of all hearings. The hearing delays in this period may have given some tenants an opportunity to find private sector housing and may have led other tenants to accumulate debts so large that they thought a hearing was hopeless. No doubt the managers put considerable pressure on these tenants to leave. Significantly 24.2% of all tenants subpoenaed before the board during this period were able to settle their problems with the project manager and were allowed to remain in housing and another 35.8% may have done so as well for their cases were apparently not pursued after the subpoena. The comparable percentages of cases in which the hearing was called off after a subpoena was issued because the problem was settled were 7.7% in 1966-74 and 1.8% in the April, 1982-1985 period. The latter figure reflects in part a then recent policy of holding hearings in non-payment cases even when the rent was paid before the hearing.

³⁰ The managers felt this way when I interviewed them in 1969. From 1975 until 1982 HUD, in letters I found in the Authority's files, pressed the Authority to toughen up its eviction policy and urged as a first step the abolition of the eviction board.

Rules From Informal Procedures

One aspect of Abel's perspective on institutions of informal justice is his observation that they tend to "eschew official law in favor of substantive and procedural norms that are vague, unwritten, commonsensical, flexible, ad hoc and particularistic." To the casual or infrequent observer, including tenants defendants, these features may seem to characterize board procedures, but over time an observer sees procedural and substantive norms that are not vague, that are in the context of a given case no more flexible than formal law and that are seldom ad hoc or particularistic. Although the eviction board may differ from other informal tribunals in these respects my hunch is that except in tribunals where judges turn over almost as rapidly as cases, the eviction board is typical in these respects. The contrary picture that emerges from some studies of informal justice is, I think, an observer artifact. Either not enough similar cases are observed to spot regularities, or the observer focuses on or reports differences thus hiding norm-bound regularities from the reader's eye.³¹

With respect to rules what distinguishes the hearings of ordinary courts from those of informal tribunals is not their presence or absence but their source, the publicity given to them and expectations about whether they will be followed. The rules that courts officially apply are prescribed by law; they are ascertainable by reference to generally available sources, and they are expected to be followed so that the flexible interpretations that occur all the time may nevertheless be occasionally held by a higher body to be legal error. Informal rules on the other hand arise out of practice; parties learn of them by proceeding before the tribunal, and deviations from them are seldom grounds for reversal by some higher tribunal, often because there is no appellate review or when there is review because the rules could legally have been otherwise. The rules officially

³¹ Abel as I have pointed out does not list these characteristics as requisites of informal justice. Rather these are among the features a subset of which will, according to Abel, characterize any institution of informal justice. As I suggested in my discussion of keying I believe that certain of these characteristics, such as flexibility and particularism, are not used to differentiate institutions of formal from those of informal justice. Indeed, I would argue, with considerable Realist and Critical Legal Studies support, that official courts are more flexible than they appear. I would also argue that informal institutions are less particularistic than they appear.

applied in courts are, in sum, legal in origin; they are captured in some official pronouncement. Informal rules are generated by the tribunal and can be changed by it.³² They are often no vaguer than official rules, but because they are not reduced to writing they may appear vague to inexperienced litigants. They reflect regular responses to the procedural and substantive issues that the tribunal confronts on a recurring basis. One might say that, "Familiarity breeds precedent".³³

Many factors influence the quality of the various rules that informal tribunals develop. One factor that is often ignored is official law. Since many informal tribunals, like the HHA's eviction board, occupy a niche which official law provides, they must often accommodate themselves to certain legal requisites as they proceed informally. Consider, for example, the introductions to two eviction hearings I witnessed.

Panel I

(Chair) O.K. In conforming with Section 360 of the Hawaii Revised Statutes this hearing relating to docket #87-90 - [Tenant] is hereby called into session. For the record my name is _____, I will be the chairperson today of this [Panel 1]. I, as well as the other members of this [panel], donate our time as a community project. We work for free, if you will. I would like to introduce the people to you, beginning with the lady to my left, . . . The purpose of this [panel] and one of the reasons we are here today is to hear cases such as your case and in your particular case the Authority is charging you with non-payment of rent and chronic delinquency. We ask that you allow the Authority to overview the statement in front of you, the statement of charges, and we ask that you respond to these charges. Should you have rental receipts with you, or should you have witnesses you may bring those into evidence and to support your position. Do you have any rental, have you made any payments at all, do you have any rental receipts with you?

(Tenant) No I don't.

(Chair) Well then that is no problem, O.K. Have you understood everything and heard everything that I have said so far?

(Tenant) Yes.

³² The common law is also generated and changeable by courts, but the courts that do the law making are ordinarily appellate courts rather than those that try cases.

³³ See e.g. the discussion of "shallow case logics" in Lempert and Sanders (1986; 75-78).

(Chair) Do you feel that you can continue with the hearing without the benefit of counsel?

(Tenant) Yes.

(Chair) Let the record so indicate and without further ado I will turn this hearing over to the hearing officer for the Authority.

* * *

Panel 2

(Chair) According to Section 360-3 of the Hawaii Revised Statutes this hearing relating to the case of _____ docket #8780 is called to order. For the record my name is _____, and I will be the presiding officer before [Panel 2]. The other members of the board are ... We are here to receive testimony and evidence to determine if your rental agreement should be terminated with cause and that you should be required to vacate your unit. Youself and the Authority are party to this hearing. You will have the right to present evidence and call witnesses to support your position, you have the right to cross-examine witnesses or repudiate evidence that the Authority may present. You have the right to be represented by an attorney, or someone else to speak for you or you may speak for yourself.

(Tenant) Yea.

(Chair) The rules of evidence at this hearing are relaxed and as the presiding officer I will make all final rulings of law. If there are no motions, [Hearing officer] please proceed.

* * *

First, consider the introduction to the Panel 1 hearing. While this introduction may appear informal to the tenant or reader, after one has heard essentially the same introduction ten times one is aware that the specific details of this introduction reflect procedural norms that have been institutionalized at least within this panel. Indeed, in this instance it is a norm reduced to writing, for Chair 1 is following a "script" provided by the Authority. However, the script itself simply replicates a mode of commencing proceedings that was in large measure standard and unwritten twenty years before. Some elements such as the introduction of board members and the statement that they are volunteers simply grew out of what was a natural practice. Other

elements such as the explicit notice of a right to counsel reflect an understanding of what due process requires in this setting; an understanding, incidentally, that is not reflected in the standard introduction of twenty years ago. Still other elements such as the discussion of rental receipts are not part of the script but reflect long time habits of the Chair which are now a regular part of Panel 1's procedures.

Contrast this with the introduction used by Chair 2 in his Panel. It is based on the same script used by the Chair 1. Many of the elements are the same. The case is announced by docket number and the applicable law cited. The tenant is told of the charge and of her right to present witnesses and is also alerted to her right to counsel. However, Chair 2 did not note that the board members were volunteers, which is part of the script, and mentioned that he would make rulings on matters of law which is not. Nevertheless the introduction in each panel is governed by similar rules.

There is, the reader may have noted, a very different flavor to the introductions, but it is probably a mistake to attribute these differences to the fact that the eviction panels are informal tribunals. One can find similar differences in the way judges in ordinary courts address juries or the parties before them. Indeed, it may be a mistake to think that tenants hearing the second introduction anticipate a more legalistic procedure than those hearing the first. While the Panel 1 Chair engages the tenant while advising her of her legal rights, the Panel 2 Chair delivers his introduction in a rapid monotone which suggests that "all this legalism doesn't matter, so let's get on with it." This difference, like the difference between the ways that the two chairs embellish the central script, probably reflects the personalities of the two chairs and the attitudes they take toward their role. It should not be surprising that Chair 2 takes a more legalistic attitude toward substantive decisions, while Chair 1 believes more in arranging accommodative outcomes.

Procedurally the remainder of the proceedings are just as norm-bound as the introductions. The prosecutor must introduce the rental agreement and get the tenant to acknowledge that she has read it,³⁴ and he must summarize the details of the lease violation. The tenant and the

³⁴ The rule is procedural, not substantive. In one case I observed the tenant said she had not read the lease because she did not read English, after a bit of hemming and hawing the case proceeded anyway.

manager are each assured a turn to speak. The manager is ordinarily a crucial witness in trouble cases and is regularly asked in non-payment cases whether apart from not paying the rent the tenant family has caused any other difficulties. There is also a sense that the tenant ought to be attended to. If, for example, a non-payment tenant doesn't speak up without prodding, she is asked why she has been having payment problems. Also questions from the board members seem to be obligatory. In several sessions I observed there seemed to be no need for inquiry, but the board chair took it upon himself to ensure that the tenant was asked some questions. The procedures were essentially the same twenty years ago, although the substance of the discussion differed somewhat since the board at that time was applying substantive rules that differed from what they are today.

Substantive rules may also be generated by informal tribunals, for when a body hears case after case it develops its own principles for imposing order. For example, early in its existence the independent board developed a rule that tenants who owed rent and showed up for their hearing would, unless they lacked all ability or intention to pay their debt, be given a second chance to remain in housing. The mechanism by which this was accomplished was to order the tenant's eviction but to defer the execution of that order on the condition that the tenant make payments toward her accrued debt and pay future rental obligations as they were due. A tenant who did not pay on schedule was subject to the immediate execution of the outstanding eviction order.

This procedure and mode of decision is nowhere sanctioned by law. Indeed, were the board an ordinary court in every such case the law would have required a decision for the landlord/Authority. However, the independent board did not invent this procedure. It had been used by the internal board of Authority officials where these officials thought it appropriate. This remedy was an unexceptional one for them since their chair, the HHA's Assistant Executive Director, ordinarily exercised supervisory responsibility over the managers. What the independent board did was to transform a procedure, which granted occasional reprieves on the basis of close case by case examinations of tenant situations, into a rule of precedent, which applied to all non-payment tenants and for all practical purposes was a rule of substantive law.

Thus, in 1969 I sat in on board decision making sessions in which some board members predicted that the tenant would never pay her debts but nevertheless voted to defer eviction because that was the way these cases were handled.

The establishment of a precedent means that cases do not have to be probed as deeply as they must when a decision maker confronts them as unique problems with potentially unique solutions (Lempert and Sanders, 1986). Transcripts were available for the independent board's early cases. We see evidence for the development of precedent by arraying cases in the temporal order in which they were heard. The correlation between transcript length and temporal order for 56 non-payment cases that the independent board heard in its first two years of existence was -.538.³⁵ I believe this pattern exists because the board initially treated each non-payment case on its merits and decided on what seemed to be an appropriate resolution. But as time passed and a rule of law developed, the board's verdict was no longer problematic and only a few questions were needed to see into which precedential category a case fit. Since most tenants could make colorable promises to repay their rent debts and could give some indication of how this might be done, the conditional deferral was the routine outcome, accounting for about 95% of the board's non-payment dispositions between the middle of 1960 and the middle of 1969.³⁶ Indeed, by 1966 the precedent was so strong that in only two of 86 cases of non-payment that the board heard between then and 1974 did the board evict at the initial hearing.

³⁵ Transcripts were only available for the first two years of the board's hearings. After that the Authority continued to record hearings but ceased routinely to transcribe them. The transcripts analyzed ran from case 22 to case 122. Some cases did not involve non-payment and others were closed without a hearing. The first 20 cases are not included in the analysis because as will become clear below the independent board did not become fully independent until the Authority's Assistant Executive Director, the Chair of the Internal Board, ceased to represent the Authority before it.

³⁶ The negative correlation between transcript length and case order cannot be explained by an increase over time in board efficiency, familiarity with the hearing procedures or caseload pressure. For fifteen over income violations over the same period the correlation between transcript length and case order is an insignificant .031 which is significantly different from the negative correlation in non-payment cases at the .05 level. This is to be expected, for each over income case was unique on its facts, and the depth of the required exploration depended on the facts of the case rather than on the easy fitting of facts to categories for disposition. Of course, had the board faced as many over income cases as it did non-payment cases it might have spotted commonalities and developed precedents in this area as well.

Judicial Values

It is no secret that judges follow not only the election returns but also values to which they personally hew. But it is also the case that judges are constrained by their understanding of the law and their conceptions of the role they are to fill. One might expect the decisions of an informal adjudicatory tribunal to be even more reflective of the judges' values than the decisions of an ordinary court since the openness of the procedures allow an appeal to a range of values that could not be addressed in legalistic proceedings and because the constraints of both written law and the possibility of an appeal are nonexistent or small. The expectation that personal values will have a greater effect on decisions when procedures are informal than when they are legalistic may be justified, but the Hawaiian data suggest that the relationship between values and decisions is no simple one. It too is mediated by the judge's perception of what law and role entail, and the influence of personal values on decisions is considerably softened when the decision is entrusted to a diverse panel rather than to one individual.

For example, during the period 1960 to 1969 virtually every vote the eviction board took was unanimous. But the unanimity did not reflect a basic value consensus by members of the board apart from their conception of what their role and the law entailed. For example, eight of the independent board members who served in the 1960s agreed with the statement that most non-payment tenants will improve their rent payment habits if given another chance by the board, three disagreed, and one was undecided. The numbers are the same but the direction of agreement is reversed when the statement is "Troublesome tenants never change." Yet these board members voted together on almost every case.

The unanimous votes reflected the existence of a strong precedent in non-payment cases, a shared understanding of what the law required in over income cases, and a tendency to strive for consensus or the appearance of consensus which is common in small decision-making groups. These features are ordinarily enough to override decision propensities based on personal values. We can better appreciate this because the board members' value preferences surfaced in a subtle

way in a situation where norms were absent. In each case after some discussion the board chair would either summarize what had been said and invite a motion to defer or evict or some member would attempt to capture the consensus by making such a motion.³⁷ When the 17 independent board members who served during the 1960s were classified by their latent roles,³⁸ those with latent roles that suggested a special concern for the poor made 69% of the motions to defer but only 42% of the motions to evict while those with latent roles that did not suggest such a concern made only 31% of all motions to defer but 58% of all motions to evict. The Chi Square statistic for this distribution is significant beyond the .005 level, so we can be confident that the board members' behavior in making motions was being influenced by attitudes associated with their general positions in life. Yet these attitudes had no apparent effect on the members' voting behavior because virtually all votes were unanimous. There was, as we shall see shortly, some slight effect of members' attitudes on decisions the board reached, but the effect was slight because these decisions were constrained by a shared normative sense of appropriate dispositions.³⁹

³⁷ In only a small handful of cases was an acquittal a real possibility, for except in certain trouble cases the tenant did not dispute the existence of a lease violation.

³⁸ By latent roles I mean the occupational or voluntary association roles that ordinarily occupied the board members' working lives. Ten board members who were either ministers, social workers, or involved in extensive volunteer social service activity with the poor were before voting and attitudinal data were examined predicted to be lenient. Seven board members who fell into none of these categories were predicted to be strict.

³⁹ This is confirmed by the pattern of decisions in over income cases where formal law rather than board precedent imposed a bias toward strictness in that the board members were told that federal regulations gave them no choice but to evict families who had gone over the income limits and not moved within six months. Counting as evictions cases where the board deferred for only a limited period of time (usually a month) to give a tenant family an opportunity to find a home, there is no significant difference between the pattern of decisions by the internal and independent boards with the latter evicting about nine out of ten families at the initial hearing. Families escape eviction for over income when they can show that their income has diminished to the point where it no longer exceeds the income limit. The one case in which the board came closest to nullifying the law was an over income case in which a family with eight children had used up their six month grace period while a house was being built. The day before the family was to move, the house burned to the ground. The Authority brought the family to the board, claiming that the law allowed them no choice but to evict them. The board refused to evict, deferring a decision on several occasions, and the board chair personally tried to find a house for the family. Ultimately the problem was resolved when the Authority moved the family to a three bedroom unit on a project without income limits which it administered for the Navy. Because of their lack of a naval connection and their family size, the family did not qualify for this unit, but strings were pulled to resolve the first problem and the second was simply ignored.

This is not to say that personal values were unimportant to the pattern of decisions that the Authority developed or that the effects of these values were not enhanced by the board's informal procedures. Had the independent board not initially consisted of a majority of people with special sympathies to the poor and had its original chair not been a leader in this respect, a different decision-making pattern might have developed at the outset. Moreover, the fact that a panel was deciding cases was very important because the panel provided a forum in which the prevailing norms, particularly the norm of leniency in non-payment cases could be restated and enforced. A single judge free of recorded precedent might well have changed the pattern of decisions in non-payment cases dramatically if she thought that non-payment tenants seldom improved their payment habits when given another chance.

Indeed, if we look at all cases rather than just non-payment cases there is evidence that the dominance of a particular value position on the board had some small effect on the outcomes reached. Considering only those board members who were active in trying to crystalize the board's position,⁴⁰ we find that those predicted lenient constitute 59% of the members sitting in deferred cases but only 47% of those sitting when evictions were ordered. In other words in typical deferred cases a majority of the active board members in attendance were, to judge by their latent roles, disposed towards leniency while in the typical eviction case the majority had a more business-like bias. This suggests that in some cases the verdicts would have been different had the values of the board members hearing the case been different. Despite the emphasis on norms in the analysis thus far, this result is not unexpected since the bulk of evictions in the '60s were in cases involving trouble behavior or income violations, such as fraudulent concealment. These causes of action were too infrequent and too diverse to foster precedent⁴¹ and so are good

⁴⁰ Four board members, all predicted lenient, made motions of any sort less than half as often as would be expected given the number of cases they sat on and the hypothesis that board members did not differ in their propensity to make motions. These are considered inactive members.

⁴¹ The trouble behavior category, for example, includes only 38 cases and involves such diverse causes as prostitution in a project unit, fighting, failing to control one's children, parking two cars, parking a car that doesn't run, and keeping pets. In 16 of these cases the board voted to evict. The board, in contrast, voted to evict in only 8 of the 160 pure non-payment cases it heard over the 9 years from mid 1960 to mid 1969.

candidates for the influence of value preferences. Presumably some of the people evicted for these reasons would have been allowed to stay had the panel that heard their cases been more dominated by members predisposed to sympathy.

Changing Norms

To judge by the Hawaiian experience, informal procedures allow not only the establishment of norms that control decisions, but also marked changes in those norms. Indeed, while I cannot prove it from a case study, I believe informality makes a tribunal especially vulnerable to marked change, particularly if key personnel turn over.

Several aspects of informality contribute to this situation. The first is rules that are unwritten. This deprives an informal tribunal of any anchor other than past experience from which to argue that a proposed departure from the rule is unwarranted. In part because the board's precedent for deferring non-payment tenants had not been written into law, it is easy for the Authority's hearing officers to point to the Authority's rules and its lease and claim that given a lease violation, routine leniency is an improper disposition. Those who would defend the prior practice could point to no equally concrete embodiment of a counter principle.⁴²

⁴² I am not asserting that unwritten rules are always weak and specially vulnerable to change. They might be as strong and even stronger than written law in cultures where law wasn't usually associated with writing and in tribunals where the judges and, if it mattered, the audience, were socialized to accept the validity of the unwritten rules. The eviction board, however, existed in a culture in which binding legal rules are expected to be written and where there was no cultural reinforcement of board norms apart from the board setting. Without written law to consult, new members were in the position of a jury that must be instructed in the law. The instruction could come from either the hearing officer or from old members. Given membership turnover, the general sympathies of most new appointees, and the hearing officer's claim to legal expertise, it is not surprising that the board members, with no written law to turn to, tended to be guided by the hearing officer's views of appropriate norms.

I am also not asserting that written law is always insulated from dramatic change. On the contrary, a written norm may be reversed with the stroke of a pen. But the process to bring about legal change is different from what it is when the norm is institutionalized in a tribunal as unwritten and understood. I have no doubt that if the Authority had had a written norm mandating deferrals in the typical non-payment case, it would have changed it before 1987 to make eviction the usual outcome. But had there been a written norm that was not changed, I do not think the Authority's hearing officer would have been able to reverse the board's prior pattern of decisions by insisting that in the typical non-payment case the proper verdict was eviction. Just as tenant-oriented board members of the '60s reluctantly evicted overincome families because federal law provided they could not stay, so I think the Authority-oriented board members of the '80s would have deferred if they could have been shown by reference to some authoritative source that in certain kinds of cases deferral was a firm norm. Indeed, lay judges

A second reason why informality is conducive to abrupt change is that the subject matter open for consideration, what Joe Sanders and I call the "res gestae" of the case,⁴³ is wide. Thus new considerations which may press the tribunal to adopt different norms may be introduced at any time. Almost any argument is in order.

Finally, the judges in informal tribunals are generally lay persons. Often such tribunals are authorized by some more formal authority, and they may, as the eviction board does, occupy a decision-making niche bounded closely by law. In these circumstances lay judges may be unsure of their proper sphere of discretion and may turn to those with apparent authority or greater legal knowledge for guidance as to their proper courses of action. This makes the tribunal vulnerable to rule changes suggested by an external authority even when the suggestions have no binding legal force. Vulnerability is enhanced if the authority appoints the members of the tribunal, provides support personnel or dispenses the funds available to it.

We can see these influences at work in the way the pattern of decisions by the eviction board changed at two points in time. In each case a change in the identity and behavior of the Authority's representative to the board contributed to a substantial change in the way the board decided cases.

The first change occurred at the independent board's inception. During its first six months the HHA's Assistant Executive Director (AED), who had chaired the internal board, presented the Authority's case. Then he was promoted to Executive Director and replaced as "prosecutor" by one of the Authority's project managers. Table One shows how the relative participation of the board members and of the parties before it changed with the composition of the board and with the identity of the Authority's representative. The data are based on transcripts that were available

might defer more to written norms than legally trained individuals, for the latter are trained to realize the non-bindingness of precedent and the openness of texts to creative interpretation.

⁴³ Lempert and Sanders, 1986. See especially Chapters 7 and 8.

from the inception of the HHA's internal eviction board through the first two years of the independent board's existence.⁴⁴

Table One

Mean Percentage Participation in Eviction Hearings by Actor and Board Type

	Board Members**	Authority & Authority Witnesses**	Tenants & Tenant Witnesses	Total
HHA Board (N=39) (Dec. 1957-June 1959)	46	34	21	101 *
Independent Board: AED "Prosecutes" (N=17) (July 1959-Dec. 1959)	18	61	21	100
Independent Board: Other Prosecutors (N=77) (Jan. 1960-June 1969)	33	45	23	101 *

* does not add up to 100 because of rounding error.

** pr (T) of the differences in mean participation by the board and by the Authority < .001 for all possible pairwise combinations of boards.

The dominance of the AED in both the internal and independent boards is clear. When he was chairing the internal board the mean percentage participation of board members was 46% while it was only 33% when the independent board heard cases presented by the project manager,

⁴⁴ The transcripts cover 133 cases in which hearings were held, 39 before the internal board and 94 before the independent board. The total transcript lines accounted for by board members, by the HHA's spokesman and by the tenant or tenants were counted for each case and then converted to a percentage expressing the fractional participation of each party in the hearing. Lines of less than half the average line length in the transcript were not counted, except that whenever an individual spoke he accounted for at least one line of participation even if he only said one word. Where witnesses were introduced the participation of the witness was counted with the participation of the party introducing him. A check on whether the tenant category accounted for more participation when both husband and wife were present than it did when only one showed up revealed no strong relationship.

and the participation of the Authority's prosecutor and witnesses goes from 34% with the HHA board to 61% when the AED participated as a prosecutor to 45% when the AED's participation counts neither for the board nor the Authority. The proportional participation of the tenants and their witnesses is virtually the same throughout.

The AED was, in short, the dominant personality so long as he participated in the hearing process. When he was on the board, he took over questioning that would normally have been part of the prosecution's presentation of the case, and when he was the prosecutor he posed the kinds of questions that would normally have been for the board to ask. Neither form of dominance was surprising. The informality and newness of the process meant that participant roles were not clearly defined. The AED supervised those who brought cases to the board he chaired, so they were used to looking to him for guidance. It is also not surprising that the first members of the independent board did the same thing. They did not receive any significant training and did not know their precise role or the rules they were to apply. Nor were there written rules to guide them. Not only was the AED experienced as a board chair, but he represented the Authority whose rules they were enforcing.

When the AED left, his replacement found himself in a different situation. Now the board was experienced and the prosecutor was not. Not only did it not have to look to the Authority's representative for guidance, but the prior pattern of deference to the Authority's representative was disrupted and the board chair could exert his leadership. As one board member said recalling this period of transition:

The board unbended a bit. It seemed to take a more sympathetic viewpoint as time went along. In the beginning the Authority said this was an action for eviction and we should do it. The relationship changed as time went along. The Authority became less formal. [Did the board become more independent?] Yes.

⁴⁵ In the first seventeen transcripts available for cases after the AED left, the Authority representative and the Authority's witnesses account for 48% of all participation and the board members for 30%. The overall figures for the post AED period are 45% and 33% respectively which suggests that the transformation from the pattern of board passivity that existed when the AED was present was an abrupt one. The original board chair was a competent, high status individual. This may have facilitated the board's greater assertiveness.

Not surprisingly the pattern of the board decisions changed. Table Two presents the results at the initial hearing for cases involving either non-payment of rent or undesirable behavior.

Table Two
Outcome At Initial Hearing By Board and Cause of Action, 1957-1969

	Non-Payment Only		Non-Desirability (Alone or With Non-Payment)	
	Defer	Evict	Defer, Clear or Transfer	Evict*
HHA Board	53% (9)	47% (8)	23% (3)	77% (10)
Independent Board AED Prosecutes	71% (5)	29% (2)	38% (3)	63% (5)
Independent Board Other Prosecutors	95% (152)	5% (8)	58% (22)	42% (16%)

* Five independent board cases where deferral was for a limited period to give the tenant a chance to find a home are included with the evicts.

Despite the small number of cases during the six months the AED served as prosecutor, it appears that the pattern of decisions in that period was different from what it was before or after, and slightly more similar to the pattern of decisions by the HHA board than to that of the later independent board. It is unlikely that in an ordinary court hearing relatively simple cases the prosecutor's identity would have such an effect on patterns of judicial participation or on the decisions reached.⁴⁶

⁴⁶ It might affect decisions if the discretion to prosecute was exercised differently by different prosecutors, or if one prosecutor prepared cases better than another. But in the eviction situation it was the managers who decided to bring cases and were responsible for gathering the evidence.

This becomes even clearer when we look at more recent history. In the 1980s the board's eviction rate in non-payment cases increased dramatically. According to board member and housing staff informants, by 1987 the board ordered eviction without conditions in virtually every case where the tenant before it had an outstanding rent debt.⁴⁷ The news of this verdict was, however, softened by telling the tenant that if her entire rent debt was paid before the time for filing an appeal to the HHA's Commission had lapsed, she could appeal and expect to be reprieved.

As Table Three suggests, this transformation of the board's decision making is the culmination of a process which began in the mid 1970s. The periods were chosen for substantive reasons before the data were examined.⁴⁸ During the first period 1966-74 there was no reason to expect that the pattern of evictions would differ from what had gone before and, indeed, we find that there is no difference. The second period from 1975-77 was a period of great substantive upheaval at the Authority. The eviction process was under attack in a class action brought by Legal Aid⁴⁹ and at one point all evictions actions were put on hold. Indeed of 120 subpoenas issued during this period only 24% resulted in hearings. The proportion of subpoenas resulting in hearings never falls below 78% in the other periods and is above 90% in the last two. In addition the management of the Authority was changing dramatically during this period⁵⁰ and HUD

⁴⁷ Tenants who have cleared their rent debt before the hearing are also technically evicted, but have their eviction orders deferred on the condition that they pay their rent on time for the following six months. Until about 1980, these cases almost never reached the board because when a tenant cleared his rent debt before a scheduled hearing, the hearing was ordinarily cancelled.

⁴⁸ A case is classified by the date of its first hearing if a hearing was held or by the date of the subpoena if the case was closed without a hearing.

⁴⁹ The claim was that the eviction board did not comply with HUD mandated grievance procedures. Legal Aid was correct in this claim. For a while it appeared as if the eviction board might be replaced by a grievance arbitration panel, but eventually it was perceived that the two were compatible. So few eviction actions give rise to adjudicated grievances that this procedural innovation need not concern us here.

⁵⁰ When I first studied the HHA in 1969 its entire business was building and managing public housing projects. By the 1970s it had been given major responsibility to build and sell housing for middle income families. These responsibilities coupled with the responsibilities given the HHA to manage and help finance a program whereby homeowners could convert leased lands to fee simples transformed the HHA from an organization that was seldom in the news to a highly visible political body and also directed much of the agency's attention away from public housing. One result was a major reorganization of the Authority following a series of newspaper articles about its failures as a development agency. This led to a change in the law which removed the Executive Directorship of the

supervision of the Authority was intensifying as general authority to oversee the HHA was transferred from HUD's Regional Office in San Francisco to the Honolulu local area office. A particular concern of the local office was the Authority's rent collection arrearages and the leniency of the eviction board was seen as the prime source of the problem. Indeed, as late as

Table Three
Outcomes of Initial Eviction Hearings for Non-Payment Cases
By Period 1966-1985

	Period						Overall
	1/66- 12/74	1/75- 12/77	1/78- 10/79	A 10/79- 1/82	B 1/82- 2/84	C 3/84- 12/85	
Conditions or Continuance	96.6% (84)	62.1% (18)	78.1% (50)	56.0% (108)	66.5% (165)	58.2% (64)	66.9% (489)
Problem Cleared or Settled	1.1% (1)	-	-	4.7% (9)	6.5% (16)	.9% (1)	3.7 (27)
Evicted at Hearing	2.3% (2)	34.5% (10)	20.3% (13)	32.6% (63)	19.4% (48)	34.5% (38)	23.8% (174)
Default Eviction (Tenant does not Appear)	-	3.4% (1)	1.6% (1)	6.7% (13)	7.7% (19)	6.4% (7)	5.6% (41)
Total Cases	87	29	64	193	248	110	731

HHA from the civil service rolls and made it a gubernatorial appointed position. This was soon followed by the resignation of the longtime executive director of the HHA who had come up through project management ranks and his replacement by a person with no public housing experience who saw his task, in part, as bringing a more business like attitude and organization to the Authority.

Shortly after my 1987 field work was completed, the HHA was divided into two agency's, one with land finance and development responsibilities and the other, like the HHA I observed in 1969, charged with the task of managing public housing and other housing support programs for people of low income.

September 1982 the local HUD office was pressuring the Authority to abolish the eviction board or otherwise make a drastic transformation,⁵¹ and as recently as 1986 HUD officials were complaining about the board's propensity to put non-payment tenants on conditions.⁵²

The period 1978-79 runs from the beginning of 1978 until mid-October 1979. It marks the end of litigation about the viability of the eviction board and the first point at which the Authority's new, more business-like management could begin to place its stamp on the eviction process. The Authority's long time representative to the board, who did not believe it was his responsibility to give the board direction, was replaced during this period. At the start of this period there was a backlog of evictions resulting from the delays attendant to the litigation of the prior period. The period ends with the Authority determined to take steps to speed up the pace of evictions.

The last three columns mark the period - which began in October 1979 - of two eviction panels. It begins with the division of the existing board into two panels and the appointment of four new members to one panel and three to the other. In addition a day long training session was held for board members in which the Authority's rent collection problems and the importance of the board in rent collection was stressed. These columns are labeled with letters because the

⁵¹ It appears that in doing this HUD had not independently analyzed the situation but was instead echoing the diagnosis and solutions for the Authority's rent collection difficulties which the project managers fed HUD auditors in their project level investigations.

The December 1978 response of the HHA's then Acting Executive Director to a HUD suggestion that the board be abolished reveals a sophisticated perspective on the virtues of the instruments of informal justice as means of official control:

The Eviction Board (now designated as Oahu Hearing Board) is the only procedure by which evictions can be processed in a timely fashion. A single Hearing or Review Officer on management staff would be constantly challenged by the grievance procedure and appeals to the HHA Commission. Although these are still options to the tenants, even with the Hearing Board, the sense of fair play representation and judicial action seems to minimize grievance and appeals. Recourse directly to the courts would not only result in a loss of control, but require lengthy delays in scheduling appearances. The inconsistencies that would be experienced under a number of different judges might well encourage rather than deter delinquency among the tenants. The time factor alone would increase delinquency before eviction is effectuated.

⁵² The officials didn't realize that by 1986 almost all tenants placed on conditions had paid their rent debt by the time of the hearing and the conditions constituted a threat to evict them immediately should they fall behind on their rent within the next 6 months.

periods they mark are defined by the Authority's representative to the board. A was the Authority's first full time eviction specialist. He was not a lawyer, but enjoyed acting like one and negotiating with lawyers. The period labeled A runs from the end of October 1979 until mid-January of 1982.⁵³ Period B runs from January 18, 1982 until February 28, 1984. B was the first lawyer to hold the position of hearing officer and was officially attached to the Attorney General's Office as a deputy attorney general rather than to the Authority. But she like her successor was in effect a full time Authority employee and reported to the Authority's head of housing. C was a deputy attorney general who became the hearing officer in 1984 and occupied this position until shortly after my field work concluded in the summer of 1987.

It looks from Table Three as if a major break in the board's routine disposition in non-payment cases occurred in the 1975-77 period, for including defaults, evictions that are voted when the tenant does not appear, there are five times the number of eviction decisions during this period as there were in the preceding 8 years.⁵⁴ However, as Table Four reveals, the break is not as significant as it appears.

The only difference between the eviction board in the 1975-77 period and the board before that was that it would evict where a substantial number of month's rent was owing while the earlier board would give a tenant a chance to clear her debt even then. Indeed Table Four does not quite reveal the strength of the rent debt factor, for in ten of the eleven cases in which the 1975-77 board evicted, the tenant's rent debt was six months or more. Moreover, there is as we

⁵³ A actually came to the Authority earlier in 1979 and handled cases before October of that year. I begin the period I label A when I do because this marks the start of the two panel system which even more than the appointment of A is a major break with the past. Moreover, the training session (which A ran) and new board memberships that accompanied the start of the second panel provided conditions that were conducive to A's influence attempts. A left the Authority before the end of 1981, but cases that arose after his departure but before a permanent replacement was in office are counted in the A period. A parallel decision was made with respect to the transition between B and C. These decisions reflect the expectation that the influence of one hearing officer was likely to linger until there was another person in a position to give the board's panels, week after week, consistently different messages.

⁵⁴ Note the figures refer to decisions reached at the initial hearings in non-payment cases. In some instances tenants were allowed a rehearing or, in later periods especially, were allowed to stay after appealing to the HHA's board of Commissioners. In other instances tenants put on conditions were again brought before the board after failing those conditions and either the conditions were changed or extended or the tenants were evicted.

Table Four

Proportion of Eviction and Default Evictions at Initial Hearings by
Period and Months Rent Owed*

Months Rent Owed At Hearing	Period						Overall
	1/66- 12/74	1/75- 12/77	1/78- 10/79	A 10/79- 1/82	B 1/82- 2/84	C 3/84- 12/85	
0 Balance	0 (4)	-	0 (4)	22.6% (31)	6.8% (59)	15.9% (44)	12.7% (142)
3 Months Or Less	0 (24)	0 (4)	7.1% (14)	37.5% (88)	18.4% (114)	38.9% (36)	24.6% (280)
More Than 3 Months	3.7% (54)	45.8% (24)	28.3% (46)	52.9% (68)	56.8% (74)	80% (30)	56.8% (296)

* Number in parentheses is the total number of cases in the category.

have noted a substantial selection problem in the 1975-77 period. So few subpoenaed cases resulted in hearings that it may be that those that did involved tenants who had both exceptional debts and exceptionally bad rent payment histories or exceptionally poor prospects for paying off what they owed. This is evident from the fact that during this period 71.4% of the cases heard owed more than six months rent at the time of the hearing while no more than 27% of the cases in any other time period fall into this category. Thus, in the period 1975 to 1977, the board appears to have been evicting only where they were absolutely convinced the tenant would not pay back his rent, something which they had done occasionally throughout. The 1978-79 period also does not suggest a marked change in prior practice. In only one of 18 cases with a rent debt of three months or less did the board evict. The board, however, was willing to evict when the amount owed was between three and six month's rent and did so in 9 of 27 cases. Indeed those who owed more than six month's rent fared better than those who owed between three and six month's rent, for only 4 of 19 such tenants were evicted at the initial hearing.

The pattern of board decisions changed dramatically only after A was handling cases and the second panel was in place. Then the probability of evictions rose dramatically regardless of amount owing. The substitution of B for A suggests that the identity of the hearing officer does matter, for except when more than three month's rent was owed the board was less likely to vote eviction when B handled cases than when A did.⁵⁵ Yet another change occurs when C takes over, for compared to B the probability of evictions rises substantially at all levels of debt. Indeed Table Four tells only part of the story, for the data extend only through 1985 when C was still trying - by his own admission - to impose his views on the board. By the summer of 1987, if my observations and interviews can be believed, evictions occurred almost always when tenants appeared at a hearing with rent owing. But even without this information, Table Four suggests the vulnerability of informal tribunals - at least when staffed by lay people - to direction from authoritative repeat players.

There is one other change that is reflected in Table Four. At one point cases were ordinarily cancelled if tenants who were subpoenaed to a hearing paid off their debt before the hearing date. As we see from Table Four, A started bringing some of these cases to a hearing.⁵⁶ Often these involved tenants who had a history of chronic delinquency, which is to say a record of either often falling behind a month or two on the rent and then clearing the debt before a subpoena could issue or of continually being about a month behind on the rent. When these cases were brought up, the board sometimes simply acquitted because there was no outstanding debt but more often (most likely where there was history of chronic delinquency) voted an eviction order but deferred the execution of the order on the condition the tenant keep her rent current for the

⁵⁵ The figures for 0 balance cases may be contaminated by selection bias, for when a tenant paid her rent in full before the hearing, the hearing officer could dismiss the case. B brought relatively more (24% v. 18%) zero balance cases to the board than A did, and it may be that if A was more selective the cases he brought to the board were better candidates for eviction on characteristics like rent payment history that the data do not measure. However, the magnitude of possible bias is unlikely to be so large as to explain the differences in the proportion of zero balance cases evicted that we observe.

⁵⁶ I cannot be certain, but the small number of zero rent debt cases before period A may be cases in which the tenant paid off the rent debt so soon before the hearing that the board did not know the case was cleared until the tenant showed up.

next six months. C transformed the board's attitudes in these cases so that chronic delinquency did not matter - the mere fact that there had been a rent debt was sufficient to trigger an eviction order deferred on conditions. We see this first in the proportion of zero balance cases in which the board acquitted outright. This proportion went from 17.25% (28.6% if continuances⁵⁷ without an eviction order are included) under A to 22% under B to 2.3% under C. Moreover, selection effects mean that C's board was probably hearing less serious cases with respect to chronic delinquency than A's board or B's, for unlike the first two hearing officers C virtually never withdrew a case after a subpoena had issued. Thus zero balance cases constitute 18% of the non-payment cases A prosecuted; 24% of the cases B prosecuted and 40% of the cases C brought to the board.

The changes that transformed the eviction board in the 1980s resulted from the Authority's decision in the late 1970s to speed up and tighten its eviction process, first by devoting two staff positions, A and a full time secretary, to evictions and then by dividing the board into two panels so that a panel of citizen-volunteers could meet weekly. Along with this a concerted effort was made to secure a board that would take a tougher, more legalistic approach to the eviction decision. The board training session I have mentioned was part of this effort as was, somewhat later, the Authority's decision to send the chairs of its two panels to the Judicial College in Reno, Nevada.⁵⁸ In addition, reappointment decisions took account of the board members' attitudes, and new appointments were made with an eye to the member's likely positions. (In the summer of 1987 three of the five non-tenant members on one panel worked for property management firms.)⁵⁹

⁵⁷ These might be ordered to see if the tenant would pay her rent on time for the next few months.

⁵⁸ The two chairs told me their behavior as chairs had not changed as a result of this experience. One enjoyed it, and the other regarded it as a joke. Subsequent chairs were not sent to judges school, although the HHA's Executive Director pointed to this move as one of the most important things he had done to toughen the board.

⁵⁹ In addition, effective January 1, 1981 the law authorizing the HHA to evict tenants was changed following an HHA produced draft to make it easier to subpoena tenants, to rationalize the process of appeals and in several other respects. Neither these changes nor the promulgation of administrative rules about the same time seem to have had any direct effect on the board's decision making. As B outlined the board's responsibilities in a memorandum to the acting SPHM in 1982, they were legally what they had always been:

The Hawaii Housing Authority's hearing boards perform three basic functions: determining whether tenants violated provisions of the rental agreement with the Authority; determining

These actions and others created fertile soil for changes in how the board decided cases. What was crucial, as we have noted in discussing Table Four, was the position that the Authority's representative took in the hearings. A and B often urged eviction but acknowledged the board's authority to defer evictions on the condition that debts be paid in full (although in 1980 a rule was adopted placing a six month limit on the length of such deferrals). However, C, the attorney who next occupied this position, was determined that the outcome be eviction in all non-zero balance cases. He developed a standard speech which argued that if the tenant was actively in violation of her lease (i.e. owed money), it was the board's obligation to evict. To soften the argument he pointed out that the board's decision was not final because the tenant had a right to appeal. This he pointed out was the proper locus for merciful discretion.⁶⁰ The board's responsibility, he emphasized, was to decide whether there was a legal violation. At times C embellished his standard argument by emphasizing that if a tenant were evicted she would be replaced by an equally needy but more responsible tenant from the Authority's waiting list. C's ability as a repeat player to emphasize these themes again and again, the fact that he was clearly speaking on behalf of the Authority, and the fact that the eviction board had come to be dominated

whether the rental agreement should be terminated as a result of the violation; and determining whether tenants should be evicted for the aforementioned violations.

The change in the appeal provision, which limited appeals to the Authority's Commission to cases in which there were "new facts and evidence" came to have a substantial indirect effect during the tenure of C for, as we shall see, he persuaded the board to abdicate some of its discretionary authority to the Commissioners, and the Authority would not have found this workable had the availability of appeal not been limited in this way and had the Commissioners not delegated the task of determining whether new facts and evidence existed to the Executive Director.

⁶⁰ But the Commissioner's decision, as the board knows, is conditioned on the tenant's paying back her entire rent debt before the time for appeal has lapsed. In some cases, C, who after having presented cases to the board then processed the eviction orders, would delay the paper work needed to commence the appeal period in order to give a tenant more time to pay her back rent. He was a former legal services attorney and saw himself as personally sympathetic to the situation of low income tenants, and in internal HHA discussions C took policy positions that were more pro-tenant than the positions of a number of other Authority officials. At one point C complained to me that the Authority's increased efficiency in processing cases after the board's decision was limiting his discretion to allow tenants whom he thought might be good candidates for reform sufficient time to generate the new evidence (full payment in the case of tenants who owed rent at the hearing and a period of full, on time payment in the case of tenants evicted for chronic delinquency) required for an appeal.

by people not bothered by strict decisions⁶¹ meant that in cases where tenants had not already cleared their debt, the board's norm of decision was transformed from one of deferrals on the condition that the debt be repaid according to some schedule to one of immediate eviction subject to the possibility of a reprieve if, after the board voted eviction, the rent debt was paid in full.⁶² This attorney's influence is reminiscent of that of the AED some 25 years before, except the AED didn't try to impose a rule of decision on the board but instead attempted to impose his view about how each particular case was to be decided.

I hypothesize that the success of this effort to impose an automatic eviction rule is, like the earlier domination by the AED, attributable, at least in part, to the fact that the board follows informal procedures. Had a right to deferral been enacted into law or been the pronouncement of some higher court, the Authority's representative would not have made the case he did. Even without a prior writing, if tenants before the board were routinely rather than rarely represented by lawyers,⁶³ these lawyers might with some authority have reminded the board of its power to be lenient and they might have argued that the board had a responsibility to decide in accordance with past decisions. But an informal tribunal even if it in practice follows precedent is not legally or necessarily bound by it and can change its precedent when an authoritative source continually champions a new rule which most of the board members find congenial.⁶⁴ Finally, if professional

⁶¹ Not only are there a number of property managers on each board, but the tenants on the board are generally quite strict with their fellow tenants. This is not because they have been selected by the Authority for their strictness; usually they have been selected from a short list furnished by the HHA's tenant union. Rather it is because the kinds of people who become active in the tenant's union are good project citizens who for the most part comply with project rules despite their own financial and other difficulties and feel little sympathy for those who do not.

⁶² The demand for lump sum repayment was less onerous than it would have been at an earlier point in time because the Authority's policy of initiating eviction actions before large debts had accumulated coupled with its increased efficiency in scheduling hearings meant that tenants were commonly brought before the board with arrearages of between one and two months. Often, by borrowing from relatives or other support groups tenants could come up with the money to clear such debts. During the 1960s and '70s debts of three or four months and more were common because cases weren't processed as rapidly. Tenants this far in debt had little hope of clearing their accounts unless they were given time to pay.

⁶³ Fewer than one in twenty non-payment tenants had a lawyer at the hearing, and by period C the rate of representation at the hearing was down to about one percent.

⁶⁴ The chair of one of the panels who had served for about ten years on the board will contest the Authority's representative if he goes too far and says in a particular case that because there is an outstanding rent debt the

judges sat on the bench, they would be cognizant of their power and would be jealous of it. Thus, if there was a precedent justifying conditional deferrals in non-payment cases, they would be unlikely to change their practices simply because a prosecutor insisted that another rule was proper. Of course professional judges are likely to see themselves as bound by the law, which in this instance gives the Authority the legal right to evict tenants who are a month or more behind in their rent. This is all the Authority's latest prosecutor was asking for.

We have seen some of the data that traces the transformation C wrought, but in 1985, which is the last year for which data is now available, the transformation was not complete. By the summer of 1987 when I was again in Hawaii and observed board hearings, the rule making eviction the standard outcome when rent was unpaid had been institutionalized, and the comments of the Authority's representative were not so much a justification for the rule as they were a reminder that there was a new standard. For example, in one hearing the Authority's attorney in the course of the hearing addressed the tenant - and obliquely the board - as follows:

O.K. Well given your balance here and what you are saying you are going to do, normally when somebody comes before the board and they do have a balance what we recommend is that the board order an eviction, but if you do what you say you are going to do and you take care of it by the 17th, you do that then we recommend that you file an appeal showing that it is all taken care of. If you do what you are saying that you are going to do, more than likely you can stay. But you have to do that. If you don't there is nothing that we can do to help you out.

However, I did witness one hearing in which a deferral was granted. The case involved a family which in the month before the hearing had paid off \$750.00 to cover two month's rent and at the time of the hearing, on the 28th of July, owed only July's rent. The family had gotten in

board has no choice but to evict. He will also point to the board's power to defer cases during the board's deliberations. However, with the exception of one case I observed, his protestations go for naught, and I have heard other members say in deliberations that the new rule was that they had to evict. Perhaps because of the mixture of old and new members with different ideas of what norms require, board members who served in the 1980s unlike those who served in the 1960s did not report that virtually all their decisions were unanimous. In this respect it is important to note that the change in unanimity does not reflect a greater mix of attitudes toward tenants in the 1980s. In the 1960s there were members whose attitudes might be characterized as pro-Authority who regularly voted for deferrals, and in the 1980s board members whose attitudes show great sympathy for tenants regularly vote for eviction. What has changed is the balance of attitudes on the board and the sense of which dispositions are normative.

financial trouble when a son whose finger had been almost severed had had it sewn back resulting in unexpected medical expenses. This problem was compounded, if the man can be believed, when the money from a recently cashed paycheck was stolen from his locker while he worked. The deferral was to allow the family to spread the repayment of the July rent over two months. It was done because the date on which the man received his paycheck was such that even if he applied his next two paychecks to the July and August rent, he might not have a zero balance in time for his appeal because the second paycheck would not arrive until after the August rent was due. Also the board was influenced by the fact that using the husband's next two paychecks for the July and August rent would leave the family with almost no money for food or other necessities.

The fact that deferring eviction in a non-zero balance case had come to be perceived as unusual was obvious in the discussion of this case and the remarks made afterward. As the board waited for the tenant to be brought back to hear its verdict one member remarked, "It must be Professor Lempert's influence; this is the first time we have done a conditional like this in over a year." Another member said, "HHA will have a hemorrhage." And a third chimed in, "C is going to croak."

The member was right about C. He was terribly distraught. During the next case which involved another non-payment tenant with an outstanding debt, C didn't make his usual pitch for an eviction but muttered that given the way the board had decided the previous case he wasn't sure what to ask for on this one. Later he complained to a fellow Authority employee who sympathized by saying the board would not recognize the facts. He also complained to me. He felt that it was unfair that the board was not consistent, and he was worried both that the board might be establishing a new precedent (after he had worked so hard to get them to develop a precedent of evicting) and that the project manager in this case would tell other managers about it with the result that the managers generally would be reluctant to bring eviction actions. I do not know what has happened since then, but I doubt very much if these fears have been realized.

The most recent changes in the pattern of eviction decisions are interesting not only for what they tell us about how the decision making of informal tribunals may be transformed and for what this story suggests about the way that informal procedures can contribute to certain transformations, but also because these changes remind us that informal procedures do not necessarily yield results that seem inattentive to law. Under the general Hawaiian landlord-tenant law when a tenant is brought before a court owing rent that he cannot then repay, the landlord has a right to evict him. This is what the eviction board is now doing in almost every case. Yet the experience of tenants before the board and the procedural freedom they enjoy is, apart from outcomes, much like what it was thirty, twenty or ten years ago.

Dimensions of Informality

Figure One

		<u>Judicial Stance</u>	
		Legalistic	Informal
<u>Party Participation</u>	Legalistic	1) Legal Adjudication	2) Court-Induced Settlement
	Informal	3) Hidden Legalism	4) Common Sense Resolution

Consider Figure One. The figure calls attention to the fact that tribunals of informal justice are informal along two dimensions which need not be associated. One concerns the quality of party participation: whether the parties hew to legal rules of proceeding like rules of evidence and develop their cases by reference to legal rules and arguments. The second takes the parties style of presenting evidence as a given and concerns the stance which the judge or judges take

toward a case: whether the judge seeks to decide cases in accordance with official legal principles or seeks to do what is right by reference to common sense and widely shared norms of popular morality.⁶⁵ Only when both the judicial stance and the party's mode of participation is informal, do we have an institution of informal justice. When both are legalistic in nature we have the model of ordinary legal adjudication.

As with all fourfold tables, real world phenomena never fit neatly into the social scientist's conceptual boxes. Cells 2 and 3 illustrate this, for the processes given as examples are not pure cases. Court-induced settlements which combine party legalism with an informal judicial stance emphasize the procedural aspects of the judicial stance. The judge comes down off the bench, so to speak, and seeks to persuade the parties that a certain outcome is both fair and desirable. This, however, is often done with reference to official law, and judges will sometimes make or threaten legal rulings to induce settlement. Along the other dimension, the parties may act less legalistically once it becomes clear that they have established the legal parameters within which a settlement will occur.

Hidden legalism emphasizes the attention of judges to official law, but where the parties' participation is informal the judge may also enter the discussion in an informal way rather than remain a passive evaluator. Moreover, if the parties realize that the judge, despite the style of her participation, is attending to official law, they will, while proceeding in an apparently informal manner, be sure that necessary legal ground is covered and that appropriate legal arguments are made. If only one party realizes that an informal judicial style does not mean that the substantive law has been relaxed, that party will be at a substantial advantage. This differential

⁶⁵ Ordinarily the first judicial stance is associated with judicial passivity while the second brings to mind the image of the judge who is an active participant in the litigation process, but these associations are not necessary. In continental legal systems or in settlement conferences in this country legalistic judges are commonly activists, and a substantively oriented judge may simply let the parties tell their stories. The empirical association is (in this country) expected to exist because, on the one hand, official law constrains judges to passivity and a legalistic judge is expected to be oriented to this body of law as well as to procedural rules and the law governing the case. On the other hand, the judge who takes an informal stance will often find that she will have to intervene to be sure the parties will reveal everything that she regards as relevant to her decision, particularly if, as will often be the case, the parties are proceeding informally and lack clear rules about what the tribunal regards as important.

understanding of what the tribunal is about is more likely when one party is a repeat player and the other is a one time participant. Small claims courts often fit into this cell.⁶⁶

The older practice of giving non-payment tenants a second chance was a common sense resolution that had hardened into precedent. Moreover, there was still room for considerable common sense in the way the precedent was effected, for the tribunal had to determine from the facts of each case what the terms of the second chance would be. The parties knew what the adjudication was about and proceeded accordingly.

Today, board hearings embody hidden legalism. From a purely procedural standpoint, they look essentially as they always have. Participation on both sides is informal. Tenants seldom have lawyers, and the Authority's representative, although an attorney, ordinarily does not act much like a lawyer. There are no rules of evidence, and the board members ask questions, express sympathy and occasionally give tenants a piece of their mind as they have always done. Yet the decision is almost always fully determined by legal criteria. The tribunal applies the official legal rule that if there is rent money owing, the landlord has the right to an eviction. The tenant's story is probed, but regardless of what the tenant says the decision is almost always determined by one basic fact - is there a rent debt outstanding. If the tenant realizes this at all, it is only after some discussion when the Authority's representative tells her that the tribunal's usual rule is to evict whenever there is an outstanding rent debt and explains that if the debt can be paid after the hearing a reprieve is likely on appeal.⁶⁷ This transformation from common

⁶⁶ See, e.g., Yngvesson and Hennessey (1975) and O'Barr and Conley (1985). The O'Barr and Conley article is particularly instructive, for they report that as compared with ordinary courts, small claims litigants are often satisfied with their experience because they feel that they have had an opportunity to tell their story in their own words to a person in authority. Yet some of these litigants lose what could have been winning cases because with limited knowledge of the law and without the constraints of legal form they fail to include in their stories all the legal elements necessary to a valid claim or defense.

⁶⁷ If the tenant has sought advice from Legal Aid before the hearing then the tenant may realize the legalistic nature of the hearing at the outset, for Legal Aid tells tenants that unless they pay their rent they will be evicted. Legal Aid came quickly to recognize the Authority's new policies and the fact that the board was implementing them. Perhaps because they occasionally tried to negotiate cases with the Authority's representative, they were explicitly informed of the change in the board's behavior and the Authority's position. Legal Aid's reaction to the new legalism was to discontinue almost entirely the representation it had occasionally provided non-payment tenants at eviction hearings. They recognized and accepted the validity of the legal rule the board was applying and were unwilling to expend their limited resources on cases they were sure to lose. Occasionally they will still

sense resolutions to hidden legalism was facilitated by the informality which characterized the common sense regime.

Before we leave Figure One note the simplifications that it incorporates for expository purposes. It assumes that the party takes the same stance toward both rules of proceeding and the substantive law (legalistic or informal) and that in this respect the two parties do not differ. It further assumes that the only judicial stance that is relevant is that which the judge takes toward the substantive law. These assumptions saved us from having to consider the possible intersections of three actors (judge, prosecutor and defendant) whose positions might vary in two ways along two dimensions and the unwieldy multi-cell table to which these possibilities give rise. By way of illustration, however, it is instructive to consider certain configurations at this level of detail.

Recall that the degree to which participants in a tribunal are constrained by legal rules and the degree to which a tribunal's decisions are oriented to official law are two of the dimensions that were defining variables of Abel's ideal-typical informal justice. I argued at the outset of this paper, however, that while both variables might well be aspects of ideal-typical informal justice, only the character of participation (whether or not it follows legal rules of proceeding) and not the degree to which judges or participants were oriented to official law was a key to defining a tribunal as an institution of informal justice. Thus parties may characterize a tribunal as an institution of informal justice when it differs from the ideal in more fundamental ways than those that always characterize attempts to link ideal conceptual types to real world exemplars. This opens various possibilities of perception, confusion and misperception. For example, we can state more precisely why the label for cell 3 of Figure One did not quite fit. Whenever a party's participation is procedurally and substantively informal⁶⁸ and the court's stance is procedurally

step in to aid a tenant with an appeal, but in doing so their first concern as one legal aid paralegal told me is to help the tenant find some "sugar daddy" who can give her money to clear her debt.

⁶⁸ Note that informality with respect to the substantive law is Weber's substantive rationality. Parties with an informal substantive orientation orient themselves to norms, but they are not legal ones. This can cause further confusion as the non-legal norms the two parties invoke need not be the same nor need they be the same as the norms the judge thinks relevant.

informal and substantively legalistic, the party will believe her case is being heard in an informal tribunal, but we will in fact have a situation of hidden legalism. On the other hand if the party's participation is procedurally informal but substantively legalistic and the court's is the same, we will have an informal legal forum - as in certain settlement conferences - in which informality provides an efficient way of testing who has the better legal case.

If one party and the judge are procedurally informal and substantively legalistic while the other party proceeds informally in both respects, the latter party is seriously disadvantaged for only her opponent is addressing the normative issues that concern the court. This is essentially the situation of non-payment tenants before the eviction board today. They may respond expansively when the board asks them why they could not pay their rent, but they soon learn their responses don't matter. At an earlier time in the board's history the situation was different, with the managers stubbornly holding out for what they saw as the legally mandated outcome and the tenant and board responding to similar unofficial norms. The managers, of course, as repeat players, recognized the situation and they responded by withdrawing legitimacy from the board - it had weak judges and was a phony court.⁶⁹

One could explore other combinations of party and court stances and party perceptions. Some may have characterized the eviction board in some cases (e.g. when Legal Aid represents a tenant) but not others, and some, no doubt, characterize other tribunals. However, I think I have said enough to make my point that there is variance worth exploring here. I leave the exploration of other configurations and their perceptual and behavioral implications to those seeking to make sense of other forums.

⁶⁹ When the board was composed of Authority officials, the managers (and perhaps the tenants) assumed that the board despite its legal status and adjudicative function would respond to the manager's substantive concerns. Indeed, several managers described the board to me as a "kangaroo court." The label is further testimony to the power of keying (here the composition of the board is a key), for the board did not routinely ratify managerial discretion but reversed the managers in about a third of its cases.

Conclusion

I have suggested in this paper that Western observances and participants characterize tribunals as formal and informal based on certain keys, such as the quality of the conversation the tribunal allows. These keys allow tribunals to be quite rule bound - both procedurally and substantively - yet still be characterized as informal. I believe the Hawaii Housing Authority's eviction board is such a tribunal. If I am correct in my description, this board had its own rules of proceeding that were every bit as regular and often almost as inviolate as the rules that are codified in official courts.⁷⁰ This was true both with respect to the procedures it followed and the substantive norms that it applied.

There is nothing surprising here. Anthropologists have long documented procedural and substantive regularities in tribunals that to Western eyes (although perhaps not to native ones) appear informal. Fallers (1969), for example, tells us that transcripts of Soga trials read (to the Western observer) like one non sequitur after another, and the non sequiturs are sometimes interlarded with apparent contradictions. Natives, however, perceive legal principles that fill in gaps and resolve contradictions. Sociologists also have documented the fact that rules arise in informal interaction. This is true even when, as was in some respects true of the eviction board, the rules are institutionalized largely within the confines of the interaction setting itself rather than, as is true of most of the tribunals studied by anthropologists, also in a larger society (cf. Bohannan 1965). Thus Ross (1970) reports liability rules (the rear driver in a collision is responsible) and damage rules (absent special circumstances damage awards equal three times the special damages) peculiar to plaintiff-insurance adjuster negotiations; Nonet (1969) describes the emergence in industrial accident tribunals of procedural and substantive rules that transformed the quality of hearings and prefigured legal change; and Emerson (1983) reports that rules can emerge even within a single day's session of a court, and that decisions are made with this possibility in mind.

⁷⁰ That rules change does not mean they are not binding as they exist at a given point in time.

The image that one sometimes encounters of informal tribunals as institutions that are unbound by rules of procedure and free to do substantive justice in the manner of Weber's khadi is highly suspect. One may always search for and should expect to find rule-like regularities in the workings of informal tribunals, although the regularities may be quite different from those of ordinary courts. So long as such regularities are not an ordinary court's regularities, they need not threaten perceptions of informality, for they will not key the concept "court of law."

I have also tried to show, using the eviction board as an example, that the kinds of proceedings that we associate with informal tribunals not only affect outcomes in particular cases and behavior beyond outcomes but also lead to substantive rules of precedent and have implications for how that precedent can change. In this connection I have argued that a major difference between legalistic and informal procedure lies in the ways that procedural and substantive norms are shaped and vulnerable to change. Indeed, the substantive norms that informal procedures shape can change even though a tribunal's way of proceeding remains in most obvious respects the same. Because informal procedure is a key to framing our conception of a tribunal, the casual observer or occasional participant may misread the character of a tribunal and overlook or misread fundamental transformations in the nature of what is going on. In particular, a tribunal may be highly legalistic in its orientation to substantive norms, but a party may not realize this until it's too late to save her case.

The causal relationship between formal rules of procedure and substantive outcomes is a staple of law school civil procedure courses and social science investigation, but the substantive outcomes of concern are ordinarily case outcomes rather than the generation of rules. It is clear from this work that procedure can effect outcomes, but the relationship is not always a simple or expected one. Stapleton and Teitlebaum (1972), for example, found that the usefulness of defense counsel in juvenile court varied with the characteristics of the court that a youth confronted. The relationship between informal procedure and substantive outcomes has received less attention, although some recent work has begun to focus on this. In particular, Comaroff and Roberts' fine

book (1981) calls our attention not only to the implications of process for substantive rules and outcomes but to the ways in which the concepts of process and rules can dissolve into each other.

In making my arguments, I have drawn on the thirty year history of the Hawaiian Housing Authority's eviction board for inspiration and examples. Although the eviction board is a specialized agency, I believe, in part because of the work that I cite above, that much of what I have found is true of other informal tribunals, especially those that are closely linked to institutions of the regular legal system. (I am thinking here of such forums as small claims courts, court-mandated mediation, court-annexed or contractually mandated arbitration, old-style juvenile courts and, in some countries, popular tribunals.) Whether I am right in these expectations - whether I have been writing about the "dynamics of informal justice" or just about "the case of a public housing eviction board" - is an empirical question. We need more studies that pay attention to the dynamics, in two senses, of the procedures we find in informal tribunals. First, we need studies that look at informality as the resultant of social forces and seek to understand informal procedures as products of the social situation of the tribunals in which they are embedded. Second, we need studies that look at informality as a moving force and ask how informality affects the behavior and outcomes in informal tribunals and whether it has larger social implications. My treatment of the HHA's eviction board is intended as an effort in these directions.

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