

Quality as Fairness: Evaluating the Quality of Free Legal Representation in NYC Housing Court

Ryan Ahern

NYC Department of Social Services
Office of Evaluation and Research

ASPHA/NAWRS 2021 Workshop, Milwaukee, WI

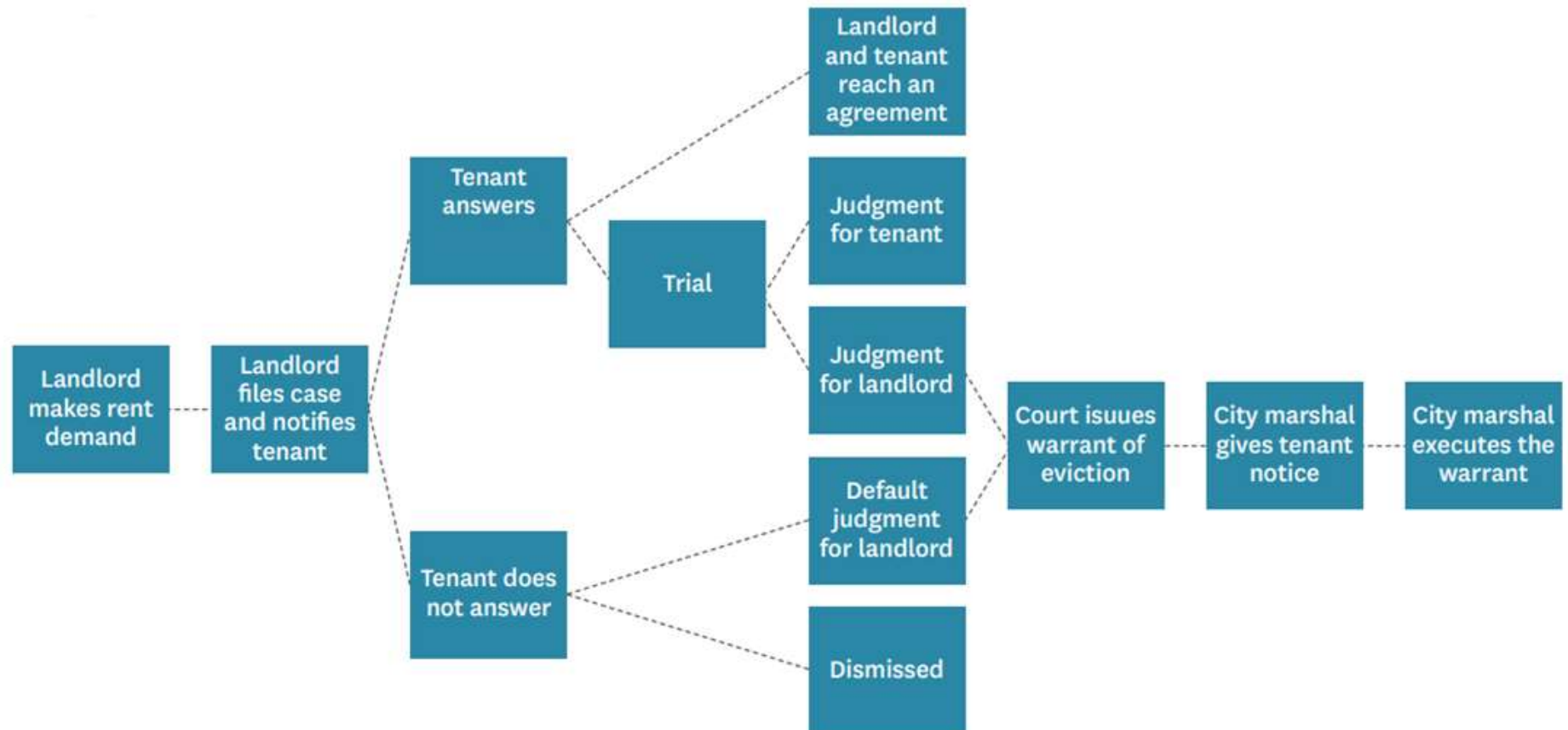
August 2021



Evictions process in NYC

- Evictions take place through a multi-step process in NYC Housing Court, a component of the State civil court system devoted to landlord-tenant matters.
- Most eviction cases relate to non-payment of rent (**non-pay**). Cases brought on other grounds are known as **holdover** cases.
- Most cases do not go to trial and are resolved through a negotiated agreement between tenant and landlord (**stipulation**).
- Stipulations are generally negotiated during tenant's first scheduled court date.
- In non-pay cases, stipulations define payment amounts, timeline, and consequences for non-compliance. Failure to meet stipulation provisions can lead to eviction.

NYC Non-payment eviction process



Right to Counsel (RTC)

In 2017, New York City enacted the country's first Right to Counsel (RTC) law for tenants facing eviction in housing court. RTC addresses a profound power imbalance in eviction proceedings: **nearly all tenants historically appeared in court *pro se* (without a lawyer) while almost all landlords are represented by attorneys.**

Under the RTC law, DSS/HRA's Office of Civil Justice (OCJ) provides free legal services to tenants with eviction cases in Housing Court through contracted nonprofit partners.

The program was phased in across the city and served over 30,000 households in FY2019 (prior to the COVID-19 pandemic).

The DSS Office of Evaluation and Research (OER) evaluated the quality of free legal assistance provided to low-income NYC tenants with eviction cases.

Evaluation Questions

Through structured interviews with RTC clients, OER explored the following questions:

1. What types of legal services did RTC lawyers provide to tenants? How often were different service components provided?
2. What were the court outcomes? How confident were tenants that they would be able to remain in their homes?
3. How satisfied were tenants with their lawyer? How did tenants perceive the quality of their representation?
4. What were the relationships between service receipt, court outcomes, tenant satisfaction, and perceived quality of representation?

Key Findings

1. Virtually all tenants were satisfied with their lawyer, and interviewees *overwhelmingly* reported high-quality legal representation in eviction cases, as measured by a series of questions related to key components of procedural justice.
2. Lawyers actively engaged with tenants over the course of housing court cases both in person and by phone, including providing critical assistance with stipulation negotiations.
3. Most tenants (85%) were still living in their home when surveyed—half of these interviewees were “very confident” that they would be able to remain there.
4. There was no notable difference in reported quality among tenants who were and were not still living in their home when surveyed—indicating that tenants highly value RTC legal assistance, regardless of how their cases are resolved.

Conceptual Approach: Quality as Fairness

Literature Scan: defining quality

- Conducted a literature scan on best practices in evaluating the quality of civil legal assistance. Reviewed 14 studies.
 - No standard definition of quality.
 - Rigorous evaluations of attorney quality are rare, particularly in the civil domain.
- Four general approaches to define quality:
 - Legal outcomes (i.e. conviction rate, sentence length)
 - Legal competence (i.e. legal knowledge, intelligence)
 - Resource inputs (i.e. caseload volume)
 - **Procedural justice**

Legal outcomes

- Seven studies defined high-quality legal assistance as assistance that leads to improved case outcomes.
- Data sources for this approach include administrative data, survey data, case file review, and stakeholder interviews.
 - **Advantages:** Intuitive approach, can be executed efficiently and systematically if relevant administrative data are available and accurate.
 - **Limitations:** In some legal domains, case outcomes are hard to qualify using administrative data. For example, most NYC eviction cases resolved via stipulation, but associated compliance is often not recorded in court records.
 - Does not consider other ways lawyers might help their clients, including referrals to social services, and explanations of court processes and rulings.

Legal competence

- Four studies focused on the competence of legal assistance, considering factors such as legal knowledge, preparedness, strategy formation, and persuasiveness.
- Data sources for this approach include direct observation, case file review, and surveys judges, jurors, and attorneys.
 - **Advantages:** Sensitive to variation in case circumstances.
 - **Drawbacks:** Competence is difficult to objectively assess, even by experts. Further, no party has access to all the information needed to draw conclusions. For example, a sitting judge may be able to critique the persuasiveness of oral arguments, but unable to consider value of case facts that were not presented.

Inputs to quality

- Ten studies examined attorney-level characteristics, such as case-load volume or years of experience.
 - Some explored the relationship between specific characteristics and case outcomes.
 - Others assessed quality of legal services by measuring the attorney level characteristics that have a demonstrated relationship with case outcomes.
- Data sources for this approach include provider administrative data, stakeholder interviews, and surveys of judges, attorneys, and other court staff.
 - **Advantages:** Useful in assessment of large-scale legal assistance groups. Standardized input criteria offer straightforward interpretation.
 - **Drawbacks:** Correlations between specific characteristics and outcomes vary by case circumstance and legal domain. Also, there are contradictory findings in underlying research. For example, attorney experience has been shown to have positive and negative relationship with case outcomes in different studies.

Procedural Justice

- Four studies use the concept of **procedural justice** to assess the quality of legal assistance, building on evidence that litigants' perception of the fairness of legal processes is a stronger determinant of satisfaction with a court experience than the outcome of their case.
 - Perceived procedural justice is also associated with increased compliance with court determinations, which has important implications for housing court as tenancy outcomes are often determined by tenant adherence to legal terms defined in stipulations.
- Procedurally just interactions are marked by four related features:
 1. **Respect**—the extent to which tenants are treated with dignity.
 2. **Voice** – the degree to which tenants bring relevant facts to bear.
 3. **Understanding**—the extent to which tenants know what is happening with their case, comprehend the consequences of court determinations.
 4. **Neutrality**—whether tenants perceive legal proceedings to be carried out without bias.

Procedural Justice (cont.)

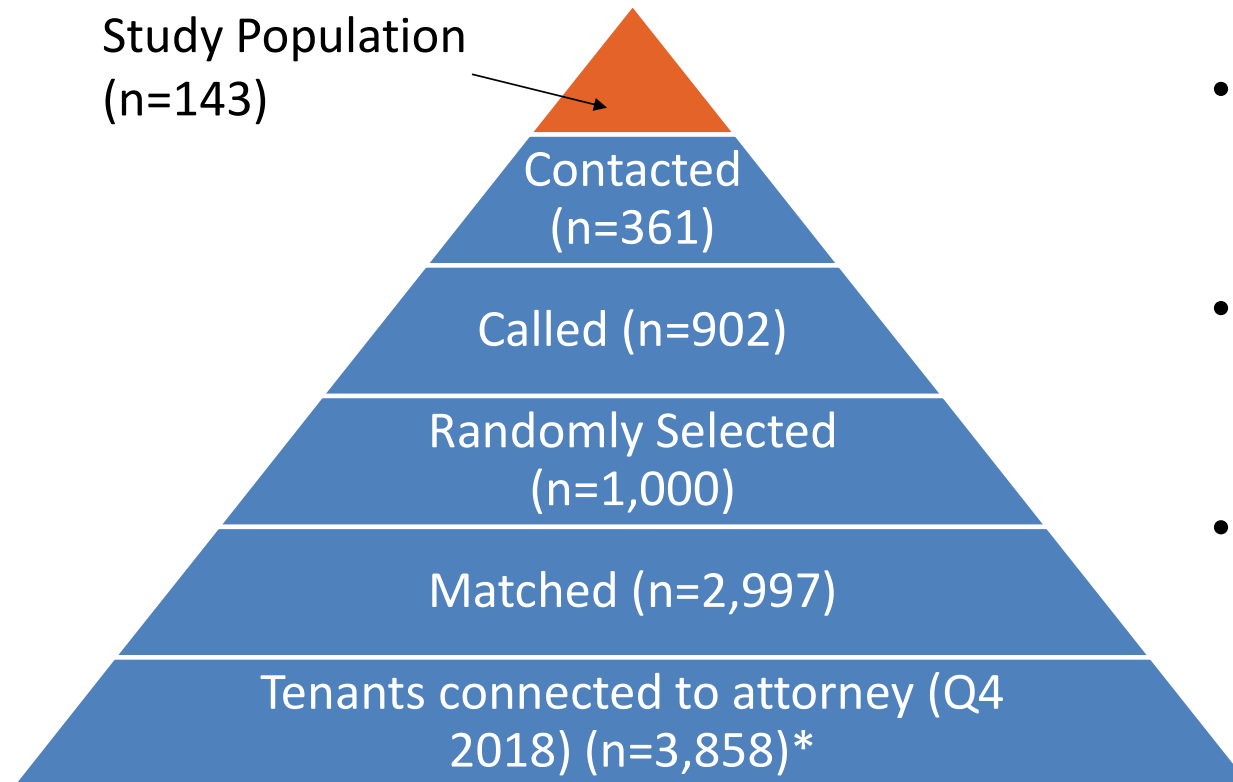
- Past interventions/evaluations have focused on a range of actors in justice systems (e.g., judges, court personnel, police)—role of defense counsel is typically not emphasized.
- In housing court in NYC, tenant lawyers can promote procedural justice by amplifying tenant voices and ensuring they understand legal processes and determinations.
- ❖ ***Lawyers in housing court are positioned to promote procedural justice, with likely downstream housing benefits for tenants. We thus define high quality legal assistance as that which fosters a sense of procedural justice among tenants with eviction cases in housing court.***

Methods

Data Source

- Conducted telephone survey with tenants who received full representation from a RTC lawyer in an eviction case (n=143).*
 - Surveys conducted during a five-week period (5/1/2019-6/7/2019) in English and Spanish.
 - Surveys took 20-30 minutes to complete; participants were compensated with two one-trip Metrocards cards for participation.
 - Sampling strategy:
 - Used RTC program data to identify all tenants connected to a RTC attorney in Q4 2018 (n=3,858).
 - Matched to DSS Welfare Management System to retrieve phone numbers (n=2,997).
 - Used random stratified sampling to select 1,000 potential participants. Stratified by case type to facilitate comparisons between non-payment and holdover cases, and by NYC borough to mirror overall distribution of RTC cases during the study period.

Sampling Strategy



- Made at least one attempt (and up to 3) to reach 90% of randomly selected tenants.
- Low overall response rate (16%) driven by unanswered calls.
- 40% of tenants who were asked agreed to participate.

Survey Instrument: Operationalizing “quality”

- To assess quality, we created a series of prompts associated with three procedural justice domains: **respect**, **voice**, and **understanding**.
 - Participants noted their level of agreement to each prompt using a 4-level Likert scale (strongly agree, agree, disagree, strongly disagree).
 - Did not include prompts related to neutrality, which is primarily influenced by other legal parties (e.g., judges).

Respect

My lawyer treated me with respect
My lawyer represented me to the best of their ability
I trusted my lawyer

Voice

I felt supported by my lawyer
My lawyer understood my side of the story
I felt more comfortable in housing court because of my lawyer

Understanding

My lawyer explained court rulings in a way that was clear to me
My lawyer made sure I understood the housing court process
My lawyer was knowledgeable

Survey Instrument: Other components

- Additional survey questions examined tenant characteristics and other aspects of their experiences working with a lawyer.
 - Participant characteristics (e.g., gender, race)
 - Receipt of different service components (e.g., # of meetings, time speaking with lawyer, assistance with stipulation negotiations)
 - Housing outcomes (e.g., current housing situation, confidence in continued residence)
 - Tenant satisfaction with their lawyer
- Open-ended question asked participants, “What was most helpful about having a lawyer in housing court?” This created opportunity for participants to bring other factors to bear.

Study Population

	Total (n=3,858)	Randomly selected, did <i>not</i> participate (n=857)	Participated (n=143)
Borough			
Bronx	1,601 (41.5%)	331 (38.6%)	49 (34.3%)
Brooklyn	1,110 (28.8%)	232 (27.1%)	57 (39.9%)
Manhattan	467 (12.1%)	101 (11.8%)	15 (10.5%)
Queens	396 (10.3%)	147 (17.2%)	15 (10.5%)
Staten Island	284 (7.4%)	46 (5.4%)	7 (4.9%)
Case Type			
Holdover	948 (24.6%)	438 (51.1%)	61 (42.7%)
Non-Payment	2,910 (75.4%)	419 (48.9%)	82 (57.3%)
# of adults per household	1.6	1.6	1.6
# of children per household	1.1	1.1	1.18
Family income below 2X FPL	3,716 (96.3%)	822 (95.9%)	143 (100.0%)
Rent-regulated housing	2,338 (65.5%)	469 (58.4%)	79 (59.8%)

- Study sample relatively similar to overall population of engaged tenants, with the exception of holdover cases which were purposely oversampled.
- Study results should be interpreted with caution given low response rate.

Study Population (cont.)

Characteristic	# (%)
Gender (Female), (n=135)	104 (77.0%)
Race/Ethnicity (n=133)	
African-American (non-Hispanic)	63 (47.4%)
Hispanic/Latinx (all races)	50 (37.6%)
White/European American	13 (9.8%)
Mixed/Other	7 (5.3%)
Educational Attainment (n=127)	
Some high school	15 (11.8%)
High school diploma or GED	34 (26.8%)
Some College	27 (21.3%)
Associate degree or higher	51 (40.2%)

- Large majority (85%) of survey population identified as African-American or Hispanic/Latinx.
- 60% of White/European-American participants were male, the other three groups overwhelmingly identified as female.
- Reported educational attainment higher than anticipated, given that all survey takers had a family income less than twice federal poverty limit.
- No differences in educational attainment between racial/ethnic groups.
- Higher than anticipated education level might limit generalizability of findings.

Findings: Service Receipt and Outcomes

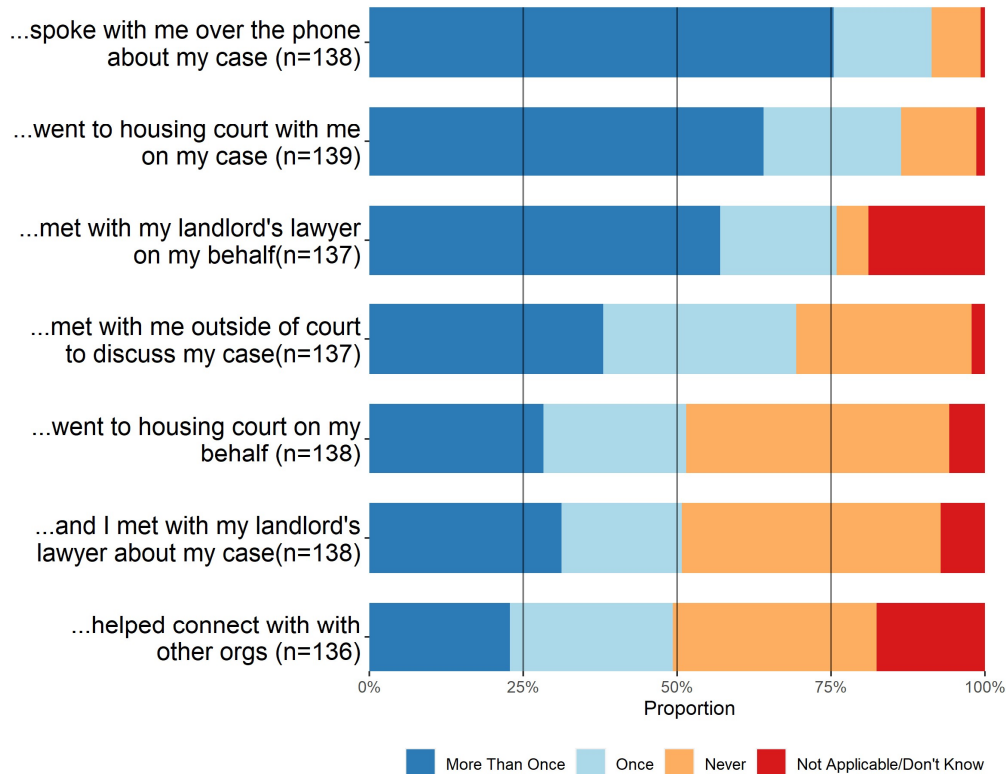
Service components

- Patterns of lawyer-tenant interactions reflect the fast-paced dynamic of housing court, as well as RTC outreach strategy at the time.
- Most respondents first connected with their lawyer in court, on or after their first court date.
- Time spent with lawyer was likely influenced by case complexity, status, and tenant availability.
- More than one-third of respondents noted speaking with their lawyer for less than one hour in total. This could be sufficient to prepare for, negotiate, and explain a stipulation agreement.

Where did you first learn you could get a free lawyer?		When did you first connect with your lawyer?	
Court	101 (71%)	Before 1 st court date	37 (26%)
Friend/Family	14 (10%)	During 1 st court date	52 (37%)
Own research	13 (9%)	After 1 st court date	52 (37%)
CBO	8 (6%)		
Other	6 (4%)		
How many times did you meet with your lawyer to discuss your case?		How much time did you spend speaking with your lawyer?	
Average	2.9	Average	1.6 hours
1 or fewer	21 (15%)	Less than 1 hour	50 (36%)
2 or 3	71 (50%)	1-2 hours	59 (42%)
4 or more	49 (35%)	Over 2 hours	28 (23%)

Service components (cont.)

My lawyer...



- Most tenants reported active engagement with their lawyers: 86% appeared together in court, usually more than once.
- Responses indicate that lawyers may have eased emotional, time burden for tenants: >70% met outside of court; most went to court on tenants' behalf.
- Highlights extra-legal benefits of representation in housing court: Half were connected to outside organizations re: housing situation.

Service components (cont.)

- Roughly three-quarters of the 88 respondents who reported having signed a stipulation indicated that their lawyer helped negotiate the terms. Tenants aided by lawyers noted greater understanding of terms, and higher confidence in their ability to stay in their home.

	<i>Did your lawyer help you negotiate your stipulation? (#, %)</i>	
	Yes (n=67, 85.9% of respondents)	No (n=11, 14.1% of respondents)
I understood all of the terms of the stipulation when I signed (n=70) ***	59 (95.2%)	4 (50.0%)
When I signed the stipulation, I was confident I would be able to meet the terms and stay in my home (n=67) *	54 (91.5%)	5 (62.5%)

*** = p-value < .001, * = p-value < .05. Statistical significance tested using Pearson's Chi-square test.

Outcomes: Housing stability

<i>Are you still living in your home?</i> (n=136)	# (%)
Yes	115 (85.0%)
No	21 (15.0%)
<i>How confident are you that you will be able to stay in your home?</i> (n=113)	
Very confident	51 (46.6%)
Somewhat confident	28 (24.6%)
A little confident	6 (5.3%)
Not at all confident	16 (14.0%)
Prefer not to say/not applicable	12 (10.5%)

- To learn about case outcomes *to date*, we asked tenants whether they were still living in their home and, if so, how confident they were in their ability to stay.
- 15 percent of respondents (n=21) were no longer living in their home. Accompanying open-ended responses suggests that all but one of these tenants had been forced out of their homes.
- Of respondents remaining in their home, nearly half were “very confident” that they would be able to stay in their home, and another quarter were “somewhat confident.”

*Survey conducted ~ 5 to 8 months after respondents connected with an attorney, and their cases were in different stages of resolution.

Outcomes: Tenant satisfaction

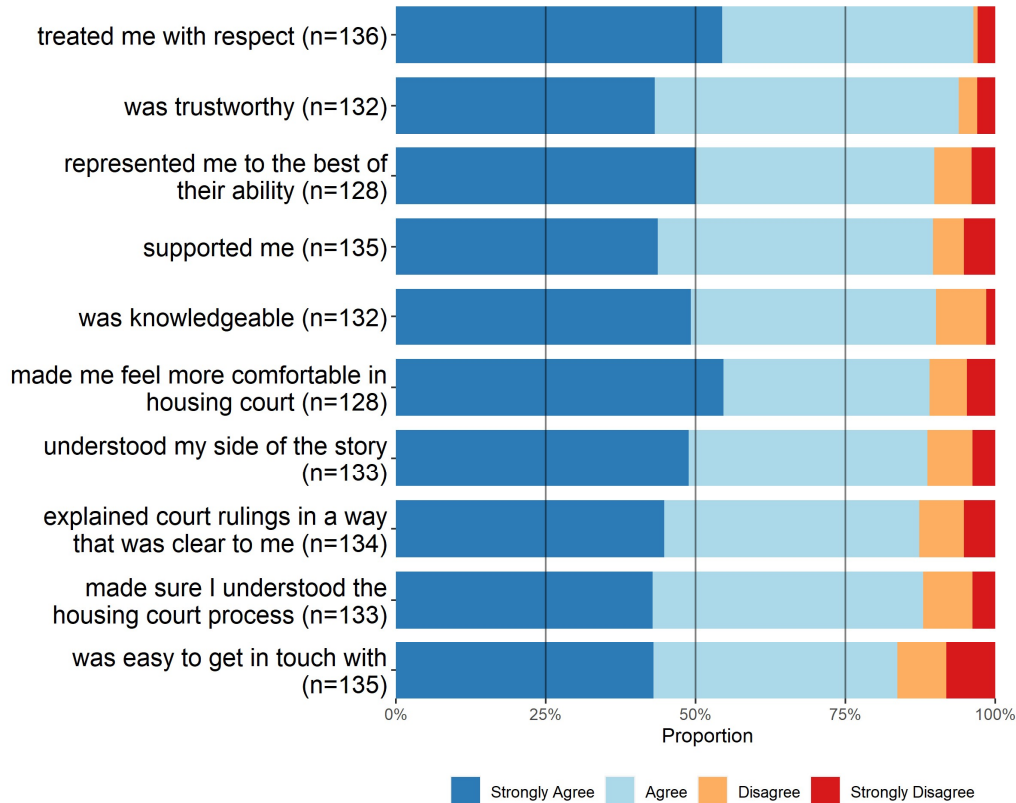
- Respondents had nearly universal positive impressions about their experiences with a lawyer in housing court. Only three tenants were not happy with their decision to get a lawyer, and nearly all stated that they would make the same choice should they have another case in housing court.

	Strongly Agree	Agree	Disagree	Strongly Disagree
If I had another case in housing court, I would want help from a lawyer. (n=129)	89 (69.0%)	38 (29.5%)	2 (1.6%)	0 (0.0%)
I am happy that I made the decision to get a lawyer for my case. (n=132)	94 (71.2%)	35 (26.5%)	2 (1.5%)	1 (0.8%)
If a friend or family member had an eviction case, I would recommend they have a lawyer. (n=130)	93 (71.5%)	34 (26.2%)	3 (2.3%)	0 (0.0%)

Findings: Tenant Perceptions of Quality

Tenant perceptions of quality

My lawyer...



- Nearly all respondents reported receiving high-quality legal representation.
- Roughly 90% of tenants strongly agreed or agreed that they were respected, supported, and kept informed by their lawyer.
- We observed strong correlation between these ten prompts, suggesting that these individual attributes are not only related, but may be mutually reinforcing.

Value of an Attorney: Open-ended answers

What was most helpful about having a lawyer in housing court?* (n=130)	# (%)
Having someone who knows housing court laws/processes	51 (39.2%)
Having someone to advocate for you/exercise tenant rights	34 (26.2%)
Emotional support	29 (22.3%)
Explaining court processes	26 (20.0%)
Connecting to other benefits	21 (16.2%)
Communicating with other parties	20 (15.4%)
Case outcomes	12 (9.2%)
Someone to listen to my side of the story	9 (6.9%)
Other	9 (6.9%)
Nothing helpful	7 (5.4%)
Go to court of my behalf	4 (3.1%)

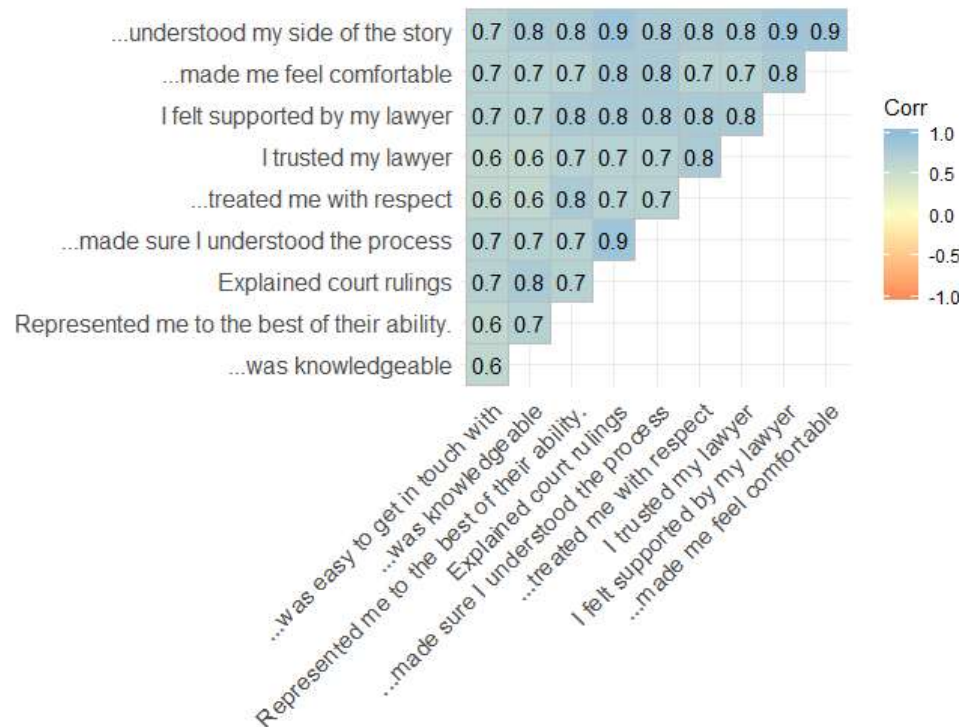
*Responses to open-ended prompts grouped by theme.

- Tenants often cited factors aligned with procedural justice, including **understanding** (e.g., having someone who knows housing court laws/processes, explaining court processes) and **voice** (e.g. someone to listen to my side of the story, communicating with other parties).
- Other tenants described how their lawyers were a source of emotional support—underscoring both the complexity of housing court proceedings, and the consequences of case outcomes.
- Some described how their lawyers afforded them credibility and respect from presiding judges, whom they perceived as being otherwise biased.
 - While survey did not probe **neutrality** explicitly, it emerged in open-ended prompts.

Tenant perceptions of quality

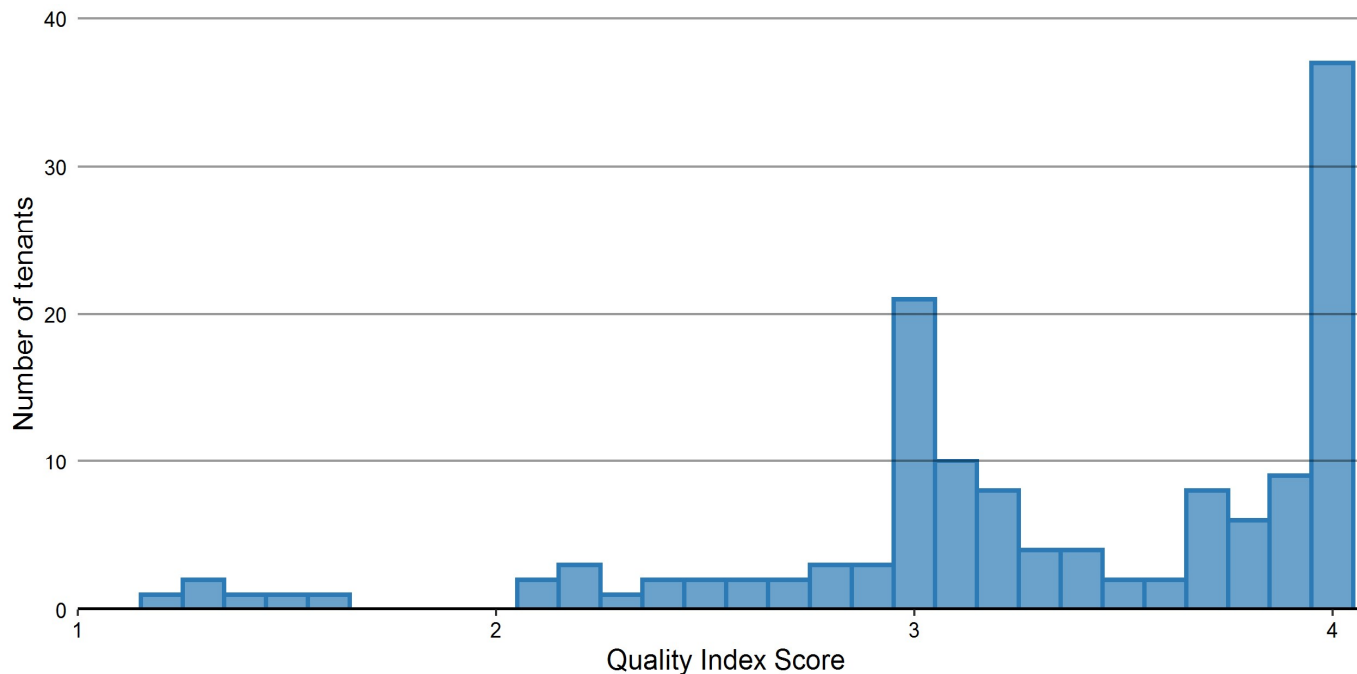
- Comments from tenants demonstrate how RCT lawyers helped foster fairness in housing court.
- *"made things clearer for me. He took his time to make sure I understand everything and all the processes that can happen."*
- *"sure I am getting a fair try...because they know more about the situation than I can. It is always more helpful to get an attorney."*

Quality Index Score



- Coded tenant responses to procedural justice prompts from 1 (strongly disagree) to 4 (strongly agree).
- We found a strong correlation between respondents' scores to individual prompts.

Quality Index Score (cont.)



- Scores for individual prompts averaged to create a Quality Index Score.
- The overall average index score was 3.3, and only 19% of respondents (n=26) had a score below 3 (=agree).

Patterns in quality

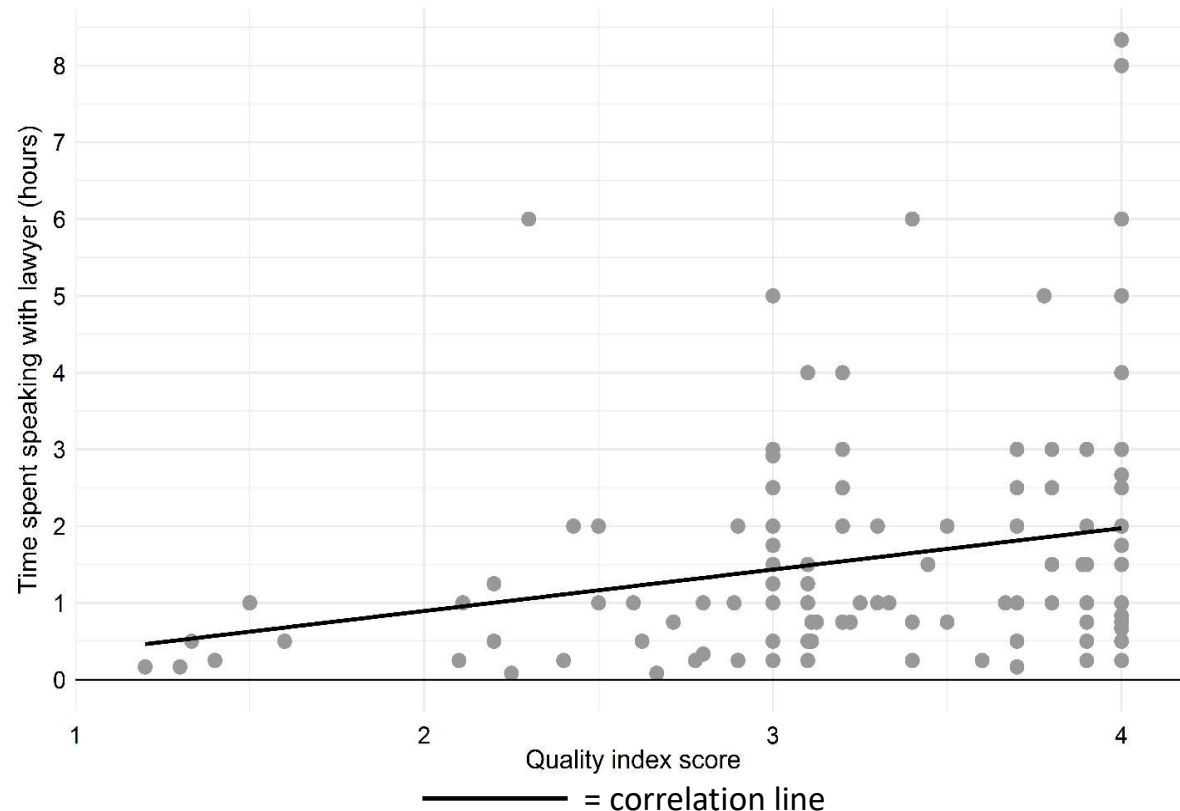
Response (Quality Index Score, #)

	More than once	Once	Never	Don't Know/NA
My lawyer went to housing court with me on my case. (n=137)	3.4 (87)	3.2 (31)	3.3 (17)	2.7 (2)
My lawyer went to housing court on my behalf (and I didn't go). (n=137)	3.5 (39)	3.4 (32)	3.1 (58)	3.6 (8)
My lawyer met with me outside of court to discuss my case. (n=136)	3.6 (52)	3.4 (43)	2.9 (38)	3.9 (3)
I spoke to my lawyer over the phone about my case. (n=137)*	3.4 (103)	3.1 (22)	2.8 (11)	3.8 (1)
My lawyer and I met with my landlord's lawyer to discuss my case. (n=137)	3.5 (43)	3.3 (27)	3.2 (57)	3.3 (10)
My lawyer spoke with my landlord's lawyer about my case on my behalf (n=136)	3.4 (77)	3.4 (26)	3.0 (7)	3.2 (26)
My lawyer helped connect me to other organizations that could help with my housing situation. (n=135)	3.6 (31)	3.5 (36)	2.9 (44)	3.5 (24)

- Looking across service components, more engaged tenants tended to report higher attorney quality.
- That said, even among tenants with limited apparent attorney engagement, many reported high quality.
 - May reflect NYC Housing Court practices, in which some cases can be resolved rapidly.
- Results should be interpreted with caution, given small n's.

* = p-value < .05. Statistical significance tested using Kruskal-Wallis rank sum test.

Patterns in quality (cont.)



*Spearman's rank order correlation coefficient = .27, p-value .002

- Higher levels of tenant-attorney interaction—in terms of both the number of meetings and amount of time—were positively and significantly correlated with tenants' perception of quality.
- Observed association was particularly strong at the bottom end of the quality spectrum.
 - Among the 6 tenants with a score <2, 5 reported meeting with their attorney for 30 minutes or less.

❖ ***Suggests that perception of procedural justice may benefit from intensive lawyer-client interaction.***

Patterns in quality (cont.)

- Tenants reporting assistance from their lawyers in negotiating stipulations, as well as those noting greater understanding of stipulation terms upon signing, tended to have a higher Quality Index Score.
- Sample size for these groups is small, and differences are not statistically significant. That said, these trends illustrate how high-quality representation can make a difference for tenants in housing court by ensuring that tenants fully comprehend their settlement repayment terms.

	Strongly Agree	Agree	Disagree	Strongly Disagree
I understood all of the terms of the stipulation when I signed. (n=62)	3.7 (31)	3.3 (28)	3.3 (3)	NA (0)
When I signed the stipulation, I was confident I would be able to meet the terms and stay in my home. (n=59)	3.7 (26)	3.5 (28)	2.4 (4)	3.8 (1)

Patterns in quality (cont.)

	# (%)	Quality Index Score
Are you still living in your home? (n=135)		
Yes	114 (84.4%)	3.3
No	21 (15.6%)	3.5
How confident are you that you will be able to stay in your home? (n=113)		
Very confident	51 (45.1%)	3.5
Somewhat confident	28 (24.8%)	3.3
A little confident	6 (5.3%)	2.9
Not at all confident	16 (14.2%)	2.9
Prefer not to say/not applicable	12 (10.6%)	3.2

- Among tenants maintaining occupancy at the time of the survey, those with increased confidence in keeping their home tended to perceive somewhat higher legal service quality.
- Strikingly, however, no notable difference was found in average Quality Index Score when comparing the 21 respondents who were *no longer residing in the disputed residence* to the 114 who were still in their homes.

Results indicate that lawyers are providing high quality assistance regardless of case outcome and—consistent with the procedure justice literature—tenants’ perception of fair process is not determined by how their cases are resolved.

Patterns in quality (cont.)

“[My lawyer] helped me with my case so I could fully understand what was going on. I was not alone so I felt secure. She helped me in the most possible way that she could. Unfortunately, I was evicted because it was a holdover case—the landlord wanted his apartment back. And the conclusion that came was, I had no other alternative. I had to go into a shelter.... [My lawyer] helped me with the steps moving forward so I wouldn't be living on the streets.”

Contact

Ryan Ahern ahernr@dss.nyc.gov

Edith Kealey kealeye@dss.nyc.gov

References

- Abuwala, R., & Farole, D. J. (2007). Court Review: Volume 44, Issue 1/2-The Perceptions of Self-Represented Tenants in a Community-Based Housing Court. *Court Review: The Journal of the American Judges Association*.
- Abrams, D. S. & Yoon, A. H. (2007). The Luck of the Draw: Using Random Case Assignment to Investigate Attorney Ability. *University of Chicago Law Review*, 74(4), 1145-1177.
- American Bar Association. (1994). *Legal Needs and Civil Justice: A Survey of Americans. Major Findings from the Comprehensive Legal Needs Study*.
- Anderson, J. M. & Heaton, P. (2012). How Much Difference Does the Lawyer Make? The Effect of Defense Counsel on Murder Case Outcomes. *Yale Law Journal*, 122(1), 154-217.
- Canada, K. E., & Hiday, V. A. (2014). Procedural justice in mental health court: an investigation of the relation of perception of procedural justice to non-adherence and termination. *The Journal of Forensic Psychiatry & Psychology*, 25(3), 321-340.
- Colquitt, J. A., Conlon, D. E., Wesson, M. J., Porter, C. O., & Ng, K. Y. (2001). Justice at the millennium: a meta-analytic review of 25 years of organizational justice research. *Journal of applied psychology*, 86(3), 425.
- Iyengar, R. (2007). An Analysis of the Performance of Federal Indigent Defense Counsel. *NBER Working Paper Series, Working Paper 13187*
- Lewis, E. & Goyette, D. (2012). *Report on the Evaluation of the Office of the Orleans Public Defenders*.
- Posner, R.A. & Yoon, A. H. (2010). What Judges Think of the Quality of Legal Representation. *Stanford Law Review*, 63(2), 317-350.
- Roach, M. A. (2017). Does raising indigent defender pay rates improve defendant outcomes? Evidence from New York. *Applied Economics Letters*, 24(14), 1025-1030.
- Sandefur, R. L. & Clarke, T. M. (2016). *Roles beyond Lawyers: Summary, Recommendations and Research Report of an Evaluation of the New York City Court Navigators Program and its Three Pilot Projects*. Retrieved April 12, 2019 from http://www.americanbarfoundation.org/uploads/cms/documents/new_york_city_court_navigators_report_final_with_final_links_december_2016.pdf.
- San Mateo County Bar Association Private Defender Program. (2017). *Annual Report Fiscal Year 2016-2017 to the Board of Supervisors San Mateo County*.
- Shinall, J. B. (2010). Slipping Away from Justice: The Effect of Attorney Skill on Trial Outcomes. *Vanderbilt Law Review*, 63(1), 267-306.
- Sixth Amendment Center. (2018). The Right to Counsel in Mississippi: Evaluation of Adult Felony Trial Level Indigent Defense Services.
- State of Minnesota, Office of the Legislative Auditor, Program Evaluation Division. (2010). Evaluation Report: Public Defender System.
- Tyler, T. R. (2007). Court Review: Volume 44, Issue 1/2-Procedural Justice and the Courts. *Court Review: The Journal of the American Judges Association*, 217.
- Tyler, T. R., Sherman, L., Strang, H., Barnes, G. C., & Woods, D. (2007). Reintegrative shaming, procedural Justice, and recidivism: The engagement of offenders' psychological mechanisms in the Canberra RISE Drinking-and-Driving Experiment. *Law & Society Review*, 41(3), 553-586.
- Weller, S. & Price, D. A. (1994). Representing Indigent Parties in Civil Cases: An Analysis of State Practices. *Center for Public Policy Studies*.
- Wright, R.F. & Peebles, R. A. (2013). Criminal Defense Lawyer Moneyball: A Demonstration Project. *Washington & Lee Law Review*, 70(2), 1222-1267.