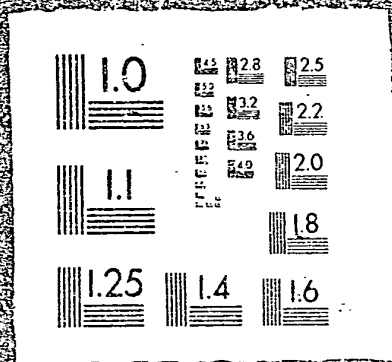


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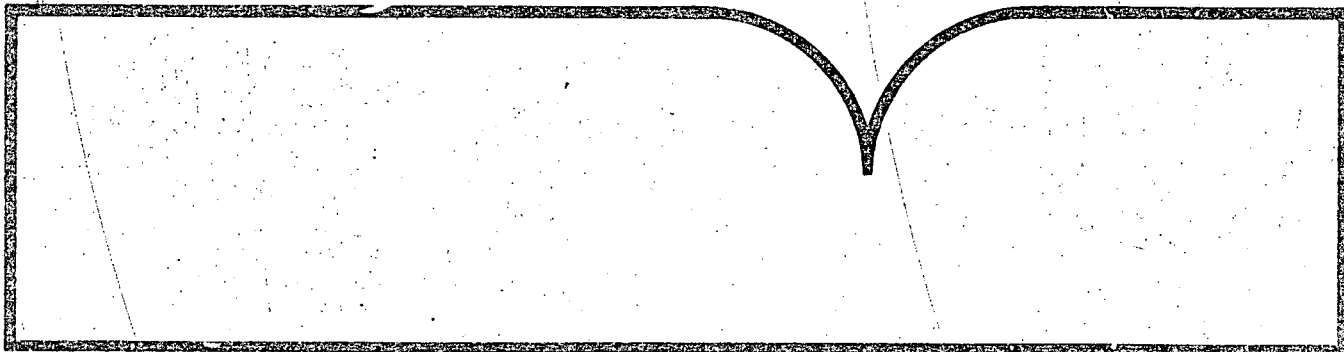
Specialized Courts: Housing Justice in the
United States. Executive Summary

American Bar Association
Washington, DC

Prepared for

Department of Housing and Urban Development
Washington, DC

Mar 81



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Randall W. Scott.

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DC.

This document summarizes a study of the nature and effectiveness of specialized courts established by several cities to deal with housing disputes, especially those involving landlord - tenant issues and code enforcement problems. The summary is intended to assist evaluations of local court systems as they relate both to code enforcement and to housing matters generally. Of paramount concern is the proper and fair administration of justice through local court systems in the handling of housing disputes. Thirteen cities were studied because they had installed such specialized courts. Analysis of these courts indicates that they may be able to improve the delivery of housing justice at the local level. Among the types of specialized courts examined were code courts, landlord and tenant courts, special small claims courts, quasi - comprehensive housing courts, and comprehensive housing courts. The report discusses the types of housing disputes that go to court, the existing weaknesses in most available forums for dispute resolution, and the features of specialized ho,

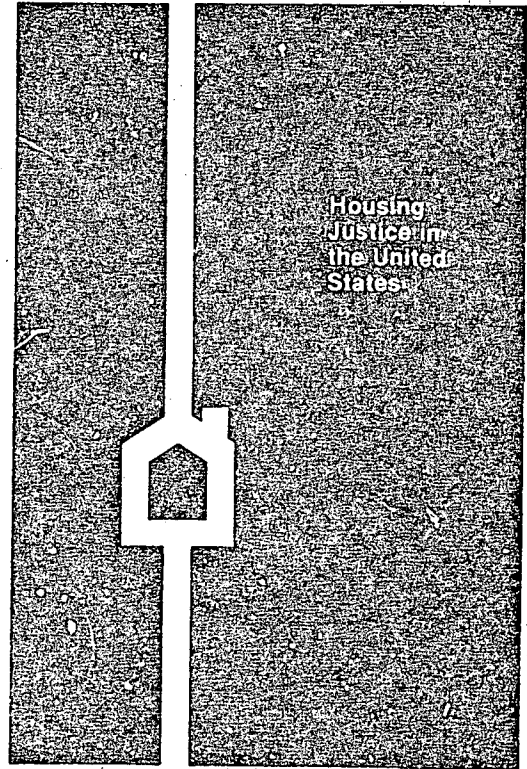
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EXECUTIVE SUMMARY

**Specialized Courts:
Housing Justice in the United
States**



UNITED STATES DEPARTMENT
OF HOUSING AND URBAN
DEVELOPMENT
Office of Policy Development
and Research

AMERICAN BAR ASSOCIATION
Special Committee
on Housing and Urban
Development Law

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ABA ANNUAL MEETING

August 11, 1981

Please make the following changes in your copy of "Executive Summary: Specialized Courts":

Page 3, at the end of line 11, after the word "from", add:

the comprehensive housing courts (see discussion above) through the "single-subject only" courts (for example, the Pittsburgh housing court handles only code enforcement mat-

Page 21, between the 16th & 17th lines: after #13 and before (a), add the following "headline":

Summary of "Landlord-Tenant 'Better'" Section (pp. 18-21):



Executive Summary

Specialized Courts:
Housing Justice
in the United States

REPORT OF THE ABA SPECIAL COMMITTEE ON
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by Randall W. Scott

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ACKNOWLEDGEMENTS

In July 1978, the "National Housing Justice and Field Assistance Program" was established under the Special Committee on Housing and Urban Development Law. Case studies, research, and field assistance were performed for the U.S. Department of Housing and Urban Development, Office of Policy Development and Research (Contract No. H-2856). The work focused on landlord-tenant matters, small claims cases, and nonjudicial dispute resolution; some material was also developed on code enforcement cases. This basic work was completed by the end of 1979, with editorial work thereafter.

Beginning in early 1980, the "National Center for Community Code Compliance" became a new project of the Special Committee. It was funded by the U.S. Fire Administration (Federal Emergency Management Agency) Division of Home and Public Building Safety (under USFA 80018)

Publications: "Chapter One" of this Executive Summary was written during 1980. Extensive revisions also were made to the coverage in "Chapter Two". Based on new field work and research, many details were added regarding code compliance aspects of specialized court system operations. Thus, the HUD and USFA research projects had input to one another, and refinements were made to all the drafts.

HUD Report: Part of this Executive Summary (revised chapter two) has been accepted by HUD for publication and release in 1981 in its final report. It will be accompanied by 18 other chapters from the 1978-79 study, to be made available from the Government Printing Office. For further information write: HUD-Room 8150, 451 7th Street, S.W., Washington, D.C. 20410.

USFA Report: For information on the 1980-81 study for USFA (tentative title "Alternatives for Effective Code Compliance and Enforcement"), readers may write: USFA/FEMA-Room 504, 2400 M Street, N.W., Washington, D.C. 20472.

Supervisory Structure for the two studies was as follows: (1) The projects were part of the Division of Public Service Activities of the ABA in Washington, D.C. (2) The ABA's Special Committee, whose members are listed on later pages, met as a review body to comment on the research work. (3) The Special Committee was augmented by national advisors and guests, and by ABA liaisons. (4) Federal agencies were represented and maintained close contact with the respective work. (5) The 1978-79 HUD study involved Randall W. Scott, Program Director, and Linda B. Reiman and Josephine A. Bulkley, Staff Attorneys (whose work is in the final HUD report). The program director also did the work for the USFA study in 1980-81.

Special thanks are due to friends who offered counsel throughout the program, including Nancy Anne Rathbun, Melvin Levin, and others. There were several ABA personnel (Katherine McG. Sullivan and Joseph M. Oglander of the committee staff), who participated via the Special Committee's ongoing program work. Thanks also are due to HUD staff (Dr. Fred Eggers and Bernard Seward), and USFA-FEMA staff (Harry Shaw and Albert Kirchner). Many of the local communities' court system and community service agency personnel helped a great deal, as well. A deep debt of gratitude for the time, tremendous assistance and friendly advice, provided during a period of nearly three years, is owed all of these persons; many of whom served *pro bono publico*.



FOREWORD

The American Bar Association's Special Committee on Housing and Urban Development Law established the "National Housing Justice and Field Assistance Program" in the Fall of 1978. An exciting national project began upon award of a federal contract from the **Office of Policy Development and Research of the United States Department of Housing and Urban Development**. Additional support was obtained from the American Bar Endowment and the Division of Public Service Activities of the ABA.

The Special Committee enlisted Randall W. Scott to supervise and direct the work of the project. Mr. Scott was assisted by Linda B. Reiman and Josephine A. Bulkley who conducted site visits and prepared the initial drafts of the thirteen case study cities. The Special Committee and project advisors met seven times to review and critique the drafts and guide the work of the project staff. In addition these case studies were circulated for confidential review and comment by persons in the various communities that were studied.

Early in 1980, the Special Committee began a code enforcement and compliance study which was funded by the **United States Fire Administration of the Federal Emergency Management Agency**. The National Center for Community Code Compliance began in 1980. It addresses code enforcement and compliance systems, of which specialized courts play a major part. Partial funding during six months of work was received as Phase I; this was followed by additional funding for a year-long, Phase II project. The Code Enforcement project drew partially upon the housing court work of the former study. It also enabled the ABA to refine and update the work on housing courts contained in the final report to the **U.S. Department of Housing and Urban Development**. This *Executive Summary* is a synopsis of the information on specialized courts, drawn substantially from the HUD 1978-80 study materials and the 1980-81 research for the **United States Fire Administration**.

We hope that this *Executive Summary* illuminates issues that will assist in evaluating local court systems as they relate both to code enforcement and to housing matters generally. We know that many communities are struggling with such reforms, while others have yet to recognize or act on these pressing needs.

Paramount throughout this *Executive Summary* is our concern with the proper and fair administration of justice. We describe and analyze a number of court systems that have attempted various approaches dealing with their caseloads. Foremost are the specialized courts, which we see as the progenitors for even more innovation and change.

Specialized courts are relatively recent phenomena in our judicial system. They have occurred at a time when "judicial reform" has moved toward the consolidation and standardization of local courts. But appearances are deceiving. It can be argued that specialization should be used within generally standardized judicial systems in much the same manner as we have for other types of courts such as juvenile courts, domestic courts, probate courts and traffic courts.

We believe that there has been no previous national focus on the special needs involved in "housing cases," particularly landlord-tenant and code enforcement matters. Local communities may well learn that there are desirable ends to be served through either modest or comprehensive specialization for such cases within our courts. The exact design is for each to decide based on a clear perception and understanding of its own requirements. We hope that this *Executive Summary* will prove helpful in that respect.



The members, advisors, liaisons, and others who participated in the committee's work are listed on the following pages. Each of them is responsible, in large part, for the success of these projects. The extraordinary cooperation we received from many persons across the United States leaves us unable to name and express our gratitude to all of them individually. We also want to express our appreciation to all of the persons listed in the "Acknowledgements" section, including the ABA staff and ABA project personnel. We especially appreciate the interest and concern shown for these major national programs by such persons as former HUD Secretary Patricia A. Harris, former Assistant Secretary Donna E. Shalala, and former USFA Administrator Gordon F. Vickery. We also acknowledge the continuing interest of these agencies in the basic research and in the field assistance work for communities around the country.

The ABA's Special Committee on Housing and Urban Development Law looks forward to continued and active involvement in the fields of housing and urban development as we enter the 1980s and the fourteenth year of this Special Committee's work.

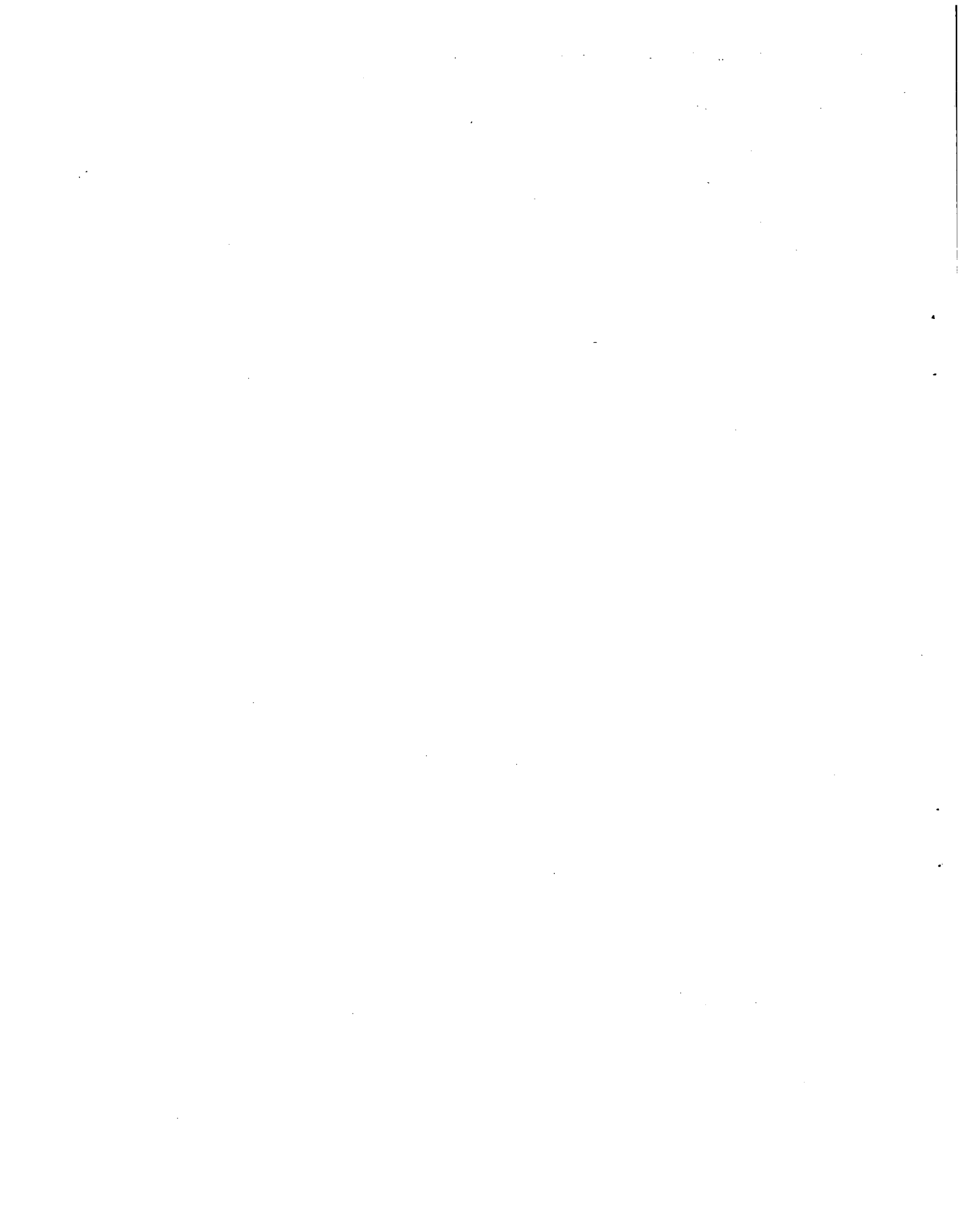
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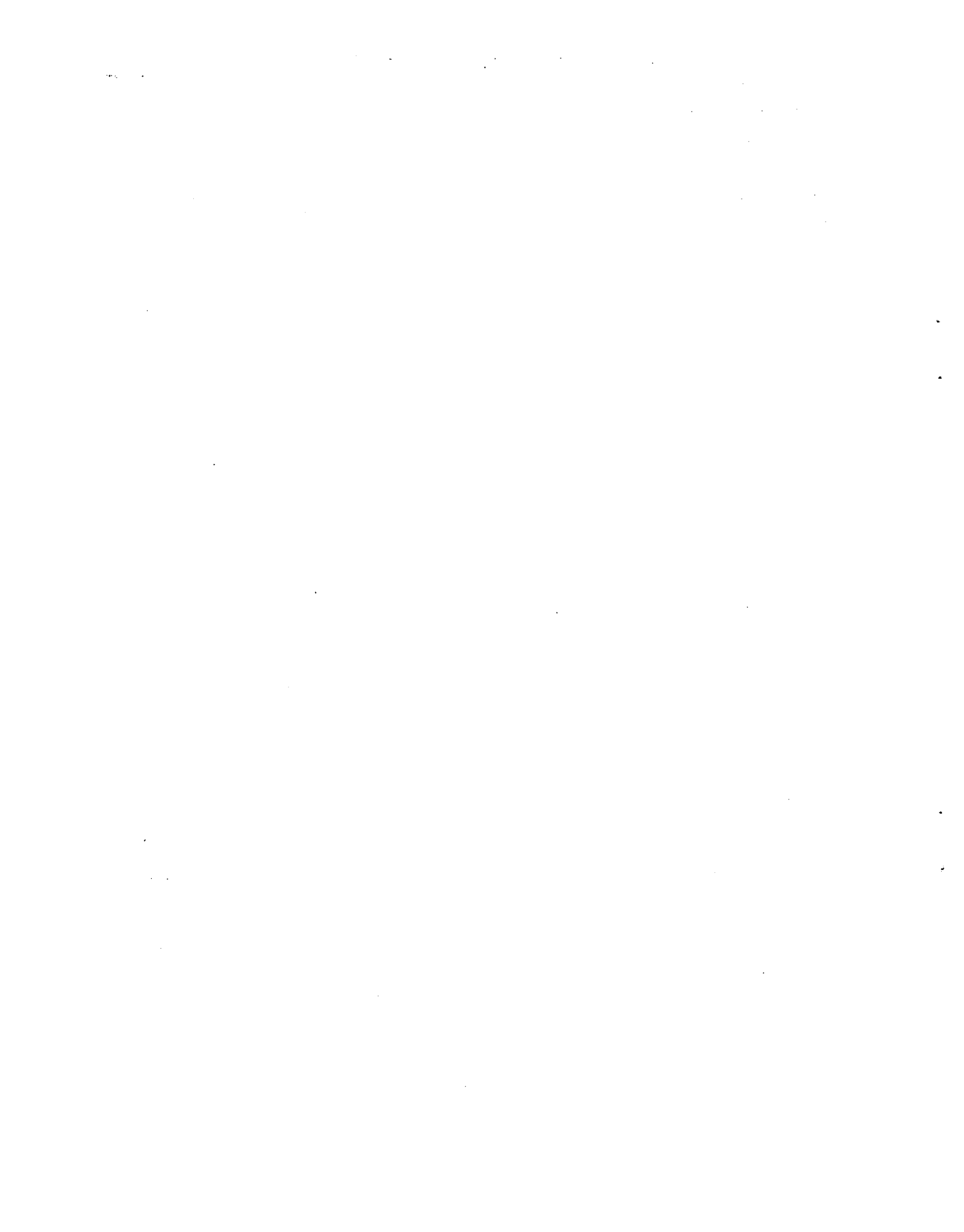
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CHAPTER ONE: OVERVIEW OF SPECIALIZED CODE ENFORCEMENT & HOUSING COURTS

Housing, the means by which the shelter needs of our citizenry are met, is vital to survival and to the quality of life. Few areas of private and public sector involvement so deeply affect the lives of individuals and of families. Housing greatly impacts on social conditions and on the future of our built environment: thus, general living conditions themselves. It is into this milieu, then, that the basic tenets of "housing justice" (residential and other buildings) can and must extend.

HOUSING-RELATED DISPUTES, SPECIALIZED COURTS, AND THE FOCUS OF THE REPORT

It is not the purpose of this Report to further delineate the nature and scope of general housing problems in the United States. However, the ABA's Special Committee on Housing and Urban Development Law has been intimately involved in these debates and concerns since the late 1960s with the establishment of its "Lawyers for Housing Program(s)" around the country. Most recently, in 1978, the results of the Special Committee's three year study for the United States Department of Housing and Urban Development were published under the apt title of "Housing for All Under Law: New Directions in Housing, Land Use, and Planning Law". Significant recommendations in that book focused on our local housing needs, on state and local laws and programs, and on the roles of our courts in interpreting and applying the law.

As a result of this book, we saw that state and local courts have had a great impact on housing justice and needed thorough study. From that book, a field assistance and research effort--and thus, this current 1980 Report--was born.

It is self-evident that our local court systems have a significant role to play in the handling of housing disputes. What is less obvious is whether or not these courts can have measurable impacts on rental housing matters: particularly where the residences involved are the subject of serious code violations.

This, in turn, raises the question: can the adjudication of state laws and local codes in the courts affect the rates of deterioration of the housing and other building stock in our communities? How is housing justice handled for the residents and owners, under landlord-tenant laws governing their rights and responsibilities? And, do these courts better serve code enforcement missions as well?

These questions are especially pertinent since, during the decade of the 1970s, a few cities tried reforms in their court systems. They had installed new and many different types of specialized courts, which deserved scrutiny. The question was: could we then, and can we now, learn from the experience of these specialized courts? Could we analyze them and then, point out the advantages and disadvantages that had been experienced? Could we isolate the ingredients of each of these courts that made their operations successful, or not so, and then compile and analyze this information? It was our hypothesis that such a national study would prove productive and useful to other communities around the country in their search to resolve landlord-tenant as well as code enforcement problems.

We strongly believe that these specialized courts do offer real promise, based

on the studies that are part of this Report. None of the 13 cities studied (included as chapters 3-15 of this Report) operates totally without flaws or at a peak of efficiency and effectiveness. In fact, some leave much room for further improvement and a few would appear, thus far at least, to be only marginal improvements over their predecessor courts. Part of the reason for this, as explained later, lies in the severe understaffing and enormous caseloads under which even these improved and specialized courts must operate.

The intent of this Report is to describe the ingredients of a successful court for the readers in various local communities. The lessons derived from these courts are instructive; their mistakes can be avoided and even more improvements made in the specialized courts that may be created in the 1980s and 1990s. The reader is urged to examine carefully both chapters 1 and 2 (as well as chapter 17 on small claims courts and chapter 18 on non-judicial approaches). Then, attention may be turned to the specifics on each of the 13 court systems studied: the case studies that are found in chapters 3 through 15.

METHODOLOGY EMPLOYED

The study for HUD involved an extensive methodology that is described in the full report. Suffice it to say that the ABA's Special Committee on HUD Law convened a total of six times. Its ten members were augmented, for the purposes of this two-year study, with three special liaisons and ten national advisors appointed jointly by HUD and the ABA. The advisors, for example, represented diverse viewpoints: landlord and tenant, judge and public official, bar association and minority group, professor and practitioner. While seldom was there total agreement, nor was there total dissent. Without individually agreeing to or dissenting from the study, the reviewers were able to act collegially.

At the November of 1978 and January of 1980 meetings, members/liaisons/advisors reviewed and commented on the research design, coverage, and generalized findings. At the March, June, August, and November of 1979 meetings, the sessions were run on the subcommittee principle for the thirteen case studies. At several of these sessions, guest judges also were asked to participate regarding the drafts that affected cities with which they were familiar. At these two and one-half day sessions, two general sessions also were convened for the purpose of discussing common themes in the overall program.

After each session, the draft concerned was briefly edited and then submitted to four to six persons in each of the cities for further reviews. Then, all review comments received at the meeting and by mail from individual reviewers were integrated--to the extent deemed appropriate--into the final drafts of the chapters. Finally, mid-1980, each city draft was placed through a final review by the ABA-HUD Program Director. Moreover, recent developments were added (although basically, the analyses of each of the courts was current through 1979).

PRESENTATION OF CHAPTERS IN THIS REPORT

Chapter One serves as a general introduction to this Report. It reviews the background to the study; the reasons some communities began experimenting with specialized courts; and, the types of housing-related cases that are heard in various types of courts around the country. It then summarizes some of the main points derived from the study: namely, that specialized courts have the potential for improving the delivery of housing justice at the local level.

Chapter One is not intended to completely summarize the entire Report. For example, the types of specialized courts can be only briefly described in this chapter. Chapter Two aids the reader further by delineating the basic ingredi-

ents of any of a number of types of specialized housing courts: from the many categories of personnel functions (judges, housing specialists, special clerks, and other court officers) to administrative concerns, including budgets and court facilities.

With these basic issues set forth, the Report moves to the case studies in chapters 3 through 15. The most "comprehensive" or complete housing courts are described first. For example, Hartford-New Britain (chapter 3) and Hampden County (chapter 4) are newer or expanded courts, based on some of the "original" comprehensive housing courts: in Boston (chapter 5), New York City (chapter 6), and to a lesser extent, Baltimore (chapter 8).

Effectively, the thirteen case studies are arranged along a "continuum": from ters; see chapter 9), to the totally "nonspecialized" courts (San Francisco; see chapter 15). In this way, the reader is able to review these court system experiences in an orderly fashion in terms of decreasing degrees of comprehensiveness and specialization.

No "ranking" of the cities is intended by this organizational approach. In fact, some aspects of the Hennepin County court system (see chapter 13) or Los Angeles (see chapter 11) deserve replication even in the most sophisticated of the comprehensive and specialized courts. Similarly, by the time of publication of this 1980 Report, changes will have occurred along this continuum; Philadelphia (see chapter 14), for example, will have begun operating a new specialized court in the Fall of 1980.

Each of these chapters has a relatively standardized format to aid the reader in making comparisons (in addition to the discussion of these matters, accomplished in Chapter 2). Thus, each chapter follows an outline as follows:

- I. Overview of the Court System
(setting the context of the court within the overall local court system)
- A. Brief Description of the Court
- B. Personnel of the Court
 1. Judges
 2. Specialized Personnel
 3. Other Staff
- C. Administrative Aspects
 1. Physical Facilities
 2. Budget
- D. Housing Stock Information

Many of the above categories have additional break-downs. For example, under B.2., there are separate listings and descriptions for the Clerk-Magistrate, Assistant Clerks, Housing Specialists, and Court Officers, where applicable. Under B.3., there is information on Clerical and Secretarial Positions, Stenographers or Recording Approaches, and Citizen Advisory Commissions.

The chapters then proceed as follows:

- II. Historical Background of the Court
- III. Jurisdiction of the Court
- IV. Summary of Substantive Law Applied
- V. Operation of the Court
(describing the procedures used before, during, and after court hearings or full trials)

VI. Analysis
Conclusion
Footnotes

Finally, and as already explained, there are special-interest chapters. New courts and the field assistance aspects of the ABA-HUD Program are contained in chapter 16. Small claims courts--a separate study that was performed--are summarized in chapter 17. Non-judicial approaches are covered in chapter 18. Chapters 19 and 20 include the appendices of forms and information and the bibliography, respectively.

HOUSING DISPUTES AND WHAT GOES TO COURT

Before we can examine specialized courts that handle various types of cases, we first must look at what types of housing-related disputes tend to reach our various courts. These disputes involve litigants who are living in, renting, owning, operating, maintaining, rehabilitating, building, regulating, inspecting, or otherwise involved in housing...from owner-occupied to rental housing, and from privately run to publicly owned units.

Indeed, it can be seen that the occupancy and use of shelter involves a wide range of problems, many of which end up in the courts. The most frequent types of cases involve landlord-tenant complaints and code violations (sometimes both at the same time). Our local courts are virtually deluged with housing-related cases, including:

SUMMARY PROCESS (evictions): for nonpayment of rent, other violations of lease terms, and miscellaneous reasons (as hold-overs).

SMALL CLAIMS: for back rent owing, rent owing (remainder of lease), pre-paid/overpaid rent, bounced rent checks, paid/unpaid bills (as utility), tenant/landlord property damage, property left/removed, tenants' security/rent deposits, and repairs made by tenants.

CIVIL SUITS (other): for major monetary claims (as rent), personal injury cases; torts (as mental distress/etc.), declaratory relief (as rights and duties or warranty of habitability issues), and utility cut-offs and/or removal.

EQUITY (ACTIONS/RELIEF): for affirmative relief (as repairs), emergency assistance (as heat), prohibitions (as use/enjoyment), mandating actions to be taken (as by agency or by individual), and special actions (commitments of defendants/receivers for buildings).

(QUASI-) CRIMINAL ACTIONS: fines/etc. (criminal or civil), show cause/subsequent warrants, probation/incarceration, and contempt.

CODE ENFORCEMENT--BY AGENCY: upon agencies' regular inspections, other-agency referrals, tenants' complaints, and neighbors'/others' complaints; concerning eviction/other hearings (court takes evidence or view), permits/licenses, boarding up & demolition, and taxes/repairs, with liens; --BY OTHER: per individuals directly bringing code cases (not via agency citation) and associations/neighbors/others filing or intervening in code cases; --RELATED: as brought in nuisance/other suits and as defenses raised in eviction cases.

The preceding types of housing-related disputes are the ones that most frequently reach the local courts. Therefore, they are the ones that are empha-

sized throughout this Report. These, and the types of cases listed below, are not a totally exhaustive list. However, they do provide us with a sense of the diversity of housing-related disputes that occur, day after day in community after community, throughout the United States.

"NEWER" ISSUES--RENT CONTROL ACTIONS: by the regulatory boards, renters/ other persons, and owners vs. government; --RENT WITHHOLDING: suits and countersuits/damages; --CONVERSION ISSUES: as by tenants/tenant co-ops, neighbors and others, and developer vs. agency; --ASSOCIATION LAWSUITS (condominium & home owner associations): such as between owner and HOA board(s), condominium & locality, board & manager, and owner & owner.

OTHER CASES--PURCHASERS/OWNERS: as against builder or agent (as with warranties), owners & sellers (breach/disclosure), realty agencies, lenders & banks (as for red-lining), lawyers & others (as for clear title), and miscellaneous parties (for discrimination as to race/age/etc.); --RENTERS' LAWSUITS: as against realtors/others (for discrimination), public/private housing authorities (as security/etc.), neighbors or co-tenants (as assault), local government (as local services), and rent strikes or "collective actions".

MISCELLANEOUS--VARIOUS PERSONS: suits regarding comprehensive or housing planning & decisions, takings & eminent domain, zoning/rezoning appeals (as in multi-family), CDBG/etc. funding, and chain of title lawsuits; --INTER-RELATED ISSUES: with environmental laws and codes (as litter/weeds/air pollution) and various types of "inter-personal" disputes.

DISPUTES AND WHY THE LITIGANTS COME TO COURT

From the preceding material, it is obvious that there is great diversity in the types of housing-related issues that appear in our local courts. However, the caseloads within this wide range of complaints are not evenly distributed. The vast majority of all cases consist of three types: (a) evictions for nonpayment of rent; (b) code violations; and, (c) small claims actions (such as those concerning a claim for back rent or for a security deposit and damage to property). The fourth type, not as frequently brought to trial, is: (d) full civil cases.

In eviction cases, one of three things usually occurs.

- (1) The tenant may pay the rent after receiving the summons to appear in court; or, he or she moves out. In either event, the landlord then is responsible for withdrawing the case, but most often this does not occur. Instead, no one appears at the court hearing and the judge should dismiss the case at that time. In some cities such as Baltimore and New York, with truly staggering numbers of filings every year (over 100,000 and 400,000 nonpayment cases filed annually), these situations are particularly prevalent. Although there are no appearances in most of the cases, the caseloads still are massive and overburden these courts, and their litigants.
- (2) A second route is that tenants will take no action. The landlords will appear in court at the hearings; the defendants "default" and judgments are rendered for the landlords.
- (3) Finally, tenants may actually appear at the court for their hearings. Generally, they do so for any of five basic reasons.
 - (a) The tenant may have read the official-looking summons, which contains legal jargon that is unclear as to what will "happen" if he or she does not

appear. Some tenants mistakenly believe they "must" come, even if they have nothing to say and do not have a defense, because they fear some new penalty such as arrest.

- (b) The tenant hopes that the judge will give him or her more time to find a new place to live: more time than the landlord is willing to give. Not infrequently, this proves to be true.
- (c) The tenant knows that some assistance can be received at court, even if he or she has no defense. In fact, in some jurisdictions, an appearance at court is a precondition to receiving an emergency welfare check to cover the rent owing. In other jurisdictions having housing courts, there may be special court staff (such as housing specialists; see chapters 4 and 5 on Hampden County and Boston), available to mediate the disputes. Also, they may offer counsel to tenants in finding rental accommodations (see examples in chapters 8 and 10 on Baltimore and Chicago).
- (d) In some instances, tenants simply want to argue their case: to have their "day in court", so to speak. They may feel harassed and want to "tell it to the judge". There may be some legitimacy to their complaints, such as broken kitchen doors or damaged interior walls, but these complaints are not likely to prevent the landlord from winning (gaining possession of the premises and, perhaps, back rent).

A specialized court--which has more time and expertise available to it, might well seek to provide a public service by sending these types of cases to mediation before the "housing specialist". Too, the mediation may be able to avoid formal court judgments for eviction and may even defuse these situations (which are very "real" to the litigants involved, whether or not they are recognizable as valid legal defenses). In contrast, many nonspecialized courts that are without such specialists, and which are over-burdened or "in a hurry" to move through the calendar that day, may lose patience with these types of cases.

- (e) The final reason for tenants appearing are where there are truly "contested" factual and legal issues. Here, tenants pose defenses to the evictions, although the judge may or may not deem the defenses as being valid or as being adequately proven.

Many matters may arise in any one case. For example, an impoverished tenant may not be paying rent in an apartment building that currently is riddled with code violations. The tenant may be able to defeat the landlord's claim for possession, may get a reduction in back rent owed, may obtain an order to place future abated rents into an escrow account until repairs are made, and may even raise certain monetary counterclaims against the landlord (as for any tenant-paid repairs). If the court has both the time and the expertise, it can give these cases a fair hearing. It can sift the spurious defenses from the valid ones, render an effective judgment, and help deliver "housing justice".

Other types of cases come to the courts, including those involving code violations. In these code enforcement cases, typically the violator has been unresponsive to demands by the administrative agency concerned. The owner may simply be recalcitrant or may be financially unable to accomplish the repairs. In the specialized courts that have the personnel equipped to handle these matters, progress has been made in gaining a measure of community-wide code compliance (see chapters 9 and 10 on the Pittsburgh and Chicago courts, for example). In some of these housing courts, the approach goes beyond that of "adjudicating" (such as levying a small fine): it may involve counselling of the code violator to assist him or her to eventually come into conformance with the law.

In several of the case studies, it is demonstrated that the local courts can have both positive and negative impacts on the administrative agencies responsible for code inspections. In court systems that are not specialized (and even in some that are), a constant refrain was that code violations are not taken seriously and that violators are able to obtain prolonged delays. There are six month to two year litigation periods and, oftentimes, little or no fines for violators (much less, collection of the fines that are imposed). This has tended to discourage the code agencies and the public. It can create agency backlogs, because the violators then are not even prosecuted by these agencies.

In addition, many of the cities studied lacked both the personnel and the remedial powers that are needed in the courts. Specialized judges and housing specialists (such as in Pittsburgh) were not available. Other courts do not have the power to "order" the defendant to undertake certain actions, such as repairing the premises. They are restricted to the imposition of fines which, for one reason or another, many courts are loathe to levy. These various types of defects are discussed in detail in the full Report.

The final two areas discussed in the case studies are: (a) small claims cases: depending on the jurisdiction's monetary limits, under \$750 or under \$1500; and, (b) civil cases: usually involving complex proceedings with monetary claims in excess of the small claims limit in that local court system. In small claims cases, some of the specialized housing courts have this jurisdiction, and for civil trials as well. As explained later, in most other court systems, the same litigants may have to bring separate lawsuits in several different local courts, even though all of the problems touch on the same basic dispute. This approach, obviously, lacks "comprehensiveness".

Finally, the litigants have been unable to settle their disputes privately. This may be a consequence of failure to communicate due to emotionally-charged situations. A specialized court with adequate and trained staff may be able to mediate or, if necessary, adjudicate many of these types of cases. The various types of cases are raised, as appropriate, in the case studies (chapters 3-15). In addition, special attention to the small claims area is paid in chapter 17 of this Report.

It should be noted at this point, that some of the case studies are all-inclusive of these four types of cases: (1) landlord-tenant actions involving evictions; (2) code enforcement; (3) small claims; and, (4) civil trials. In other cities, where it was obvious that a comparative analysis would have been more or less redundant with previous court system chapters, there was a focus on only one type of case. For example, in the Los Angeles analysis--see chapter 11--only the specialized calendar call for landlord-tenant matters is described. Code enforcement activities were such a low percentage of caseloads, and the absolute numbers so small, that analysis would not have been particularly productive.

DISPUTE FORUMS: SOME WEAKNESSES IN COURT SYSTEMS

From the case studies and field work in still other cities, it would appear that many court systems lack the necessary staffing and expertise in housing matters. Moreover, the above four types of legal categories for housing cases often formalistically determine what can and cannot be heard in any one particular court or in any one case. A landlord may sue for possession in one case; he or she may have to sue for back rent in a separate case before a small claims court or through a full civil trial. The tenant, on the other hand, may be unable to articulate and present a "conditions" defense that the apartment is not worth the rent being charged (regardless of whether or not the tenant was able to pay at that time). If the court does not have sufficient time to properly handle

the case, or is not knowledgeable about or sensitive to these defenses, the defendant fails. Moreover, the same owner or landlord may be a defendant before still another court in a code violation case. Finally, the tenant may have to bring a small claims court action for return of the security deposit or for damage to, or loss of, personal property.

(1) The first problem, then, is that these situations can be fraught with incomplete or unapplied "justice", as demonstrated in several of the case studies. They can result in three basic failures for all types of litigants concerned:

- (a) inequities;
- (b) ineffective dispositions or judgments; and,
- (c) because of multiple/delayed lawsuits, inefficient delivery of justice.

(2) In most court systems around the country, there is very limited or no "specialization" for handling housing-related matters within the local courts. Instead, as described above, there are many forums with limited jurisdiction. The litigants either may have to forego their legal rights or be forced to go--if at all--to several different courts at several different times, to resolve related problems associated with one apartment or house, or one building. No feasible method may exist by which to "consolidate" the various legal actions in order to obtain some semblance of comprehensive treatment of housing problems.

(3) As already stated, court systems that do not have special, trained court staff to assist the judges and the public in handling housing disputes may be hamstrung from the beginning. This can limit the opportunity for insightful and creative resolution of housing-related litigation. This was a repeated comment from many of the nonspecialized courts and from several of the specialized court systems that did not have sufficient personnel. (On the other hand, both in New York City and Chicago--see chapters 6 and 10--the specialized judges felt they were able to accommodate most of these needs by relying primarily on special agency personnel rather than specialists hired directly by the court.)

(4) Another situation, which sometimes can prove to be a problem, is that housing cases tend to be mixed in with all other types of court cases: there is no specialization relating to housing cases (compared to special juvenile, domestic relations, and other local courts); disadvantages result:

(a) No one judge or judges becomes expert in the law pertaining to housing matters, from complex facts and calculations concerning the warranty of habitability or conditions defenses, to the intricacies of state and municipal code violations. For example, in a number of cities studied, it was felt by some observers that many judges are not sensitive to, or do not understand or correctly apply the law in regard to, conditions defenses and other complicated statutes and case law.

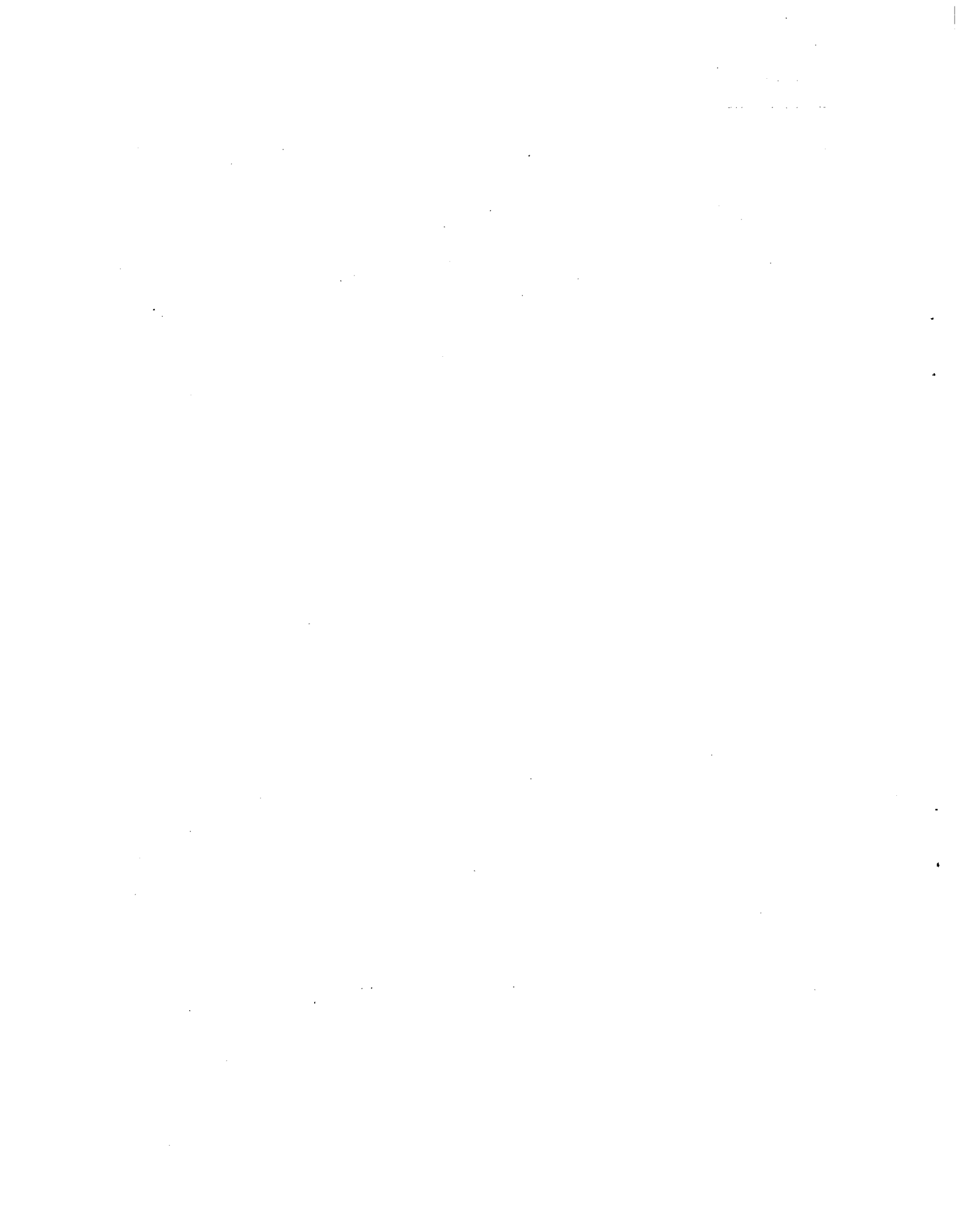
(b) There is serious potential for inconsistent interpretation and application of the law as among the various judges rotated in to hear these housing cases. This can involve differing interpretations about the substantive law. It also can involve problematic judicial attitudes and treatment of the litigants in the courtroom. And, it can involve procedural questions such as inconsistent interpretations as to what constitutes valid evidence versus hearsay, or what will be recognized as valid service of process or waiver of that service.

- (c) Nonspecialization also can result in inconsistency in decisions or dispositions, particularly in code enforcement cases. With one judge tending to dismiss cases for technical reasons, another giving minimal fines and then suspending them until the repairs are accomplished, others who primarily continue the cases and then dismiss them without fines once repairs are made, and still others who utilize the injunctive powers and give stiff penalties including contempt of court for similar code violations...inconsistencies can be very problematic.
- (d) Continuity is likely to be lost. For example, a judge who initially hears a code case may continue the hearing; the defendant then finds himself or herself before another judge on the continued date. The new judge is left with trying to hurriedly read an often incomplete case file, asking the prosecutor what the recommendation of the city is, and asking questions of the defendant in order to gain even a basic understanding of the continued case. In all probability, the case will be continued again and again. This leads to inefficiency on the part of the court and to ineffectiveness in dealing with violators. Nor does it take long for the "defendant community" to become "system-wise" to this weakness of the judicial process. Persistent violators may use this to gain long delays prior to compliance, if any. In the interim, the owner-violator may be seeking an eviction against a tenant (who, if knowledgeable, should have some valid conditions defenses).
- (5) A fifth problem is that code enforcement agencies become disillusioned with the progress of cases brought to the courts. Seeking even-handed application of the law, consistency, and continuity, they may find little or none. Besides the obvious results with the cases that are prosecuted, the agency may tend to back off from use of the courts. The code inspectors then must spend greater energies in working for compliance in problem cases than they ought to (if the court were doing its job), instead of focusing the agency's limited resources on keeping pace with new inspections throughout the jurisdiction's deteriorating housing stock and other problem buildings.

In specialized courts, the burden of enforcement (but not prosecution)--and, perhaps, compliance--can shift to the court: the judge and the housing specialists. Expeditious justice can or should be delivered, while the agency is able to proceed with its main mission: that of working on inspections and compliance until a decision is made to prosecute the violator(s).

- (6) The sixth area of problems involves a type of "opportunity cost" to the community and public at large. Without a visible and effective judicial forum, people with housing disputes may not bring their problems forward for resolution. These problems can continue to fester because the local courts are seen as ineffectual. Persons may forego the opportunity for resolving their disputes or obtaining justice, being dissatisfied with "the system" (see also chapter 17).

Moreover, lack of reform in the courts can ignore the opportunity to help reduce or reverse the decline of neighborhoods and a deteriorating housing stock. These are hard to identify "could-have-been" aspects of a different system (examples of this type of community analysis are contained in chapter 16 of this Report). What could have been the situation if highly expert court personnel were in place to aid the public? What types of reforms could have been instituted, such as summonses and information for defendants which could be easily read and understood, and whereby defendants could be informed as to how to prepare before coming to court? What could have



occurred in terms of stemming the tide of deterioration of buildings if there were timely and adequate handling of code violations? What might have happened for litigants if the courts were sensitively interpreting the case law and aiding in its application and development? And, would this in turn have stimulated appropriate administrative and legislative policy responses for still other housing-related problems?

- (7) A final area of problems concerns certain courtroom procedures (covered in more detail in chapters 3-15). Analysts of landlord-tenant law and judicial management have been known to object to some courtroom behavior and allied procedures. This is brought out extensively in the case studies. For example, heavy caseloads and understaffing can tend to breed:
 - (a) time pressures that intimidate defendants unrepresented by counsel;
 - (b) cursory examination of plaintiffs' proof, especially regarding notice and service of process;
 - (c) "time-saving" procedures that violate individuals' rights to fair hearings and to due process;
 - (d) failure to explore the facts and reasoning behind often poor attempts by unrepresented tenants to articulate otherwise valid defenses; and,
 - (e) in not a few courts, apparently judges urge litigants to "settle" their cases in the halls, before and even during the actual court hearings. This is done without further advice or review by the judge concerned.

Substantial injustice for many unrepresented litigants in these cases can result. Yet many of these difficulties are quite problematic to prove, in the classic sense of showing direct cause and effect. Nonetheless, we can learn from localities that have changed or adapted their judicial systems over the past decade. Many of them, having experienced these types of problems, realized it was necessary to implement reforms. Many of these innovations are described in the chapters (2-17) that follow. They attempt to answer certain basic questions. How do these courts currently operate? Have they proven to be successful, if not in the absolute sense, than in terms of being perceived as improvements over the systems that preceded them?

TYPES OF SPECIALIZED COURTS

It was the above types of problems, reforms, and issues that gave rise to this 1980 Report. In a handful of cities, special "housing courts" had been created in the late 1960s and the 1970s. These approaches, however, were significantly different from one another, as can be seen from the features of each court in the case studies contained in chapters 3-15. The various types of courts studied were of two basic categories.

I. Nonspecialized Courts

These courts do not have judges who "specialize" in housing-related cases by being assigned at least half-time for periods of not less than six months to a year (instead, a number of judges rapidly "rotate" in hearing such cases). Moreover, there is little or no segregation of housing cases on special calendars (i.e., no particular significance attaches to the housing-related caseloads). Finally, there are no additional court personnel who specialize in pre-, during, and post-trial handling of housing-related cases.



II. Specialized Courts

Specialized courts do have the characteristics mentioned above (judges, calendars, and personnel handling the cases). They can be loosely categorized into five or six sub-types, as described below.

A. Code Courts

These specialized courts handle only those cases that are brought as code enforcement actions (and, perhaps, demolition cases as well). This type of housing court might be called a "code enforcement court"; or more accurately, a "residential code enforcement court" if it is limited to housing units and does not handle commercial or industrial structure violations.

Type A, the code enforcement courts, are typified by Buffalo (chapter 7), Baltimore (chapter 8), Pittsburgh (chapter 9), and Chicago (chapter 10).

B. L & T Courts

These specialized courts deal only with eviction cases (they may or may not be able to render monetary judgments with respect to back rent and attorneys' and collection fees as well). This type of court might be called an "eviction court", an "FED court" (denoting forcible entry and detainer cases), a "summary process court", or a "rent court".

Type B, the "L & T courts", are typified by Baltimore (chapter 8), Chicago (chapter 10), and Los Angeles (chapter 11).

C. Special Small Claims Courts

These courts actually are special calendars within the local small claims courts, for housing-related matters. (Just like the other specialized courts named above and below, there are specialized judges or referees and other personnel, as well as a segregated calendar for any housing-related claims.)

Type C is typified by Hennepin County (chapter 13), and is relatively rare in jurisdictions that do not otherwise have specialized courts. In most cities, housing-related cases are mixed in with other small claims cases; nor is there specialization among the judges or other court personnel. (Note: in Types D and E, below, small claims cases are specially calendared and are handled within these comprehensive or quasi-comprehensive housing courts.)

D. Quasi-Comprehensive Housing Courts

Many of the existing housing courts actually are "quasi-comprehensive". One or more of the characteristics of the fully comprehensive housing courts --Type E, below--has been modified or limited in any of the following four ways: (1) the court is limited in its subject matter jurisdiction (for example, tort or consumer fraud cases are not heard); (2) it does not have a complete range of remedies (the most disadvantageous being a lack of any equitable relief powers); (3) it shares its jurisdiction concurrently with other trial courts of original jurisdiction, and these other local courts frequently decide housing-related cases; or, (4) the court does not have housing specialists assigned directly to it, but utilizes agency personnel to fulfill many of the specialists' functions. (However, such substitute personnel generally cannot act as court mediators, as in Boston's Type D court; or, as probation officers, as in Pittsburgh's Type A court.)

Type D, the quasi-comprehensive housing courts, is typified by Hampden County (chapter 4) and Boston (chapter 5). These two courts are not completely comprehensive, in that they have concurrent jurisdiction over housing cases with their areas' District Courts (the third limitation listed above). In Hampden County, however, almost all of these cases tend to be docketed in the Hampden County Housing Court so that, in effect, it more or less may be considered a Type E court, below. In Boston, on the other hand, the District Courts have substantial caseloads in the housing area, and handling a large number of eviction cases.

New York City (chapter 6) does not have housing specialists (number 4, above), but the judges indicate that they believe the court is sufficiently well-served through use of agency personnel, in lieu of housing specialists. They assert that New York City should be considered to have a comprehensive Type E court, below.

Buffalo (chapter 7) has the theoretical and future capacity to become a comprehensive housing court. Baltimore (chapter 8) borders on a Type D via having one judge preside over both, but separate, courts (Types A and B).

E. Comprehensive Housing Courts

There are few truly "comprehensive housing courts". This type of housing court has none of the four limitations noted above. Instead, it would have: (1) full subject matter jurisdiction to handle virtually all types of housing-related cases that might arise; (2) a complete panoply of remedies (civil, criminal, equitable) at its disposal; (3) exclusive jurisdiction, by law or by court rule, over all housing-related cases (that is, housing cases generally are not decided by any of the other trial courts in that jurisdiction; and, (4) specialized staff that handle pre-, during-, and post-trial work as the "housing specialists", reporting directly to the judge(s) of the court.

Type E is exemplified by Hartford-New Britain (chapter 3). As mentioned above in Type D, Hampden County effectively is a Type E court since its jurisdiction, by practice, has become more or less exclusive.

Boston and New York City, again as mentioned above, arguably are Type E courts. However, in Boston, most eviction cases are not filed in the housing court (see chapter 5). In New York City, code agency officials work on code cases in special ways; other personnel "ancillaries" carry many of the landlord-tenant burdens that housing specialists might handle (see chapter 6).

- F. In theory, still another category (Type F) could be developed: the "unified housing/structural/environmental court", which does not yet exist in any one jurisdiction. This court could include all the basic features of Type E, above. In addition: (1) this court would have subject matter jurisdiction over not only residential buildings but, importantly, other types of structures as well, including commercial and industrial buildings; and, (2) it would be able to deal with a full range of code violations (not just building and health violations, etc.), including zoning, subdivision, local and state pollution laws, and more prosaic code problems affecting the use and occupancy of these many types of structures (including ordinances on litter, noise, and signs).

This type of court does not currently exist. The closest approximation would be a combination of the Hartford-New Britain housing court (which does have jurisdiction over more than residential premises), the Hampden County housing court (which has taken on some pollution cases), and the Indianapolis

"Environmental Court" (which handles all types of codes; it is mentioned briefly, although it was not a case study city, in chapter 16).

At this stage, it should be noted why other court systems -- such as Detroit (chapter 12), Hennepin County (chapter 13), and Philadelphia (chapter 14) -- are not included in the above categories. Each involves "specialized" courts, in the sense of having segregated calendars for housing cases and noteworthy approaches or innovations. Some even have specialized personnel assigned to the court(s).

Nonetheless, they are not listed because they do not have one important element mentioned above: they do not have judges who "specialize" in housing cases, even on less than a full-time basis. (For example, if the caseloads were relatively low, a judge could specialize half-time.) Instead, in these courts, the judges serve short periods of time in the segregated calendars; they are "rotated in" on the basis of from one week tours of duty to one-month stints.

Finally, San Francisco (chapter 15) is the last of the 13 case studies. It is totally nonspecialized; moreover, its caseload would appear to make the establishment of a specialized housing court seem less than a major reform need for that jurisdiction. Thus, all four of these chapters (12-15) offer a type of counterpoint to the specialized housing courts previously described.

WHAT ARE THE FEATURES OF A HOUSING COURT?

A specialized housing court is most clearly and easily described in terms of what a fully comprehensive housing court (Type E) would look like. Yet it should be borne in mind that jurisdictions may well choose to modify these basic characteristics, including some items and deriving permutations of still others. (Certain of the characteristics already have been described in this chapter, and are not elaborated on at any length here. These characteristics and others that are mentioned below are analyzed in significant detail in chapter 2.)

- (1) Housing cases are segregated from other types of cases within the local court system, on special calendars.
- (2) There is a specialized "housing court" that becomes a visible community dispute resolution forum.
- (3) The court has subject matter jurisdiction inclusive of all, or almost all, types of housing-related cases.
- (4) The court has exclusive (or at least, concurrent but vastly predominant) original jurisdiction over these cases. (It may have appellate jurisdiction as well, if its original jurisdiction is concurrent.)
- (5) The court has a full range of powers: civil, criminal, and equitable.
- (6) The judge is specialized; he or she:
 - (a) is, or becomes, an expert in housing law;
 - (b) is assigned for a minimum of six months and preferably, a year or more;
 - (c) is able to lend continuity to the handling of the cases, particularly those involving code violations;
 - (d) is able to lend consistency to the application of substantive and procedural law;

- (e) renders a degree of predictability to the judicial process as well as a sense of even-handedness in dispositions and judgments in the cases brought to the court;
 - (f) stimulates both the court and the agency staff to perform well and to drive toward new opportunities in order to ensure that the public and justice are well-served; and,
 - (g) has the time and patience to consider all cases in light of facts and applicable law. (The court must not be engaged in hurry-up procedures: a "mill" where people and real problems become grist between the hurried wheels of justice.)
- (7) The court has personnel who are specialists in their duties and responsibilities (see chapter 2 for examples). They should include, at a bare minimum:
- (a) the housing specialists, who are the eyes and ears of the court and who are fully involved in the pre-, during-, and post-trial stages. They are critical to nearly all the operations of the housing court, with the exception of the judging in the courtroom itself (even there, they have potentially helpful roles to perform for the judge). They are the contact point for the public and are mediator-conciliators as well as investigators.
 - (b) the clerks have similarly important roles (as described more fully in chapter 2 and, particularly, the innovations in chapters 3-6).
- (8) The court should have a full range of powers, as mentioned above. In jurisdictions with a two-tiered system--such as district and superior courts--it should include all powers of both. This involves equal subject matter jurisdiction, all necessary remedial powers, appellate responsibilities (if applicable), and a series of other advantages of the second-level trial courts. Too, it decreases the possibility that the judges who are given the positions would consider the housing court to be a type of second-class judicial assignment.

There are many other aspects of housing courts worth mentioning, but these are the key elements. They offer the new housing court a fair opportunity to do its job and to do it well, as long as it is not under-staffed or poorly staffed. Properly handled in terms of personnel selections, jurisdiction, and powers, the housing court may have a good chance to succeed.

SPECIALIZED COURTS: IS THERE A NEED?

This leads us to the question of whether a housing court is necessary or desirable in a given community. Clearly, some of the cities have believed that this was the case; this is described in the various chapters under their respective "Historical Background" sections.

Many of the reasons for the establishment of specialized courts already have been mentioned. Problems with the predecessor systems included: heavy case-loads; inconsistency; lack of continuity; uneven treatment of defendants and plaintiffs; serious abuses within prior systems; and, a desire to reach for new opportunities through a more effective and equitable dispute resolution apparatus. Another compelling force, in most communities, has been a serious problem with adequate code enforcement and code compliance efforts by existing local courts. A housing court was seen as the "way to go".

On the other hand, not all communities need housing courts. The existing judicial systems may be operating quite adequately from the perspective of the many groups in the community who are, or ought to be, concerned with housing matters. Caseloads in eviction matters may be low; and, there may be general agreement that the public already is fairly and adequately served within the confines of existing law. Code enforcement may not be a severe problem and the agencies themselves may be achieving administrative compliance without real loss to the efficiency of their central missions. There may be no real complaints from either the landlord or the tenant communities, because the courts are effectively delivering "comprehensive" justice in complex as well as simple housing-related disputes. In such instances, it may be perceived that no real need exists for specialization of personnel or of the court structure itself.

Nonetheless, still other types of improvements are desirable in virtually all existing court systems. For example, Hennepin and Hampden Counties (chapter 13 and 4) have implemented reforms such as special informational brochures and court forms. And, nearly all of the chapters in this Report highlight many other major innovations and reforms that could be implemented, short of instituting specialized housing courts per se.

Still other cities may wish to consider "quasi-specialization": in other words, the assignment of a judge on less than a full-time basis to handle all of the housing cases in that jurisdiction. This provides a workable approach for cities or counties that feel they cannot justify the assignment of one judge to a specialized court for all of his or her time. This may prove to be feasible if the judge is well-supported by at least one housing specialist on a full-time basis as well as experienced clerks. (See, for example, the four schematics presented later in this Executive Summary.)

BUT ARE SPECIALIZED HOUSING COURTS SUCCESSFUL?

Success is not easy to measure. One set of standards might well include: (a) whether or not the cases the housing court handles are leading to legally appropriate decisions under the circumstances; (b) whether or not the parties in the courtroom, on the average, feel that they are getting fair hearings in the courts; (c) whether or not the laws as enacted by the legislatures are being served true to their purpose, meaning, and intent; and, (4) whether or not, in somewhat nebulous but nonetheless meaningful terms, justice is being done as well as appearing to be done.

Questions such as those above are involved in the concept of whether or not the court process is "equitable". Two other measures also ought to be introduced: are the housing courts "effective"; and, are they "efficient"?

Before any generalizations are attempted, it is important to note that the concepts of equity, efficiency, and effectiveness may be approached either on a comparative basis or in isolation. That is, one can try to determine whether or not one part of the court (such as the clerk's office) is efficient or effective in the "absolute": standing alone, how well it currently operates. Alternatively, one can seek to decide whether a specialized court's operations are "more" effective, via a comparison with the court or courts that preceded it.

We should first ask, and then dispose of, the comparative questions: namely, are the operations of a housing court "better" than the non-specialized courts that came before? Perhaps not surprisingly, the answers are hard to come by. This is true because so many events have occurred or changed over time; influential factors bearing on both sets of courts have not remained constant.

CODE ENFORCEMENT: "BETTER"

In regard to code enforcement cases, the problems with deteriorating housing are becoming more acute over time. This can mean increased pressures on local government. Too, there may be greater awareness on the part of the public.

Moreover, the laws relating to code enforcement may have changed dramatically. The codes may have become more detailed and new provisions may have been added. The very nature of the laws also may have changed, as with converting them from criminal to civil types of prosecution. Or, as in Massachusetts, new types of actions may have emerged. (Under a high court decision and subsequent legislation in that state, it now is possible for a criminal complaint to be brought directly by a private citizen against a building owner for code violations: see chapters 4 and 5. In most cities, only the local code enforcement agencies can bring code violation complaints before the courts.)

Nor can other factors be underestimated, such as many cities currently having fewer numbers of inspectors and in-depth inspections than they did a decade ago. Local politics, policies, procedures, and fiscal constraints may have resulted in a de-emphasis on code enforcement of certain types. Yet there may be newly-recognized needs for establishing priorities for code inspections in such areas as nursing and boarding homes or fire and life safety in hotels and motels.

All of these considerations contribute to a lack of constancy over time, and affect the validity of conclusions drawn on a comparative basis. Similarly, the creation of a new housing court--done in order to accomplish reform--may affect the code enforcement process. Hartford-New Britain's housing court (chapter 3), for example, caused code prosecutions to accelerate after it was begun in 1979.

Despite these nuances, the interviews in the study cities provided a substantial basis for analysis. Although the interviewees' opinions were subjective, there was basic agreement that code enforcement generally was significantly "better" than under the previous courts. It was felt that the specialization of the courts, broader powers, more knowledgeable judges, the use of housing specialists, and careful preparation of cases by the agencies, all had contributed to appreciably better code enforcement and compliance activities in these communities.

Most interviewees were convinced that the code enforcement work of the specialized court was better for the reasons previously described about housing courts in general: continuity, consistency, and other factors. It also was felt that these courts took interest in their work and that they were dedicated to community-wide improvement. Too, there was the belief that defendants (property owners) were being "fairly" treated, although the courts often were being far too lenient toward violators.

The overall implication was that in regard to code enforcement matters, specialized courts are, in fact, more "effective". In Pittsburgh, Chicago, Baltimore, Buffalo, and Boston (chapters 9, 10, 8, 7, and 5), it was expressed that an adequate job was being accomplished, on the average, although there was and is room for further improvement. In those cities, not coincidentally, the courts either were totally specialized for code enforcement cases, or these cases represented a very significant portion of the comprehensive housing court's total caseload.

Nonetheless, in almost all of the jurisdictions studied, many persons felt that the community's overall code enforcement program was inadequate or ineffective: that large numbers of violations remained undetected or uncorrected far too long and that small percentages of the violations ever reached the courts. Typically,

persons therefore were reluctant to say that the courts were "effective" in the broad sense.

However, it is important to make the point that there is a dichotomy that can affect the way interviewees view their local courts. On the one hand, the courts are not prosecutors but adjudicators. Yet many persons see the courts as failing to do what, in effect, is the code agency's job (prosecutions). On the other hand, many court systems fail to utilize specialized court personnel to assist in gaining compliance once these cases are before the court. And, still other courts many of the cases to drag on for long periods of time and then, attach little or no penalties once these cases are "resolved".

This situation presents a second dichotomy. Some local courts are required by law to "help improve and maintain the housing stock", while at the same time being made responsible for levying fines and penalties. Some interviewees suggested this places these courts in inconsistent positions -- or at least, in a posture of having bifurcated goals -- particularly when faced with defendants apparently "unable" to pay the costs of repairs. (The study city chapters illustrate this problem, although some jurisdictions have taken steps to resolve these dilemmas. It is this very process--the roles of, and the interplay between, agencies and courts--that forms the basis of the ABA Special Committee on HUD Law's 1980-1982 work on code enforcement and compliance programs at the local level.)

In conclusion, it must be noted that courts per se will affect only a marginal number of the community's widespread code problems. Their "success" can be measured only in terms of making the "problem cases" actually come into compliance as well as offering financial and other disincentives for violators.

In nearly every city, several problems were identified by interviewees, time and again, in terms of court operations. These applied to the nonspecialized courts as well as to some of the housing courts, although the latter experienced lower levels of problems in most instances. The criticisms most commonly voiced were that the court:

- (1) was unable to require or directly order owners to make repairs, because it lacked the necessary equitable or injunctive relief powers to do so;
- (2) was limited generally due to the characterization of code violations as being criminal versus civil matters;
- (3) was hampered in its performance where there were no specialized judges and no housing specialists or, where these persons were overburdened;
- (4) was inconsistently interpreting the law and disposing of cases; and, was lacking in continuity, in part because of judge-rotation (and, many judges find these the assignments not to their liking);
- (5) "continued" cases too many times, being unduly accepting of owners' reasons for delays;
- (6) very infrequently made use of fines, despite the fact that many of the code violators' cases were continued several times and went through a number of court hearings: all of this having followed on the heels of numerous warnings and administrative attempts by the code enforcement agencies concerned. In fact, not only were fines not given, but often the violators were not even found "guilty" (as long as they eventually removed the violations with which they had originally been cited by the code agency);

- (7) in those instances where fines were imposed, gave minimal fines (despite not only provisions of the law, but high costs to the city and the court system, and the lack of any deterrent effect for other violators);
- (8) did not diligently pursue collection of the fines that remained unpaid;
- (9) held overly formalistic proceedings that unnecessarily intimidated the defendants (in other cities, comments to the opposite effect: that proceedings were too informal and that procedural due process was not fully observed); and,
- (10) did not maintain adequate statistical data on dispositions and other court activities, and subsequently did not perform moderately sophisticated analyses to determine how to correct reoccurring system problems.

Where these problems were discovered, they are treated in the "Analysis" sections of each of the study chapters (numbers 3-15; see generally, chapter 2).

In conclusion, it would seem that a specialized court for code enforcement matters is likely to be able to do better work than under current court operations. In communities that already have the specialized courts, there is a perception that these courts are comparably more effective than the "old" systems; few persons interviewed suggested any desirability of returning to former ways or systems.

Nonetheless, it is apparent that, for specialized courts:

- (1) many of these specialized courts still are beset by problems 5, 6, 7, and 8, above;
- (2) most also had some difficulties with numbers 9 and 10; and,
- (3) a few had problems with numbers 1 and 2. (Types D and E specialized courts had few problems with number 1.)

Nonspecialized courts often had greater degrees of these problems; they:

- (1) were particularly restrained by problems 3 and 4;
- (2) moreover, had problems with numbers 5, 6, 7, and 8 (usually to a greater extent than specialized courts); and,
- (3) problem areas 1, 2, 9, and 10 were experienced as well (to about the same degree as the specialized courts).

LANDLORD-TENANT: "BETTER"

Some of the specialized courts studied had subject matter jurisdiction over landlord-tenant cases. These primarily involved evictions, but oftentimes also included small claims actions as well as other types of civil litigation.

Again, determining whether specialized courts are better than their predecessors is particularly difficult in this area of housing law. Under the laws a decade ago, compared to those under which the court systems must (or should) be operating today, procedural and substantive law is much different in most jurisdictions. For example, not long ago, evictions tended to be truly "summary". A landlord needed only to have alleged nonpayment of rent and, barring any technical defects in his or her pleadings, would have won a judgment for possession

almost automatically. Recent laws enacted by legislatures, and in other instances interpreted into case law by the courts, have made legal issues far more complex. The idea of mutually dependent covenants--that the tenant must pay his or her rent and the landlord must maintain the premises in habitable condition--is only one illustration of major changes affecting tenancy relationships. (For examples of complicated changes in one state's laws, see the chapters 4 and 5.)

Landlord and tenant groups or their representatives who were interviewed in the various cities had many criticisms about "the courts" generally. Their first tendency was to describe why they felt the laws or court rules were unfair, complex, or time-consuming and costly in effect.

Not infrequently, some judges privately felt the same way. Nonetheless, they were bound to observe, and judge under, the existing laws.

As already stated in this Executive Summary, it was evident that many such objections may be well-taken; however, this was outside the scope of this particular national research program. What was pertinent was the narrower question: were these laws being observed in the courts and was there greater satisfaction with specialized courts than with the nonspecialized court systems?

The specialized courts studied for this Report have been criticized significantly less than the nonspecialized courts. Generally, tenants' attorneys indicated a preference for the housing courts over prior systems. Landlord groups were not particularly ecstatic about these courts, but their criticisms centered more on the laws on the books, than disappointment with the specialized courts per se. Only where it was believed that the housing courts were paying "too much" attention to tenant defenses, or taking too long to process the cases, was a desire expressed to return to the "older" types of court systems.

Some owners and managers added that they had had good experiences with the housing courts because of successful attempts at mediation (particularly when it involved at least some payment of back due rent) by housing specialists and other court personnel. The expertise, interest, and sensitive judging also were cited as major advantages by most observers: a significant improvement over predecessor courts.

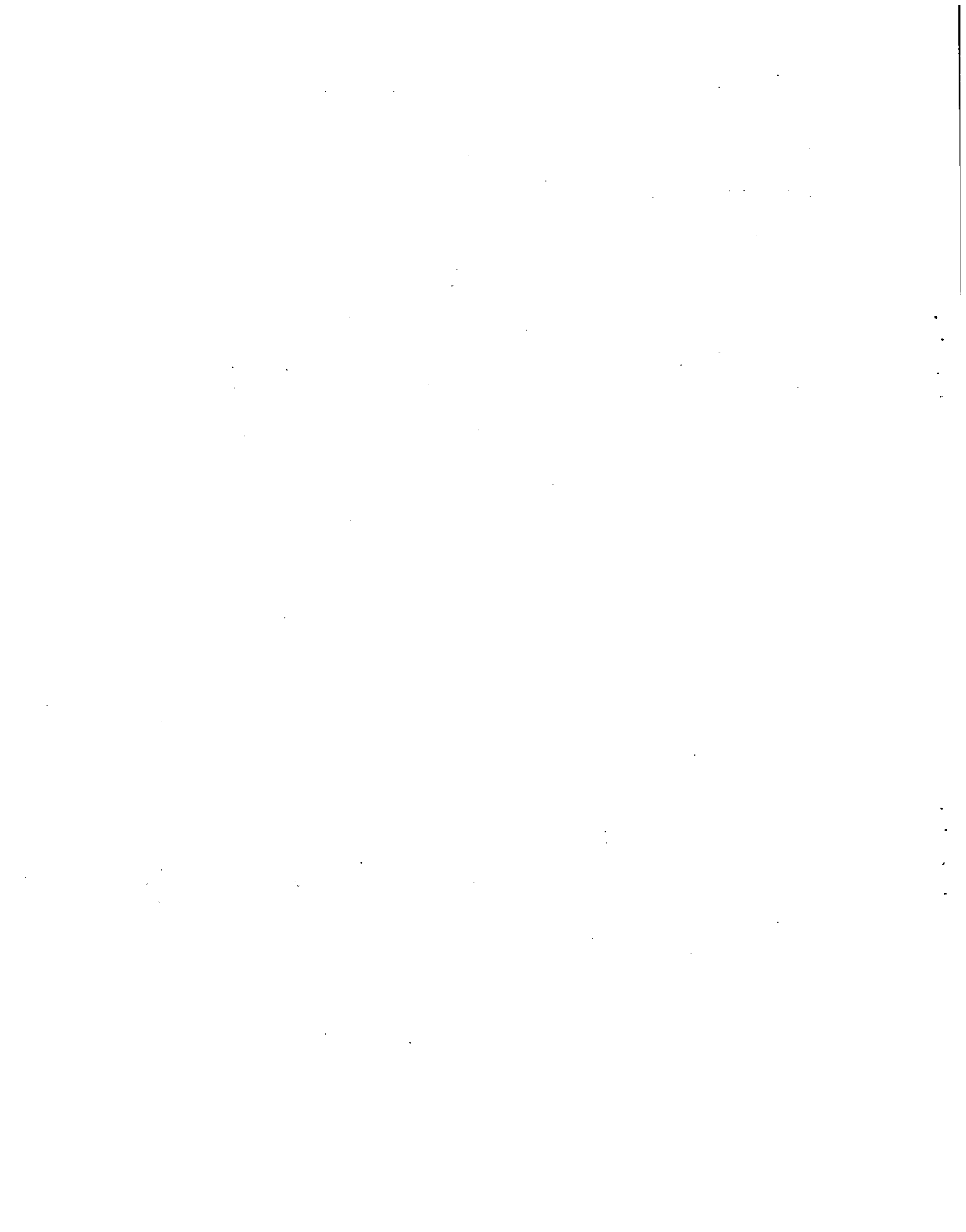
In terms of the courts that were studied (both specialized and nonspecialized), below is a distillation of some of the more important criticisms.

- (1) Again, courts were severely hampered without housing specialists to accomplish many crucial tasks (described in detail in chapter 2), including mediation.
- (2) The caseload was too heavy (even in some specialized courts). This was made worse where there were no staggered calendar calls. The net result, in the words of some critics, was that the courtroom atmosphere resembled a zoo.
- (3) A crowded calendar generated hurry-up procedures with all of the attendant problems, not the least of which were serious violations of procedural due process and of the right to a fair hearing and a trial on the merits.
- (4) The court was believed to be only partly applying the law of warranty of habitability (mutual and dependent covenants, explained briefly above). This is mentioned time and again in the chapters that follow.



Specialized courts, it was believed, have done a much better job as a general, although not universal, rule.

- (5) Several courts have encouraged out-in-the-hall settlements. This has worked relatively well under the supervision of the housing specialists or certain other court personnel, but it has been subject to abuse when unrepresented defendants are forced to do so without assistance. This is particularly true if the judge does not read over the settlement (placed in writing by the parties) and then does not question the litigants to ascertain that they understand the implications of their proposed agreement.
- (6) Almost all of the courts find judges handling even minor details, which would seem to be poor practice where the caseload is heavy and there is limited time and expertise available. Default cases provide one example, where time is needlessly spent because reforms or innovations have not been implemented. The most innovative approaches to this and the other formal proceedings are found in chapters 4 and 5 (the two Massachusetts housing courts) and chapters 11 and 13: Los Angeles and Hennepin County (not a specialized court).
- (7) Experiments with other-than-judge mediations and hearings (see above item), however, have not gone without some criticism. This is described in the respective chapters on those cities (along with any of the adjustments that have since been proposed) as well as in chapter 2.
- (8) The "judicial process" (not necessarily the court itself) was regularly chastised by owners and managers, due to undue delays:
 - (a) where landlords fail to follow complex technical rules and have to start the process over;
 - (b) where laws and court rules permit defendants to engage in (what is viewed as) delay tactics, such as lengthy trial delays and dilatory motions for discovery;
 - (c) where the court frequently grants tenants "too much" time to leave;
 - (d) extraordinary delays regarding appeals procedures;
 - (e) additional procedural steps after judgment, which take more time before the eviction actually can be executed; and,
 - (f) weeks before the Sheriff's Office executes on final eviction orders.
- (9) Tenants' representatives were critical about many of the problems already mentioned. These included, for example, charges that:
 - (a) judges failed to take time to listen carefully to unrepresented tenants' defenses, particularly when caseloads were heavy; and,
 - (b) despite major technical flaws (by plaintiffs) and valid defenses (by defendants), judgments were given to landlords, nonetheless.
- (10) The court lacked the power to give judgments for back rent (landlords frequently complained about this).
- (11) The court did not have injunctive powers, and therefore could not order



repairs to be made (a frequent complaint of tenants and tenant groups).

- (12) The court did not consolidate the various causes of action pending with regard to one building because:
- (a) it lacked the power to do so; or,
 - (b) it did not have or take the time or it chose not to, despite its theoretical capability--and even charter--to examine these matters.

Virtually none of the courts regularly probed code violations of record as matters to be examined on its own initiative when the cases before it were for nonpayment of rent. For those defendants who were unrepresented, this was less than what should have been done by the court. For the chance to deal with the code problems of that community, this instead became a missed opportunity to deal with these violators.

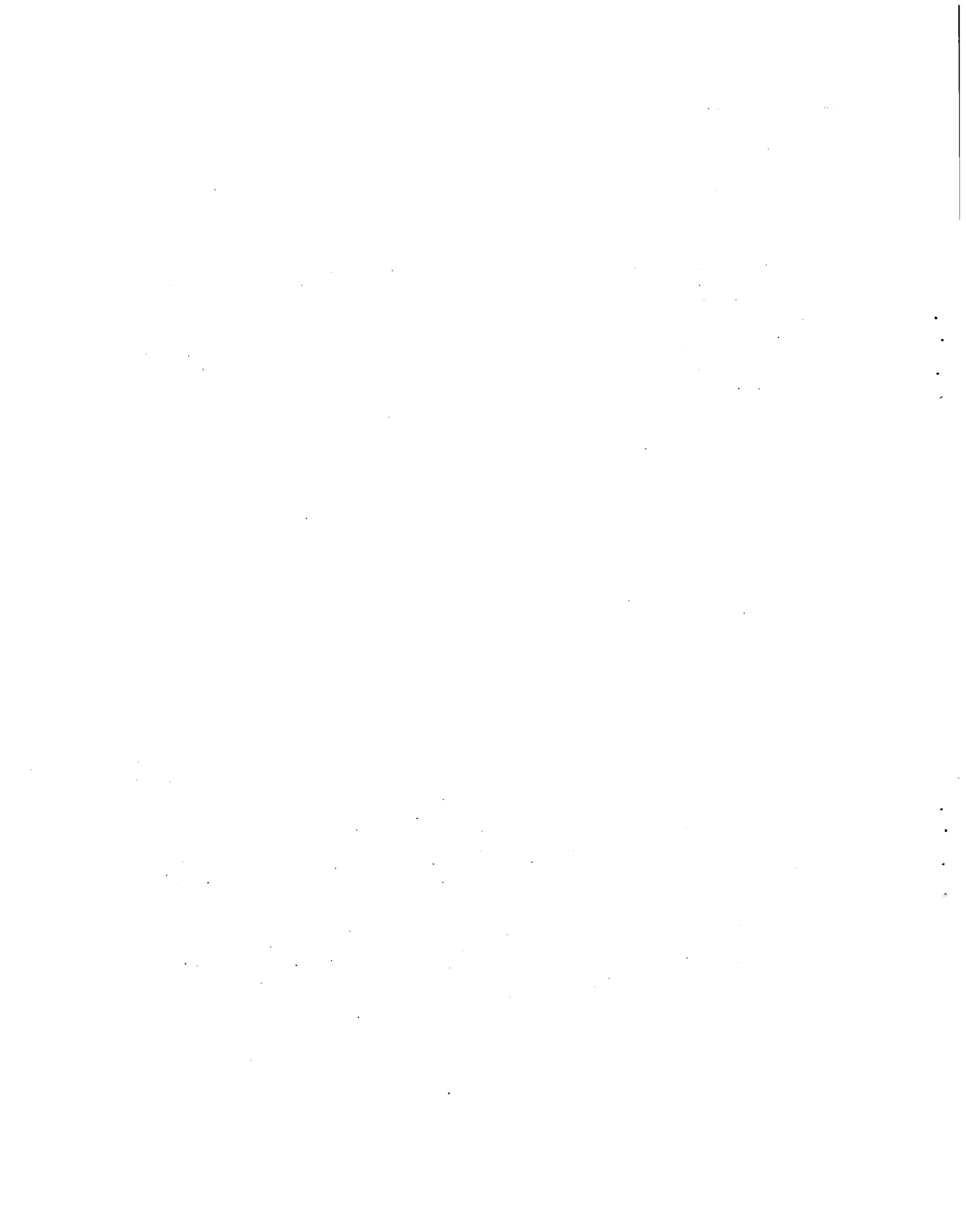
- (13) Again, the courts generally failed to maintain statistical data on the many stages and dispositions involved in these types of cases; nor did but a few courts perform the types of management analyses that could have helped improve their operations over time.
- (a) The above types of problems as well as others are described in the respective court system chapters (3-15), where and if they were applicable. Suffice it to say that nonspecialized courts were particularly susceptible to problem areas 1, 3, 9, 10, and 11, above.
 - (b) A few of the specialized courts (particularly those of Type B, but not so much Types D and E)--and nearly all nonspecialized courts--had some problems with numbers 2, 4, 5, 6, and 13.
 - (c) The specialized courts (including Types D and E as well as B)--especially if they were operating under complicated laws--were critiqued for: problem area 8 by landlords; occasionally, problem 7 by tenants; and, because of the unique potential to do something about the situation, problem 12.

SMALL CLAIMS CASES: IT DEPENDS

Other types of cases do come before the specialized courts or other courts in the same jurisdiction: most notably, small claims actions. The advantages, disadvantages, and effectiveness of the courts in dealing with this type of case are not analyzed in any detail in chapters 3-15. This is because there was a separate research component in the ABA-HUD project on small claims courts (in jurisdictions other than the thirteen case studies). The results are summarized in detail, along with recommendations, in chapter 17 of the Report. Nonetheless, two facts should be reiterated here.

First, many courts are flawed by their inability to deal with a full range of small claims and other monetary and civil matters. They cannot bring "totality" or "comprehensiveness" to a housing dispute between two (and sometimes, more) litigants. Comprehensive housing courts, on the other hand, are able to do so.

Second, if a community does not pursue the adoption of a new Type E specialized court, then it should look to reform of the small claims procedures at the same time that it considers the status quo or the creation of a Type A, B, C, or even D, specialized court(s).



Chapter 17 of this Report is designed to assist in regard to local analyses of small claims court operations. Also, a separate executive summary of the book "Housing Justice in Small Claims Courts" may be obtained from the ABA. (It is available free of charge.)

WHAT'S THE BOTTOM LINE?

Earlier in this chapter, questions were raised as to how the so-called "success" of the specialized courts could be determined: admittedly, questions and conclusions involving high levels of generalization.

Equity and Effectiveness. To summarize with regard to the concept of "equity", it would appear that parties who regularly appear at the specialized courts are on the average, satisfied that these courts are improvements over their predecessor systems. They believe there is a better chance for a fair day in court.

There is, nonetheless, some concern over the substantive laws under which the courts must operate. And, the specialized courts are not seen as being free of problems, since they have needs for "more" time, "more" staff, and "more" sensitivity to the cases that these courts must hear.

In specialized courts, there also is greater expertise in dealing with landlord-tenant cases. Given this fact--greater knowledge, interest, and experience in the applicable law--plus more time and staff to deal with each case, the chances are much greater for these courts to render more legally appropriate decisions under the circumstances. Add to this the fact that some of the specialized courts have broad subject matter jurisdiction and a full panoply of powers and remedies, and it is possible for them to give more "complete", rather than fragmented, justice in housing-related disputes.

Whether the laws on the books are being served true to their purpose, meaning, and intent is a more difficult question. Generally, in the field of landlord-tenant matters, this probably is the case: the specialized courts are "better", comparatively speaking. But even then, they certainly are not completely "satisfactory" in most cities.

Code enforcement cases are similarly problematic. The specialized courts labor under somewhat schizophrenic responsibilities, given the laws pertaining to them and their enforcement-related duties. The codes themselves generally set out standards, along with penalties for violators' failure to live up to the codes. On the other hand, the court's enabling legislation may state that it has been established in order to help maintain and enhance the housing stock in the community. Most specialized courts have decided to interpret the latter provision to mean that they are not in the business of "punishing" violators via fines so much as they are to pursue "code compliance" elimination of all or most of the violations.

This often has led to an operational philosophy in many of the specialized courts of using the judicial process for continuances/adjournments, additional compliance efforts, and finally, the dismissal of cases once compliance has been achieved. Fines imposed and actually collected often are even less than in the predecessor courts. On the other hand, compliance rates--that is, the bringing of properties up to code standards--tend to be greater than in previous court systems.

Whether the courts, therefore, can be judged as more "effective" in code work is a split question. One conclusion is that, yes, this is the situation, depending on: the expertise of the judge and the housing specialists for the compliance

work; and, the powers or strategy of the court concerned. In a few of the courts, the "carrot and stick" approach has been used: a substantial but suspended fine until compliance actually has been achieved (or there has been failure to achieve compliance). The suspended fine strategy has been a valuable one. Some courts may not have the statutory authority to "order" a defendant to take corrective measures. They can, however, effectuate a similar result by conditioning the fines: the defendant must fulfill certain "conditions".

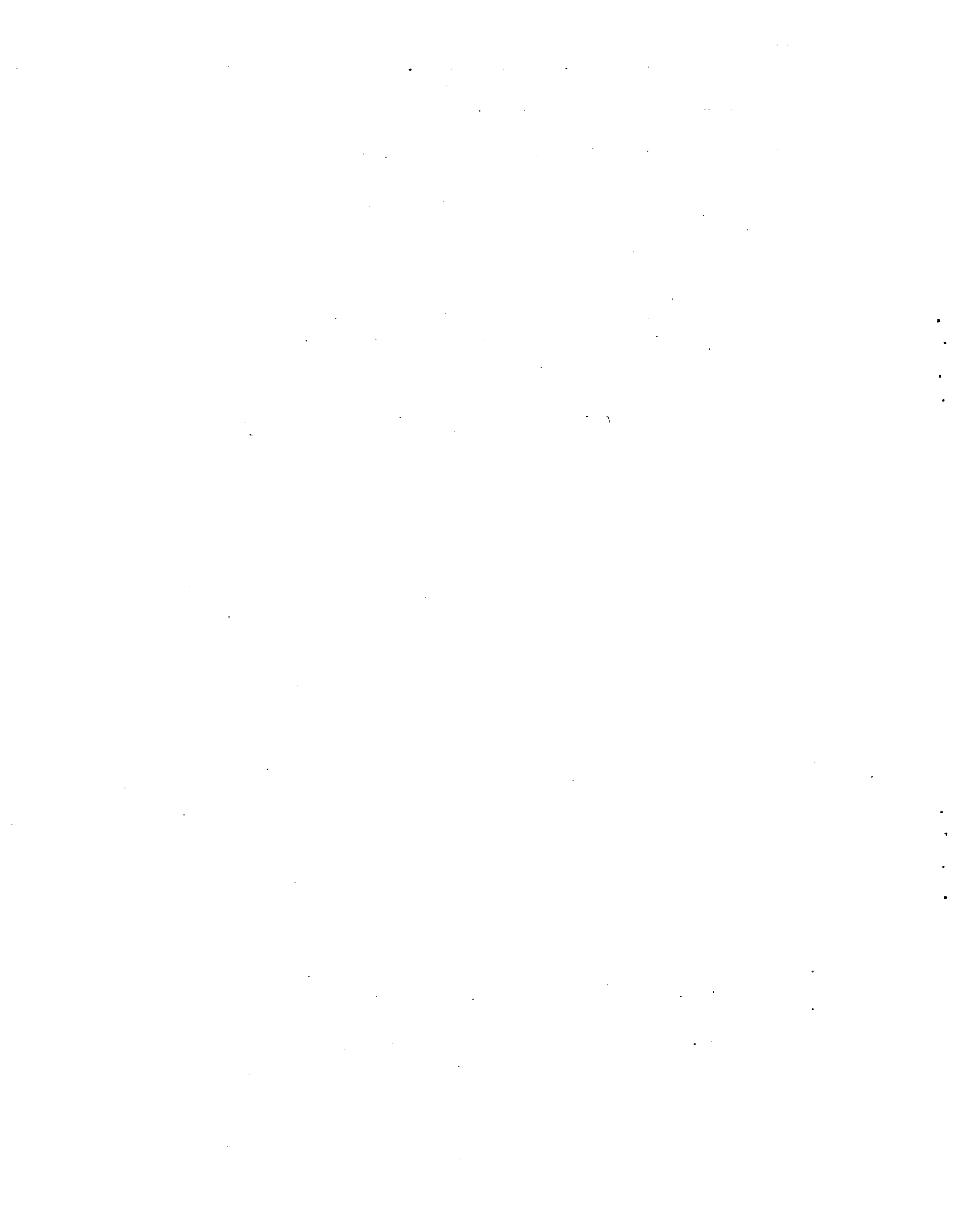
Moreover, a number of other specialized courts have used injunctive relief where it has been necessary and desirable to do so. Others have even gone so far as to put the violators under what technically is "probation". These methods also have often proven effective.

Local study commissions and other originators of the specialized courts may not be completely satisfied in terms of effectiveness. Originally, they might have been troubled by the predecessor courts, in that: (a) code cases were not being pursued diligently or taken seriously in the courts; (b) fines were not being given and thus, there was little visible deterrent value for prospective and actual violators; and, (c) the code enforcement agencies were avoiding actual prosecutions since it was felt that the courts were not proving useful.

Given this as background, some of the originators of these courts may be somewhat disappointed with the "leniency" of some of the specialized courts. They are likely, however, to be relatively pleased with the court's success in terms of compliance that has resulted in many of the "problem cases".

Efficiency. The above discussion has summarized the issues of equity and effectiveness, on both individual and comparative bases, to the extent that it is possible to derive defensible conclusions. Efficiency is the final criterion, and it too is subject to similarly "split" conclusions. The advantages of the specialized courts, in terms of efficiencies, are several-fold.

- (1) The public has access to expert clerks and specialists, as well as new written materials prepared by the specialized courts (see chapter 2). Thus, people can be assisted to the point that actual litigation sometimes can be avoided.
- (2) Where the specialized courts have broad subject matter jurisdiction and full powers, and where both landlords' and tenants' claims and counterclaims can be consolidated in one case, the litigants need not resort to different forums in different locations and at different times.
- (3) Some of the specialized courts have developed expedited procedures for jury trial demands, reducing the time that would be experienced in the other courts in those same jurisdictions (see chapters 4 and 11).
- (4) Because of the mediation work at the hearings, some cases are resolved and need not proceed to full hearings or "unsatisfactory" judgments.
- (5) Where monetary settlements are mediated, the process tends to be more efficient and satisfactory because the parties experience higher average rates of actual collection than with the court-imposed judgments. (See chapter 17 regarding the situation with small claims in general.)
- (6) Several specialized courts have improved and expedited the service of process as well as other formal court notifications (one court has gone even further: see chapter 4), through utilizing special process servers and, in problem cases, the actual court staff (see chapter 2). In one court system



(see chapter 8), special court rules permit the use of inexpensive, private sector "agents" to handle plaintiff-landlords' appearances in the vast majority of the actions that result in defaults.

- (7) Because housing specialists can be sent out to take "views", often a case can be disposed of the same day, without a second court date.
- (8) Several courts have implemented new pre-trial inspection procedures and can move more quickly toward dispositions in code violation cases.
- (9) Many specialized courts have established new working relationships with executive and administrative agencies. These cooperative situations have led to: (a) better preparation of agency cases; and, (b) better assistance to defendants in landlord-tenant and code violation cases, both pre- and immediately post-trial (for examples, see chapters, 8, 10, and 4: see generally, chapters 18 and 19).

Nonetheless, there are "inefficiencies" associated with the specialized courts. Efficiency is measured, first, by the unit costs and "productivity" that come into play. Thus, a specialized court--with full-time judges and other specialists who take the time to do a proper job on housing cases, compared to a nonspecialized court--would have higher "per case" costs. (The issue may well be: is this not an appropriate cost for really doing justice?)

Second, and in even more academic terms, this would involve internalizing all external costs as part of this costing analysis. An important general concept, this means that an evaluation of a system's efficiency must proceed by recognizing and considering all costs, including indirect or social costs. Thus, a badly-conceived court is likely to have high social costs (i.e., impacts on society in general: persons' lives, as well as the quality of the housing stock).

A well-operated specialized court probably can reduce these social costs. In turn, the total "costs" would be lower: the court would, in an economist's terminology, be comparably more efficient than a nonspecialized court.

However, most laypersons do not really look at efficiency when they use this term. Instead, they mean: how much will the public expenditures be (budget); and, what will this cost, on the average, for the cases the courts handle? This is a very limited way to examine efficiency. It causes a "budget bias", since it does not look at social costs.

If one examines the average time taken on each case that comes before a specialized court, it is likely that it will be greater than nonspecialized courts. It also is true that more court staff time will be devoted to each of the contested cases at the pre-trial, during trial, and post-trial stages. Included in staff time are: judges; housing specialists; the clerks; other personnel, such as court reporters or volunteer mediators; and, any of the administrative or other agency personnel dealing specially with the housing court's litigants.

This will cost more and take more time per case than nonspecialized courts. (It does not necessarily mean that it would delay getting landlord-tenant cases before a judge.) In contrast, picture the eviction mill court: it may be "efficient" in terms of direct budgetary costs, but it is not truly efficient (as well as tending to be inequitable).

The housing court, however, will take time to assure that litigants have fairly aired their viewpoints before the judge or via mediation. Each day's caseload is not as likely to go as quickly. This will mean that the court calendar will take



longer and, therefore, more court staff will become involved in order to avoid delays and case backlogs. Overall, more resources will be needed for these cases.

If justice is to be served, there will be higher costs: a necessary means to achieve that end. There will be the assignment of additional and admittedly costly resources: more than likely, on a full-time basis where before, one judge seemingly was "able" to do all the "same" work in less time. The fallacious nature of an incomplete efficiency analysis, therefore, certainly should be evident.

In code enforcement cases, a "cost-saving" approach might simply be to dismiss certain cases and immediately dispose of most of the remainder through fines imposed at the very first court hearings. In a housing court, this strategy may be used on occasion, but more than likely the cases will be continued one or more times. While these multiple hearings may or may not eventually result in similar dismissals or fines, the overall approach may result in more compliance, benefitting the community. This requires additional time and resource allocations.

In summary, not only are there costs for personnel, but there are costs associated with the physical facilities and other matters (all of which are described in detail in chapter 2 of this Report). The budgetary ramifications can be somewhat significant: beyond what the courts cost in the past.

It is not just the time spent on each case that can make the specialized courts more costly. Local and state laws have tended to become more complicated than in the past, as with regard to the warranty of habitability. New laws are on the books and there are due process requirements to be observed: a heavier workload for the courts. The specialized court is better equipped to handle this.

Moreover, there is the curious factor: a successful housing court tends to breed new "business". As a visible forum, it becomes known as a valuable asset in the community for the resolution of housing-related disputes. More cases are liable to be brought to that court, especially if it is comprehensive: having the staff and the necessary jurisdiction and powers to render fairer and more complete determinations. Finally, the court will reach out to the community through its housing specialists, and even through occasional sessions held in various city neighborhoods.

This "accessibility of housing justice" naturally has its "inefficiencies"; and, increased caseloads should be expected as well. The blunt fact of the matter is: the new system will cost more...and this is necessary to do the job right.

NO PANACEA, AND SOME PROBLEMS

Housing courts are not without their problems. First, many of the "disadvantages" have been summarized in earlier parts of this Executive Summary.

Second, there are general problems relating to staffing. The attempt to create a housing court in the first place may have run into resistance because of the "new bureaucracy" and the higher costs. The result, then, is that some specialized courts have been denied the additional resources they need. Some are not even authorized to employ certain personnel, such as housing specialists or specially trained clerks. The consequence not only can be self-fulfilling disappointment with the performance of the new housing court, but an inability for the court to live up to its full potential.

Another personnel difficulty in some cities has been recruiting and keeping good staff. With housing specialists, it is a matter of salaries combined with overwork and overextension because of the heavy caseloads at the court. In regard to judges, it is the "turnover" problem: many judges simply do not want, or will not continue in, the assignment to a housing court. It may even become difficult for the chief judge to convince someone to take that position.

At the other end of the spectrum is the resistance to having any one judge more or less "permanently" assigned to a specialized housing court (as for more than two or three years), without some extensive review and evaluation. In cities just now considering housing courts, this has been expressed in terms of being saddled with a permanent "bad judge" situation. In a few cities that already have housing courts, rotation after no more than a few years is now seen as a healthy approach that should be implemented in the future. These persons believe this would avoid possibilities for ingrown attitudes to pervade the housing court or to deny it fresh perspectives from time to time.

A third problem area is that in several of the housing courts, calendars have rapidly become virtually overwhelmed by eviction-related cases. Additional personnel to handle the heavier-than-expected caseloads have not been assigned to those courts. Nor have those, or most other, courts instituted methods for screening the default cases in order to maximize use of the judges' and the litigants' time. Moreover, only one or two courts have sufficient and expert personnel to even begin to handle the heavy number of contested cases (where both parties appeared for the court hearings). As a result, time is wasted in the court and the opportunity for mediation and other worthwhile activities is lost.

Fourth, instead of "consolidation" of all the issues regarding one building or set of litigants, heavy calendars have resulted in segregation by types of cases. In fact, in a few instances, matters have even gone so far in some quasi-comprehensive housing courts (Type D) that the judges are restricted to hearing these "separate" types of cases all of their time.

A fifth problem area pertaining to all of the courts--nonspecialized and specialized--can be mentioned only in passing in this Report. The problems include:

- (1) The massive caseloads in most of the courts means that relatively small numbers of litigants are able to avail themselves of the benefit of legal counsel when they wish to do so (except in criminal matters). There are only limited resources at the understaffed legal services offices.
- (2) At-court counselling or mediation services are found infrequently. They could be provided by any of the following basic sources:
 - (a) housing specialists, which most courts do not have (or, if they do, often are insufficient for heavy caseloads: see chapter 2);
 - (b) specialized clerks, ranging from having an attorney-clerk for complex matters to having "pro se" clerks specially trained to help unrepresented litigants in understanding and filing court papers (see chapter 2). For example, see Hampden County and Boston housing courts, regarding specialized clerks; and; New York, regarding pro se clerks (see chapters 4, 5, and 6);
 - (c) administrative agencies themselves; primarily for post-judgment relocation counselling or emergency payments assistance in evictions (for example, in Baltimore and Chicago; see chapters 8 and 10);

- (d) legal aid clinics staffed by specially trained students from area law schools (for example, in Detroit; see chapter 12);
 - (e) training programs for defendants (for example, a self-help defense program in Philadelphia and a former court-supported training program in Baltimore; see chapters 14 and 8);
 - (f) attorney-volunteers for mediation programs sponsored by local bar associations: unfortunately, a rarity (for example, the program in Los Angeles; and, in Chicago: see chapters 11 and 10); and,
 - (g) non-judicial dispute resolution programs (see chapter 18). This set of innovations, incidentally, is worthy of extensive study and further informational materials in the future. As an off-shoot of this current Report, another monograph was prepared; it is an initial effort to describe some of these innovative non-judicial programs currently in operation in a few cities (titled, "Housing Justice Outside of the Courts".)
- (3) Legislative reform is desirable in many legal areas (as landlord-tenant and code enforcement laws) that courts handle. Where problem areas were acute, as indicated by the interviewees in the study cities, the legislative issues were briefly identified in chapters 3-15. This in no way implies a low priority given these vital matters, either generally or by the editor and authors or reviewers of this Report. On the contrary, there was consensus that detailed comparative analysis in the future is absolutely critical.

WHAT STANDS IN THE WAY OF HOUSING COURTS?

Several issues typically must be resolved in order for a jurisdiction to achieve implementation of a specialized court. These dilemmas are listed below.

- (1) Reluctance to assume the costs of a housing court.

This need not, however, be a major cost item (see details in chapter 2). Any moderate-sized jurisdiction, for example, can use current positions to appoint or reassign a judge as well as a clerk and an assistant clerk to the new housing court. The two or more housing specialists positions will cost more, but are well worth the additional, but not insignificant, investment.

All told, it is erroneous simply to use previous court system budgets (reflecting gross under-expenditures relating to housing caseloads) as any real departure point for budgetary arguments. It can be misleading to compare costs of past court operations to full costs of a new court approach that can help cure known difficulties and reap major benefits for the public.

Moreover, a political problem can arise if the new court is not a local funding obligation. Obtaining a budgetary allocation via a state-funded court system may present some obstacles. In that case, contacts will have to be made in order to gain the support of the state court administrators and, perhaps, various members of the state legislative delegation.

- (2) Necessity for enabling legislation.

In some jurisdictions (as described further in chapter 2 of this Report), it may be possible to implement the specialized court through the exercise of administrative authority vested in the chief administrative judge in that jurisdiction or in the state supreme court. In some instances, where it appears that state enabling legislation for a fully comprehensive court would

be desirable but will take a great deal of time, half-way measures can be implemented administratively in order to begin interim operations of a partially specialized court.

A comprehensive housing court (Type D, E, or F) is likely to require state enabling legislation. It should be anticipated that the process will take a minimum of two legislative sessions in order to achieve passage; the groundwork will have to be laid carefully. Some of the factors that may trigger a need for state enabling legislation, depending on the current laws, are:

- (a) granting the court broader geographical jurisdiction (perhaps necessary in terms of justifiable caseloads, such as county-wide);
 - (b) giving the court broad subject matter jurisdiction over housing cases (compared to existing first-tier trial courts);
 - (c) changing provisions relating to dollar limits regarding counterclaims in small claims actions (which otherwise would escalate some of these cases to second-tier courts);
 - (d) changing the court's jurisdiction to "exclusive"; or, to special "concurrent" jurisdiction with other courts in that area;
 - (e) granting the court a full panoply of powers (as explained earlier);
 - (f) right of removal, on motion, from other courts to the new court;
 - (g) special rules relating to discovery;
 - (h) appeals procedures, perhaps including granting the housing court appellate responsibilities from first-tier courts if its jurisdiction is concurrent in part;
 - (i) whether or not to make the judge "permanent", or to leave assignments on a rotating basis but with a minimum term also set forth;
 - (j) whether or not to mandate the creation of a citizens advisory commission and performance of certain responsibilities (such as public hearings or annual reports, etc.; see chapter 2);
 - (k) legislative language pertaining to the housing specialists: qualifications, duties, powers, and responsibilities (see chapter 2);
 - (l) similarly (to item k., above), for the clerk-magistrate and any other court staff, including assistant clerks and special process servers and agents (see generally, chapter 2); and,
 - (m) clear lines of authority and accountability within a housing court.
- (3) Resistance from the bench.

The concept of a housing court may run into resistance from some members of the judiciary. Their objections may include a series of issues that will need to be discussed at length and care with them:

- (a) the apparent "inconsistency" of having specialized courts within "unified" state and local court systems;

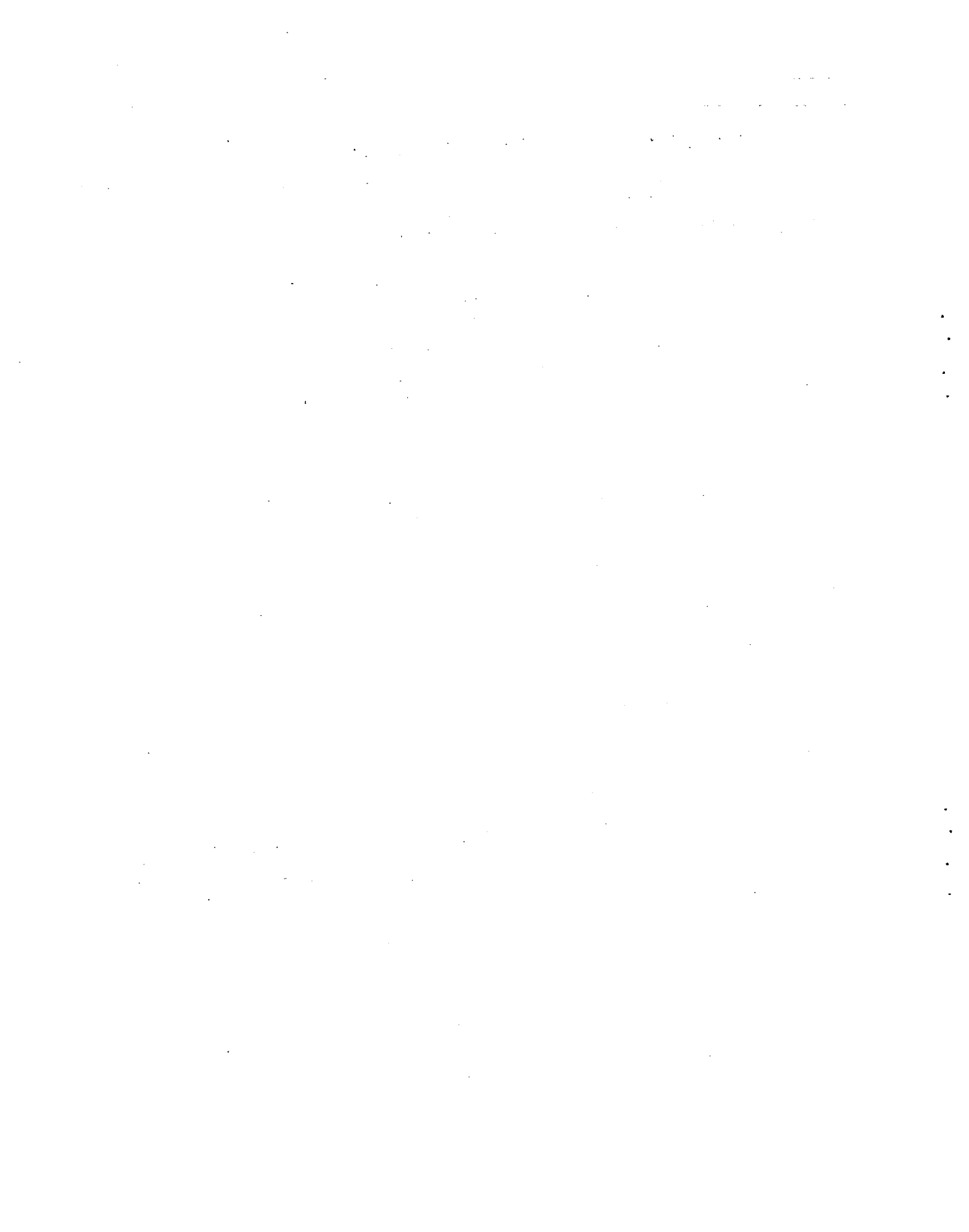
- (b) in non-unified court systems, that the judges want to retain jurisdiction over housing cases in "neighborhood" or district courts;
- (c) the reluctance to give what many view as an "essentially first-tier court" any additional second-tier responsibilities or powers; and,
- (d) a concern that someone will have to be assigned for a relatively long term to such a court: an assignment many do not wish to have.

(4) Resistance from "practitioners".

A housing court probably will represent major changes in the way many of the cases currently are handled. In addition to a number of the factors already mentioned above, reluctance from practitioners may be expected due to:

- (a) landlords' concern that the court process will be less expeditious or that it will "overdo itself in 'sympathy' for tenants' defenses;
- (b) tenants' concern that the new court will fail to exercise its full responsibilities; or, that the appeals route now available from a first-tier court decision somehow will become far more difficult;
- (c) local attorneys' concern that the proposed changes will be undesirable since current procedures and court operations would be "different"; and, that "if it works now, why fix it?"; and,
- (d) a general concern that "everything will depend on who becomes the housing judge" and that the new court "might be worse than before if there is a 'bad judge'": a reaction that "it's safer to bet on the current 'potluck', which averages things" and a belief that it would be "better to leave things as they are than run the risk".

In proposing the establishment of a specialized court, the types of resistance indicated in the above sections may well arise and have to be dealt with. To do so requires a series of intensive discussions, a mutual education process, the building in of system "safeguards", and a real dedication to reform. Eventually, of course, the process simply will have to be brought to the necessary political or policy culmination: a decision will have to be reached, by vote or otherwise.



CHAPTER TWO: OVERVIEW OF SECTIONS

Chapter Two of this Report discusses the basic organizational, staffing, and administrative aspects of our court systems in the administration of housing justice. It is important to understand each of these elements, whether the purpose is for instituting a specialized court or simply for making modest changes to existing, nonspecialized courts.

The major portion of this chapter is organized according to the types of "personnel functions" that may be necessary within local courts. Many of these positions are specialized in order to improve the public's access to housing justice. The first five sections of this chapter include:

- (1) the judge and quasi-judicial personnel;
- (2) the clerk's office;
- (3) the housing specialists and other special staff;
- (4) a series of additional court staff and courtroom personnel; and,
- (5) mechanisms for community participation, such as a citizens' advisory commission.

Each of the separate sections describes in significant detail the roles and options for these various positions and functions. Throughout the above sections, the basic findings and recommendations of this national study are reiterated. The reader then can turn to the individual city studies (chapters 3-15) for elaboration and specifics as to any of the courts' approaches.

The next two sections are as follows:

- (6) budgetary and cost implications; and,
- (7) location and physical facilities.

They involve analyses of other crucial court management issues. These concerns also have impacts on staffing considerations, and vice versa. For jurisdictions with severe limitations in terms of finances, which might prohibit implementation of optimal new housing court arrangements, some alternatives are presented. Finally, there is a section on:

- (8) "remaining observations", highlighting some legal reform issues.

It is evident throughout this Report that there is a wide range of approaches among the various court systems that were studied. Often, this variety is surprising, with many interesting permutations on the "standard" types of court personnel and operations. These cities have experimented with different approaches based on pre-existing systems, political realities, budget restrictions, and changes in statutory and case law.

In a few instances, these court systems have been able to incorporate changes readily in response to the needs of the community and the justice system. Yet in a few cities, the courts have been hamstrung since their creation 2-15 years ago. Marginal and even dramatic adjustments may have been made, but these courts still tend to be limited in the extent and quality of justice they are able to deliver.

Thus, it is to be hoped that the lessons derived from all of the courts studied for this Report will permit still other communities to "design out" similar administrative and court system defects.

A BRIEF OVERVIEW

A little more than a decade ago, specialized courts for housing-related problems were little known, operating in only a few cities. Even by 1980, just several more specialized housing courts had been initiated. Nonetheless, additional jurisdictions have begun to indicate more than passing interest in the "housing court phenomenon". Some of these localities have started what can be a several-



year long process in initiating their own new courts.

The unique tensions and needs associated with housing-related cases are achieving more widespread recognition. It is becoming more apparent to community leaders that the handling and adjudication of such litigation may require the courts to be organized, and to perform, in a "specialized" fashion.

Yet the idea of court specialization is not universally welcomed. For those who resist the idea of specialization, it should be pointed out that the creation of housing courts has a parallel in still another set of court reforms, now considered commonplace. These include, for example, the nation's small claims courts. Similarly, our judicial systems have previously developed specialized juvenile courts, and even, administrative hearing officers in lieu of having judges handle traffic violation matters.

In a number of the cities that were studied, the special requirements of housing-related cases have been recognized. The responses, in terms of court specialization, have been interesting and novel; they are commended to local court systems and jurisdictions around the country.

The Special Committee on Housing and Urban Development Law of the American Bar Association finds that such specialized approaches are an innovative and vitally important response to the critical need for housing justice in our communities.

Each jurisdiction, of course, must make its own choices in the design of its courts within the context of its own needs and systems. This Report is meant to assist community leaders in this regard.

The alternatives may require radical departures from the manner in which many local courts are currently operating. The time has long since arrived for careful scrutiny and sensitive adjustment of local housing justice delivery systems.

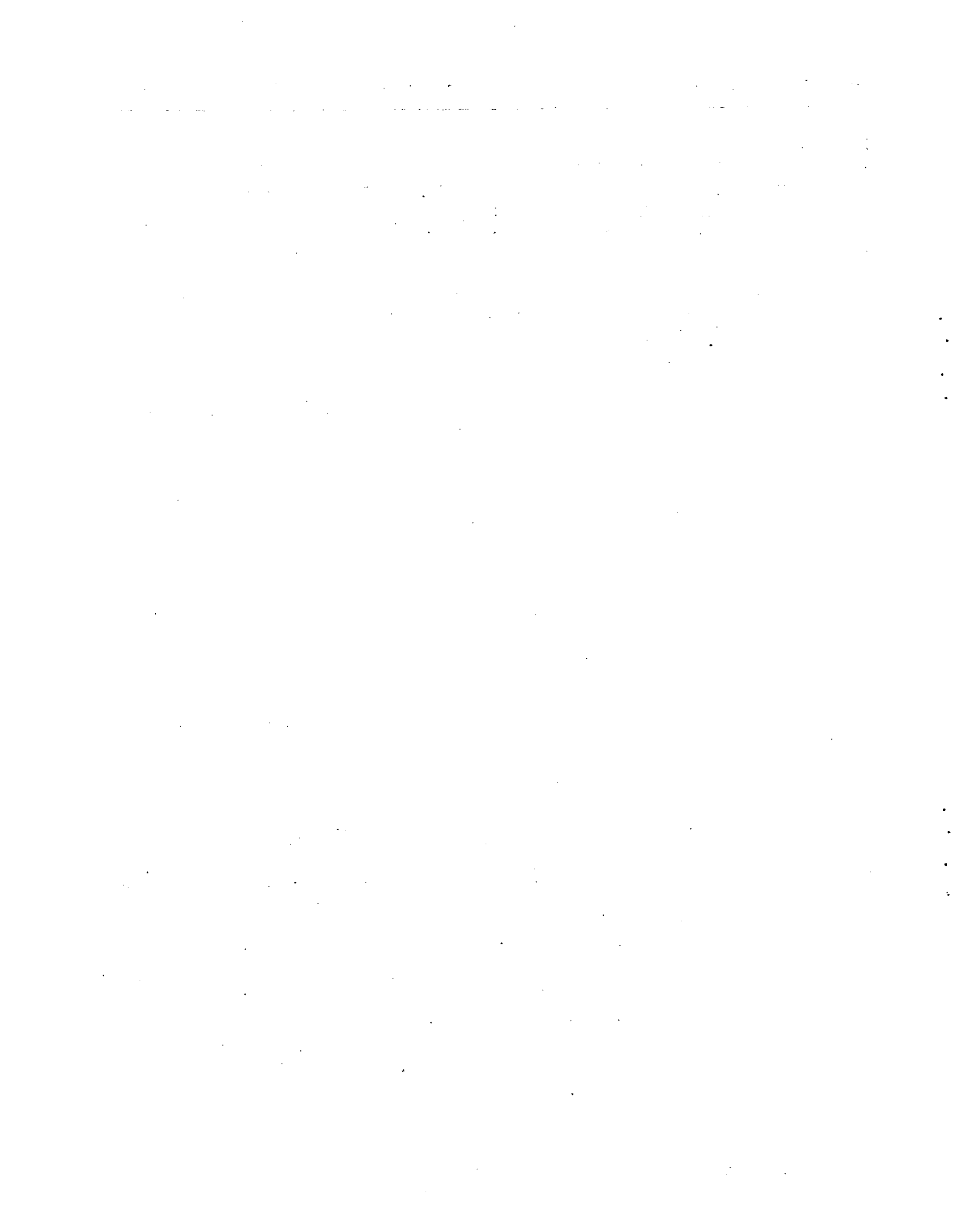
EVALUATING THE PERSONNEL FUNCTIONS

Part of the local evaluation process should include analysis of personnel positions and functions within the court, the budgeting, and the facilities for same. It should be reiterated that no one model will fit the great variety of communities that may wish to consider a specialized housing court of some type. In fact, whole new combinations have arisen in some of the court systems that were studied for this Report.

For example, the clerk of the court serves in a position that lends itself to many adjustments and variations: as administrator of the court's docket and records; as clerk-magistrate with quasi-judicial responsibilities; and, as management innovator.

In the last respect, the clerk may be the driving force for modernization of court management, for improved linkages between the bench and the administrative agencies, for simplification of procedures and preparation of information to assist the public, and for staff training and other internal tasks that will aid in the development of consistent and professional court staff.

The next several pages describe and schematically present the court positions and functions that are analyzed in the sections that follow later in this chapter. (Each is analyzed in great detail; examples are provided.) They are intended as a summary of the types of considerations that ought to be borne in mind as any jurisdiction undertakes its evaluation of local court system community needs.



While these options will affect the budget of the overall court system, any such reform analysis must proceed with a recognition of the social and opportunity costs currently associated with that system's status quo. If the local courts present major problems for tenants and landlords in the efficient and effective delivery of justice -- or, if the court could better meet its responsibilities regarding the community's housing and other building stock, through such activities as code enforcement and code compliance) -- then these factors must be carefully taken into account.

A failure to attribute "costs and benefits" to these dilemmas would mean that deliberations about the need for a specialized court were proceeding almost in a vacuum. Nearly all of the nation's "new" housing courts have gone through a more careful analysis. It is only then that the specialized court approach can be fairly weighed as an option for the local court system.

In order to assist communities in considering the size and type of specialized court that they might need, below are several summary schematics. Each of the functions is described on pages 2.8 - 2.103.

SCHEMATIC FOR A SMALL JURISDICTION WITH ONLY A LIGHT TO MODERATE CASELOAD

A small jurisdiction might proceed with the following personnel for its new housing court. (Note: for the closest approximation to this arrangement, see chapter 16 of this Report, and particularly, the study plans developed for Syracuse.)

Judge (assigned a minimum of half-time to housing court cases)

Housing Specialist (in all likelihood, two will be needed)

Clerk assigned to housing court: knowledgeable in housing; able to answer pro se [unrepresented] litigants inquiries

Clerical support staff, including a paralegal who can substitute for the clerk in performing assistant clerk's duties in the courtroom and for occasional pro se work

Recording device in lieu of a court stenographer or reporter

Options: - Bailiff (also serves part-time as a process server)
- Citizens Advisory Commission with active projects
- Volunteers or interns (administrative assistance)
- Nonjudicial dispute resolution programs in locality

SCHEMATIC FOR A COUNTY-WIDE JURISDICTION COURT WITH A MODERATE CASELOAD

If a housing court were established for a county-wide jurisdiction, and if it had caseloads that were not particularly heavy, the following adjustments could be made to the above schematic. (Note: see chapters 3 and 4 of this Report, for a description of the Hartford-New Britain and the Hampden County housing courts.)

Judge: full-time and perhaps on circuit to two central cities

Housing specialists: two or more (perhaps one specialist would be assigned to the second city's courtroom location)

Clerk: same (but perhaps with certain quasi-judicial roles)

Assistant Clerk: handles courtroom duties and regularly acts as a pro se clerk in conjunction with the paralegal

Clerical (more) / Recording Device / Options: same as above

SCHEMATIC FOR A COURT WITH A MODERATE TO HEAVY CASELOAD

If the above two housing courts (a small jurisdiction with only a light to moderate caseload and a county-wide jurisdiction court with a moderate caseload) were to experience significant increases in the caseload, the following adjustments might be made.

Judges: assignment of a second judge on a half-time basis or, perhaps, spinning off some of the complex and time-consuming cases to another knowledgeable judge

Housing specialists: same, but with increased mediation tasks and significant follow-up work on "problem defendants"

Clerk: assigned regular quasi-judicial duties for the court

Assistant clerk(s): same, but handling mostly courtroom duties

Paralegal: definitely needed for the pro se responsibilities

Clerical (more) / Recording Device / Options: same, although special process servers and a law clerk may be needed

SCHEMATIC FOR A COURT WITH A RELATIVELY HEAVY CASELOAD

Some cities, especially those with comprehensive housing courts handling heavy caseloads, may need a full complement of highly specialized personnel. Thus, the comprehensive housing courts that are in operation, or which are under consideration in a number of communities, have the full range of personnel outlined below. In many respects, these personnel may parallel similar functions in the other types of specialized courts in that jurisdiction. (Note: see chapters 3, 4, and 5 of this Report for full descriptions of the some of these specialized courts.)

Judges: two or more, full-time

Hearing examiner: quasi-judicial duties (as with defaults)

Housing specialists: probably at a ratio of 2 or 3 per judge, with heavy mediation workloads and investigations for the court in higher number of second+ hearing cases

Clerk: acts as court administrator; some quasi-judicial work

First ass't. clerk: quasi-judicial for show cause & utilities

Second+ ass't. clerks (including the paralegals): handle all courtroom duties; perform thorough reviews of the case files prior to hearings; handle the pro se clerks work

Clerical: same, but allowance for heavier support to housing specialists and to judges/clerks; also, help in the tracking of caseload paperwork and agency follow-ups

Recording device: same (although some may use stenographers)

Options: - Bailiffs: increase, for each of several courtrooms
- Process servers: special arrangements may be needed if current arrangements are not satisfactory due to workloads in the Sheriff's Office
- Volunteers & interns: regular use, particularly for assisting in management tasks and new improvements
- Law clerk: new position, to regularly assist judges
- Citizens Advisory Commission: regular meetings/work



CAUTIONARY NOTE REGARDING USE OF THE SCHEMATICS

The preceding four schematics for specialized courts -- of different sizes and caseloads -- must be used with caution. In fact, the reader should not rely on these schematics except as examples or illustrations of the principles and the information contained in the remainder of Chapter 2. The reasons for this are several-fold.

(1) Still other ideas and alternatives are presented in the sections that follow on this chapter. These suggestions cannot be readily summarized in the four schematics, without compromising clarity of presentation. Thus, the reader will want to review all of the materials in Chapters 1 and 2. After doing so, these schematics become merely a point of reference for designing a new set of options based on the information contained elsewhere in this Report.

(2) Housing courts, once created, tend to remain at the same levels of personnel, despite workloads and obvious needs to the contrary; that is, inertia may block further reform. The schematics should not be allowed to bind the specialized court into inflexibility.

For example, a housing court created without housing specialists may find later that it needs these personnel, but cannot get the relevant statute or the budget readily changed. A similar situation may prevail in regard to the clerk's position: whether or not that individual should have authority to perform certain types of quasi-judicial duties.

One option, of course, is to write the legislation broadly, enabling the creation of various positions within the court. The actual timing as to when these positions are to be filled could be left, by law, to the discretion of the chief administrative judge in that jurisdiction. This would permit flexibility without the need to return for legislative amendments.

The reverse side of the argument is that if certain positions or authority are not mandated, but are left discretionary, then the community may later find that it cannot convince the decision-maker who is responsible to exercise his or her discretion. To counteract this potential problem, some thought could be given to mandating at least minimum levels of staffing. For example, the statute might state that no less than two, and no more than six, persons shall be employed as housing specialists. The statutory language then could set forth who would exercise discretion for hiring within that overall range.

(3) Some courts may believe that they will be able to operate adequately without a number of the positions represented in the schematics. For example, the chief judges in Chicago's and New York City's housing courts argue that they can do without housing specialist positions, since they have access to agency personnel who have special court-related assignments. (At the same time, within these two communities this perception is not necessarily a universal one. Some observers argue that the agency personnel cannot and do not perform all of the responsibilities that housing specialists would have in code violation cases. Others point out that landlord-tenant cases need these types of specialists, and that current arrangements are valuable but not completely satisfactory.)

(4) As already implied above, there are personnel "substitutions" that are possible, at least on a temporary basis, which are not indicated in the four schematics. Such alternatives are described in the sections that follow in the remainder of Chapter 2.

(5) The schematics do not represent the multitude of tie-ins with administrative

agencies and other community service organizations. For example, in Pittsburgh's housing court, the county health department has established a whole team of personnel who handle the prosecution of code violators. They work closely with the housing court. (See chapter 9.) Another example is Hartford-New Britain, where the prosecutor for the code violation cases has an office right in the housing court building. (See chapter 3.)

These types of special arrangements are not shown on the schematics. Nor are the other innovations shown, such as novel landlord-tenant services. For example, in Chicago and Baltimore there are special "clinics" that work in close cooperation with the housing courts. (See chapters 10 and 8.) Detroit's court, which is not fully specialized, has a legal aid office at the court. (See chapter 12.) And in Philadelphia, a nonspecialized court, there is a very active landlord-tenant education and legal assistance project that is independent of the court system, but which has major impacts on the way many landlord-tenant cases go forward in the local courts. (See chapter 14.)

(6) Alternative forums for nonjudicial dispute resolution also are essential to consider as the community deliberates on housing justice reforms. None of these approaches is represented in the four brief schematics. Some of these programs are highlighted, however, in this Report. (See chapter 18.) In this regard, it is recommended that readers should obtain two other publications produced by the ABA-HUD program:

URBAN LAW ANNUAL - VOLUME 17 (1979)(published in conjunction with the Law School of Washington University). This important 400-page book contains more than 20 articles on judicial and nonjudicial dispute resolution, prepared especially for use in conjunction with this ABA Report.

HOUSING JUSTICE OUTSIDE OF THE COURTS: ALTERNATIVES FOR NONJUDICIAL DISPUTE RESOLUTION (R. Scott ed.)(1979)(available in preliminary monograph form from the ABA in Washington, D.C.).

(7) Moreover, a host of functions that each of the personnel should or could perform cannot be fully and graphically represented in the schematics. These issues are brought out in the various sections in Chapter 2. For example, one reform is repeatedly mentioned: the development of informational materials for litigants, such as the brochure attached to the summons in landlord-tenant cases. (See the brochure from Hennepin County, per chapters 13 and 19). Another example is the approach used in Los Angeles, where the judge makes brief presentation to litigants each day, prior to calling the cases. (See chapter 11.)

(8) Finally, the schematics cannot give details on the interrelationships with other courts in that jurisdiction. This also can affect the design and workload of a new housing court. Boston provides one example, where jurisdiction in housing matters is concurrent with a number of other courts. (See chapter 5.) Or, in small claims matters, such housing-related claims may be handled by still other courts. (See generally chapter 19.) The reader should also obtain the ABA-HUD publication:

HOUSING JUSTICE IN SMALL CLAIMS COURTS (J. Ruhnka ed.)(1979)(published in conjunction with the National Center for State Courts).

For all of these reasons, then, the schematics should be used with caution. To assist the reader further, each of the sections in Chapter 2 contains extensive footnotes for cross-reference purposes. These footnotes indicate which of the study cities (see chapters 3-15), best illustrate the points made in the text.

SUMMARY: CHECKLIST FOR EVALUATION OF TYPES OF PERSONNEL NEEDS FOR COURT FUNCTIONS

SUPERVISORY FUNCTION

- Chief Administrative Judge
- Judicial system appeals and complaint mechanisms

JUDICIAL FUNCTION FOR THE COURT

- Judge

QUASI-JUDICIAL FUNCTIONS

- Judge (in low caseload court)
- Options (esp., high caseloads):
 - Hearing examiner
 - Commissioner
 - Clerk as a magistrate
 - Assistant clerks (limited: as for utility warrants)
- Options regarding postponements & pre-trial conferences:
 - Clerk
 - Law clerk
 - Judge (low caseload court)

MEDIATION AND SETTLEMENT FUNCTIONS

- Housing Specialist Department
- Clerk or assistant clerks, if not in a magistrate's role
- Law clerk
- Additional options not using court staff:
 - Volunteer mediators, such as from bar association
 - Referrals to & assistance from the local agencies
 - Separate nonjudicial dispute resolution programs

ADMINISTRATION FUNCTION FOR COURT

- Court administrator (for the court or courts generally)
- Clerk (reports to the judge)
- Innovation within the court:
 - Staff meetings/discussion
 - Volunteers, re assistance

FOLLOW-UP FUNCTIONS WITH AGENCIES

- Housing specialist
- Clerk's office (as in codes)
- Agency staff, delegated with court liaison coordination

SECRETARIAL AND CLERICAL FUNCTIONS

- Secretaries assigned to court
- Clerical support from a "pool"
- Use of high technology package
- Use of computer tie-ins with records useful to the court

OVERSIGHT AND PROCESS INVOLVEMENT

- Community Participation thru:
 - Citizens Advisory Com'n
 - City housing task forces
 - Ad hoc meetings & groups
- Speeches to Community Organ's
- Public hearings and testimony

FUNCTIONS RELATED TO COURTROOMS

- Stenographic/recording tasks:
 - Use of mechanical recording devices in court
 - Regular, assigned stenog.
 - Stenographers from a pool
 - Provided by the litigants
- Cashiers & collection options:
 - Clerk's office counter w/ one staff for follow-up
 - Assistant clerk collects in the courtroom, also
- Docket books & general assistance to judge: asst. clerk
- Bailiff or officer functions:
 - Sheriff's office assigned
 - Uniformed, staff of court
 - Assistant clerk serves in this capacity

OTHER FUNCTIONS RELATED TO COURTS

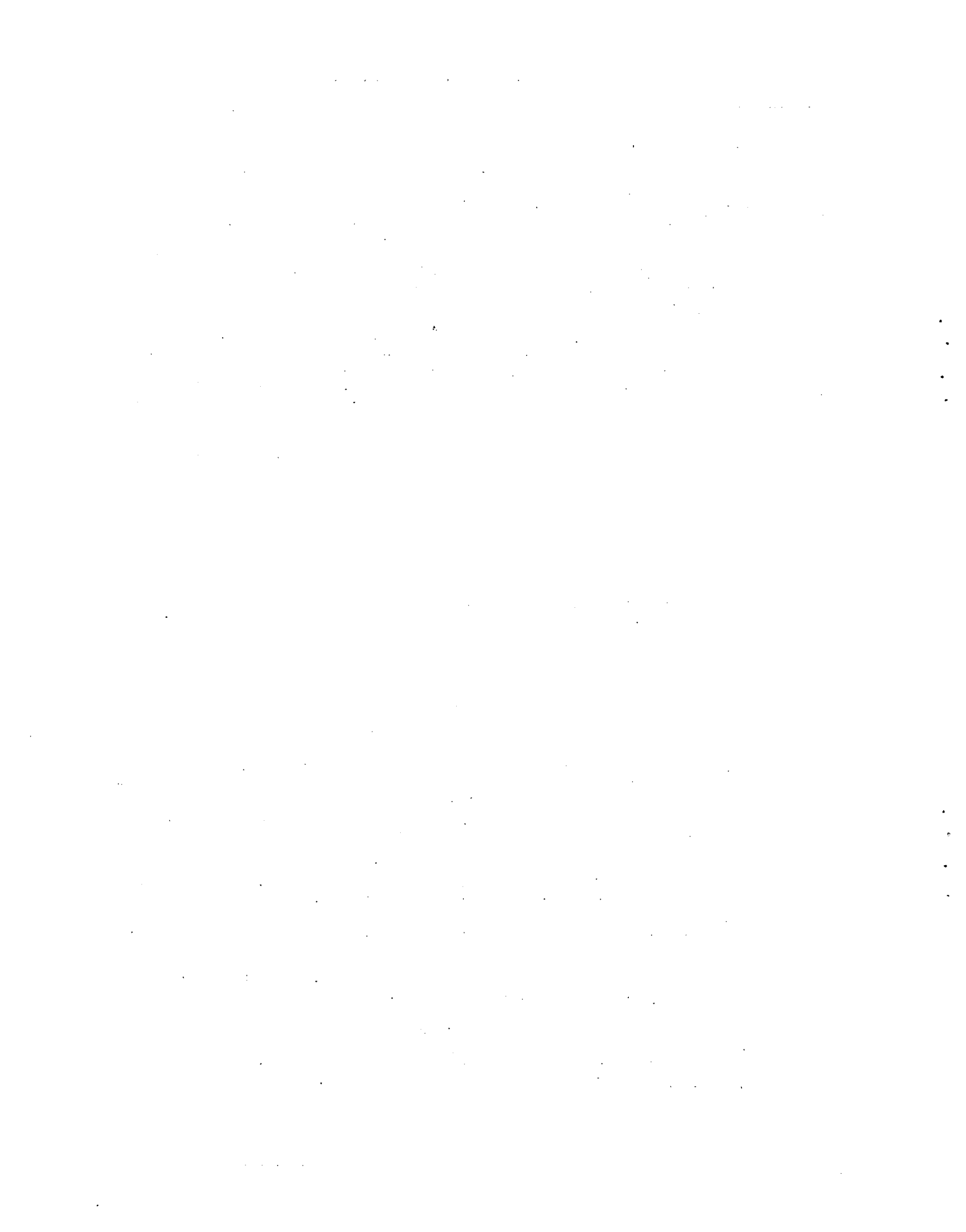
- Law clerk, assigned to judges
- Paralegals to assist in many of functions (as to left)
- Volunteers and interns to aid in management-related tasks
 - Student interns
 - Community volunteers

ASSISTANCE TO THE PRO SE LITIGANTS

- Brochure accompanying summons
- Special information at court: visual display areas; leaflets, audio-visual aids
- Pro se counters/desks at court
 - Volunteers
 - Pro se assistant clerks
 - Law students & attorneys
- Additional assistance from the housing specialists

PROCESS SERVER AND SERVICE OPTIONS

- Sheriff's office
- Bailiffs
- Code agency personnel
- Private/special servers
- Occasional use of court staff w/ dual assignments-authority



THE REMAINDER OF CHAPTER 2

A specialized housing court is part of a "system-wide" reform effort in regard to improving the administration of justice. As such, communities should not restrict their inquiries only to the judicial branch and the personnel and functions of a specialized court. Instead, the inquiry must proceed as a general one. Questions must be asked: To be effective, what system changes are desirable in the administrative agencies? In governmental housing programs? In local and state programs that support the housing effort (such as low and moderate income loans for rehabilitation)? In neighborhood improvement programs? In nonjudicial dispute resolution programs? The list is a long one.

Proposals in this regard are beyond the scope of this particular Report. A sense of the richness in this field of inquiry can be gained, nonetheless, from the narratives on each of the study cities (chapters 3-15.) Some reference also may be made to an earlier ABA-HUD report: HOUSING FOR ALL UNDER LAW: NEW DIRECTIONS IN HOUSING, LAND USE AND PLANNING LAW--A Report of the American Bar Association's Special Committee on Housing and Urban Development Law and its Advisory Commission on Housing and Urban Growth (1978)(Ballinger Publishing Co., Cambridge MA). Finally, Chapter 2 deals with these issues; it is organized as follows:

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The Clerk's Office: Staffing and Operations	25	-	45
The Housing Specialists and Parallel Special Functions	47	-	56
Additional Staffing Requirements	57	-	72
Mechanisms (such as a CAC) For Community Participation	73	-	79
Budgetary and Cost Implications	81	-	95
Location and Physical Facilities for the Court	97	-	103
General and Remaining Issues	105	-	115

A CONCLUDING NOTE

The implementation and the operation of a specialized court--a housing court of any of several types--is not an easy matter. Assuredly, there are a number of pitfalls that can be associated with these systems. They have been outlined in this Executive Summary and are further described in each chapter of this Report.

We have attempted to set forth throughout this Report both the advantages and the disadvantages of these new systems. Perhaps, at times, we appear to have given emphasis to some of the shortcomings of these new court experiments. This does not reflect any disillusionment on our part with these unique and specialized courts. On the contrary, we are impressed with their promise and extraordinary potential.

It is our hope that, by pointing out carefully and in great detail each of the many aspects that have been part of the experience in these courts, many other communities will benefit. They will have had the opportunity to have learned and to have undertaken still further departures through the design of their new specialized court systems.

In turn, these communities will enrich all of us through their own, and new, "Recommendations for Change and Innovation in Our Courts".

In a decade, therefore, we would hope to return to this field...to ask whether, together, we have been able to better accomplish, nation-wide, what is so desperately needed: significant improvements in the very systems that are meant to administer, and to truly deliver, justice in our communities.

JUDGES AND QUASI-JUDICIAL OFFICERS

THE SUCCESS OF A HOUSING COURT IS DEPENDENT, IN LARGE PART, ON THE ABILITIES AND LEADERSHIP OF THE JUDGE. THIS INDIVIDUAL, AS WELL AS OTHER JUDICIAL AND QUASI-JUDICIAL OFFICERS, SHOULD BE UNIQUELY QUALIFIED TO PERFORM FOUR ROLES, THE FIRST TWO OF WHICH ARE ADJUDICATORY AND CONCILIATION-RELATED.

As previously discussed in this Report, the key element of a housing court¹ is its specialized personnel. Clearly, the central position in this respect is the housing court judge or judges. His or her duties, which are highly interrelated, are of four basic types. (Each is briefly reviewed here so that a community that is considering a new housing court may review these workloads and, therefore, the adequacy of its plans.)

(1) Adjudicatory. The judge performs a series of adjudicatory functions that are similar to those of most other judges in the local court system, at least in theory. The actual application of these functions in the courtroom and in chambers, however, can differ significantly from what is typical in other types of cases²; these differences are described later in this chapter.³

In general, the judge may perform the following tasks prior to hearing the litigants' actual cases and defenses: (a) preside over the calendar call;⁴ (b) preside over the motions calendar;⁵ (c) rule in probable cause and show cause hear-

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- 1 The term "housing court" includes any specialized court that deals with housing-related matters. Thus, unless specifically stated otherwise, the term is inclusive of comprehensive housing courts, landlord-tenant courts, code enforcement courts, and the housing-related small claims calendar of the court.
 - 2 For example, the code enforcement cases are handled quite differently than most other types of misdemeanor actions (such as traffic violations) in most local courts. Many such differences are a healthy phenomenon in the nation's new housing courts. They represent new responses to the unique responsibilities of these courts in dealing with sensitive housing issues. At the same time, some practices--even in the housing courts--are subject to criticisms from the user-communities who were interviewed for this Report. These are summarized in Chapter One.
 - 3 For a set of independent commentaries on some of the housing courts, see 17 URBAN L. ANN 1 (1979), which is a major resource volume specifically designed to complement this 1980 REPORT.
 - 4 The calendar call consists of "calling" each case by the parties' names and case number(s), in the courtroom. Generally, the cases are organized as to those likely to be defaults (usually subject to a second call) and those which are to be heard because the parties are present. What is done once the calendar is called -- whether cases are assigned to other courtrooms (as in New York City, see chapter 6) or whether they are heard immediately by the same judge (as in Baltimore, see chapter 8) -- is discussed in detail in chapters 3-15 of this Report.
 - 5 The motions calendar may be held in a separate courtroom (as in New York City, see *id.*) or motions may be heard at any time by the housing court judge. Some motions are relatively mechanical, such as postponements or uncontested non-evidentiary motions. They even may be handled by a quasi-judicial officer. See a later section of this chapter, titled "The Clerk's Office: Staffing and Operations", parts #26-34 relating to quasi-judicial functions. Still other motions may have to be heard by a judge per se, depending on court rules.



ings;⁶ (d) arraign defendants in misdemeanor or other criminal matters;⁷ and, (e) review and sign settlement agreements and consent decrees.⁸

As discussed later in this chapter, some of the above duties may be assigned instead to quasi-judicial officers of the court, rather than by the judges themselves. If this is done, safeguards should be designed into the system.⁹

During the hearings themselves, the judge is responsible for: (f) assuring that the defendant has been advised of his or her rights;¹⁰ (g) making findings of fact (except in jury trials); (h) making findings of law; (i) ruling on motions during trial; and, (j) formulating the dispositions in the cases.¹¹

Other important adjudication-related activities also must be accomplished by the judge: (k) holding pre-trial or other in-chambers conferences, when this is called for;¹² (l) assuring that the parties who are unrepresented (*pro se* litigants) have a real opportunity to articulate their respective sides¹³ at the hearings; and, (m) assuring that an examination of the plaintiff's papers has been accomplished,¹⁴ in order to assure that justice is done and that the rights of

6 See *id.*, parts #27 and 31.

7 Courts differ markedly in their utilization of arraignments. The task may be handled by the judge, with arraignments more or less being the primary method (in lieu of full trials) in most cases. See chapter 5 (Boston); chapter 9 (Pittsburgh).

8 This is discussed later in this section. See *supra* note 5, and the commentary that follows for the remainder of that section (as to the mixture of mediation and adjudication roles).

9 *Id.* This reform has a great deal of promise, but also is a potential problem area: an issue that is raised repeatedly in this Report.

10 These include advising the defendant of the right to counsel, trial by jury, etc., depending on the nature of the case. See chapter 5 (Boston).

11 Most cases do not result in separate written opinions; only brief notations are made in the case jackets. The dispositions themselves range from continuances to declaratory judgments, fines, probation, or the like. A high number of cases -- other than summary process (evictions) -- are "continued", pending efforts to resolve the dispute or to gain compliance short of having a final order from the court. This is discussed elsewhere in this Report. See generally chapter 9 (Pittsburgh); chapter 5 (Boston).

12 Usually this is done only in complex cases where parties are represented by attorneys; the number is very few. In Boston, a legal assistant occasionally performs this function. See chapter 5.

13 The judge should be sensitive to, and able to help meet, the needs of litigants in expressing their complaints and defenses. On the other hand, it does not mean that the judge should, for example, read aloud a list of all possible tenant defenses. In fact, if the housing court has been innovative, the litigants should already have been exposed to written materials prior to the hearings. See a later section of this chapter, titled "The Clerk's Office: Staffing and Operations", part #15 relating to defendant information. See also, Winer, *Pro Se Aspects of the Hampden County Housing Court: Helping People Help Themselves*, 17 URBAN L. ANN. 71 (1979); Rogers, *An Alternative to a Housing Court*, 17 URBAN L. ANN. 177 (1979). The latter article includes sample informational brochures and summonses; updated versions also are included in chapter 19 of this Report.

14 The judge may do so or, if court rules so permit, another quasi-judicial officer. See *supra* note 5. However, this should not mean that it is to be accomplished by clerical personnel who only see if the material "seems to look in order". Unfortunately, this task often is skipped or (cont.)



defendants are not violated.¹⁵

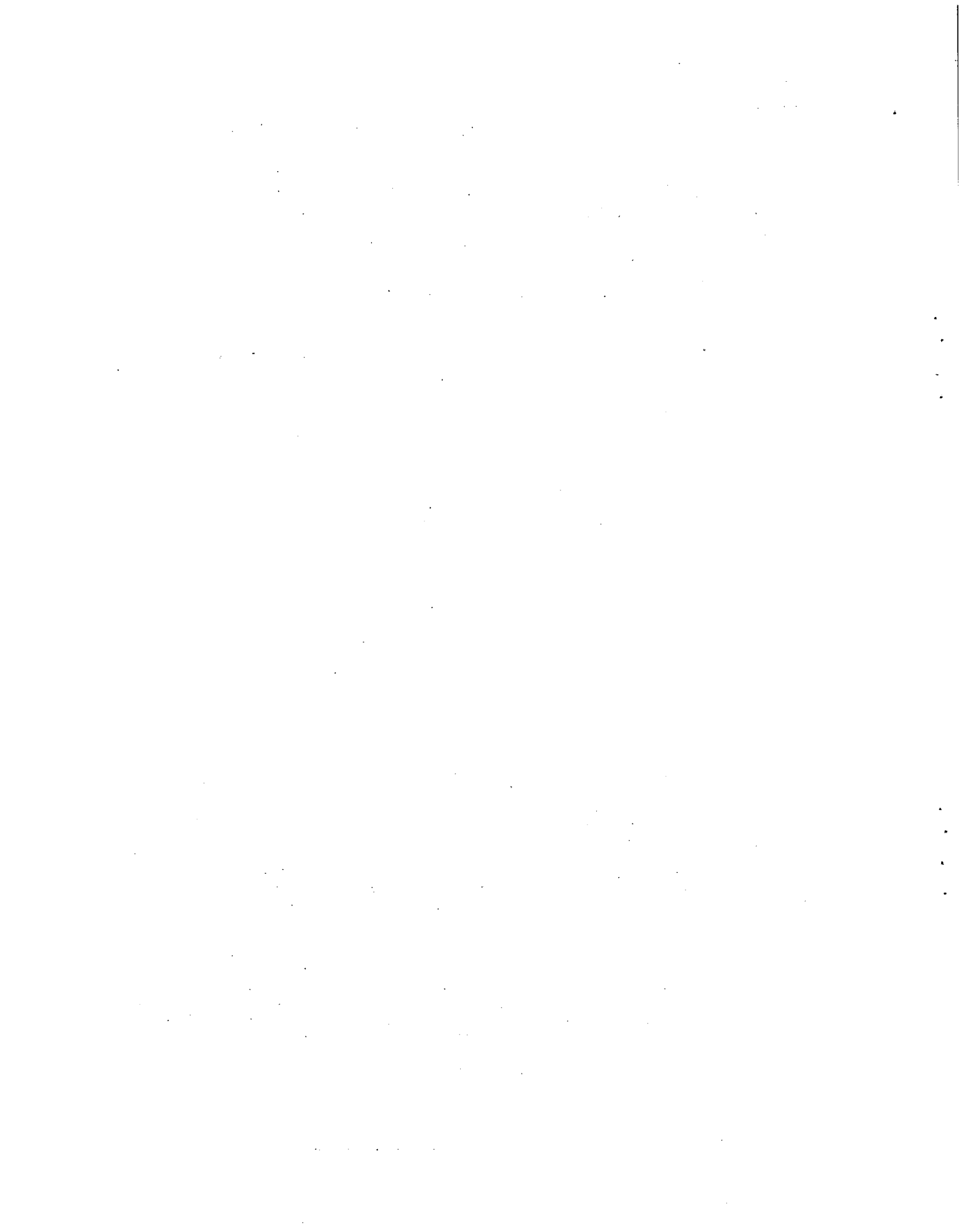
(2) Conciliation. This area of a judge's responsibilities is one of the most sensitive. Moreover, it means combining the "neutral" adjudicatory/judging function with a type of conciliation or settlement role. (This is particularly fraught with uncertainties if it is accomplished by a quasi-judicial officer whose authority -- to say nothing of training and expertise -- is more limited than that of a judge.¹⁶) Safeguards must be built in.

In many cases, the court may seek to achieve a resolution to the dispute: a settlement or compromise that is agreed upon by both parties, rather than imposing a "win-lose" decision based on the judge's narrow rulings as to the facts and the law.¹⁷ This can be done by: (a) encouraging the litigants to meet with a mediator just prior to the court hearing that day;¹⁸ (b) referring the case in mid-hearing to other court staff (such as the housing specialists¹⁹) and "continuing" the case to another time; or, (c) having the judge interpose directly in a type of conciliation-facilitator's role during the actual hearing itself.²⁰

A fourth approach is used in some courts: (d) sending the cases "out into the hall" for unsupervised settlements.²¹ As a general rule, this approach is objectionable on several counts. When cases are to be brought to the courts for a decision, and if the court's approach is to encourage settlements at that time, then it should be the responsibility of the court to provide for supervision of

the judge does not examine the agreement. (Source: field interviews in confidential conversations; some judges also admit they do not have the time to review the material and will not do so "unless the tenant asks for it".)

- 15 Proper service often is a problem that is not properly reviewed. In Los Angeles, for example, a commissioner and a team of law students take special precautions in this regard. See chapter 11.
- 16 See supra note 5.
- 17 For example, the landlord may be entitled to a judgment for possession and a writ of execution within a few days. The judge may try to facilitate another "arrangement", satisfactory to both landlord and tenant, such as a longer period and payment of partial rent while the tenant seeks another place to live.
- 18 Volunteer mediators from the county bar association are used in the landlord-tenant part of the court in Los Angeles. See chapter 11. All settlements (mediation) occur just outside the courtrooms, usually within an hour or two of the calendar call. These mediators supervise and facilitate the settlements in a noteworthy fashion. The judge then reviews each settlement agreement, which is made part of the "decision" in that case.
- 19 See a later section of this chapter, titled "The Housing Specialists and Parallel Special Functions in the Courts". Housing specialists are crucial to the operation of a properly-staffed housing court.
- 20 Facilitating an agreement between the litigants is quite different from taking too strong a hand and virtually requiring a particular result. The latter approach has brought some judges and quasi-judicial officers significant criticism, as is evident in various cities. See generally chapters 3-15.
- 21 This "practice" often results from crowded calendars, too little time for each case, and too few judges. Lack of any housing specialists or any mediators (in other words, the settlement process must go unsupervised) contributes to the problem as well. See generally chapter 1 (Overview of this Report).



the settlement process whenever the parties desire this type of assistance.²²

TWO OTHER ROLES SHOULD BE FULFILLED BY THE JUDGE OF A SPECIALIZED HOUSING COURT: LIAISON WORK OUTSIDE OF THE COURT AND ADMINISTRATIVE RESPONSIBILITIES NOT ONLY FOR MAINTENANCE, BUT IMPROVEMENT, OF COURT OPERATIONS.

(3) Relationships Outside the Court(s). The presiding judge -- or alternatively, the chief administrative judge in that jurisdiction -- has an opportunity to act as a very real catalyst for the improvement of justice in housing matters. This, of course, must be accomplished within the bounds of judicial codes of ethics.

(a) The judge should encourage the development of an active citizens advisory mechanism for the court,²³ whether or not he or she personally is in attendance at those meetings.²⁴ (b) The judge may speak at meetings of respected community groups, schools, or other civic-minded organizations where the role of the housing court can be explained.²⁵ (c) As head of the housing court, the judge should actively encourage development of written materials and other informational or educational devices so that the community can make better use of the housing court.²⁶

Finally, (d) the judge is in the position to bring reform ideas directly to the chief administrative judge of that jurisdiction. In turn, that judge will be able to make certain policy and administrative decisions, or may even take the issues to other branches of government where the reforms can be implemented.

22 Prior to the litigants appearance at court, or if they refuse assistance, the judge of course cannot intervene in what the parties may choose to do. Once the case is in the courtroom, however, the judge should not urge pro se parties to settle where it is likely that the "settlement" will be based on misinformation, imbalance of power and crisis-ridden (eviction) situations, and ignorance of legal rights and responsibilities. In such situations, inequities are liable to occur. The justice system must provide proper assistance via adequate staffing and volunteers, to assure a proper, supervised settlement process. See supra notes 18 and 19.

23 See a later section of this Report, titled "The Citizens Advisory Commission (CAC)".

24 The judge may wish to have a designee, such as the court administrator, chief clerk, or chief housing specialist, attend instead. See generally id. The judge or designee will want to participate in these deliberations, but should not be the chairperson of this advisory body.

25 This was done in Boston by the first housing court judge. Comments by Judge Paul Garrity, national advisor. The clerk and housing specialists also are active in these types of speaking engagements. In Pittsburgh, the judge, the court administrator, and the head of the "housing clinic" (a close approximation to a housing specialists department) all do so. Comments by Judge Alan Penkower, national advisor. In Chicago, the housing court judge frequently appears before community groups to speak about code enforcement-related matters. Comments by Judge Richard H. Jorzak, Supervising Judge of the Chicago Housing Court, guest-advisor.

26 See generally supra note 13. The court should reach out not only to litigants, but the community at large (as to the roles of the housing court, its responsibilities, and its "services"). Most persons are unfamiliar even with those housing courts that have received a fair amount of press coverage. Interview with Douglas King, Administrator of the City of Pittsburgh Housing Court, in Pittsburgh (Oct. 16, 1978).



Three examples of broad-based reform best illustrate this role. The first involves stimulating a greater degree of court plus public agency cooperation, such as in code enforcement matters and eviction cases. The second example pertains to development of nonjudicial dispute resolution mechanisms.²⁷ The third includes change in the body of the statutory law itself.²⁸

(4) Administrative Responsibilities. One of the primary responsibilities of the housing court judge is the administrative aspects of that position. This is particularly true where the judge has a long term, as opposed to a short-term, assignment.²⁹ (In fact, if judges are rotated relatively frequently, the administrative guidance of the housing court probably should be in the hands of another judge.³⁰) Some of the administrative functions are as follows.

(a) The judge must determine what types of administrative duties are to be delegated to the chief clerk (or the court administrator, if the positions are not one and the same),³¹ and should exercise regular review authority.

(b) The judge should delineate carefully all of the basic work procedures of the housing specialists department³² as well as of other court personnel.³³

27 See chapter 18 (nonjudicial approaches).

28 This includes addressing major defects not only in the courts, but in the substantive law. In Maryland, for example, the chief judge of the district courts of that state has repeatedly expressed to the state legislature his concern about major biases under current statutes. Comments by Hon. Robert Sweeney, Chief Judge of the Maryland District Courts, guest-advisor. See chapter 8 (Baltimore).

29 A "long-term" position involves no less than a one year assignment with the probability that the judge concerned will accept an extension of that assignment. Six months to a year is relatively short; it reduces the probability that the judge will be able to exercise much effective or lasting administrative impact on the overall performance of the housing court system.

30 If the jurisdiction is small, the chief administrative judge should be interested in and able to handle this task. In larger systems, such as New York City, much of this task may have to be delegated to senior judges in each borough and the clerk of the housing court (who, in effect, is the court administrator). In turn, they report to the Chief Administrative Judge of the Civil Courts of the City of New York. See chapter 6. In Boston and Hampden County, another several-tiered approach is used. See chapters 5 and 4.

31 For the administrative responsibilities of the clerk, see a later section of this chapter, titled "The Clerk's Office: Staffing and Operations", parts #1-25 relating to administrative duties.

32 See supra note 19; see generally Croteau, Housing Specialists in the Trial Court of the Commonwealth Housing Court Department-Hampden County Division, 17 URBAN L. ANN. 85 (1979). Moreover, in one of the housing courts, some interviewees sharply expressed a need for careful examination of how the housing specialists were performing or otherwise acting in their mediation roles; in another court, as to the work of the clerk. Criticisms are evident in the city studies. See generally chapters 3-15.

33 The clerk's office should undergo some scrutiny in terms of records and data management. Most courts have shortcomings in this area, which the judge should evaluate and work to correct. Unfortunately, courts typically also are under-staffed and over-burdened. As a result, optimal arrangements are not pursued and there are opportunity costs in terms of sound court management practices.

(c) The judge should institute regular monitoring and review procedures. These should consist not merely of the judge holding himself or herself "available" to the court staff. Additionally, there should be regular staff discussions based on periodic reviews of written documents in the files, as a quality control check. This would pertain to the adequacy of work as evidenced, for example, in the court records and entries in the files by housing specialists, assistant clerks, and others. Particular attention ought to be paid to the work of quasi-judicial personnel.³⁴

The above types of reviews are important for several reasons. First, the judge thereby should be able to spot any short-term problems and then take actions to reduce the chances for their reoccurrence. While this is the role of any supervisor in a "governmental" office or department, judges often are adverse to this type of administrative role. Second, these reviews may suggest longer-range reforms relating to court operations and to the body of the case and statutory law.³⁵ Third, the judge may recognize areas that require improvements outside of the judicial branch. These might involve, as already mentioned, other governmental agencies such as in code enforcement cases³⁶ or eviction assistance programs.³⁷

(d) In addition to reviews of the files, the judge should hold regular meetings with the court staff.³⁸ This can provide a useful forum for exchange of infor-

34 This includes the work of the clerk-magistrate, commissioner, and any assistant clerks or paralegals who perform some type of quasi-judicial function. This is discussed elsewhere in this and later sections, supra note 5.

35 See Rogers, supra note 13; interview with Sweeney, supra note 28; interview with Judge Arthur L. Spada, Housing Session - Superior Court, Hartford-New Britain Judicial District, in Hartford (July 17, 1979); chapter 3 (Hartford).

36 Comments by Judge Alan S. Penkower, national advisor, in relation to the on-going examination of court and code enforcement agencies' roles and cooperation. Also, in New York City, the comptroller urged a greater role for the housing court in the code enforcement activities. See chapter 6 (New York City). On the other hand, two of the Chief Administrative Judge(s) of the Civil Courts have pointed out that these calls for reform should not confuse the court's role with the agencies' responsibility for the prosecution of code violators. They deemed it inappropriate to "impose on the court the role of prosecutor of housing code violations. Such a role may be proper for an administrative agency, but it is foreign to a court." Letter from Judge Francis X. Smith (December 14, 1979), national advisor. Nonetheless, other reforms have been pursued in great detail by the housing court, including the assignment of housing court inspection squads from the agencies, see article in chapter 19, and additional attorneys for the Corporation Counsel's office. Comments by Smith, id.

37 An Eviction Prevention Center in Baltimore's Kent Court has been a successful example of court and agency cooperation. See chapter 8; article in chapter 19; interview with Judge Robert Bell, (then-judge of the) Rent Court & Housing Court of Baltimore, in Baltimore (April 28, 1979).

38 Court staff meetings, on occasion, may be expanded to include code enforcement personnel or representatives from other governmental agencies, depending on the topics to be covered. Thus, broad approaches for eviction prevention and assistance could be a topic to be covered, for example. Moreover, these same issues are appropriate for meetings of the citizens advisory commission. See supra note 23.



mation, for raising questions as to the longer-range issues³⁹ pertinent to the court, and for staff seminars and training.⁴⁰ (This function is not at all identical to the occasional one-on-one meetings regarding individual cases or specific litigants before the court: for example, as between the judge and the assigned housing specialist.) Unfortunately, this leadership role on the part of the judge is accomplished infrequently in most of the jurisdictions studied for this Report.

(e) Based on the responsibilities and reform-oriented work of the court, the judge can and should have a general "institutional therapy" effect. (This is appropriate, too, in light of judicial canons of ethics relative to a judge's responsibility to help improve the administration of systems of justice.) Not only must the court address its own primary mission in terms of delivering even-handed justice, but it can be a real catalyst for reform and innovation of administrative mechanisms and agencies that participate in "housing justice".

This should be accomplished by the judge assuring: first, that the agencies' cases and their follow-through activities meet the court's standards⁴¹; second, that "satellite programs"⁴² to assist in the delivery of justice are considered and perhaps implemented; third, that aggressive outreach and liaisons are maintained with local agencies, community groups, and the citizens' advisory commission⁴³; and fourth, that the court system adequately implements internal changes and reforms (below).

(f) A number of internal reforms already have been mentioned: first, reviews of files and correction of inappropriate staff practices; second, improvement of data keeping and management analysis functions⁴⁴; and third, discussion with and training for the court staff and court-related personnel. Other ideas also should be pursued by the judge. These include: fourth, the development and revision of

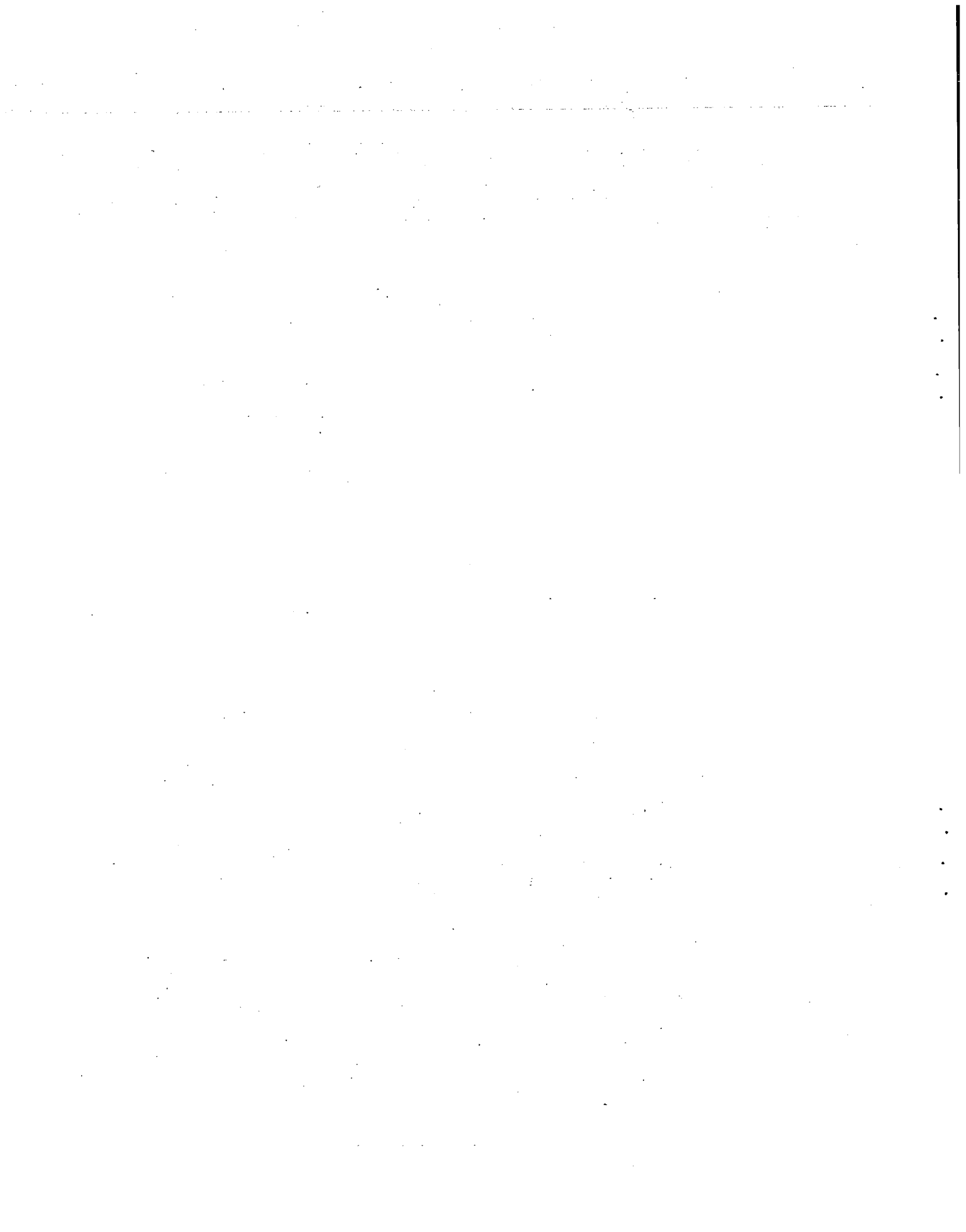
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- 39 Instead of dealing with the specifics of any one case, these discussions can revolve around topics such as: "we are having problems providing assistance to pro se complainants", with discussion ensuing on short and long-term strategies. These internal meetings also may lead to discussions with the chief administrative judge, the CAC, and agency personnel.
- 40 When the Hartford-New Britain housing court was initiated, the judge arranged training sessions over a period of several months, in early 1979. Interview with Judge Arthur L. Spada, *supra* note 35. In New York City, almost-monthly seminars are held for the 16 housing court judges. See chapter 6. In a few cities that were studied, there was judicial and even staff resistance to any such approach; however, most court system staffs decried the fact that the courts failed to convene such meetings regularly.
- 41 Individual discussions about cases *per se* also can be used to accomplish a "therapeutic effect". For example, if code cases are not being properly prepared, the judge may explain in chambers why it is that such cases are being dismissed for technical reasons. Explanations are important so that the decisions of the judge do not appear to be arbitrary, and so that the agency personnel can undertake corrective procedures. Comments by Judge Alan S. Penkower, national advisor.
- 42 See chapter 18 (alternative dispute resolution mechanisms). They include, for example, volunteer mediators, eviction prevention centers, neighborhood justice centers, and landlord-tenant clinics.
- 43 At the same time, discretion must be exercised as to the appropriateness of certain types of public pronouncements by the judge or other court staff.
- 44 Management and policy analysis has a crucial impact on court effectiveness; this is discussed in later sections of this chapter, titled "The Clerk's Office: Staffing and Operations" and "Budgetary and Cost Implications".

benchbooks for the judges; fifth, similar background books for the other court staff (particularly where turnover rates are high);⁴⁵ sixth, the preparation of rules of procedures, annotated with readable and simply understood explanations for pro se litigants⁴⁶; and seventh, the promotion of a creative atmosphere in which persons feel free to suggest how the court can continue to improve its "services".⁴⁷

(g) In large jurisdictions using several judges in a housing court, one of the judges should have the administrative responsibility for that court.⁴⁸ This includes the matters previously mentioned plus such others as assignments of staff, budget supervision, and major personnel matters. (In nonspecialized court systems, judges often delegate these duties to another staff person, intervening only when necessary. Pattern and practice tend to find the clerk of the court acting as the administrator, under the general supervision of the chief administrative judge.⁴⁹)

The judge of the housing court should be interested in taking an active role in administrative affairs, particularly as the housing court may have been initiated in the first place superfluous to cure previously-existing problems. However, the intensity of this administrative responsibility will be significantly lessened if judges are rapidly rotated in and out of their assignments. (Several courts studied exemplify this.⁵⁰) In such a situation, the chief administrative judge of the local courts is the one to whom these responsibilities must fall. The problem is that he or she has many other court operations to supervise, and may even be resistant to changes that increase this burden or which are perceived as radical by other judges in the system.⁵¹

- 45 These guidelines and explanations should be updated regularly via a loose-leaf format. The materials can serve to guide new personnel as to the operations of the housing court. They also can serve to reduce the probability that litigants will be given inconsistent advice by the court's staff or inconsistent decisions from frequently-rotated judges.
- 46 Most court rules make heavy use of legal terminology. There is little or no reason why there should not be step-by-step clarifications for those who want to use the court but are not represented by an attorney. (Small claims courts generally have done a better job in this respect than most other types of local courts.) Surprisingly, virtually no such material was distributed by the various courts studied for this Report. The best material was available from the Hennepin County courts. See supra note 13.
- 47 These methods are highlighted throughout this Report. Of particular importance are public hearings and CAC meetings. See chapter 6 (New York City re public hearings); a later section of this chapter, titled "Mechanisms (such as a CAC) For Community Participation".
- 48 This authority, of course, is subject first to that of the chief administrative judge in that jurisdiction and then, to such other authorities as set forth in the state judiciary articles of state law.
- 49 The judge should have authority over any personnel specially selected for work in the housing court (assuming that the judge is not on short-term rotation, in which case this devolves to the chief administrative judge). Contra chapter 4 (Hampden County) and chapter 5 (Boston), in that both the clerk and the judge(s) are independently appointed for life.
- 50 See generally chapter 15 (San Francisco); chapter 12 (Detroit). In the latter, the judges have one-month assignments. Their courtroom stenographers also double as their secretaries, and "travel" to the rotating assignments with that particular judge. The clerk's office for all of the local courts (nonspecialized) is independently managed.
- 51 More than a dozen court systems around the country contacted the (cont.)



The three largest housing courts exemplify two types of approaches in terms of how the administrative responsibilities of these courts can be allocated. In Boston and in Chicago, the senior judge of the housing court directly exercises most of the administrative powers for that court,⁵² including assignment of cases to the other judges. Continuity prevails in that both of these judges have served for several years.

In New York City, the administrative power is vested in the chief administrative judge for the civil courts, with day-to-day administration in a central clerk-administrator for the housing courts.⁵³ Moreover, in each of the four boroughs, the senior-most judge among the 2-5 in that borough has some administrative responsibilities, although assignment of cases is handled primarily through the calendar call by a civil court judge (not one of the housing court judges).

In the smaller housing courts studies for this Report, administrative responsibilities usually are assumed by the presiding judge of the housing court. This has been beneficial where there has been a relatively long-term assignment of the judge and other staff. This has been true, for example, in Pittsburgh and Hampden County (and during the initial year in Hartford-New Britain).⁵⁴ These courts also have specialized clerks and housing specialists,⁵⁵ which has meant that a "team" -- a specialized unit -- has been developed and maintained within the local court systems.

Where there has been no longevity of the judge in the specialized courts, some problems have arisen.⁵⁶ (This pattern becomes quite exacerbated⁵⁷ in the non-specialized court systems, for reasons described above.)

At the very least, cities interested in housing justice should take steps to assure that administrative attention and interest is brought to bear on housing-related cases within local court systems. Through whatever alternatives are chosen, continuity and targeted responsibility must be assured if any lasting improvements are to be made.

ABA-HUD Program during 1978-1980 for assistance, in addition to the 13 city studies included in this Report (chapters 3-15). A repeated refrain was that the chief administrative judge gave short shrift to landlord-tenant and code enforcement concerns. Moreover, that he or she in fact avoided strong administrative and leadership roles, instead seeking to act "collegially" with the other judges. These attitudes frequently are not conducive to reform or administrative innovation.

52 See chapter 10 (Chicago); chapter 5 (Boston).

53 In this case, the chief administrative judge has taken special interest in the housing courts. The duties of the clerk of the housing court in New York City are akin to those of a court administrator. See a later section in this Report, titled "The Clerk's Office: Staffing and Operations". Sixteen judges sit in four of the five boroughs; each location has clerks' offices. See chapter 6 (New York City).

54 See chapters 9, 4, and 3.

55 In Pittsburgh, the titles are "court administrator" and staff of the "Housing Clinic". See chapter 9.

56 See chapter 7 (Buffalo); chapter 8 (Baltimore). More recently, this has occurred in a specialized court that reverted to short-term assignments of the judges. See chapter 11 (Los Angeles).

57 An exception has been Hennepin County. See chapter 13. There, the judges repeatedly have worked together on, and taken some interest in, housing-related reforms. (Nonetheless, some groups are advocating further changes. See chapter 16.)



CAREFUL CONSIDERATION SHOULD BE GIVEN TO THE SELECTION AND THE TENURE OF JUDGES FOR HOUSING MATTERS. THE OBJECTIVES SHOULD BE TO PROMOTE EXPERTISE, CONSISTENCY, AND EFFECTIVE SUPERVISION OF THE COURT'S OVERALL RESPONSIBILITIES IN HOUSING-RELATED CASES AND DISPUTE RESOLUTION.

(1) Characteristics. From the preceding discussion of the four basic types of responsibilities of the judge in specialized court operations,⁵⁸ it is apparent that the person selected should possess a strong set of personal and professional characteristics. In fact, the operation and success of a housing court are integrally dependent on the quality of the judge(s) selected.⁵⁹

Ideally, the judge should be knowledgeable and experienced in housing matters.⁶⁰ He or she should be conversant not only with housing law, but with the variety of public and private programs that affect the provision and the maintenance of housing and housing opportunities.

This familiarity should extend beyond housing per se. Indeed, this Report constantly makes reference to "housing". Housing is used as a shorthand word; it perhaps runs the risk of being a misnomer that conceivably could mislead the reader. A judge of a "housing court", and particularly if that court handles code enforcement, may have jurisdiction over many types of structures (not merely residential housing). For example, the court may well adjudicate code violation cases involving commercial and industrial structures, hotels and nursing homes, and many other types of structures in that community.

Therefore, when the term "housing" is used in the materials and chapters that follow, the reader generally should consider these broader aspects as being implicitly included in the term "housing".⁶¹

In new housing courts, it may be appropriate to find or recruit "candidates" for a judgeship who possess the knowledge and expertise characteristics noted above. This was done in Boston and Pittsburgh, for example.⁶² It may not be possible to follow such a course in jurisdictions where judges are elected, or where they frequently are rotated into the housing court assignment.

In any event, the judge chosen should indicate a keen interest in housing issues and a willingness to perform the specialized court responsibilities. At the same time, it has been argued that housing expertise can be newly developed if the judge is a quick student and wishes to develop it through dedicated study.⁶³

(2) Expertise/Benchbook. There is little doubt that a well-conceived benchbook, appended by additional background materials, can be of real assistance to judges.

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- 58 The four responsibilities--adjudicatory, conciliation-related, liaison work, and administrative--are described on pages 2.9 - 2.17 of this chapter.
- 59 It is apparent in several court systems that if the quality of the judges in any way deteriorates, the housing court operations will be likely to come under significant criticism. In several communities studied, there have been efforts to replace these judges or to have them rotated out.
- 60 Note that these characteristics are actually legislated into the enabling legislation with regard to housing specialists, per the next section of this chapter.
- 61 In fact, some courts are designated "housing courts" when in reality, they are "structural" courts with jurisdiction over all types of built structures.
- 62 See chapter 5 (Boston); chapter 9 (Pittsburgh).
- 63 This may be more true in landlord-tenant law in some states than in (cont.)

A benchbook for use by judges serves a wide variety of important purposes. In the context mentioned above, it provides background that more or less brings a judge up to speed with regard to the law and to the operations of the specialized court. For example, it collects in one place: (a) important prior written decisions of the court; (b) model or alternative guidelines for how the judge can handle cases in the courtroom, such as suggestions for appropriate lines of questioning of defendants and plaintiffs; (c) guidance on technical matters, such as proof of service; (d) discussion of procedures, such as contents of a speech to litigants at the calendar call;⁶⁴ (e) proposed answers to typical questions posed by litigants;⁶⁵ (f) suggestions as to judgments that may be rendered by the judge; (g) case follow-up work;⁶⁶ and, (h) copies of and references to applicable laws.⁶⁷

Other sections of the benchbook and appended materials might center on administrative matters. This might involve, for example, use of the housing specialists in different types of cases or for pre-litigation counselling activity. In this regard, there are many sections that the clerk of the court could prepare, for review by the judge prior to insertion into the benchbook.⁶⁸

This level of detail in the benchbook is intended to help accomplish four major objectives: (a) to develop some minimum level of expertise of any newly-designated judge; (b) to provoke continued use of desirable practices and avoidance of poor procedures, based on prior experience of other judges; (c) to assure a certain degree of consistency over time, regardless of the judge sitting in the housing court; and, (d) similarly, to stimulate effective supervision and operation of the housing court generally.

(3) Tenure of Judge. A benchbook is an aid to consistency, but cannot completely substitute for having judges serve an adequate tenure on the specialized court.

A number of cities do rotate their judges on a weekly, bi-monthly, or monthly basis. For reasons already explained, there are certain disbenefits to such an approach or, at least, a number of additional benefits to be derived if tenure is of sufficient duration.⁶⁹ The question, then, is what is an adequate tenure?

some other areas of the law. Code enforcement is an example of a complicated area requiring familiarity with many codes, their technical applications, and availability of follow-through procedures with defendants.

64 In Los Angeles, the judge of the landlord-tenant court gives a presentation of sorts at the opening of court. See chapter 11.

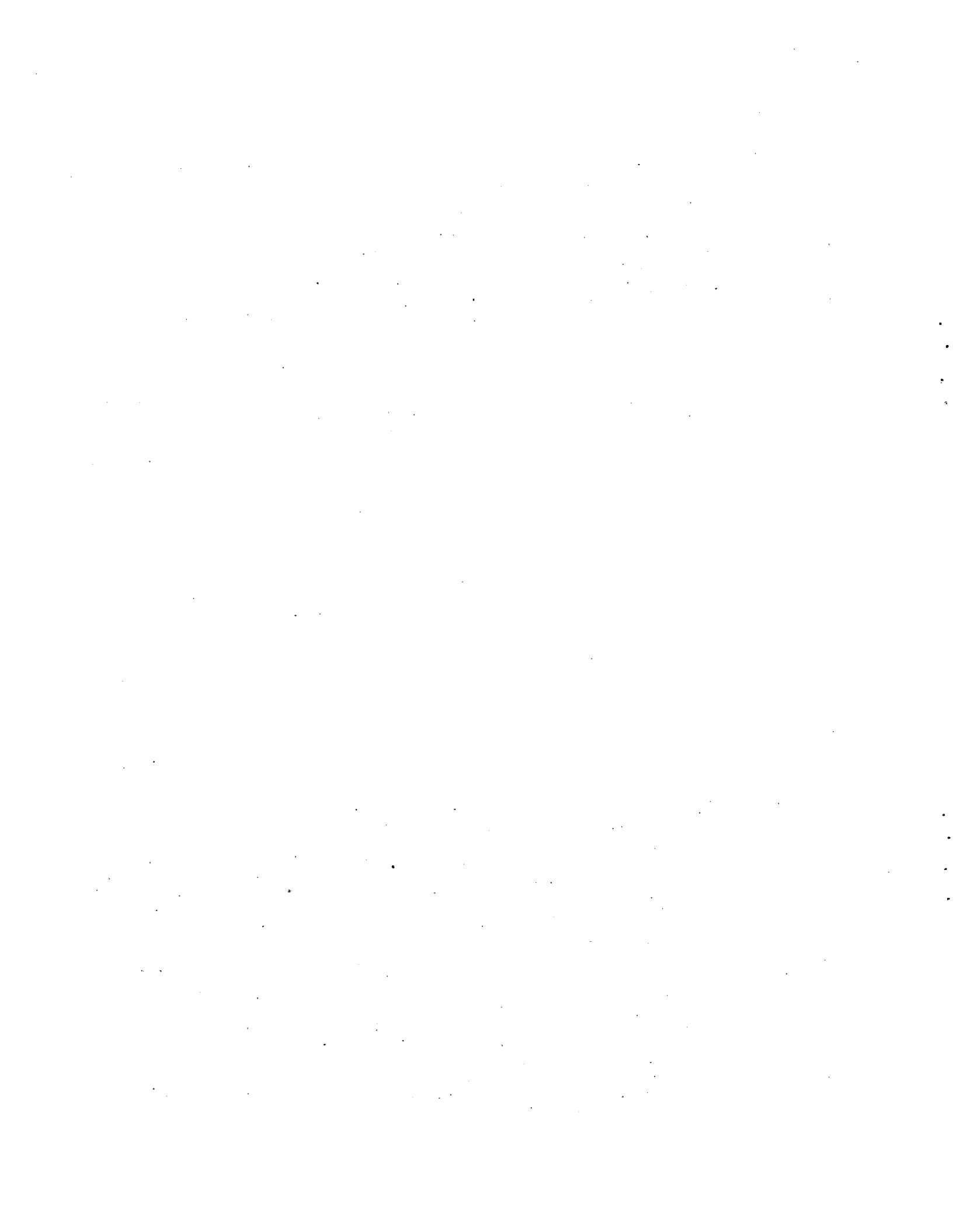
65 A litigant may want to know what he or she should do to collect money judgments. Judges may decide that certain answers are appropriate to offer, and these would be outlined in the benchbook. (The benchbook might also include proposals to the judge that, for example, court staff develop an informational sheet for distribution by the bailiff or assistant clerk.)

66 The benchbook could outline how, depending on the defendant, various judgments can be utilized. For example, it would suggest how to use housing specialists or probation officers for defendants in code enforcement.

67 Not all laws could be so included. However, one of the purposes of a good benchbook is to capsule principal aspects of the law, to indicate its applicability in various situations, and to give the necessary citations in the event the user has further questions or wants to refer to actual copies of the laws, ordinances, rules and regulations, or cases on point.

68 See a later section of this chapter, titled "The Clerk's Office: Staffing and Operations". In New York City, valuable seminars for judges also are held. See chapter 6.

69 Overall administration of the court can be one such area that is affected.



A variety of tenures were found in housing courts that were studied for this Report. Rapid rotation was the rule in some;⁷⁰ in others, the same judge had served for several years.⁷¹

It is to be emphasized⁷² that a specialized court should be oriented toward the achievement of expertise, of consistency, and of continuity. It is improbable that much of this can be brought to the court in a period of less than one year. A community that is seeking to establish a housing court will want to consider having a judge assigned or appointed to that position for at least six months, if not a full year. Other persons⁷³ recommend eighteen months to two years as an appropriate duration of tenure for the judge concerned.

The reasons why shorter periods may not be advisable, are implicit in the preceding discussion. The general rule may vary, of course. For example, one community experimented with six month terms; by practice, the judges usually had volunteered for second terms in the court.⁷⁴ Problems did arise, however, when later judges chose to avoid serving more than six months in the landlord-tenant court.

This raises questions about whether or not tenure might differ depending on the type of specialized court that is involved. (a) Many judges and others feel that judicial "burn out" can result if the judge is continuously exposed only to eviction cases. Some judges even believe more than one month is too long.⁷⁵ Still others are concerned that this is not a desirable assignment in terms of "career patterns". (b) On the other hand, a code enforcement court may present a different perspective. A judge may find several years to be an appropriate tenure,⁷⁶ that a shorter period is not advantageous,⁷⁷ and that any burn out will occur at a slower rate. (c) In a comprehensive housing court, the situation often is different still. Changes in pace and variety of cases may mean that no less than one year term, and even many years of service, is quite acceptable to judges.

(4) Permanency vs. Phasing-In. At the other extreme is the question of permanent or no-fixed tenure assignments, regardless of the type of specialized court involved. In the courts studied for this Report, most interviewees expressed deep concern about "permanency". These doubts were of several types. (a) The first was that this could freeze in a bad situation, were it to develop. (b) Due to the historical independence of the judicial branch, many felt there would be no real administrative recourse,⁷⁸ short of instituting formal proceedings for re-

70 See chapter 13 (Detroit); chapter 14 (Hennepin County).

71 See chapter 4 (Hampden County); chapter 5 (Boston); chapter 6 (New York); chapter 9 (Pittsburgh).

72 These points were developed and analyzed in Chapter One of this Report.

73 Members of and advisors to the ABA's Special Committee on Housing and Urban Development Law concluded that a year, and no less than a six month period, is a minimum tenure advisable in most situations; and, that permanent assignments generally are not advisable. See text at page 2.20, *infra*.

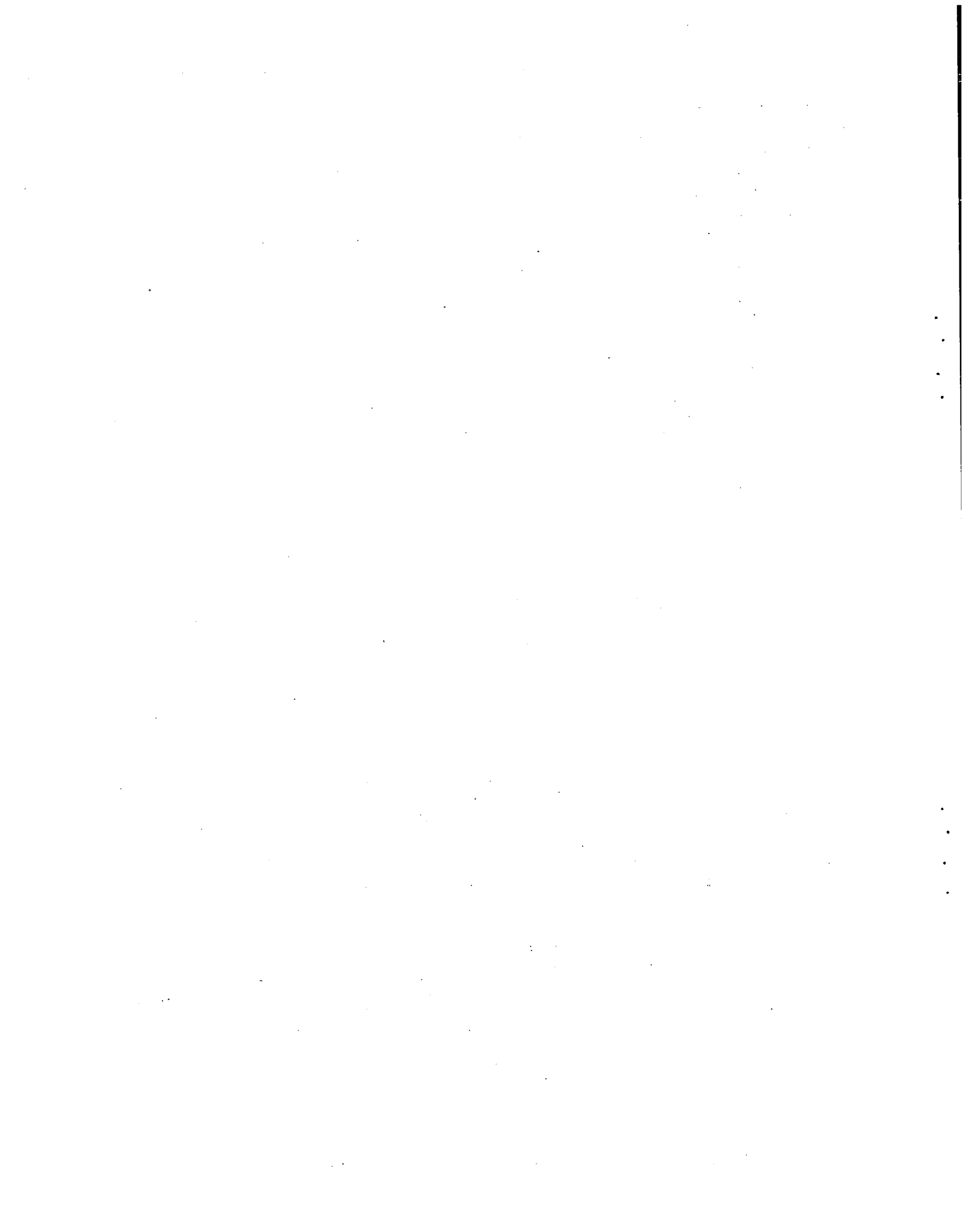
74 See chapter 11 (Los Angeles).

75 In a number of cities without housing courts, judges expressed their desire to avoid any housing-related assignments. Many conceded that the prospect of even one month in their current courts, was a burden that had to be shared (and, therefore, rotated) among the current judges.

76 The expertise levels of the judges must be developed and retained. Most of the code courts had longer-term judges. See chapter 9 (Pittsburgh); chapter 10 (Chicago).

77 See generally chapter 7 (Buffalo).

78 Some observers believed reliance could not be placed on chief administrative judges to deal with this: their authority or their desire to use (cont.)



moval of the judge from office. (d) In many courts where, by practice, the specialized judge's tenure exceeded more than a few years, even some of the judges themselves speculated that, at some point, they should move into other assignments within their court systems.⁷⁹

The reasoning for this last point is that advantages may accrue to the specialized court, if it is infused periodically with a new perspective, a change in judicial energies, and a different set administrative skills that are brought to bear in and for that court.⁸⁰ This type of change, if it is relatively infrequent, would tend to outweigh the occasional loss of consistency and continuity. This is particularly true if a number of measures are taken to mitigate the disadvantages that can otherwise ensue.

For example, the court could phase in a new judge by letting him or her handle some housing cases in the weeks preceding the full changeover.⁸¹ This procedure would permit the opportunity for discussion between the two or more judges during the overlapping assignments.⁸² Moreover, an opportunity would be provided for the new judge to read and to gradually apply the benchbook, without a sudden plunge into the full responsibility for the housing court.

In larger housing courts, which are likely to have a senior judge, this blending in of new judges would be significantly easier to accomplish. It would almost certainly reduce the loss, if any, of continuity in overall court operations. (Some of the cases, of course, would change hands as between the judges.⁸³)

Still other approaches or materials could contribute to maintaining consistency and continuity during this period. The judge could carefully examine: (a) the benchbook, mentioned earlier; (b) any training and procedural materials that had been developed for other court staff;⁸⁴ (c) any annotated copies of the rules of the court.⁸⁵

it was limited, and their track records were lackluster at best.

- 79 Some judges suggest that maximum tenures be set, such as five years. This also would avoid any ideas as to "causes" lurking behind the reassignments.
- 80 This is a management philosophy that pervades much of the public and private sectors. It suggests that top "managers" are agents of change, and that the organization's objectives may benefit from periodic transfusions of new talent and leadership.
- 81 The new judge might arrange to have his or her current type of caseload decreased while picking up new cases in the housing court.
- 82 It is curious fact that it is rare for judges to "learn" by sitting in as observers in other judges' courtrooms; nor would most ever think of making such a suggestion. For a host of traditional and etiquette reasons, this is studiously avoided, despite its potential value as a valuable educational tool. Instead, judges apparently are expected to be experts due to their own reading, a limited amount of conversation, innate skills and abilities, general experience as practicing attorneys, and experience as judges in still other types of cases and courtrooms.
- 83 Special arrangements might be able to be made, assuming no jurisdictional obstacles, in more complicated cases. For example, the judge might retain some of the cases where continuity was important; and, he or she might also require some continuing access to services by the housing specialists.
- 84 This is mentioned in a later section of this chapter, titled "The Clerk's Office: Staffing and Operations". Unfortunately, most courts have not developed this type of material, even though it is badly needed in many of the cities that were studied.
- 85 It is conceivable that a housing court might develop an annotated set (cont.)



Finally, the chief housing specialist, the clerk of the court, and other court staff should be able to assist in the completion of a successful transition by the new judge.⁸⁶ This is particularly the case in light of the relationships of the court to the administrative agencies in many types of cases.⁸⁷

(5) Selection Process. As already mentioned, judges may be selected through a variety of methods: (a) election to the bench, without specific assignments;⁸⁸ (b) appointment to the bench, again without specific assignments; (c) appointment with specific assignment to the specialized court;⁸⁹ and, (d) election specifically to the specialized court (probably not an advisable approach).⁹⁰

An appointment may occur as a result of nominations and subsequent action by different officials, from the mayor or governor, to the chief judge or even a citizens advisory commission or judicial selection panel; it may or may not involve the legislative body. The assignments may be made more or less exclusively to the specialized court,⁹¹ or this may be an optional matter of internal administration of the judiciary by the chief administrative judge.⁹²

One of the questions frequently debated is whether or not a citizens advisory commission ought to play a formalized role in the selection process.⁹³ Experience differs as among the cities studied, but appropriately, such panels' recommendations are only advisory. However, the more rapid the rotation of judges, the less likely it is that the public will have much input into these matters.

(6) Discipline. Each state or jurisdiction has various methods of disciplining, removing, or transferring judges. (a) In large part, the chief administrative judge usually has wide discretion to accomplish the desired effect, utilizing the power of transfer or reassignment. Unfortunately, in a number of cities studied, this discretion had not been exercised well or as early as apparently needed.⁹⁴

(b) The result in a few cities⁹⁵ has been that serious problems festered until complaints eventually were voiced by bar associations and lawyers' groups, court watch projects, citizens advisory commissions, legal aid, and others. Not infrequently, this was accomplished only after some damage allegedly was done: to the

of rules for use by staff, based on common questions raised in the past.

86 The reliance of the specialized court on its specialized personnel, from the clerk's office and housing specialists to other types of positions, is discussed in the sections that follow in Chapter Two of this Report.

87 Code cases and the "maintenance of the housing stock" is one such objective, examined in a later section on "General and Remaining Issues", on pages 2.103 - 2.111 of this chapter. See generally chapter 3 (Hartford-New Britain); chapter 4 (Hampden County); chapter 5 (Boston); chapter 6 (New York City).

88 Examples are Los Angeles and Hennepin County. See chapter 11; chapter 13.

89 See chapter 5 (New York City). The hearing examiners, now judges, are appointed to the housing court positions.

90 This was proposed in early drafts of state legislation pertaining to Cleveland's and Buffalo's housing courts. See generally chapter 16; chapter 7.

91 See chapter 5 (Boston).

92 See chapter 3 (Hartford-New Britain).

93 See a later section of this chapter, titled "Mechanisms (such as a CAC) for Community Participation". See generally chapter 3, *id.*; chapter 9 (Pittsburgh); chapter 5 (Boston).

94 See *supra* note 51.

95 Citations to specific cities is not appropriate here. However, these types of concerns were indicated by interviewees in chapters 3-15 of this Report.

litigants appearing before the court, to the public perception of the operations of the court system, and to the efficiency and morale of court or agency staff.

Other approaches may result in "discipline" or oversight within courts. (c) Most state laws establish official boards to hear complaints. (d) In a few rare instances, the prosecutor's office may bring charges. (e) The ballot box or the non-reappointment process may take its toll as well.

All of this speaks, however, not to existing formal measures for discipline, but to the need for effective court administration and for open channels of communication between courts and the public as well as administrative agencies. The vehicles are: in the first instance, professional court staff; secondly, sound administrators, such as chief administrative judges; and third, practices that encourage dialogue with representatives of the user community (when the problems are ones that are "external" rather than strictly internal).⁹⁶

Where internal disputes in authority, management responsibility, or personnel issues occasionally occur, the overall system should provide for timely reviews. In most situations, the judge (as supervisor) would make a decision. Where problems continue to exist, a clear administrative procedure should bring the matter to a chief administrative judge for an early solution to the difficulty.⁹⁷

SPECIALIZED COURTS SHOULD PRODUCE CONSISTENCY, CONTINUITY, AND EXPERTISE. THUS, JUDGES WILL NEED TO EXAMINE THE ADEQUACY OF ASSISTANCE FROM OTHER COURT STAFF AND COURT-RELATED PERSONNEL, INCLUDING QUASI-JUDICIAL OFFICERS AND SPECIALISTS.

As indicated within Chapter One of this Report, some major themes underlying the use of specialized courts are consistency, continuity, and expertise. This is in order to do justice and to appear to do justice in "housing"-related cases.⁹⁸

It need not be reiterated at any length here that inexperienced judging, fragmented handling, and inadequate staffing can lead to difficulties with trial procedures, due process, and the application of case and statutory law. It can compound problems in terms of case follow-up, assistance to litigants, and meeting the basic responsibilities of the court. This can interfere with the objectives of specialized courts: to improve on the efficiency, effectiveness, and equity of existing legal mechanisms in the area of housing justice.

The specialized court judge should be able to lend innovative and effective superintendence to the court itself. A "regular" judge can do much to overcome inconsistencies in the courtroom, can appropriately deal with cases and the litigants, and can improve on court administration and caseload problems. He or she can be a catalyst -- an "agent of change" -- within the highly inter-related court and administrative or social agency systems.

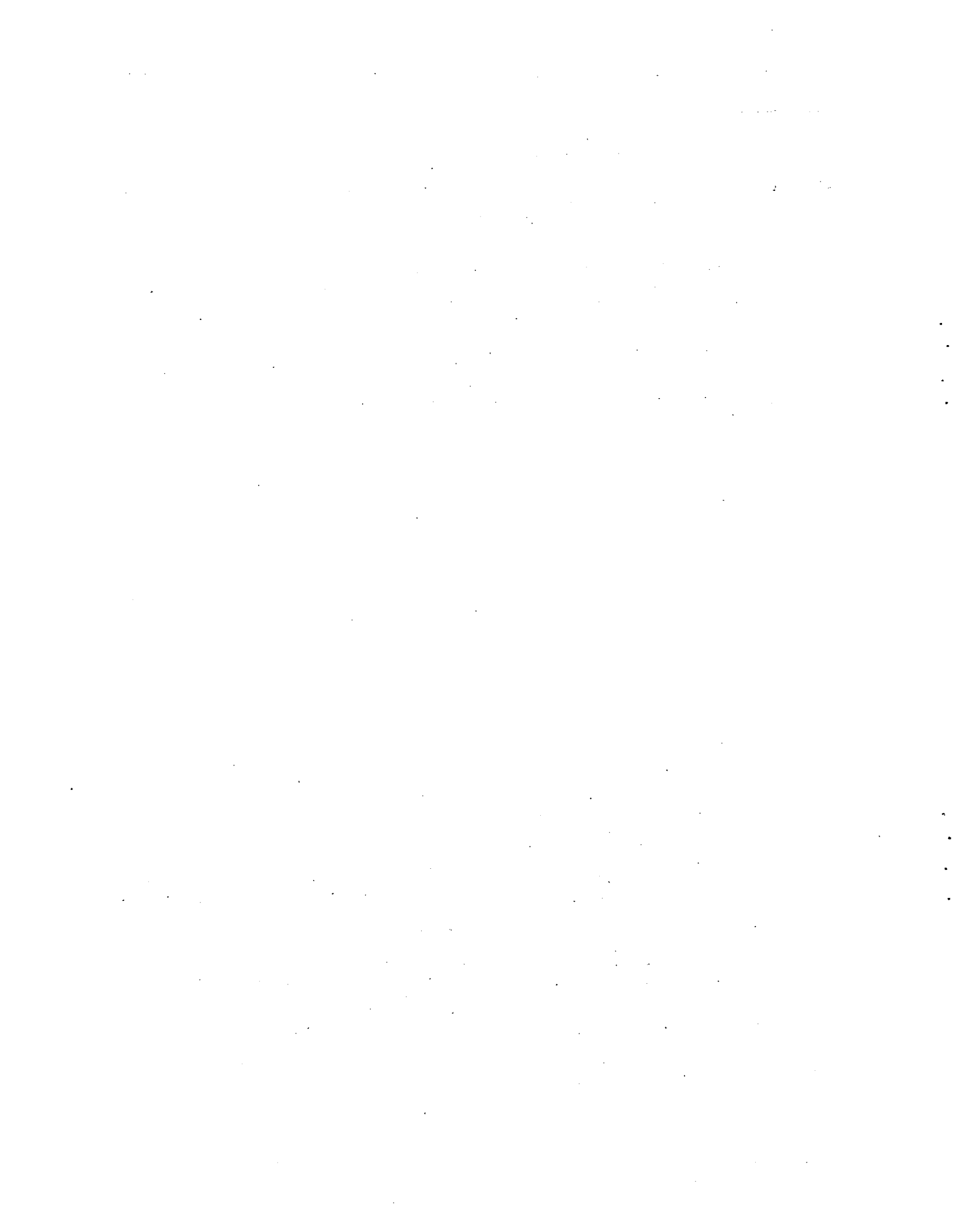
All of this requires creativity, sensitivity, and other skills;⁹⁹ but, it also requires sufficient assistance and resources to do the job. A judge who is over-

96 See the analysis in a later section of this chapter, titled "Mechanisms (such as a CAC) for Community Participation".

97 The point is that internal disputes in a few courts allegedly have disrupted normal operations, due to failure of procedures and clear accountability.

98 Appearing to do justice includes, for example, avoiding unevenness in judging and leaving the majority of litigants satisfied, whether they win or lose, that they have had a fair and reasonable opportunity to be heard.

99 Some are non-lawyer judges. See chapter 9 (text re Allegheny County JPs).



whelmed by the caseload¹⁰⁰ or by routine tasks¹⁰¹ simply will not have a chance to accomplish many of these tasks. (The types of personnel¹⁰² needed in the specialized courts is the subject of much of the remaining sections of Chapter Two.) Indications as to the many roles the judge can and ought to play, have been described previously. These opportunities are further highlighted in the following pages, regarding the supportive responsibilities of the clerk's office.¹⁰³

The "schematics" offered at the beginning of this chapter¹⁰⁴ indicate the many ways in which still other judges can be assigned to, or assist, the full-time¹⁰⁵ judges in housing matters. In lieu of this approach, various "quasi-judicial" officers can be assigned to the courts, to handle many of the more routine matters that are an inefficient use of the judge's time. The innovative utilization of such persons¹⁰⁶ is set forth in the various study city chapters in this Report.¹⁰⁷ The primary examples are in Hampden County, Boston, and Hennepin County.¹⁰⁸ The type of work that is performed by these officers, such as screening default and noncontested matters from the remainder of the landlord-tenant calendar, can be a real boon to the court. This is summarized in the next section on the role of the clerk's office.¹⁰⁹

Finally, many important questions are raised in Chapter One and several are mentioned in the last section of this chapter, involving the conduct, procedures, and decisions in many courtrooms.¹¹⁰ These are issues that must be faced in the near future. Nearly all deserve more in-depth study and development of solutions for implementation in many more jurisdictions.

It is true that some courts have undertaken major steps toward improvement. Nevertheless, many persons who participated in this national study were dismayed at the inferior and even dismal job that was being done in all too many of the court systems that were studied or otherwise contacted. It would be naive to suggest anything less, than that the road to reform in the courts obviously is going to be a very long and arduous one.

The shame and the burdens are self-evident, explicable but undeniable.

Second-rate justice cannot be the rule of the day.

100 This is a common problem; the complaint is stated regularly in many courts. See generally chapter 6 (New York City); chapter 8 (Baltimore).

101 For example, with scant clerical, paralegal, or other assistance, the judge is unable to prepare adequate opinions and is subject to constant interruptions in chambers. This has many spill-over effects, such as an inability to work with staff or initiate improvements in court operations.

102 See sections on types of staff in the clerk's office (pp. 2.25 - 2.45); the housing specialists and parallel special functions (pp. 2.47 - 2.56); additional staff: 11 types (pp. 2.57 - 2.72); and, CACs (pp. 2.73 - 2.79).

103 See the next section of this chapter, titled "The Clerk's Office: Staffing and Functions".

104 See an earlier section of Chapter One, titled "Overview" (pp. 2.1 - 2.8).

105 It might be argued that if the judge wished, so as to avoid "going stale", he or she could be assigned a day a week to non-housing cases or trials.

106 Their titles include: magistrate, commissioner, hearing examiner, hearing officer, clerk-magistrate, and so forth.

107 See generally [selected portions of certain] chapters 3 - 15.

108 See chapter 4; chapter 5; chapter 13. Another example is in Baltimore, see chapter 8, in some code cases.

109 See subsection on quasi-judicial roles of clerks (pp. 2.33 - 2.39).

110 See section on "General and Remaining Issues" (pp. 105-115).



THE CLERK'S OFFICE: STAFFING AND OPERATIONS

THE CLERK'S OFFICE FULFILLS A NUMBER OF TRADITIONAL FUNCTIONS FOR THE COURTS AND THE PUBLIC. SOME JURISDICTIONS HAVE DEMONSTRATED EXCEPTIONAL CREATIVITY IN EXPANDING THE ROLE OF THIS OFFICE TO MORE APPROPRIATELY HANDLE HOUSING-RELATED DISPUTES IN SPECIALIZED COURTS.

In designing a new housing court, whether for code enforcement cases or for landlord-tenant matters, scrutiny should be given to the functions that the clerk's office should be expected to perform. To some extent, past practice in the local courts will offer guidance in understanding the traditional roles of clerk's offices. However, it is crucial to acknowledge that major departures from past practice may be necessary. In fact, one of the keys to the success of a new housing court is the creative use of the clerk's office. It will be necessary to redesign these functions, based on the experience of other cities around the country.¹

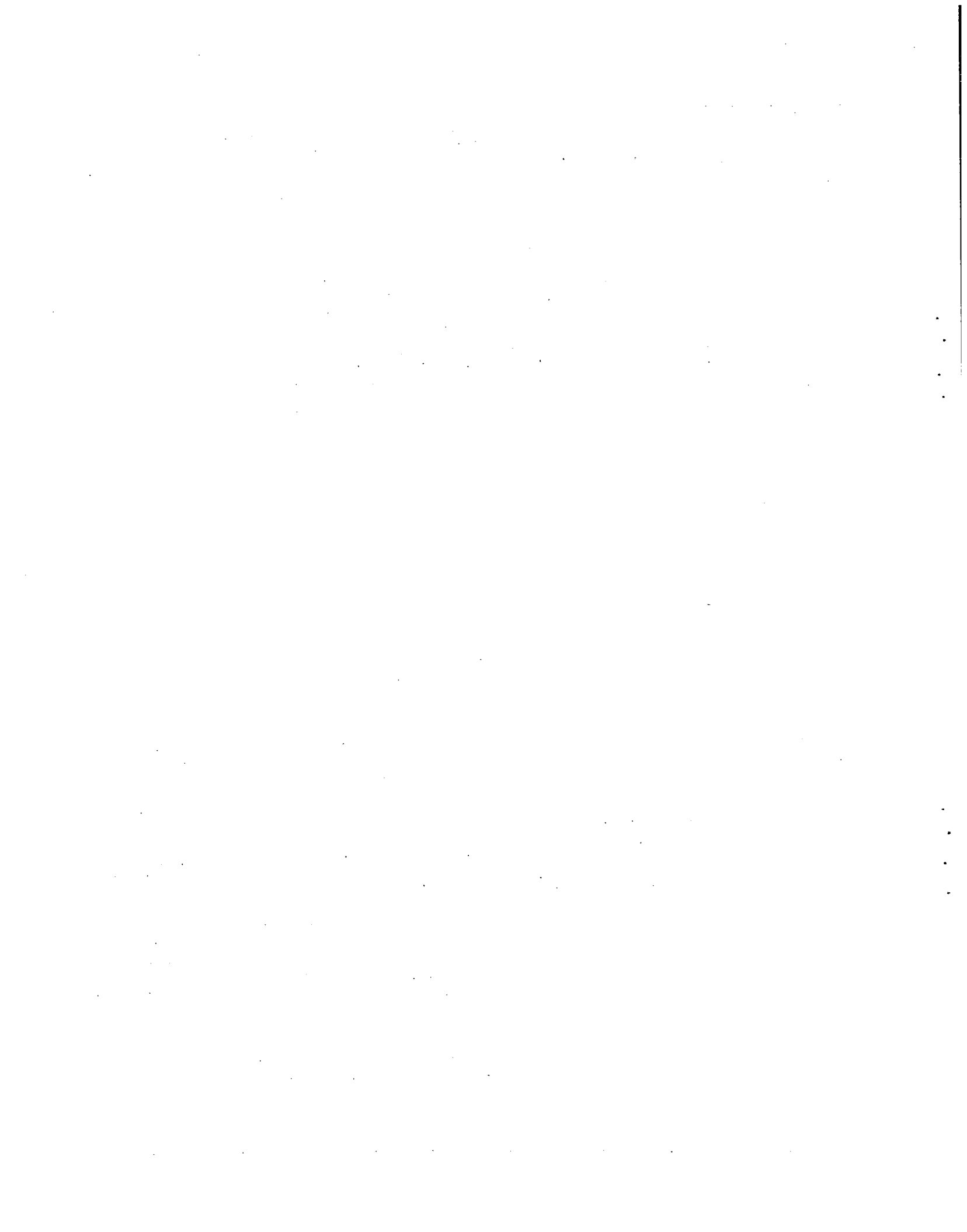
Most of the changes proposed can be accomplished through a combination of methods. Each has to be explored thoroughly to see which approaches are the most workable locally. The alternatives are set forth below, from the most complex to the simplest methods.

(a) Legislation creating the housing court may include special provisions for the clerk of the housing court, as in Boston and Hampden County.² (a) One reason it may be necessary to do this is if the housing court itself requires new legislation, including all the positions and powers associated with it. (b) A second reason may be that special powers are to be given the clerk, and this requires legislative approval.³ (c) A third reason is that certain procedures may be desired regarding the selection of the person to be the chief clerk of that new office.⁴

(b) The supreme court of the state, or another high judicial office, may have the discretion to promulgate special rules and procedures pertaining to the new housing clerk's office.⁵

(c) The chief clerk of that jurisdiction's courts, in consultation with the chief administrative judge, may be able to specially create the new clerk's office. For example, the clerk of the housing court may technically be an

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- 1 Each of the thirteen chapters (3-15) includes a description of the personnel in the jurisdictions studied, including the clerk's. In addition, each chapter also includes discussion of the clerk's functions in the descriptive and analytical narratives (which follow the personnel section).
 - 2 See chapter 4 (Hampden County); chapter 5 (Boston). These two chapters, incidentally, have the most thorough treatments of the clerks' offices because the operations are the most sophisticated of all the housing courts in the country.
 - 3 For example, the changing of the clerks' roles to include that of "magistrate(s)" required legislative approval. See *id.*
 - 4 In Boston and in Hampden County, the clerks are appointed for life by the governor of the state, with the advice and consent of the Council. See *id.* (Selection methods are discussed in a later section of this chapter.)
 - 5 Such rules, for example, are required regarding certain of the new magisterial duties of the Clerk-Magistrate(s) in Massachusetts. The rules must be approved by the Supreme Judicial Court. See *id.*



"assistant" clerk.⁶ This assistant clerk then may be assigned specially to the housing court (perhaps physically distant from the "normal" clerks' offices in that jurisdiction).⁷

(d) The judge of the housing court may formally delegate or assign certain duties to the clerk. These responsibilities may be "unusual" for the typical clerk's office, but are within the discretion of the judge.⁸ This is the approach taken in Pittsburgh.⁹

(e) Similarly, the clerk may assume responsibilities with the tacit approval of the judge(s) of that court, on his or her own. This is especially true if the office is relatively "independent" within the court system.¹⁰ These approaches should be explored by communities that are considering changes in their local courts, whether or not they create a whole new housing court. Discussions ought to be held with the clerk (and judges) concerned to elicit his or her support and cooperation in implementing certain reforms.¹²

The first eight "functions" (listed below) of the clerk's office are administrative in nature. They are handled by a complement of personnel, ranging from the clerk and the assistant clerks, to quasi-professional staff and clerk-typists. The number of persons, and their individual skills, will depend on the workload, the budget, and the availability of other court personnel (such as bailiffs¹³) to assume some of the tasks.

(1) Record-Keeping. The clerk is responsible for maintaining the official records, papers, and files of the court. Nearly all courts accomplish this in terms of "hard copy", which should be readily available to the housing court or

6 In Philadelphia, there are "Assistant Chief Clerks" who have special duties relating to housing litigation; each has staff who are "court officers" (the term of "clerk" is not used). See chapter 14 (Philadelphia).

7 In Hartford's and New Britain's single housing court, there are two "assistant clerk(s) for housing matters". See chapter 3. Both have their own offices, and both are physically separate from the chief clerk's offices in that judicial district.

8 The chief clerk of the housing courts for New York City has a number of such duties. See the discussion in a later section of this chapter, titled "Additional Staffing", part #1 relating to "Court Administrator". Also, see the special work of the assistant clerk in Hartford (part #2, *id.*, relating to "Law Clerks").

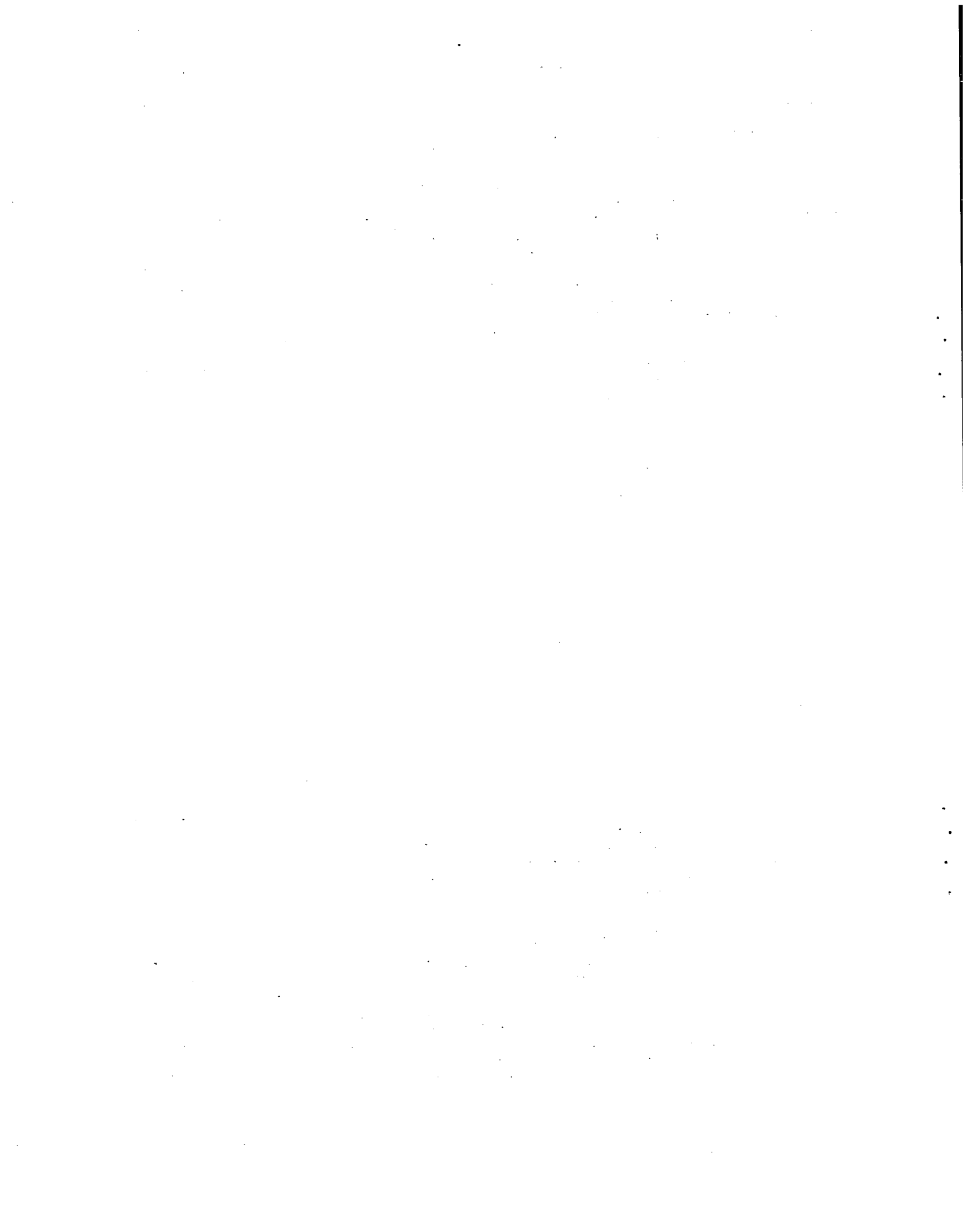
9 The position of housing court administrator (effectively, the clerk as well) was created by the housing court magistrate in 1969. See chapter 9 (Pittsburgh).

10 See Winer, Pro Se Aspects of the Hampden County Housing Court: Helping People Help Themselves, 17 URBAN L. ANN. 71 (1979). This article, as well as the discussion in chapter 4 (Hampden County), explains the creative functioning of a clerk's office in a housing court.

11 On the other hand, certain disagreements can arise between the clerk and the judge, as in Boston. See Chapter 5. The clerk also was rebuffed in her attempts to secure funding for new training and dispute resolution approaches. Interview with R. Susan Dillard, Clerk-Magistrate of the Boston Division of the Housing Court Department of the Trial Court of Massachusetts, in Boston (January, 1979).

12 Such reforms are discussed in detail, *supra* note 10.

13 Bailiffs are covered as part #6 in another section of this chapter, titled "Additional Staffing Requirements". Often, their courtroom duties are similar to those of assistant clerks in other cities' courts.



in convenient storage. (Few courts have yet modernized these processes to take advantage of computers, microfilm, or other methods.)

(2) Indexing. The clerk generally is responsible for maintaining an adequate indexing system to "track cases. Typically left undone, however, is any automatic cross-indexing of parties in the various cases that have come before the court, or any cross-indexing by "address" of the property that is the subject of the dispute. A sophisticated indexing system should allow, for example, a building to be "pulled up" on the computer to see how many times that building has been before the court, for what reasons and in what cases. The computerization of code violations on a building is a first step in this direction, which is being done in one of the nation's housing courts: New York City. Indices could help the court in many ways, and would be even more useful to the code enforcement agencies concerned with administering local and state codes.¹⁴ (Some landlord organizations also have suggested maintaining similar files on tenant-defendants involved in nonpayment of rent proceedings. Their idea is that the court should have a "record" on each defendant¹⁵ as to whether they are proven "rent-skips".¹⁶)

(3) Case Scheduling. Generally, the clerk schedules most of the cases for the court's calendar or docket, according to the provisions of the law and the rules of practice before that court. (In some jurisdictions such as Chicago,¹⁷ another clerk's office may receive the filed papers and forward them to the appropriate clerk of the specialized housing court. Most cases are scheduled as a matter of course without consultation with the judge. Other cases may be rescheduled upon the request of the litigants or because of lack of service. Still others will be continued by the judge after the first hearing(s), and the clerk's office must stay abreast of these scheduling needs as well (what dates the judge has decided to hear these cases). From all of these details, the docket must be carefully managed or it will become "overwhelmed".¹⁸

(4) Docket Books. Most courts have "docket books" which are used in the courtroom each day, and in which are entered the names of the cases, their numbers, and a brief description of the disposition in each case. (The judge writes the decision in the case jackets in most instances;¹⁹ not in the docket

14. This is an approach that deserves greater exploration by code enforcement agencies, in conjunction with the courts. It is a prime area for cooperation and innovation between the two branches of government.

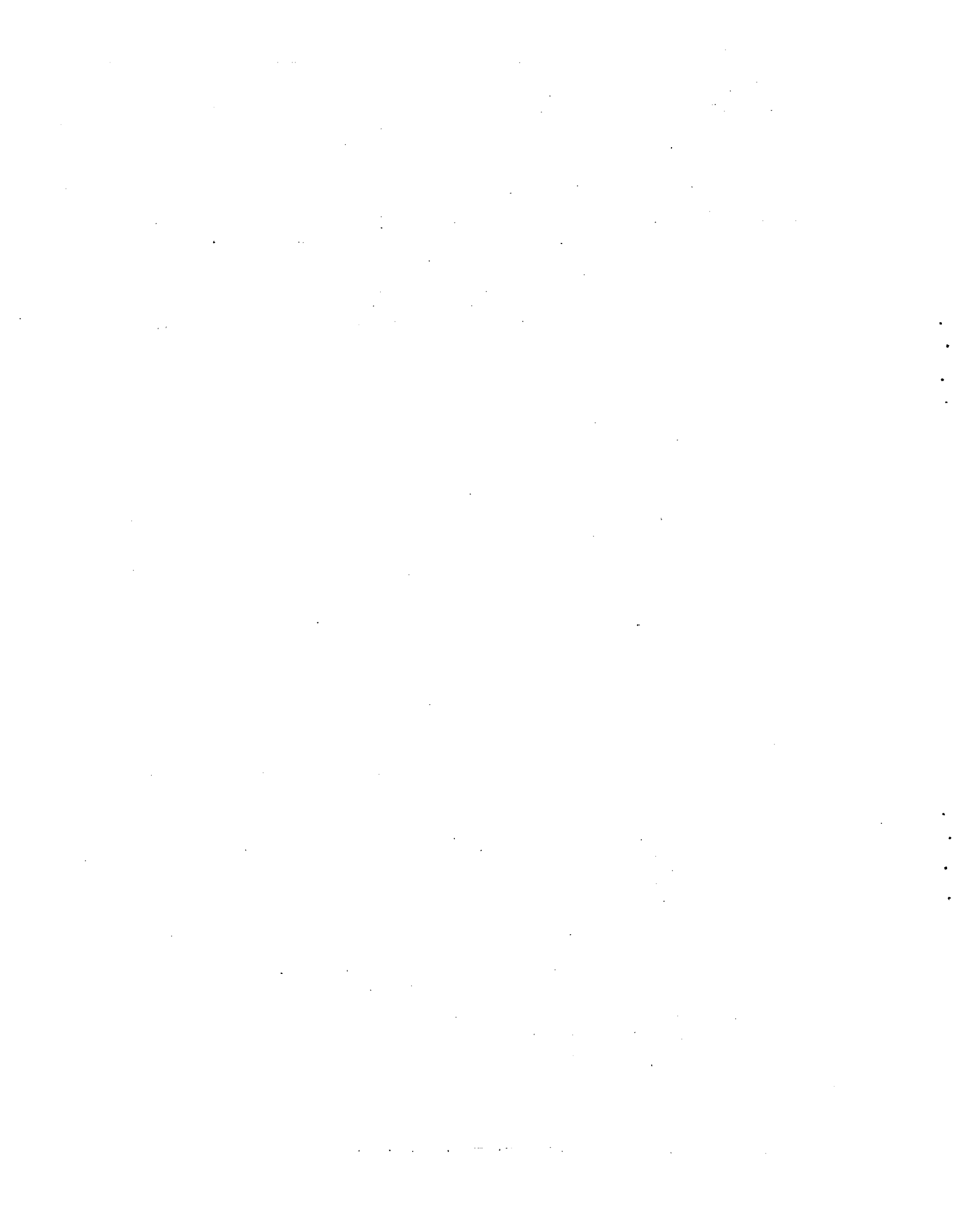
15. Such a proposal suggests real constitutional and legal obstacles that would have to be explored fully. On the other hand, cross-indexing could be useful to the work of the housing specialists; although such files or information obviously could not be shared with the public.

16. Private sector approaches in some cities already include a type of credit check and rent-loss insurance program for landlords who subscribe to this private service.

17. Code enforcement cases are forwarded to the Housing Court. See chapter 10 (Chicago).

18. Summary proceedings present a special problem, in that they must be scheduled for hearings within a certain period of time. In New York City and Baltimore, the housing courts are pressed too hard in this respect, as are the eviction courtrooms in Chicago. See chapter 6 (New York City); chapter 8 (Baltimore); chapter 10 (Chicago).

19. The case jackets or files are the official papers relating to the case. In some instances, a questionable practice is followed: the judge simply signs and lets the assistant clerk in the courtroom fill in the "details" of the disposition and the findings of the court.



books.²⁰ Usually, an assistant clerk is present and maintains the docket book that day, as is done in Pittsburgh; or, this may be done by the court's bailiff, as in the New York City housing courts.²¹

(5) Statistics. The clerk should maintain statistics that, at least in the first instance, can be derived from the docket books. Other sources of data are the cases filed (complaints, etc.), individual case files, data from the housing specialists, and so forth. These statistics can be used for a variety of important purposes, including general court management and budgeting processes (described in greater detail later in this chapter). Unfortunately, the statistics that are maintained in most housing courts are crude or incomplete. This is due to workload pressures and other causes. Consequently, the data are not susceptible of much interpretation, and judicial management opportunities suffer as a result.²²

(6) Personnel Management. The clerk's office generally serves as the "personnel office" for the court, completing payrolls, time records, evaluations, and so forth (such records may be forwarded to still other central offices for clearances). The clerk acts as a personnel administrator in this regard, consulting with the judge if the need arises, but trying to screen him or her from these administrative tasks. While the clerk may not be the actual supervisor of many of the court's personnel (such as uniformed officers), generally there is an informal deference to the authority of the clerk.

(7) Support Staff. Secretarial staff usually are hired and supervised through the clerk's office. (In some courts, a secretary is assigned directly to the judge, as is the case in Hennepin County and in Detroit; or, the judge has no secretary at all and must make use of a "pool" arrangement.²³) Alternatively, the court administrator²⁴ may do this job.

(8) Services and Materials. Materials and supplies are ordered by the clerk's office, from equipment to postage. Other services may include arranging meetings, transportation, and "views" ordered by the court.

The next nine functions are primarily courtroom duties, often performed in combination with still other court personnel.²⁵

(9) Courtroom Attendance. In most jurisdictions, one of the clerk's office staff, or the clerk *per se*, will be in court with the judge.²⁶ (For example, and as already mentioned, the docket books may be filled in for each case by that clerk.)

20 The docket books are either bound volumes (as in New York City) or looseleaf sheets later placed in the clerk's notebooks (as in Pittsburgh's housing court).

21 See chapter 9 (Pittsburgh); chapter 6 (New York City).

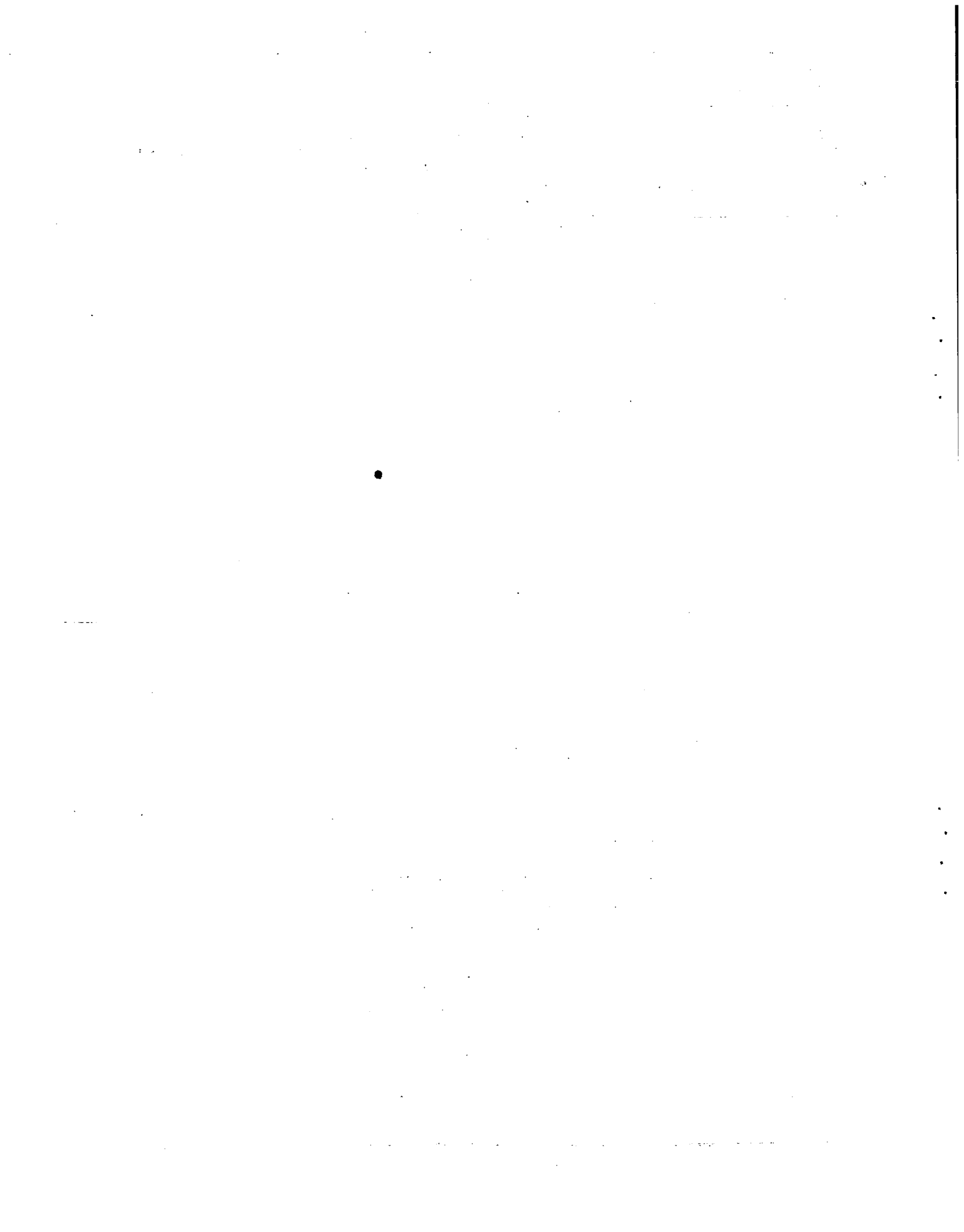
22 This problem is discussed later in this chapter.

23 See *id.*, part #3 relating to "Secretaries".

24 See a later section of this chapter, titled "Additional Staffing Requirements", part #1 relating to "Court Administrator".

25 Bailiffs and special court officers may fulfill many tasks that assistant clerks would handle in other cities. See *id.*, part #6, relating to "Bailiffs".

26 In Hennepin County, an assistant clerk also sits with the hearing officers and serves many of the same general functions, such as handing file jackets to the hearing officers and making entries on the records. See chapter 13.



(10) File Reviews. In Baltimore, the "rent escrow clerk" checks each summons to assure that there has been proper service²⁷ (in addition to such other duties as set forth below). Generally, assistant clerks perform such file reviews as the judge deems desirable; most of these are or should be accomplished prior to the litigants coming before the judge. In the event that the file indicates prima facie that such papers are defective, this should be caught at the earliest possible stage so as not to inconvenience the litigants on the day of the hearing. (Finding defective service is one example that can save litigants time and money.)

(11) Calling Cases. Typically, the assistant clerk "calls"²⁸ the cases, announcing the litigants by name and the case by number. This is done, for example, in Baltimore, Chicago, Detroit, and other courts. (Too, most courts post a copy of the calendar outside the courtroom, so that the litigants will have some idea in what order the cases will be called.)

(12) File Handling. In most courts, an assistant clerk brings the case files into court that morning,²⁹ having double-checked the papers in the case jackets prior to the beginning of court. He or she then hands each of the case file to the judge as the case is called, in turn taking back the jacket just completed. (This is done by the clerk-tipstaff in Pittsburgh, for example.) At the same time that assistant clerk may make any necessary administrative entries on the jackets.

(13) File Follow-Up. Either in the courtroom or later that day, the clerk's office will extract certain information regarding the cases heard that day. Fines will be recorded; notations will be made as to papers that must be served, such as arrest warrants; and other follow-ups by other court staff³⁰ will be scheduled. The clerk's office processes the final court orders or judgments, as is done in Chicago and Detroit and many other courts.³¹ (In some situations, the order will be prepared immediately, the judge will sign it, and it is given to the plaintiff who has requested immediate signing of the order or judgment.)

(14) Administering Oaths. In some courts, the assistant clerk or another court officer will swear in witnesses for the full hearings or trials.³² In Boston, other "rights" may be explained to the defendant by the assistant clerk.³³

27 As explained elsewhere in this Report, this should only be an initial check as to service. It still is the responsibility of the judge to make a formal determination that service was proper. This should not be completely delegated to the clerk's office, since such a check can only include whether or not the papers per se "seem" to indicate that everything is in order.

28 An apt position title used in Philadelphia is "assistant chief crier". See chapter 14.

29 In New York City, the bailiff handles most of these duties. See chapter 6.

30 As described in a previous section of this chapter, titled "The Housing Specialists and Parallel Special Functions in the Courts", coordination is required with these court officers when the cases have been referred to them.

31 See chapter 10 (Chicago); chapter 12 (Detroit).

32 Often, however, the cases never reach this stage. In fact, most "hearings" are done without swearing in the parties at all. The practice seems to be relatively rare except in full trials for major code violations or jury trials in some civil cases.

33 Such rights include trial by jury and right to counsel or court-appointed counsel. See chapter 5 (Boston).



(15) Defendant Information. The assistant clerk or another court officer may hand the litigant-defendant certain information before he or she leaves the courtroom. In Philadelphia, this consists of an informational brochure pertaining to evictions; in Boston, the defendant is given the equivalent of an appointment-reminder card, indicating the time and place of the next hearing.³⁴ In any event, both of these practices deserve replication in most courtrooms, where unrepresented litigants are confused about what has occurred and what they are to do next.³⁵

(16) Fines and Costs. One of the functions of the clerk's office may be to collect any fines that are paid into court that day, as well as court costs. Some courts encourage defendants to pay immediately; in Pittsburgh, the clerk-tipstaff may collect fines in the courtroom. In Boston, an assistant clerk handles these matters at the clerk's counter instead, collecting fines and court costs as well as escrow accounts and filing or entry fees.³⁶ Still other courts have specialized personnel whose duties, in whole or in part,³⁷ are to act as cashier(s).³⁸ (Of course, the clerk's office also maintains records on those fines that are not paid.³⁹)

(17) Courtroom Order. Often the assistant clerk is responsible for maintaining order in the courtroom; this is the case in Pittsburgh. (A uniformed deputy does so in Chicago "eviction" and housing code enforcement courts.⁴⁰ In cities where the caseload volumes are high, uniformed court officers handle this task instead of the clerk.)

Eight other roles are performed by the clerk's office prior to cases coming into court for the first hearing. These generally are litigant-contact functions.

(18) Case Filings. Various forms and papers are accepted in the clerk's office, such as the complaints. Minimal fees are paid at the time the plaintiff files these papers. The counter clerks (who may be clerical staff or assistant clerks) check the papers at the counter to see that they are properly filled out. They then prepare a case jacket and number the case, which will be docketed shortly thereafter.

(19) Public's Questions. Often, inexperienced litigants will come to or call the clerk's office to ask questions. These may be simple time-consuming questions to answer, such as, "What do I have to do to evict a tenant? What papers do I have to fill out?"

34 See chapter 14 (Philadelphia); chapter 5 (Boston); chapter 19 (contains examples).

35 "Close of hearing" practices of small claims courts are similarly criticized. See RUHNKA, HOUSING JUSTICE IN SMALL CLAIMS COURTS (1979), published by the National Center for State Courts for the ABA's Special Committee on Housing and Urban Development Law; chapter 17 (which summarizes this book).

36 See chapter 5 (Boston).

37 The rent escrow clerk is one example. See chapter 8 (Baltimore).

38 As noted elsewhere in this Report, many cities' courts simply do not bother to pursue collection of the fines beyond sending out a letter or two. In fact, it is not unusual to find that the vast majority of fines remain unpaid.

39 See the discussion in a later section of this chapter, titled "Additional Staffing Requirements", part #9 relating to "Cashiers".

40 See chapter 9 (Pittsburgh: the clerk-tipstaff); chapter 10 (Chicago: a deputy sheriff).

Brief factual answers⁴¹ are given to these persons, and forms are provided to them. In complex matters, the person may be informed that it would be advisable to seek legal help. The housing courts in Pittsburgh, Hartford, Boston, and Hampden County find they answer a great many queries from the public.⁴²

(20) Pro Se Assistance. Inevitably, the clerk's office comes into daily contact with unrepresented (pro se) parties. Only one court has established separate positions for this purpose. (In New York City, there are special "pro se clerks" in each of the four boroughs.⁴³ Their activities include answering questions, helping prepare answers⁴⁴ as well as tenant-initiated actions,⁴⁵ preparing orders,⁴⁶ and filling out various forms with the unrepresented litigant(s). Some special training to handle these duties is important, for obvious reasons.⁴⁷) If the local caseload does not justify a pro se clerk's position, the assistant clerks should be trained and experienced to handle such matters, perhaps on a rotating basis.⁴⁸

(21) Forms Clarification. As explained elsewhere in this Report, one of the responsibilities of the clerk should be the revision of current court forms and the preparation of informational aids for the litigants who may have to come before the court.

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- 41 Providing legal advice is not the function of the clerk's office. This demarcation between "facts" and legal advice" is not a clear one, however, and is discussed elsewhere in this Report.
- 42 Queries also come to the housing specialists. This is described in the next section of this chapter, titled "The Housing Specialists and Parallel Special Functions in the Courts".
- 43 38 pro se clerks serve in the four boroughs' clerks' offices; these positions generally were mandated in an amendment to the state law in 1977. See chapter 6 (New York City).
- 44 Answers must be carefully handled. The pro se clerk must discuss the situation with the defendant (or plaintiff) and determine what he or she wishes to provide as an "answer" or "defense" to the complaint that has been brought against him or her.
- 45 Such actions include "show cause" hearings and tenant-initiated cases or claims, including code enforcement actions. See chapter 6 (New York City).
- 46 Draft "orders" of the court may be presented to the judge at the hearing/trial, and which the judge may modify. Basically, legal terminology and format are required; again, the pro se clerk will be helpful in this regard.
- 47 It is evident that without special training, it would be difficult for a clerk's office employee to deal with answers or tenant-initiated complaints, supra notes 44 and 45. Moreover, without delegation of "authority" to do so, these employees may be reluctant to become too involved in such a process.
- 48 As already mentioned, housing specialists may assume some of these duties, supra note 42. In Hampden County, the clerk has to accomplish some of this work himself, as he does not have an assistant clerk. See chapter 4 (Hampden County). In Hartford, each assistant clerk is an attorney and handles some of these requests as well as supervising other employees who do so. See chapter 3 (Hartford). In Boston, the law clerk occasionally provides special assistance to the housing specialists or to the assistant clerks in complex problems, although he generally does not directly provide assistance to the pro se parties. See generally a later section of this chapter, titled "Additional Staffing Requirements", part #2 relating to "Law Clerks".



This process is exceptionally important to the functioning of the court system. The Hampden County housing court exemplifies an excellent approach in this respect, which deserves replication in other courts.⁴⁹ (This activity is heavily inter-related with the function of providing pro se assistance:⁵⁰ item #20, above, as well as #22.)

(22) Pro Se Judgments. When parties are unrepresented in court and a decision has been rendered by the judge, frequently the prevailing party will not know how to enforce the order or the judgment. In eviction cases, the landlord should be assisted in filing the forms properly and in a timely manner, including contacting the official who will handle the physical dispossession.⁵¹ In small claims cases, many litigants do not know how to enforce collection against a recalcitrant defendant. This should be explained as well, since many judges handling small claims matters do not do so in the courtrooms.⁵²

(23) Official Papers. At different stages, the clerk's office will type necessary papers such as summonses or warrants, and will process the court orders and judgments. Unfortunately, the system itself often is cumbersome and ridden with problems. (System-wide reform efforts may be required, and not merely follow-up by the assistant clerks themselves.⁵³)

(24) Agency Follow-up. The clerks' offices in some jurisdictions such as Pittsburgh⁵⁴ are aggressive in their follow-up work with code enforcement agencies. The clerk reminds the agency prior to the second hearing (after a continuance) that certain reports or other materials are due back to the court before the scheduled court date. Not only does this encourage the government to be prepared when it comes back to court, but it also stimulates follow-up by all parties.⁵⁵ (In many other courts, the attitude instead is that it is the prosecutor's

49 See Winer, supra note 10; chapter 4 (Hampden County); chapter 19 (re examples). A different approach was used in Hennepin County, where the judges themselves prepared still other materials. See chapter 13; Rogers, An Alternative to a Housing Court, 17 URBAN L. ANN. 177 (1979); chapter 19 (re examples).

50 The need for major improvements in court-provided materials is discussed repeatedly in this Report. Citizens advisory commissions also can play a role in developing this material. See a later section of this chapter, titled "Mechanisms (such as a CAC) for Community Participation".

51 Inexperienced landlords may be unaware of the process by which the writ of eviction is obtained, how it is forwarded in most cases to the sheriff, and the time and legal requirements that pertain to an actual physical "removal" of the tenant and belongings. A brochure from the court, handed out regularly to "new" plaintiff-landlords, could also reduce the drain on the clerks in offering oral explanations.

52 This is evident from two studies. See RUHNKA, Small Claims Courts: A National Examination (1978); RUHNKA 1979, supra note 35; chapter 17 (summary of id.).

53 A system-wide series of reforms may be necessary to improve service of process and other problems relating to paper-shuffling among court offices. See also a later section of this chapter, titled "Additional Staffing Requirements", part #10 relating to "Process Servers".

54 See chapter 9 (Pittsburgh). The court administrator, who also functions as the housing court's clerk, has a noteworthy approach that was implemented under the aegis of the magistrate and the code enforcement agency.

55 This is a type of "institutional therapy" addressed elsewhere in this Report. See generally Penkower, The Housing Court of Pittsburgh, 17 URBAN L. ANN. 141 (1979).

concern whether or not to pursue each case, and cases are not even scheduled for new hearings until after the prosecutor's office makes such a request.⁵⁶⁾

(25) Collecting Fines. Depending on local and state laws, generally the clerk's office may be responsible for administrative efforts to collect fines and costs in code enforcement cases. As discussed elsewhere in this Report, a minimal level of effort seems to prevail in most court systems. New procedures should be examined when designing a new housing court with jurisdiction over these matters, to assure that a better job is done. This also is important to the integrity of the judicial system.⁵⁷

CONSIDERATION SHOULD BE GIVEN TO GRANTING THE CLERK OF THE HOUSING COURT SPECIAL DUTIES AND AUTHORITY. BENEFITS CAN ACCRUE TO THE JUDICIAL SYSTEM AND THE PUBLIC WHEN THIS IS ACCOMPLISHED, IF IT IS INSTITUTED WITH PROCEDURAL SAFEGUARDS.

Twenty-five basic activities of the office of the clerk have been reviewed briefly above. Moreover, a number of housing courts have experimented new, "quasi-judicial" responsibilities of the clerks and assistant clerks. These innovations can be critically important to the functioning of a fully-comprehensive housing court that handles a wide range of cases, ⁵⁸ for at least six reasons.

(a) The judge is freed from considering certain matters. Instead, his or her time can be spent in contested cases, complex litigation, and in the preparation of adequate findings of fact and law (opinions where necessary).

(b) The litigants, especially government agencies as plaintiffs, can obtain immediate hearings without waiting to be "calendared" before a judge.

(c) Some cases can be referred to the housing specialists for special work or mediation, even before they come before a judge for formal adjudication.⁵⁹

(d) Certain disputes may be amenable to settlement, via work of the clerk's office, prior to any full hearings.

(e) Assistance can be rendered to members of the public in a special fashion that is designed to assist pro se litigants.⁶⁰

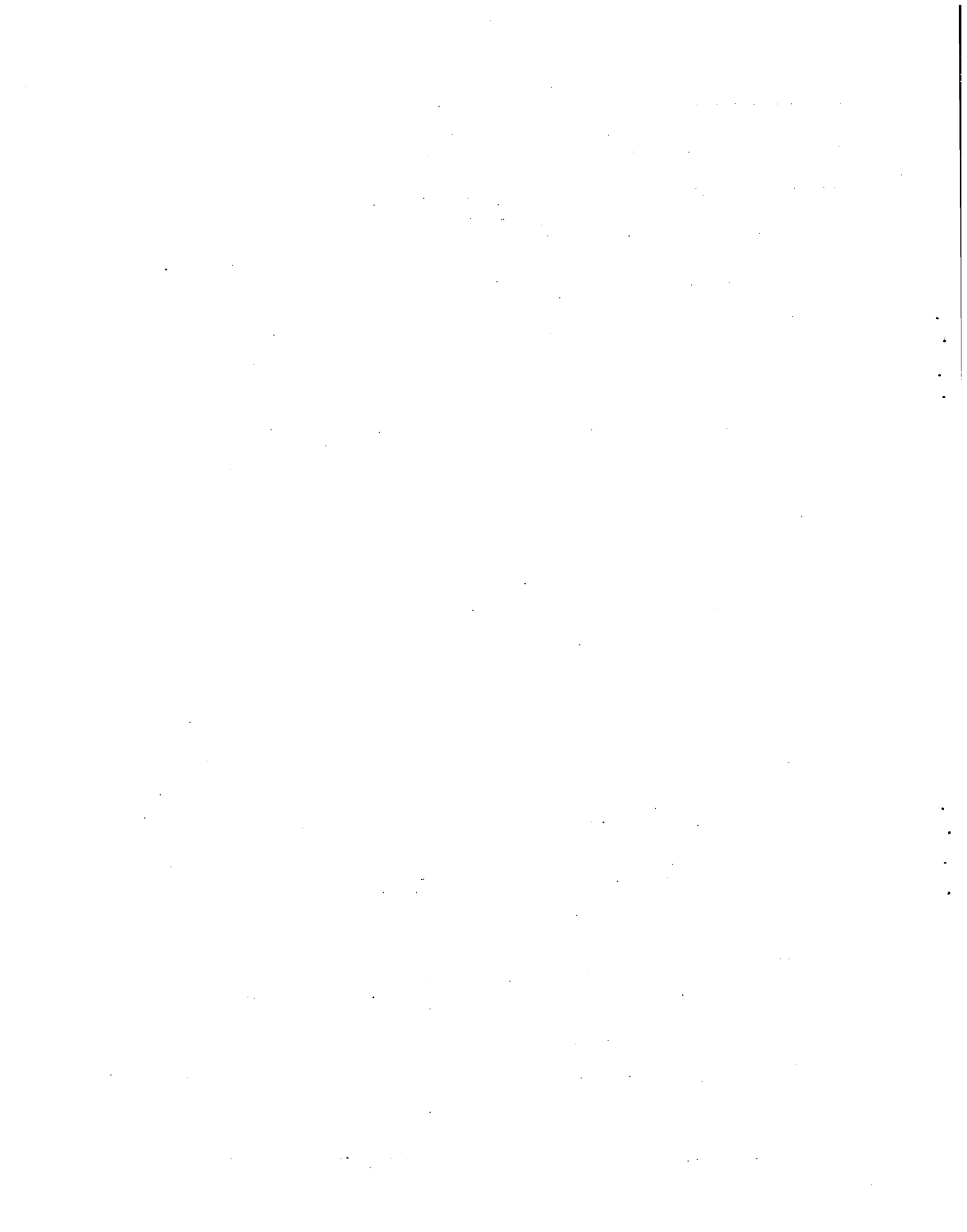
56 As a consequence, some cases simply languish and are carried as indefinite continuances on the court records. These cases may drag on for some time. In some court systems, cases are not even "dismissed" after eventual compliance is achieved, because the court is not so informed; this is discussed elsewhere in this Report.

57 Comments by Judge James Rogers, national advisor.

58 Such cases, as previously explained, include all landlord-tenant disputes involving evictions and back rent, security deposits, code enforcement matters, and, a variety of civil, criminal, or equitable issues.

59 A referral might be made, for example, to a welfare agency in order to obtain emergency relief in lieu of non-payment of rent and a consequent eviction (if the landlord accepts this alternative).

60 The informality of the hearings and the attempt to assist the pro se litigants in exploring the full aspects of their dispute(s) may reach to issues beyond the legal question per se. This would be more difficult to achieve in the courtroom, where various formalities tend to restrict the breadth of the legal inquiry. Already discussed, was the idea of "pro se clerks" (item #20, above), which may short-circuit the dispute being brought before the clerk in his or her quasi-judicial capacity.



(f) Motions, requests for postponements, and minor evidentiary matters may be able to be heard by other than the judge (the clerk), speeding the overall process.

Each of these reasons is pertinent to the discussion items that follow. First, however, it is important to delineate the methods by which these special quasi-judicial functions can be assigned to the clerk's office.⁶¹

One method is a limited delegation of responsibility from the judge of the court, conferring very narrow authority on the clerk. In fact, the delegation is so limited that the function is almost ministerial and not really quasi-judicial. For example, in Pittsburgh the Court Administrator may grant certain postponements of scheduled hearings when both parties agree to that request.⁶²

A rarer method is when a quasi-judicial officer also is made the clerk of the housing court. This is done in Baltimore.⁶³ In that jurisdiction, there are court commissioners, one of whom is appointed to the housing court (which handles code enforcement cases).⁶⁴ He or she also serves, simultaneously, as the clerk of the housing court. (That commissioner has two assistants, one of whom acts as an assistant clerk and sits in the courtroom with the judge of the housing court). This situation differs from the third method, below, in that the clerk in Baltimore must first have been appointed a commissioner.

Another method is the "Clerk Magistrate" (the term "magistrate" generally denotes an "inferior/minor" judicial officer). This exists in two of the nation's housing courts: Hampden County and Boston.⁶⁵ This position is held "simultaneously": that is, the person who has been to the office of clerk also is enabled by state statute to exercise certain powers as a magistrate.⁶⁶

A fourth method also arises under the housing courts in Massachusetts: the "assistant clerk with certain quasi-judicial duties".⁶⁷ Due to the nature of the clerk-as-magistrate provisions under state law, certain authority and powers can be further delegated to the assistant clerks. This is governed by rules proposed by the housing court department for adoption by the Supreme Judicial Court of that state.⁶⁸

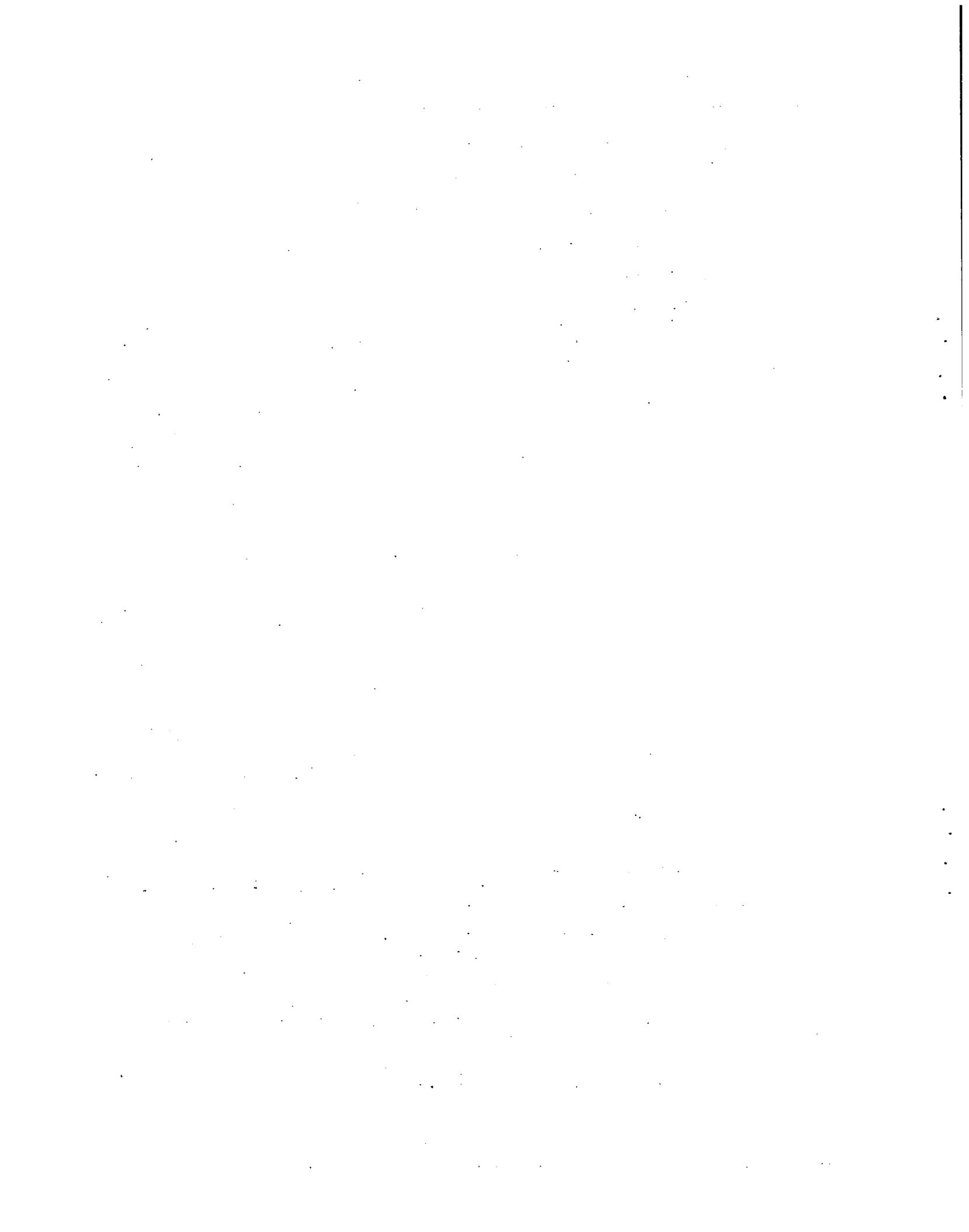
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- 61 Note that in the first page of this section (titled "The Clerk's Office: Staffing and Operations"), the actual methods of implementing these approaches are discussed: from legislative amendments to decisions by the presiding or chief judge. Items (1) and (2) discussed in the text immediately above are likely to require legislative approvals.
- 62 See chapter 9 (Pittsburgh); note, the Court Administrator is also the Clerk of that court.
- 63 See chapter 8 (Baltimore). See also a later section of this chapter (as to the court administrator acting as a clerk), titled "Additional Staffing Requirements", part #1 relating to "Court Administrator".
- 64 See an earlier section of this chapter, titled "Judges and Quasi-Judicial Officers".
- 65 See chapter 4 (Hampden County); chapter 5 (Boston). Chapter 4 is a description of the broad exercise by the clerks of the magisterial powers.
- 66 All clerks in the Commonwealth were granted this power under the Court Reform Act of 1970. This reform was not targeted specifically toward the two housing courts. See chapters 4 and 5, *id.* The housing courts have made the most innovative use of these powers.
- 67 See chapter 5 (Boston).
- 68 These powers are to be exercised under rules proposed and promulgated by each organizational "department" of the courts. Rules were proposed by (cont.)

Finally, another method ought to be mentioned: a "method" that may be quite unacceptable but which, too often, can be seen in some court systems. It is the acquisition of unsupervised power and authority by the staff,⁶⁹ when unfettered discretion and decision-making should not prevail on the part of these court personnel.

This last "method" typically involves undesirable practices that evolve through hurriedly dealing with unrepresented parties. It is the very opposite of the pro se clerks responsibilities.⁷⁰ It may result in people being discouraged from pursuing their legal rights.⁷¹ This practice may arise out of ignorance of the law,⁷² workload pressures, or acceptance of traditional "ways of doing things". To cure these problems, or even to spot them, requires both administrative safeguards and a system-wide oversight mechanism.⁷³ Their potential existence⁷⁴ should not be dismissed quickly; they may well exist in many jurisdictions.⁷⁵

the housing court department in late 1979, the second such department of seven to propose rules to the state's highest court. Telephone conversation with David Esancy, Executive Secretary of the Housing Court Department of the Trial Courts of Massachusetts (Jan. 4, 1980).

- 69 The two clerks' offices have exercised these powers or parts thereof since the middle of 1978. Nonetheless, rules had not yet been adopted by the state's highest court as of early 1980, due to the fact that court decided to appoint a committee to review all proposed rules submitted by any of the departments. This problem can infect clerks' offices and housing specialists' departments.
- 70 Pro se clerks, as discussed previously in this section, are designated and trained to assist parties in articulating their legal rights and defenses, in filing claims, in following through on judgments, and in making sense of legal documents and forms.
- 71 For example, brusque treatment can dissuade a confused litigant from finding out what his rights or alternatives might be. In more extreme circumstances (and this was voiced in a number of field visits and interviews), unrepresented litigants allegedly were told that they should not "bother" pursuing certain defenses or that they "must" follow a certain legal route. Supposedly, tenants even were told that they were required to see other persons or agencies before filing complaints or that they "really ought not to" seek certain types of remedies (as equitable relief) from the court. Perhaps some of this guidance is meant to be well-intentioned. For example, if the judge almost universally avoids granting injunctions, court staff may attempt to dissuade an unrepresented party from taking such a course, believing that it is relatively useless to do so and that another approach might work instead.
- 72 If court staff are not trained in seemingly esoteric areas of the law, such as warranty of habitability and conditions defenses, they can mislead unrepresented parties who ask them questions.
- 73 Other parts of this chapter discuss such mechanisms, from the role of the chief administrative judge to CACs. With regard to the latter, see a later section of this chapter, titled "Mechanisms (such as a CAC) for Community Participation".
- 74 Abuses themselves may not be prevalent. Instead, there may be certain "opportunity losses", such as the failure to inform the prevailing parties how to collect on judgments. See infra note 75.
- 75 In small claims courts, assistance generally is rendered to plaintiffs. One author severely faults small claims courts as to their pro se assistance to defendants, and their assistance (or lack thereof) to plaintiffs once they have prevailed at the first hearing (re collections). See RUHNKA, supra note 52.

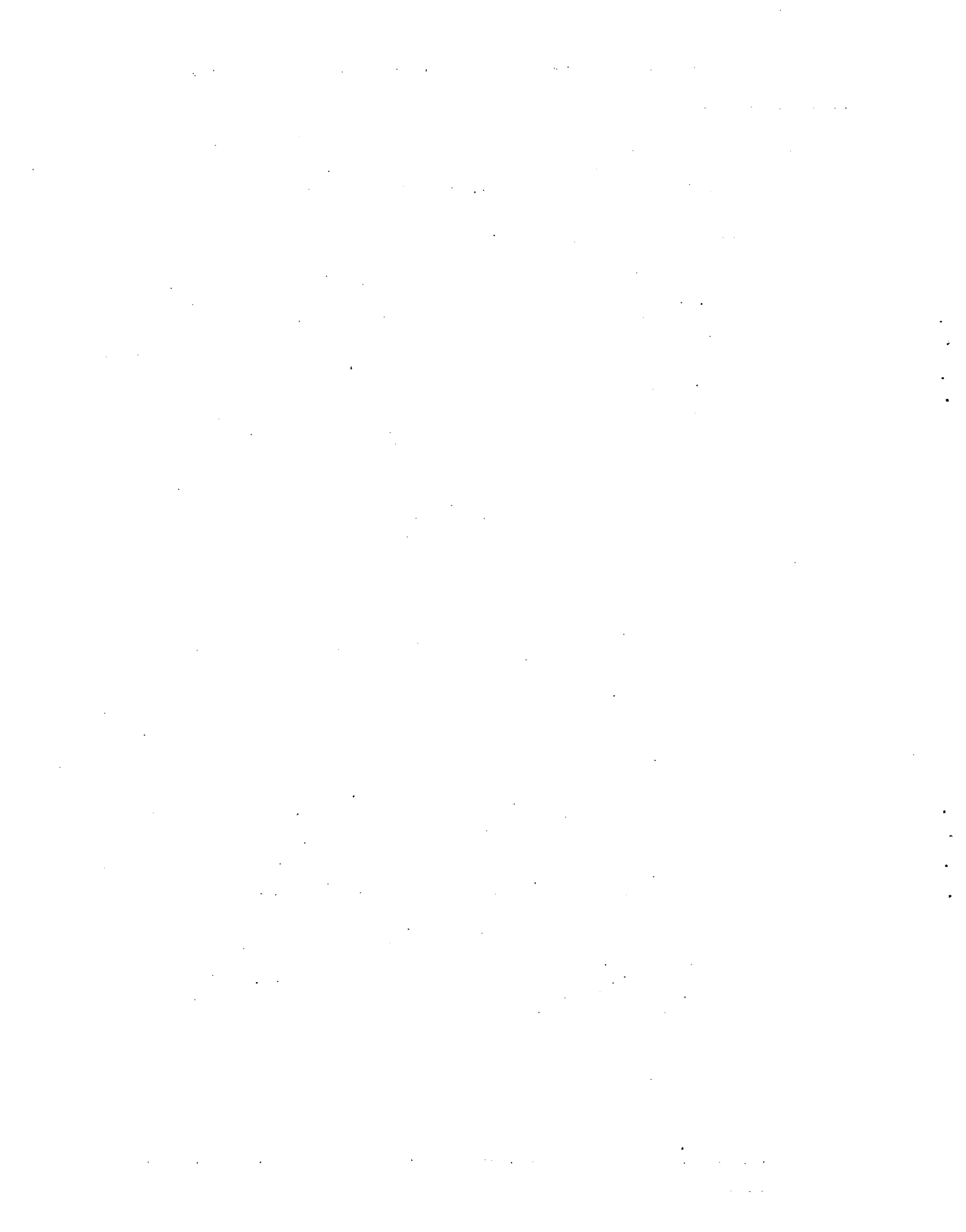


The below discussion covers the methods by which quasi-judicial duties may be assigned to the clerk's office of the housing court. These functions are briefly summarized below (they are numbered in sequence to 25 other functions that were presented earlier in this section). These expanded or new powers may deserve replication in other courts around the country.

(26) Granting Postponements and Continuances. As previously explained, this may be done as a matter of course when both parties agree. In effect, the hearing is rescheduled (and therefore, docketed by the clerk's office) to a later date.⁷⁶

(27) Show Cause Hearings. A "show cause" hearing is an opportunity for a defendant to show a reason why a criminal complaint against him or her should not be issued. (Later, there may be an arraignment and even, a separate trial, before a judge⁷⁷). The defendant is notified that a complaint and summons may be issued by the clerk of the court. He or she may request⁷⁸ such a show cause hearing. This hearing is not a finding as to guilt. Technically, it only provides an opportunity to block issuance of the complaint because of mistake or other reasons.⁷⁹ In Massachusetts, the clerk-magistrate may hold such a hearing⁸⁰ in lieu of the judge doing so. The entire proceeding is informal and, in fact, a series of novel circumstances may result. The clerk may agree to "continue" the show cause hearing,⁸¹ basically allowing the parties to have a chance to settle

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- 76 The granting of postponements is relatively typical in most courts, as it is to some degree a combination of prosecutorial discretion balanced against the defendant's right to a speedy trial. Continuances also are granted by the clerks in the Hampden County and Boston courts. See chapters 4 and 5.
- 77 A trial is not held unless the plea is "not guilty" at the time of arraignment. This is discussed in a number of the Report's chapters on the 13 cities that were studied.
- 78 Provisions of Massachusetts state law were changed in 1978. See chapter 5 (Boston). Obviously, persons could request to be put on a "list" whereby they were notified before any criminal complaint was to be issued; they then could request a show cause hearing. Now, all persons must be automatically notified of a right to a show cause hearing, and may demand same to be held. Nonetheless, some persons in Massachusetts pointed out in interviews that (at least through 1979) this requirement was not always observed. All persons, it was alleged, were not being notified of this new right. (One explanation was offered: that the show cause language contained in the statute was meant in terms of the typical Clerk-Magistrate functions in the many Commonwealth courts. It was argued that it is unclear whether or not the legislative intent was to apply to housing-related code violations specifically.)
- 79 Technically, mistake, lack of probable cause, or abuse by a plaintiff of the complaint process, are three of the few reasons why a complaint should not be issued. Such reasons rarely occur in most cases. Instead, the show cause hearings serve other purposes. See *infra* note 82.
- 80 The first assistant clerk in Boston actually does most of these show cause hearings, and not the clerk-magistrate. See chapter 5.
- 81 The use of a "continuance" in most show cause proceedings, technically is dubious. Nonetheless, this "inventive" approach seems to be effective in most cases. See chapter 5 (Boston). A legal purist would insist that a complaint and summons be issued without a "continuance". Instead of a continuance, the parties could stipulate that if the code violation were corrected before the time of the hearing (and the date would be set at the show cause hearing), the complaint would be dropped. More legally correct, this formality is not followed.



their dispute.⁸² The result may be that the litigation is dropped altogether and never reaches the stage where any formal court papers are issued, much less requiring that an arraignment or a hearing before a judge be held. (If other courts were to adopt such a procedure, the authority of the clerk-magistrate should be clearly specified in the statute or rules of the court.⁸³

(28) Utility Cut-Offs. Another function of the clerk's office⁸⁴ in Boston, for example, is to hold utility warrant hearings. This is done pursuant to state law, prior to removal of gas or electric meters (for nonpayment of utility bills, in nearly all cases). The court notifies the defendant, who may request an informal hearing prior to a warrant being issued allowing removal of the meter. The cases eventually do not go (as they would in item #27, above) before a judge, unless there are exceptional circumstances and unusual relief involved. Of those defendants who show up at the informal "hearings" before the assistant clerk, often a settlement is worked out by the parties and this involves bill payment terms. In effect, the clerk's office facilitates conciliation and agreements when both parties are present. Where the defendant does not appear, a warrant to allow removal of the meter is issued. In neither type of case would it appear appropriate for such "litigation" to go before a judge,⁸⁵ who thereby is relieved of these types of duties.

(29) Certain Motions. In the Massachusetts courts, clerk-magistrates are permitted, once court rules are adopted,⁸⁶ to rule on certain "uncontested, nonevidentiary motions". This phrase is unclear, requiring further elaboration under court rules (which, as of early 1980, did not exist in final form).⁸⁷ In Hampden County, great leeway is being practiced as to what this means. The clerk-magistrate already is holding certain "magistrate sessions" in summary process matters and small claims.⁸⁸

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- 82 Show cause hearings are held in Boston in nearly one-quarter of the criminal cases filed with the housing court; show cause hearings total nearly 100 a month. See chapter 5. This consumes part of every day of the first assistant clerk (and not the judge). A one week continuance, as part of the "mediation" that occurs in the show cause hearing, is relatively commonplace. The parties concerned often are able to "settle" their dispute at that stage, as a consequence of the show cause hearing.
- 83 This was the consensus of the ABA's Special Committee. Remarks by Judge Laughlin Waters, Chairman (January 27, 1980).
- 84 Another assistant clerk (in effect, the "second assistant clerk") holds the utility warrant hearings. Nearly 4,500 hearings were scheduled in 1978 alone, although many defendants failed to show up. Still, the workload is significant. See chapter 5 (Boston).
- 85 This type of "case" rarely is subject to a "defense" being raised. If there is a real defense, generally the company will repair the situation or the matter will go to court. For all intents and purposes, the assistant clerk's utility warrant hearings simply lend credence to the gravity of the situation and assist the parties in talking to one another so as to arrive at a solution agreeable to both.
- 86 The purposes of the rules, obviously, are to delineate the bounds of authority and responsibility and to put all parties on notice of what these limitations are. These rules are meant to apply to all seven court "departments" in the Commonwealth, although each department's rules conceivably could be different.
- 87 Esancy, supra note 67. The importance of such rules cannot be over-emphasized.
- 88 See supra notes 66-67. Serious questions arise in this regard. See chapter 4 (Hampden County).

(30) Probation Violation. In Hampden County, the clerk-magistrate may hold probable cause hearings relating to the violation of parole.⁸⁹ As parole is rarely used in housing courts studied, it is likely that this function would be accomplished by the judge, instead.⁹⁰

(31) Arraignments. As already mentioned, in Baltimore⁹¹ the clerk also is a commissioner. As such, the commissioner handles all arraignments, which are not heard by a judge in that jurisdiction. It is only after an arraignment that the clerk-commissioner then schedules the misdemeanor (usually, a code violation case) before a judge for trial. In this fashion, the judge is removed from the arraignment workload. However, this is not the situation in most other housing courts, where the judges handle arraignments as well as any full trials.⁹² (In fact, most judges insist that the arraignments themselves are a means by which they can impress on defendants the need for compliance prior to an actual hearing and perhaps, a guilty finding by the court.⁹³)

(32) Pre-Trial Conferences. Another part of the Massachusetts laws permits the clerk-magistrate, under court rules, to call pre-trial conferences.⁹⁴ The purposes are to simplify the issues for trial and, oftentimes, to encourage dialog that may result in a settlement if that is what the parties -- usually represented by attorneys in such instances -- care to do. (In Boston, the law clerk accomplishes this task on occasion when requested by the judge.⁹⁵)

(33) Conciliation Roles. Often, the clerk's office provides information to the public which will help potential litigants solve their problems before they actually file formal complaints. In some courts, as in Boston, some amount of the clerk-as-magistrate role is really a mediation effort, such as in the utility cut-off hearings.⁹⁶ In Hampden County, the clerk-magistrate holds special "magistrate sessions" involving summary process (eviction) and small claims

89 See generally, chapter 4, *id.*

90 As noted elsewhere in this Report, most code violation cases simply do not end with a "guilty" finding. Instead, all types of attempts are made to obtain compliance before, finally, even a fine is levied. Technically in Pittsburgh, a referral to the Housing Clinic may be done via putting the defendant on "probation". The staff of the clinic are "probation officers". See chapter 9 (Pittsburgh). On the contrary in Massachusetts, referrals to the housing specialists usually are done after arraignments but before the "trials". Though similar in effect to Pittsburgh -- in terms of using court staffs to work with the defendants -- this is not "probation". See generally chapter 9, *id.*, chapter 5 (Boston); chapter 4 (Hampden County).

91 See chapter 8 (Baltimore).

92 The procedures are lax in many jurisdictions; the court does not bother with formal arraignments (this is commented on elsewhere in this Report).

93 Many housing courts utilize the court process to drive toward compliance. The arraignments are part of this approach and are a compliance tactic more than a prelude to criminal enforcement. This still could be accomplished by a clerk-magistrate or a commissioner, of course, rather than a judge if the process is to require two separate hearing dates: an arraignment and then a later trial. (Other courts combine this into a one-step process.)

94 This function is most appropriate in civil trials, and not in simple summary proceedings where no counterclaims are involved and where expeditiousness is key.

95 See chapter 5 (Boston).

96 See discussion in text, *supra* item #28; *supra* note 85.

cases.⁹⁷ These latter types of cases present sensitive and special issues, however, which are discussed later in this section.

(34) Hearing Examiner. The clerk-magistrate could serve as a type of hearing examiner in default cases.⁹⁸ In the event it is determined that the case is not a default -- because the defendant appears and contests the action -- the clerk (acting like a hearing examiner) should immediately refer the case to the judge of that court. This method would reduce a significant amount of the burden on the judge(s) and has much to commend it.⁹⁹ The closest parallel to this approach is the one used in the housing court of Hampden County.¹⁰⁰

THE ROLE OF CLERK IS CRUCIAL TO HOUSING COURT OPERATIONS. SAFEGUARDS AND SPECIAL PROCEDURES SHOULD BE TAKEN REGARDING THE QUALIFICATIONS, SPECIAL TRAINING, AND EXERCISE OF ADMINISTRATIVE RESPONSIBILITIES AND HEARINGS-RELATED AUTHORITY:

The role of clerk of the court can involve many types of responsibilities, both administrative and quasi-judicial, as discussed in the preceding text of this section. The broad range of tasks that the court expects the clerk to perform calls for special precautions and guidelines, particularly if the housing court clerk's authority involves a major departure from the clerks' jobs in other parts of the local court system.

(1) To a large degree, many of the "personal" qualifications¹⁰¹ for a clerk parallel those for the housing specialists and to some extent, the judges themselves: sensitivity, interest in housing issues, a high level of personal and professional integrity, and good interpersonal skills.

(2) Professional qualifications include (in the first instance, as to the role of court "administrator"), expertise and facility in the application of court management principles. He or she also should be knowledgeable about local governmental agencies¹⁰² as well as other housing problems, needs, and programs in the community. The clerk also should have a clear and accurate grasp of applicable procedures and rules relating to housing cases. This should include a general familiarity with housing law in that jurisdiction and state.

(3) The training needs of the clerk will differ, depending on the precise nature of the position in that housing court. For example, if the clerk (or assistant clerk) is to serve in quasi-judicial roles, he or she may be an attorney or have

⁹⁷ See chapter 4 (Hampden County).

⁹⁸ The Hennepin County courts utilize hearing examiners in landlord-tenant cases. See chapter 13. See generally an earlier section of this chapter, titled "Judges and Quasi-Judicial Officers".

⁹⁹ The problem, on the other hand, is that mediation should not be mixed with this quasi-judicial function; this is discussed in the text, *infra*.

¹⁰⁰ See chapter 4 (Hampden County). However, reference should be made to the method used in Hennepin County. See *supra* note 98.

¹⁰¹ These considerations are discussed at the beginning of this chapter, titled "Organizational Considerations for Court Systems in the Administration of Housing Justice".

¹⁰² Such agencies include those handling code enforcement, the city's legal affairs (corporation counsel and prosecutors), welfare, housing authorities and public housing programs, and so forth. In addition, there should be a good working knowledge of landlord and tenant groups, neighborhood organizations, legal aid, and other private sector associations.

at least some legal training.¹⁰³ In other instances, it may be quite satisfactory to specially train a layperson prior to having him or her assume these quasi-judicial functions.¹⁰⁴ Similarly, for the assistant clerks, pro se clerks, and paralegals who come into regular contact with the public, both paralegal and in-service training should be designed. In any event, all such personnel should be regularly scheduled for refresher "courses".

(4) The clerk should be evaluated in part on his or her initiative in improving the operations of the court.¹⁰⁵ Proposals for improvements should be discussed regularly with the chief judge of the housing court and, perhaps, with the citizens advisory commission.¹⁰⁶

(5) The clerk should be charged with at least four non-administrative tasks: (a) preparing staff training materials and seminars on a regular basis;¹⁰⁷ (b) maintaining complete and accessible records systems, from case files to data and from records management improvements to the circulation of compilations of recent case decisions;¹⁰⁸ (c) assisting with updating of benchbooks;¹⁰⁹ and, (d) improving court forms, information, and other assistance for use by the public.¹¹⁰

(6) Subject to the protection, if any, the clerk has under a merit system, he

103 The head clerks in Boston and Hartford (at the time the cities' court systems were studied) had this type of background. In Boston, the assistant clerk also was an attorney; he handled several quasi-judicial duties. Legal backgrounds, however, are unusual.

104 A number of clerks without legal backgrounds nonetheless have developed expertise in their fields through constant exposure over time to housing cases. These qualified individuals in the cities studied probably only require some additional in-service training (as do most lawyers) in order to sharpen their skills and to stay abreast of new case law and statutory developments.

105 Where the housing court sees frequent rotation of judges, the clerk may be the one relatively permanent feature at the court. Procedures for evaluation should stress the clerk's responsibility to improve on the operations and management of that court, with oversight by the chief administrative judge and advice from the CAC, *infra* note 106.

106 See a later section of this chapter, titled "Mechanisms (such as a CAC) for Community Participation". In fact, the clerk may serve as the liaison between the court and the CAC, in lieu of the judge (for reasons explained in the referenced section, *id.*).

107 For the work of the clerk in the New York City housing courts, see chapter 6. This also was the approach of the judge in the Hartford housing court as it began its operations. Interview with Judge Arthur L. Spada, Housing Session - Superior Court of Hartford/New Britain Judicial District, in Hartford (July 17, 1978).

108 *Id.* Unfortunately, many courts do not prepare such compilations of case decisions for other judges (who may rotate in) to use later. Similarly, the analysis of court data for management purposes appears often to be at a crude or nonexistent level; this is discussed elsewhere in this Report.

109 Without benchbooks, other judges rotating into the court may be significantly hampered, particularly where the rotation is for six months or less.

110 See Winer, *supra* note 10; Rogers, *supra* note 49; chapter 4 (Hampden County); chapter 13 (Hennepin County). It also may be possible to use some of the city's community development block grant funds (from the U.S. Department of HUD) to develop these materials. Comments by Kathleen Connell, national advisor.



or she should be responsible¹¹¹ to the chief administrative judge in that jurisdiction as well as to appropriate orders of the judge of the housing court.¹¹² Generally, the administrative authority in the court should remain in the hands of the judge of the housing court.¹¹³ Any statutory provisions or ambiguities to the contrary -- such as an "independent" clerk's office appointment -- should be avoided when creating a new housing court. (The clerk should, however, have the right to "appeal" any administrative decisions to the chief administrative judge of that jurisdiction should he or she feel that the functioning of the court is severely hampered by adverse decisions by the then-current judge.¹¹⁴ He or she also should be able to request transfer, if that is the "only solution".)

(7) The exercise of quasi-judicial authority (the clerk in the role of magistrate or commissioner, pursuant to statute) generally should not be combined with mediation or conciliation work by the same person. In those situations where this is done, special safeguards are required. As a general rule, these two functions should be segregated, although there are exceptions. (As this set of issues is central to the role of clerk-as-quasi-judicial officer, it constitutes the remainder of the discussion in this subsection.)

As already explained, there are at least twenty-five basic administrative and management duties of the clerk and nine types of quasi-judicial functions that can be performed.¹¹⁵ In both types of roles, administrative and quasi-judicial, the clerk frequently is involved in "dispute resolution". The issue is not whether this task of dispute resolution is appropriate for the clerk's office; clearly, it is.¹¹⁶

Rather, problems can arise when a quasi-judicial officer also engages in mediation or conciliation activities while sitting as the formal "adjudicatory" officer of the housing court.¹¹⁷ (This has been discussed, in part, in a previous

111 It was the consensus of the ABA's Special Committee that the clerk of the housing court should not be independently elected or appointed, due to the sensitive nature of the clerk's duties and the need for clear accountability. Comments by Judge Laughlin Waters, Chairman (January 26, 1980). For an approach contra, see chapter 5 (Boston); chapter 4 (Hampden County).

112 Note that the housing court judge is subordinate to the chief administrative judge. See generally an earlier section of this chapter, titled "Judges and Quasi-Judicial Officers".

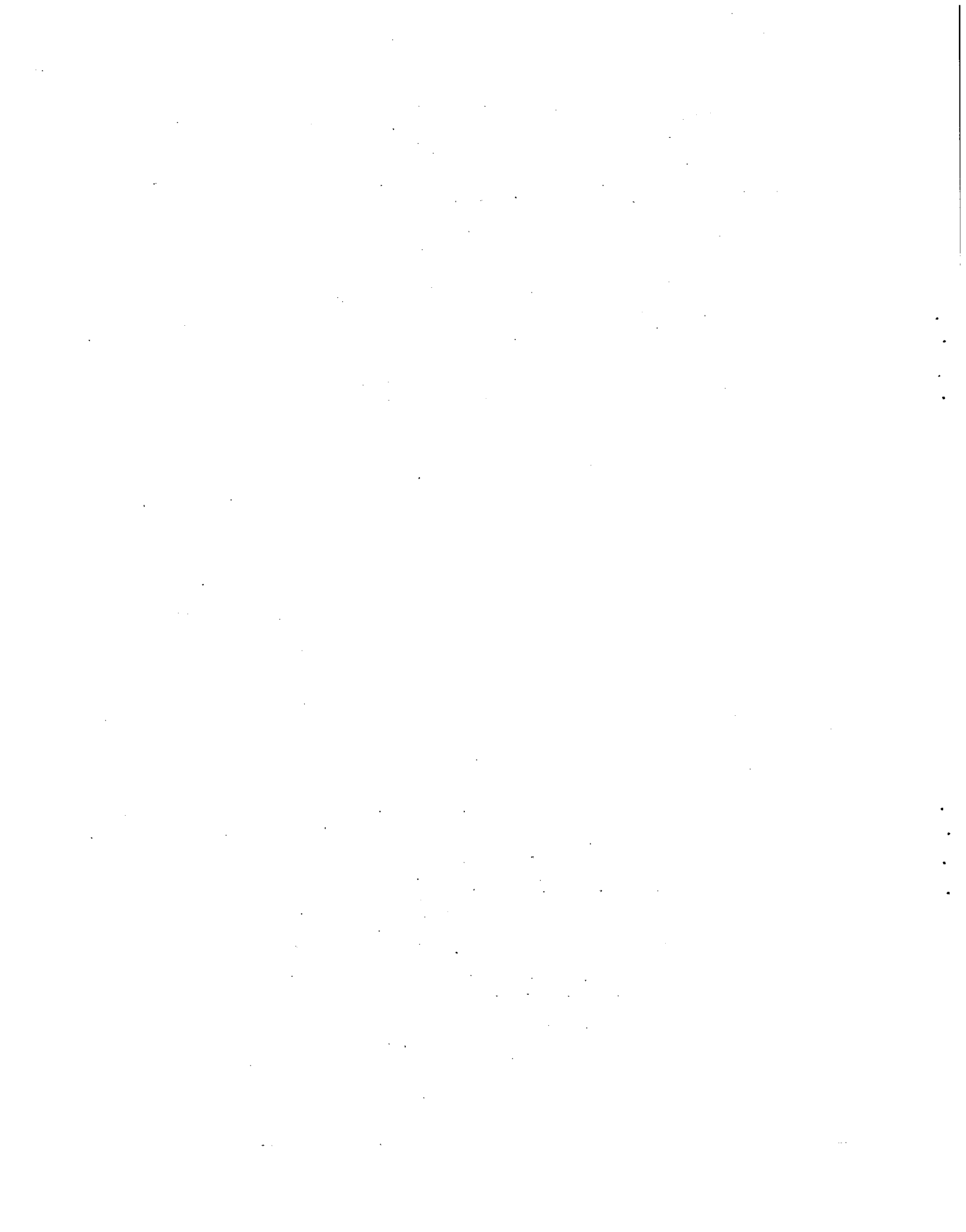
113 This type of question became the subject of a 1979 dispute in the Boston housing court. It was complicated by apparent ambiguities between traditional practices, pre-existing statutory provisions, and new amendments engrafted on to the state laws in 1978. See chapter 5 (Boston).

114 The administrative appeals mechanism must function expeditiously and thoroughly to deliver firm resolution so that the problems do not disrupt the functioning of the court. This process was dysfunctional in the situation cited; id.

115 These are listed as items #1-34 in this section of the chapter.

116 Dispute resolution involves, for example, assistance to pro se litigants and others; mediation of disputes preparation and distribution of informative brochures relating to housing disputes; and, simplification and innovation in the use of otherwise "standard" court forms. It also carries over into referrals to the housing specialists, to other governmental agencies, and to nonjudicial dispute resolution programs in that locale.

117 As previously discussed in this section of the chapter, these functions may be accomplished as "clerk-magistrate", as "commissioner", or as (cont.)



section of this chapter, in respect to judges.¹¹⁸) An inquiry into this apparent dilemma should include the following issues.

(a) There is the question of whether or not the clerk should be performing quasi-judicial functions. (It also is conceivable that other court personnel are clothed with the authority to do this work.¹¹⁹)

(b) It is necessary to identify the types of cases in which the exercise of this quasi-judicial authority is desirable and helpful to the court and to litigants.

(c) Situations should be identified which could tend to give to potential problems (others might not¹²⁰). The idea is to identify where conflicts between the roles of "mediator" and "quasi-judicial officer" could result, and then either to install safeguards in the system or to separate the mediation and quasi-judicial roles altogether.

Certain types of cases probably will not raise any conflict issues. Postponements and continuances, agreed to by the litigants present no real problems (unless there appears to be some pattern of questionable practices by the clerk, or abuses by litigants¹²¹).

This is not, however, to say that all quasi-judicial sessions that result in "continuances" are acceptable; in fact, they may not be. For example, a clerk-magistrate might seek to "hear" a summary process case, attempt to mediate the situation personally, and then "continue" the case until such time as the parties perform or fail in their settlement. This type of situation is not an acceptable practice, since it mixes quasi-judicial and mediation roles. Such cases should be heard by a full judicial officer: the judge. A mediator (such as a housing specialist) may try to accomplish settlement before the case actually is heard. A quasi-judicial officer's role should be limited (for example, handling the defaults where the defendant does not appear or raises no defense at all).

A narrow exception to the rule that mediation and quasi-judicial roles should not be mixed, is in utility shut-off hearings.¹²² In these situations, it is acceptable for the quasi-judicial officer to mediate while "hearing" the warrant request. The reason for this is straightforward: rarely is there a true "defense" available to the defendant.¹²³ For all practical purposes, the case is not

delegated under other statutory authority or rules of the court.

118 See generally an earlier section of this chapter, title "Judges and Quasi-judicial Officers".

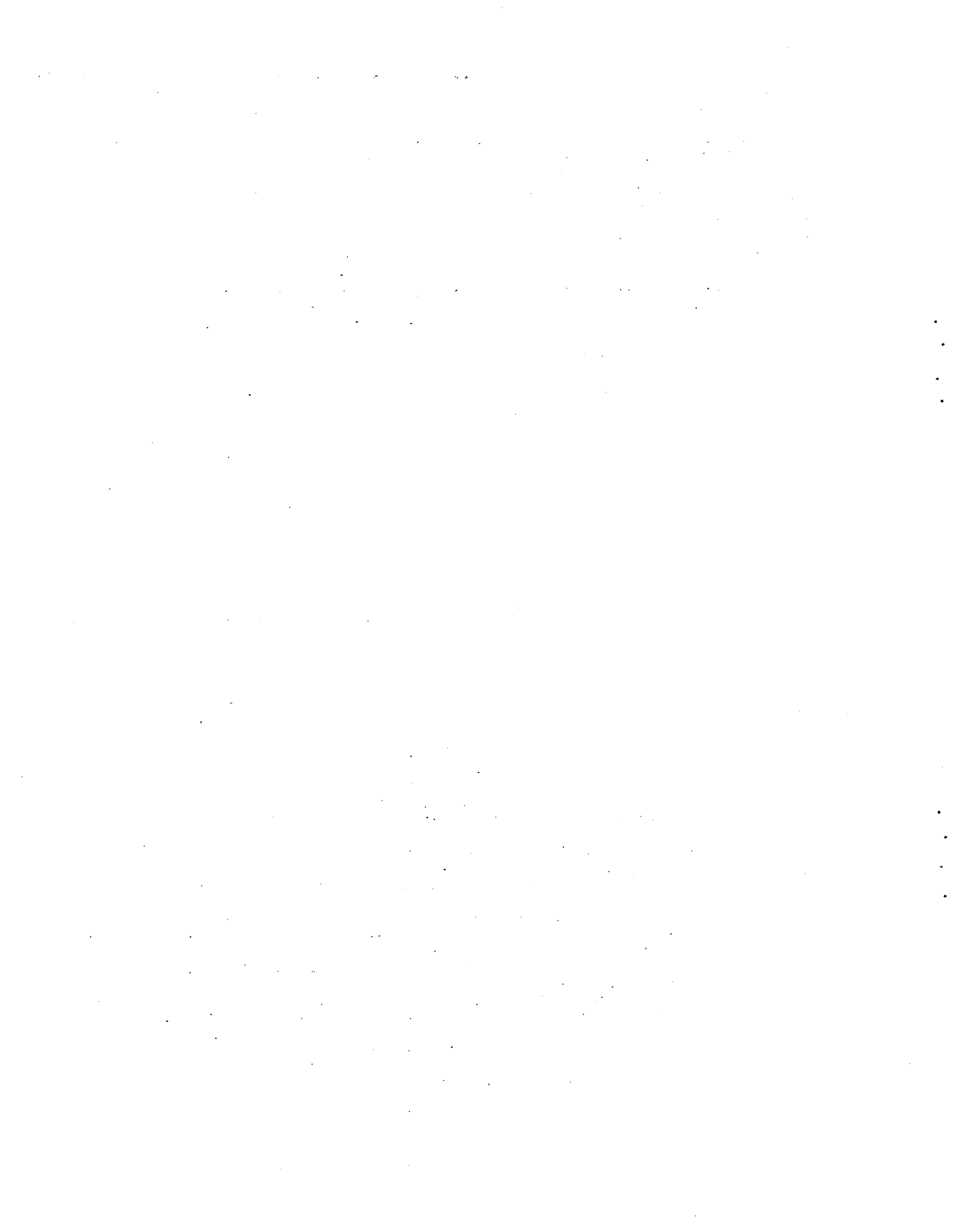
119 See *id.* For example, a "hearing examiner" -- totally separate from the clerk's office -- may perform these quasi-judicial functions. This is done in Hennepin County. See chapter 13.

120 All situations are potentially subject to abuse, even when carefully limited by rules of the court. However, some mixes of authority are more likely to give rise to problems than are others.

121 A hypothetical situation best illustrates this possibility. Unscrupulous landlord-companies might regularly misrepresent to unknowledgeable tenants what will happen when they go to court, or might give them an erroneous statement of their rights. Such tenants might agree to "settle", (waiving their legitimate defenses, if any) with the landlord simply obtaining a continuance and then later obtaining a default judgment if they fail to pay.

122 This was discussed as item #28 in this section of the chapter.

123 *Id.* Frequently, the issue is nonpayment without legal cause. If any legal error or mistake surfaces at the hearing, the clerk-magistrate is (cont.)



"contested"; nor are the issues of law complex; nor are the litigants likely to be imbalanced in their knowledge of their rights and duties; nor are mediated settlements likely to disadvantage either party. All of the above reasons are critically important to why a "mixture" of mediation and adjudication is acceptable in this type of case.¹²⁴

This type of situation does not prevail in most "disposses" (eviction) actions. It may well be that the parties are unequal in their knowledge of rights under the law; the issues of law are somewhat complex;¹²⁵ and there may be very real "defenses" that the defendant wishes to voice, but is unable to articulate well. In these situations, one might think that mediation by the clerk-magistrate would be appropriate and helpful to both parties. However, it is not appropriate for reasons explained below, and there are other personnel within the court who should accomplish this function of mediation instead.¹²⁶

A clerk-magistrate could hear defaults in eviction cases. If it is apparent that the defendant has any type of defense, the case ought to be immediately transferred to a judge.¹²⁷ If it is clear that the parties want to "settle" but need to talk over the dispute, the clerk-magistrate should not switch into the role of mediator. Instead, the housing specialist or trained mediator should take the case over, handle the mediation, and bring the settlement agreement to the judge for approval.¹²⁸ (If the mediation fails, the case should be heard by the judge the same day if the parties so desire.) The clerk-magistrate thereby avoids any mixing of the roles of adjudication and mediation.

likely to continue the hearing or dismiss the company's request for the necessary warrant to remove the meter.

124 Small claims are mediated by the clerk-magistrate under Massachusetts statutory provisions. See chapter 4 (Hampden County); chapter 5 (Boston). Whether this should be another exception to the general rule of segregating mediation from adjudication, is an open question. If the settlements subsequently are carefully reviewed by a judge, this may be acceptable in principle, but with another caveat. The litigants should be provided with a brochure prior to the hearing. This brochure should explain the process and state the rights of the parties to have their case heard before a judge. It should note the limits of the clerk-magistrate's authority as a "mediator". Other precautions should be instituted as well if this practice is to be followed (this is explained in the text that follows). One conceivable rationale for allowing a small claims case to proceed in this mixed fashion is the distinction from summary process actions, where, the net result may be the denial of shelter.

125 Warrant of habitability law(s) provide an example.

126 Housing specialists, volunteer mediators, or others who can supervise mediations and are trained to do so, are discussed elsewhere in this Report.

127 The hearing examiner process utilized in Hennepin County follows this type of format. See chapter 13. (However, there are no housing specialists to refer disputes to for supervised settlements. The cases therefore must go to the judge or else, are settled "in the hall" in an unsupervised setting.)

128 There is some advantage to letting the clerk-magistrate review these settlement agreements in lieu of a judge doing so. If the rules of the court so permit, and if the clerk-magistrate is highly knowledgeable and experienced, this may be a workable option. (However, the judge in that court should periodically examine the types of settlement agreements the clerk-magistrate is approving.)

This two-step process may appear cumbersome. While it does add an extra step, it is a good one in that the two different roles are kept separate in the eviction cases.¹²⁹ There are substantial reasons for maintaining this separation.

(1) The magistrate's calendar is not slowed down. Other litigants are not disadvantaged by waiting while the clerk-magistrate "mediates".

(2) The litigants have more time to discuss the situation with the housing specialist and to discuss the situation more fully.

(3) The settlement is supervised¹³⁰ by an individual who is not bound by rules of evidence to limit his or her field of inquiry.¹³¹ Thus, the parties are able to explore what might be only one dispute within the context of a series of problems. Thus, there can be an opportunity for full dispute resolution (and not restricted to the legal issues).

The last reason perhaps is the most telling. Simply put, most litigants are not at ease when they come to court as defendants; nor are they well informed. The "majesty" of the courtroom setting and the rapidity with which most cases are handled makes many unrepresented defendants uncomfortable and unable to explain their problems. They also tend to be timid about objecting to what they think the judge is insisting on.

Similarly, if the clerk-magistrate is "holding court" in his or her quasi-judicial role, litigants may feel restricted, particularly if what they want to do is "solve" their problem rather than to litigate it. Under these conditions, the clerk-magistrate should not be engaging in mediation.

It may be true that only a few defendants will object to mediation by a clerk in a quasi-judicial role. They may not be informed of their "right" to have their cases heard by a judge. They are likely to acquiesce even if so informed, perhaps believing that it "wouldn't do any good" to insist on a hearing by a judge.

Moreover, for reasons already explained, this more hurried and narrow mediation (than housing specialists or others might accomplish) is not advantageous.¹³²

To the extent possible in the majority of cases,¹³³ therefore, the two roles of

129 Note again that the emphasis is on these cases for reasons explained in the text at supra note 124.

130 If the court has no one to accomplish settlement work (as housing specialists or even trained volunteer mediators), there is a predicament. Then, the clerk-magistrate effectively cannot send the case to mediation, and the litigants must settle the case themselves, without assistance. This practice is critiqued elsewhere in this Report. At the very least, the court should equip the parties with informational materials in the event that they must do without the assistance of any mediator.

131 A hearing in court, obviously, is bound to restrict what can be discussed, due to rules of evidence, germaneness, and the legal issues in controversy.

132 Two counter-arguments are that the process is more expeditious than before a mediator, in that the parties know they have to "keep to the issues"; and, that the case, now already before the "court", might just as well be completed at that time without further burdening other court staff to act as mediators.

133 Certain exceptions, such as small claims or utility warrant hearings, may be acceptable. See generally supra note 124.

mediator and adjudicator ought to be segregated.¹³⁴

This, then, leads to the next section of this report. It deals with "The Housing Specialists and Parallel Special Functions in the Courts".

Conclusion

The role of clerk of the housing court is a very important one, as the text of this Report repeatedly indicates. The traditional and new roles of the clerk -- set forth as 34 functions earlier in this section -- should be considered at great length. The cities studies for this Report (chapters 3-15) provide many specifics for the principles already discussed. Innovation and experimentation are to be encouraged, as long as system safeguards and review or oversight mechanisms are built into the process to allow for later adjustments and change.

134 See also the analysis and discussion in an earlier section of this chapter, titled "Judges and Quasi-Judicial Officers".

HOUSING SPECIALISTS & PARALLEL SPECIAL FUNCTIONS

IN DESIGNING A HOUSING COURT, CONSIDERATION CAN BE GIVEN TO A UNIQUE FUNCTION: THE HOUSING SPECIALISTS' COMPONENT. THERE ARE SEVERAL ALTERNATIVES FOR ESTABLISHING THE STAFFING OF HOUSING SPECIALISTS OR PARALLEL SPECIAL FUNCTIONALISTS.

Housing specialists, established in several of the specialized courts studied for this Report, can be one of the most important ingredients for the functioning of a locality's housing court. It is appropriate first, therefore, to review the range of the specialists' formal relationships with the court as well as the personnel characteristics of these officials.¹

(1) The first, and "classic", type of housing specialist is, for all intents and purposes, a direct employee of the specialized court for which he or she performs work. The specialists are responsible to, and report to, the judge of that court.

In all likelihood, the specialists have been personally interviewed and selected by the judge (or former judge) of that housing court. On the other hand, if the judges are rotated frequently, these interviewing and selection responsibilities may be vested in the chief administrative judge of that jurisdiction.²

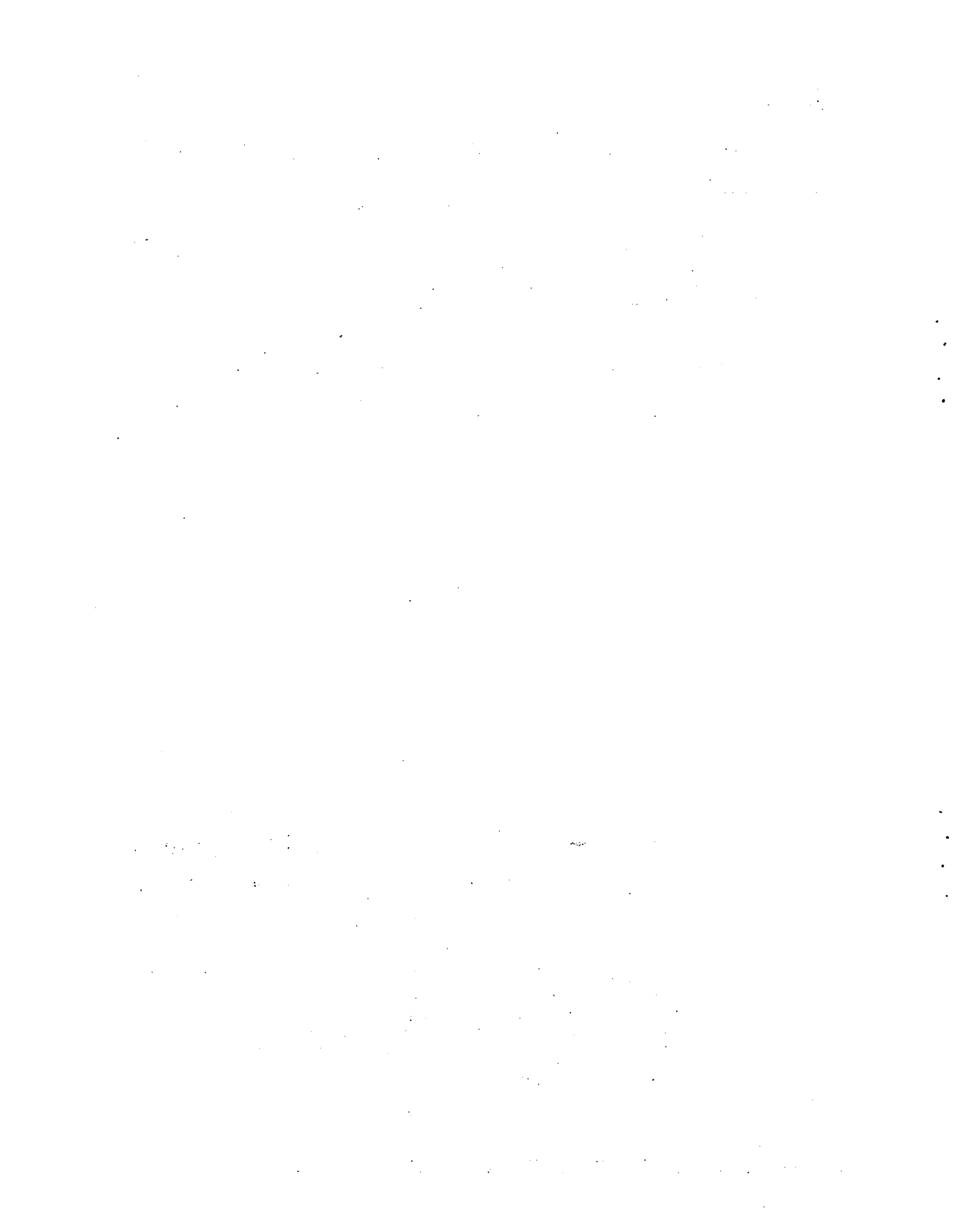
There are many possible variations on the above approaches. The housing specialists may be hired under a general merit system selection process; or, they may serve simply at the discretion of the appointing authority.³

The actual, formal appointments to these positions may be done by various public authorities. (Strictly "political" appointments outside of the court system are not favored.⁴) But the core concept is the reporting relationship to the judge.

Specialists' salaries may be paid: out of the specialized court's own personnel budget; out of the overall court system budget; or, out of other funds available to the court administration system.⁵

A number of scenarios may apply to the process of "new-hires". The judge responsible for selecting the specialists may ask a citizens advisory commission to interview and comment on a short list, or even, to screen the initial applications. He or she may wish this type of advisory input, or may want avoid it altogether. Still other types of non-binding "clearances" may be built into the system, formally or informally. The key concept, however, is accountability to the court.

- 1 In a later part of this section, the duties and responsibilities of these specialists are reviewed.
- 2 It is probable, in any event, that the chief administrative judge will exercise some discretion for review and approval in these matters.
- 3 There may or may not be any civil service system-type protections regarding terminations or discipline of employees. Usually, appeals would be made to the chief administrative judge; short of that, the only protection may be to seek a remedy through litigation in the general jurisdiction courts.
- 4 This type of basis for appointment might interfere with desired levels of accountability preferred by most judges. On the other hand, it could be argued that a political appointment and consequent independence might reduce internal pressures on housing specialists to conform to a system as then administered by a particular judge.
- 5 In fact, a specialized court's budget may not be easily extrapolated from the overall court system budget in that jurisdiction. See a later section of this chapter, titled "Budgetary and Cost Implications".



Court systems currently using full housing specialists, employed by the housing courts, include: Hartford-New Britain,⁶ Hampden County,⁷ Boston,⁸ and Pittsburgh.⁹

(2) A second type of housing specialist--actually, only a method of "acquiring" such a position--was used in Buffalo.¹⁰ There, a CETA position was available to the housing court and the person fulfilled these responsibilities for some period of time. However, when continued use of these funds was no longer possible, the position could not be filled and the housing specialist function was lost. The citizens advisory commission cited this fact as one of the main defects of the continued functioning of the housing court in a report to the state legislature.

Under shortages of personnel and budget, the Hampden County housing court added to the two housing specialist slots that it already had.¹¹ A court bailiff was named a half-time housing specialist, and is able to perform some of these tasks.

(3) The third type of "housing specialist" has not been used frequently at all. In fact, this arrangement probably is best used as a transition method for a new housing court, until the specialists' line-item can be added to a budget submission the following year or years.

Here, the idea is to "borrow" an individual or several persons from an executive agency or agencies of local government. For example, the building or housing and community development department might put an employee(s) on loan to the court, to perform the duties of a housing specialist.

There are potential disadvantages to this approach. (a) One is that the person remains an employee of his or her originating department. (b) Second is that the individual is primarily accountable to the original agency, although any assignments are being made by the court. (c) Too, the individual is likely to look more toward the career patterns and orientations, acquaintances, and policies of the agency-employer than to the court policies, procedures, and personnel roles. (d) The person assigned may not have all the skills and background desired of the full-fledged housing specialists. For example, a health department inspector on temporary assignment to the housing court may not have, or really wish to obtain, any expertise in landlord-tenant programs and services available in that city, for use in the counselling of defendants. (e) The court loses the possibility of continuity in its specialists' functions as, at some point, that particular em-

6. See chapter 3. See generally Spada, The Hartford-New Britain Judicial District Housing Court, 17 URBAN L. ANN. 187 (1979). There, the housing specialists work out of the two separate branch offices of the housing court.

7. See chapter 4; Croteau, Housing Specialists in the Hampden County Housing Court, id. at 85. See generally Peck, The Hampden County Housing Court: An Overview, id. at 65; Winer, Pro Se Aspects of Hampden County Housing Court: Helping People Help Themselves, id. at 71.

8. See chapter 5. See generally Garrity, The Boston Housing Court: An Encouraging Response to Complex Issues, id. at 15.

9. See chapter 9. The specialists are titled "probation officers", in line with the titles and positions for other courts in that city, and handle only code enforcement-related cases.

10. See chapter 7 (Buffalo); Lo Russo, The Buffalo Housing Court: A Special Court for Special Needs, supra note 6, at 199. Conversation with Father Denis Woods, chairman of that CAC, in New York City at a NAHRO conference's panel discussion (with Woods, the Report Editor, and Robert Gould of New York City, ABA project advisor-guest) on housing courts (June 16, 1980).

11. See chapter 4 (Hampden County).

ployee is likely to have to return to his or her agency. (f) The arrangement may conceivably lead to questions at a later date why, "if it works", the court needs any additional budget appropriation for its own housing specialists. (g) Finally, certain functions may not be able to be handled by temporary non-court personnel, under court rules or other requirements of applicable court system laws.

Nonetheless, the approach is one that is better than having no housing specialists available at all. In Indianapolis, a specialized court¹² felt itself hamstrung for some period of time, operating without specialists until a budget for same was approved. In Syracuse, which has been considering a form of a specialized court for code enforcement cases, this approach was proposed and was tentatively agreeable to the city agency concerned. It may be utilized during the period that the experimental six-month project is carried out in that city.¹³

(4) The fourth type of arrangement can not really be characterized as one of a "housing specialist" at all: hence, the terminology in the title of this section of "The Housing Specialists and Parallel Special Functions".

This type of specialist is one who is assigned to the specialized court for the express purpose of handling his or her agency's court-related duties. That is, these staff do not assume the mantle of housing specialists. They are available at or to the court to take on certain assignments, based on the agency's perception of what their work should entail. There are a number of subtypes, below.

(a) One of the agency staff may be stationed at the court itself almost all of the time. This person may be, for example, a senior inspector who is able to answer questions put to him or her by the court. However, this person is not necessarily the prosecuting witness in a code case; and, may or may not be limited to offering expert testimony.¹⁴ Courts that use this system include New York City and Chicago.¹⁵

(b) Certain specialist inspectors may be available as a team on a periodic basis as a "flying squad" to make special inspections ordered by the court. This can occur, for example, for a building that is in court that day and there are questions as to the continued existence and severity of violations that have been cited (or raised as a defense by a tenant). Again, New York City has implemented this method.¹⁶

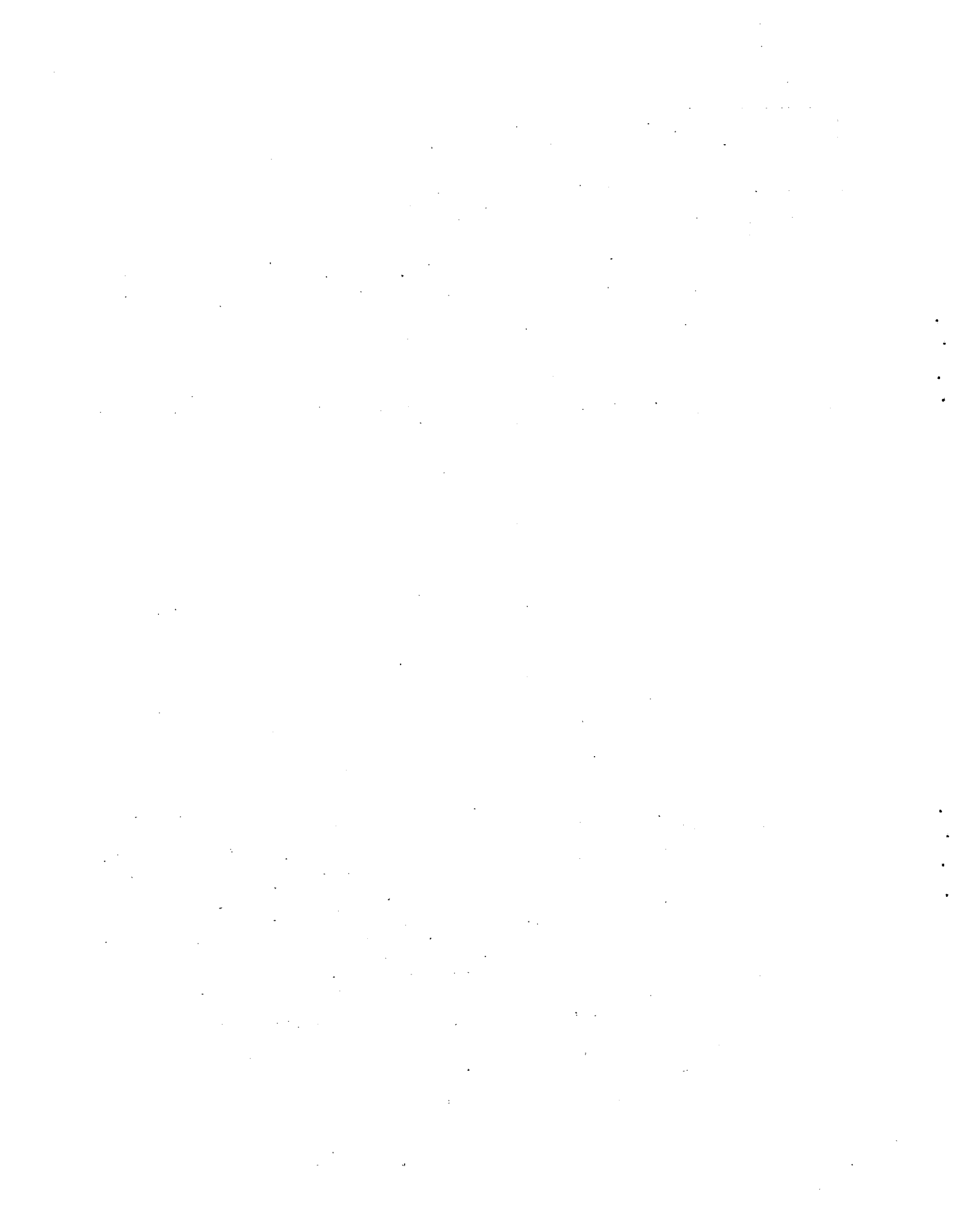
12 The Indianapolis court is uniquely labelled the "Environmental Court". See generally chapter 16 (re Indianapolis); Jester, The Indianapolis Environmental Court, supra note 6, at 209.

13 See chapter 16 (re Syracuse's report, submitted as part of reporting to the ABA-HUD Program for its "planning stipend" work). Conversations at November 1979 Syracuse meeting of local officials as well as the Report Editor.

14 In criminal code enforcement cases, usually the requirement is that an inspector who has personally examined the subject premises must be the one to testify. If the inspector is always stationed at the court, he or she would not be the testifying inspector. (It is possible, of course, that if code violations were characterized as civil matters, personal testimony might not have to be offered.) In landlord-tenant cases involving only an interpretation of code provisions, actual inspections may not be required.

15 See chapter 6 (New York City).

16 Id.; chapter 10 (Chicago). Other cities also use the "team inspection" approach. However, usually they do so by scheduling it administratively, rather than in response to court cases. Nearly all courts could, under arrangements with the agencies, do this (such as for hotels and other public occupancies requiring use of an inspection team of specialists).



(c) Agency staff may be assigned most of the time at the court, to counsel the tenant-defendants in landlord-tenant cases after an eviction has been ordered. In effect, their purpose is to make immediately available special social or other services in that city, so as to help mitigate the impacts of the judgment on the defendant. The Rent Court in Baltimore uses this approach in its "emergency eviction center".¹⁷ The housing court (for code enforcement cases) in Chicago also has such counselling services in the courthouse building.¹⁸

(d) There may be other at-court services provided by agency officials or by private organizations. Examples include: mediation may be handled by bar association volunteers, as in Los Angeles;¹⁹ attorneys or law students may be available to assist defendants who cannot afford legal representation²⁰ or, this may be accomplished, as it is in many cities, by outside legal services offices; there also are organizations that offer nonjudicial dispute resolution services.²¹

(5) Finally, some courts have chosen not to use housing specialists. Some have made this a conscious choice, rather than as a result of budgetary pressures. As an example, New York City's housing court administration has stated that it feels the current relationships with the code enforcement agencies fulfill whatever requirements it would otherwise have for housing specialists.²² Chicago's housing court (code enforcement only) feels that it has no need for any housing specialists. It finds that it can rely on the inspectors that regularly appear in that court, to accomplish whatever tasks are needed.²³

In this general refrain--that is, of special functionalists who deal with the court (although, not at all relevant to housing specialists' tasks)--there are two other major types.

(a) The first involves the use, within the agencies themselves, of specialists who handle all of that agency's cases in the specialized court. In effect, these persons are the litigation-preparation and prosecuting team in code enforcement

17 See chapter 8 (Baltimore). This eviction counselling takes place after judgments by the court. There are no housing specialists in either the Rent Court (evictions) or the Housing Court (code enforcement); both courts are presided over by the same judge.

18 See chapter 10 (Chicago). See generally Rothstein, The Chicago Experience, 17 URBAN L. ANN. 133 (1979); Fusco, Collins & Birnbaum, Chicago's Eviction Court: A Tenant's Court of No Resort, *id.* at 93; Klein, The Politics of Housing Dispute Resolution, *id.* at 353.

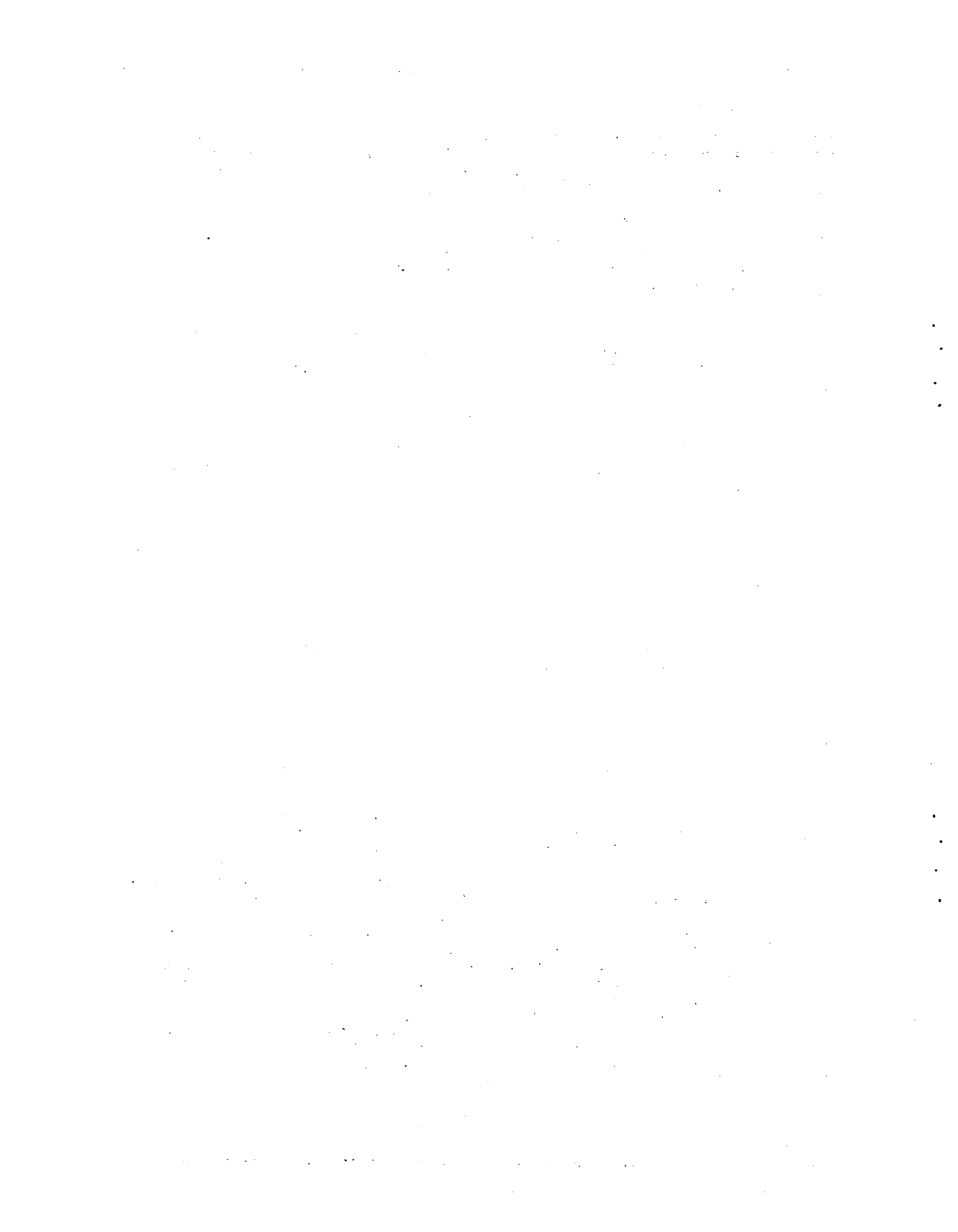
19 See chapter 11 (Los Angeles); Epstein, The Los Angeles Landlord-Tenant Court, *id.* at 161. Los Angeles does not have any housing specialists.

20 See chapter 12 (Detroit). See generally Reed, Detroit Code Enforcement and the Housing Court Debate, *id.* at 215 (which argues against establishment of a specialized housing court; another that explains a similar point of view is Rogers, An Alternative to a Housing Court, *id.* at 177).

21 See chapter 18 (nonjudicial dispute resolution); HOUSING JUSTICE OUTSIDE OF THE COURTS: ALTERNATIVES FOR NONJUDICIAL DISPUTE RESOLUTION (R. Scott ed.) (1979) (published in preliminary version by the ABA). See generally McGillis, Neighborhood Justice Centers and the Mediation of Housing-Related Disputes, *supra* note 18, at 245; Warman, Mountain View Rental Housing Mediation: A Grass Roots Program, *id.* at 271; Ebel, Landlord-Tenant Mediation Project in Colorado, *id.* at 279; Fogel, The San Jose Housing Service Center, *id.* at 287; Klein, *supra* note 18. See chapter 14 (Philadelphia).

22 See generally chapter 6 (New York City).

23 Conversation between the Report Editor and Judge Richard Jorzak of Chicago, ABA project advisor-guest (March 13, 1979).



cases. The team may include a chief compliance officer (a senior agency inspector) who reviews the cases, does a final pre-trial inspection, and provides the testimony in court. The team also includes an attorney who, in Pittsburgh's²⁴ case, is housed within that agency.

The other type of personnel may be found in the office of the corporation counsel, city attorney, or state's attorney. Most cities do not assign any one attorney "permanently" to this job.²⁵ Others have highly specialized attorneys, as in Chicago²⁶ and Los Angeles;²⁷ Hartford-New Britain²⁸ has the attorney with an office at the court itself.

HOUSING SPECIALISTS CAN SERVE A NUMBER OF VARIED AND IMPORTANT FUNCTIONS. THEY SERVE THE JUDGE OF THE COURT, THE MEETING OF THE RESPONSIBILITIES OF THE COURT, AND THE MEMBERS OF THE PUBLIC THAT APPEAR, OR MIGHT APPEAR, IN MANY DIFFERENT TYPES OF HOUSING-RELATED CASES.

Most of the functions of the housing specialists are defined by the type of specialized court in which they serve. The broadest range of activities occurs in a comprehensive housing court, which has jurisdiction over many types of housing-related cases: landlord-tenant, code enforcement, small claims, and civil actions. (Their responsibilities are reviewed later in this subsection.)

In specialized courts with only code enforcement jurisdiction or with only summary process (eviction) jurisdiction, their responsibilities cover a more narrow range. The question is, can these courts use other personnel instead of housing specialists? The answer is a qualified yes, as indicated in the previous subsection that indicates the various types of housing specialists and parallel special functionalists.

The yes answer is somewhat qualified because there are limitations inherent in the accountability, duties and assignments, experience and expertise, and professional interests of these substitutes for housing specialists. A more definitive

24 This approach has much to recommend it. Conversations between the Report Editor and Judge Alan Penkower, ABA project national advisor; and, attorney Robert Borgoyne, ABA project advisor-guest. In this case, it is done within the Health Department of Allegheny County. See chapter 9 (Pittsburgh); Penkower, The Housing Court of Pittsburgh, *supra* note 18, at 141.

25 This may not prove to present any problems in some cities where the number of prosecutions are low. In others, the situation has caused some difficulties. See chapter 16 (re Miami's report, submitted as part of the to the ABA-HUD Program for its "planning stipend" work). Conversations at Miami meetings of local officials and the Report Editor (April of 1980).

26 See chapter 10 (Chicago). Conversations (1980) between office of corporation counsel attorneys, the Report Editor, and Judges John Sulewski and Richard Jorzak, ABA project advisor-guests. This is a large staff, with as many as two attorneys assigned to each of the five courtrooms handling the code-related cases in the housing court.

27 See generally chapter 11 (Los Angeles). Conversations between the Report Editor and city attorney's staff, about the creation of a unit of attorneys in that office as of late 1980.

28 See chapter 3 (Hartford-New Britain); Spada, *supra* note 6. The full-time position was later changed to a half-time position, but the attorney actually has offices in the housing court's own building. 1980 conversations between the Report Editor and court staff, including attorney Raymond Weizalis, ABA project advisor-guest.

answer is not possible, since it appears that many courts feel they can do without housing specialists per se. Others feel quite the opposite,²⁹ and believe that the full-fledged housing specialists are essential.

The functions of these specialists in a comprehensive housing court³⁰ are many. They are reviewed briefly, below. Additional information is found in the various study city chapters that follow.³¹

(1) They can serve as investigators for the judge, acting as the eyes and ears of the court. In contested landlord-tenant cases, or even code enforcement cases,³² the judge can request the specialist to make a "view" for the court (as for the existence of putative code violations). A report is then filed or given in open court. This may be done during a continuance of the case. In rare instances, it may be accomplished in a matter of hours, while the hearing is recessed pending this report.

In this function, the housing specialist is acting as a resource to the court. He or she only indirectly is a resource to the litigants. Sometimes, the fact that the court intends to schedule such a view, leads to changes by the litigants of their testimony and the case then proceeds.

(2) Some courts use the housing specialists as a "referral" source in the code enforcement cases.³³ The specialists then work with the defendants during the period of the continuance in the case. This is particularly helpful when it is evident to the court that the defendant simply has not understood the charges and the nature of the case brought against him or her.³⁴

Some courts continue the vast majority of the code enforcement cases.³⁵ They are

29 The housing courts with housing specialists include those infra note 30, and some courts lacking such specialists argue strenuously that they are key. See generally chapter 7 (Buffalo); chapter 16 (re Indianapolis).

30 See chapter 3 (Hartford-New Britain); chapter 4 (Hampden County); chapter 5 (Boston). One comprehensive housing court does not have housing specialists. See Cohen, The New York City Housing Court: An Evaluation, supra note 18, at 27. Some of the judges note that such specialists are not needed, due to the use of other ancillary personnel. Conversations between Report Editor and Judge Francis Smith, ABA program national advisor. But see, Goodman, Housing Court: The New York Tenant Experience, supra note 18, at 57.

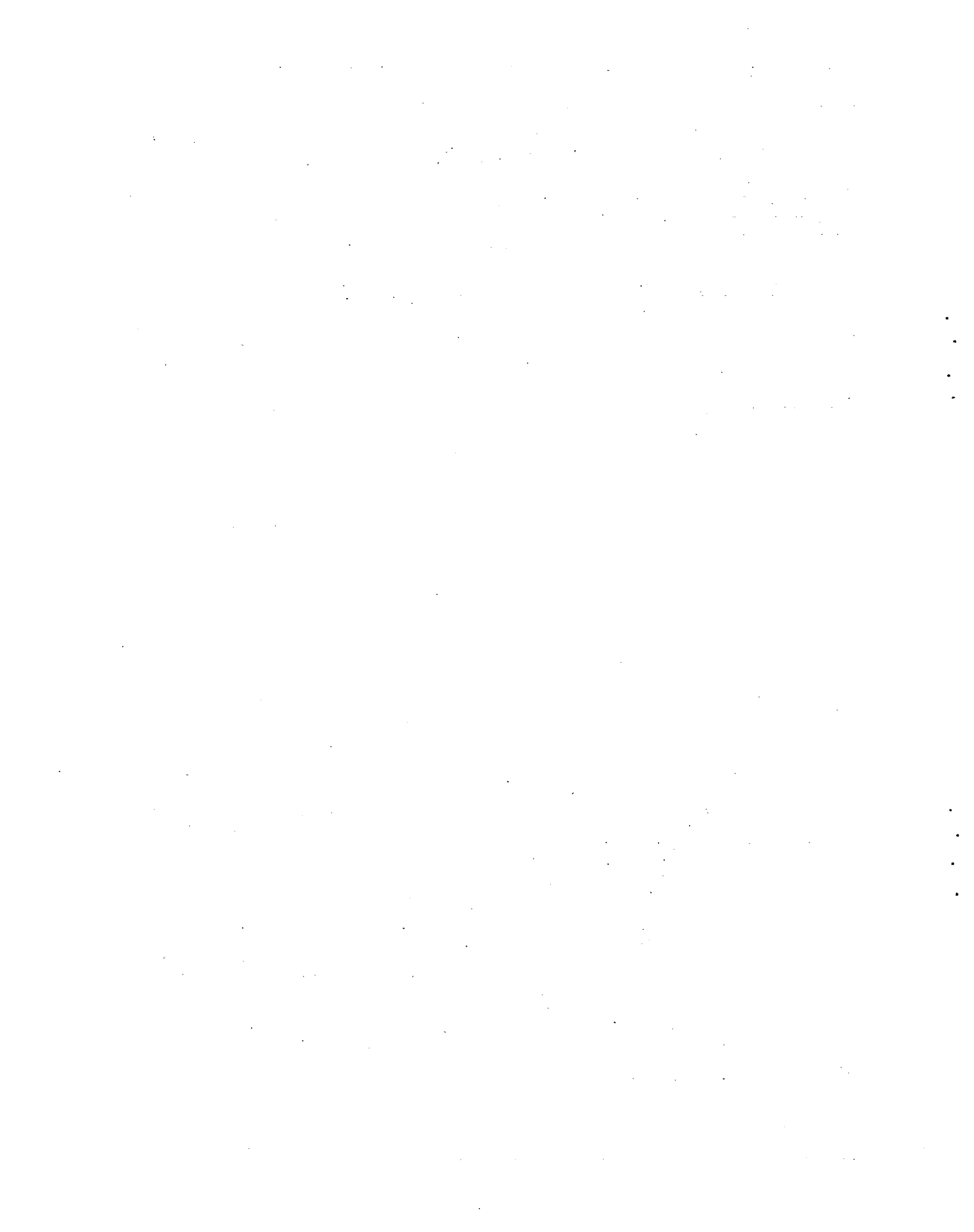
31 See chapters 3-15.

32 Some judges use the specialists, on occasion, to spotcheck for code inspection system abuses in code cases. Others indicate that they do not want to use housing specialists for this stated purpose, because it gives the administrative agencies the impression that the inspectors are not completely "trusted". While they will not schedule any independent views in these cases, they may have the specialists work with defendants during the continuances of the cases. Other courts may have the original building inspector, the housing specialist, and the litigants or defendant meet at the subject premises during the continuance period. (Conversations, in confidence, with various judges and the Report Editor (1979-80).

33 This even may be done at the arraignment, rather than formal hearing, stage. See generally chapter 5 (Boston).

34 An example is an elderly defendant who owns the building; or, a tenant who is obviously unable to comprehend the nature of a tenant house-keeping violation against him or her, perhaps because of illness or mental infirmities.

35 See generally id.



in the habit of referring the cases, in the first instance, to the housing specialists, and expect them to try to work for compliance with the defendants. (As discussed later in this Report,³⁶ this follows on the heels of all of the efforts of the administrative agencies to obtain compliance prior to filing a court case.) These over-abundant referrals³⁷ can greatly overload the specialists, and can tend to delay or protract the enforcement process even further.

In the referral process, the housing specialist works with the defendant to help achieve compliance. The specialist can explain: (a) what needs to be done to correct the violations; (b) the availability, if any, of financial assistance at low interest rates or under special city programs; and, (c) any technicalities of obtaining bids for repairs. Moreover, the specialist can: (d) do an inspection when the defendant says the repairs have been made on any or all of the violations; (e) make reports to the court on the defendant's progress; and, (f) if necessary, see to it that other city agencies follow up on the case or lend some assistance to the defendant.

(3) Also in code enforcement cases, the specialists may act as "probation officers".³⁸ The difference here, is that the defendant has been judged "guilty" in a code violation case. He or she may be placed on probation as part of the disposition in the case.³⁹ Many of the same services as noted above, are rendered by the specialist.

(4) In landlord-tenant cases, the housing specialists may act as mediators for purposes of supervising settlement discussions between the litigants. This may be done prior to the calendar call of the cases in court that day.⁴⁰

It also may occur after the hearing has begun, if it is obvious to the judge that this is the best course to take.⁴¹ As noted later in this chapter,⁴² a preferred practice may be to have the litigants reduce any settlement to writing, with the help of the housing specialist. It then can be reviewed by the judge, corrections made if this is necessary, and the agreement entered in the court record or as part of a conditional judgment.

In limited instances, the judge may continue the case for several days rather

36. See a later section of this chapter, titled "General and Remaining Issues". A number of issues are raised about courts' code enforcement procedures.

37. One court often announces at an arraignment that the case is "HSD", meaning that it has been referred to the housing specialists department. If other courts were to do so, it would be helpful for the judge to briefly explain what this means to the defendant. The explanation need not be lengthy, if the court gives the defendant a sheet of information as to how the process with the housing specialists works. In addition, either a housing specialist or an assistant clerk or bailiff should be immediately available to the defendant while he or she is still in the courtroom, to assist if any confusion remains.

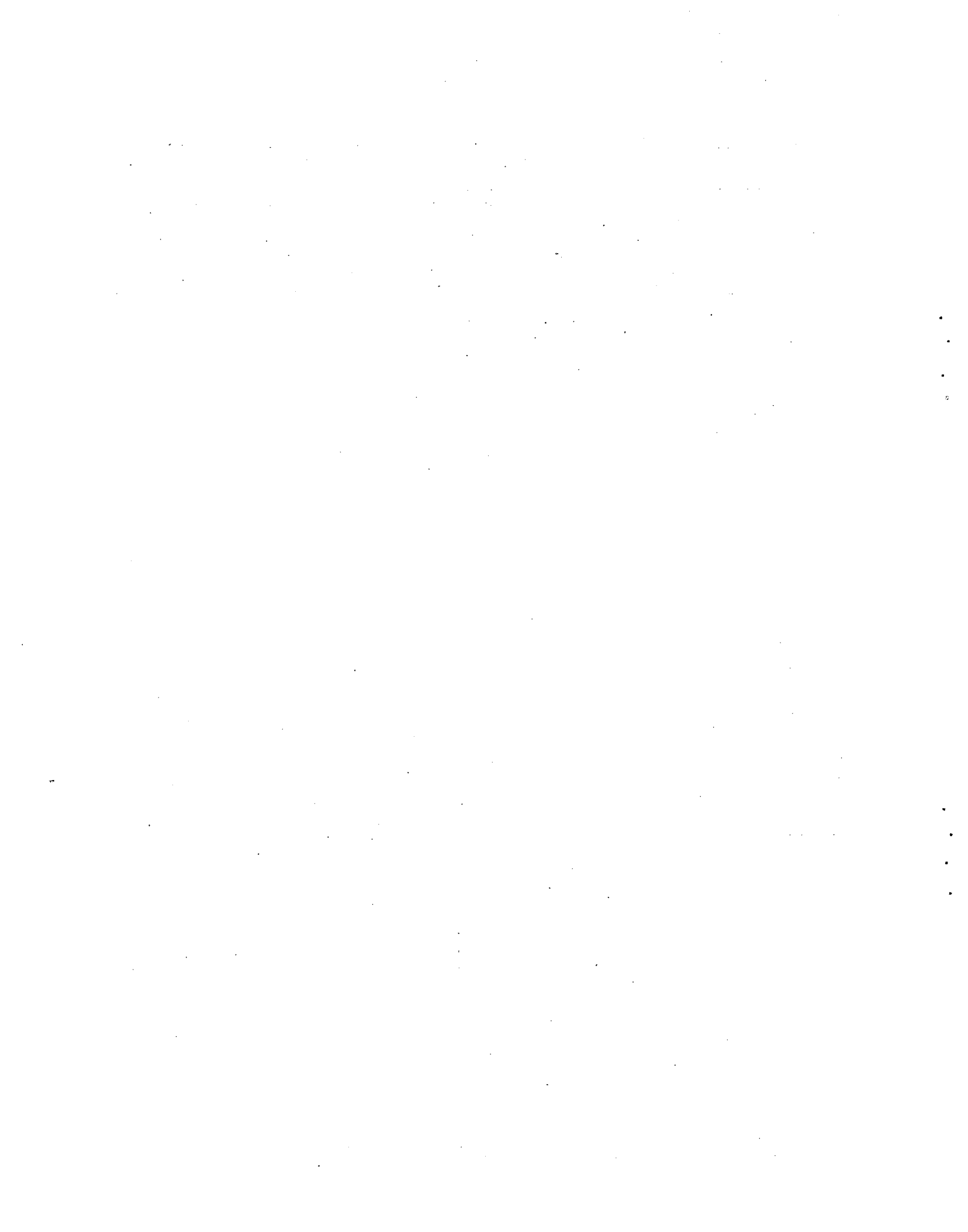
38. This is their title in Pittsburgh's housing court. See chapter 8; Penkower, *supra* note 24; sources *supra* note 7.

39. Another part of the disposition may be to levy a fine, suspended in whole or in part, pending compliance. See generally chapter 9 (Pittsburgh and Allegheny County); *infra* note 42.

40. This is done in Hartford-New Britain. See chapter 3.

41. Some cases may become complex and, perhaps, highly emotional. To seek a satisfactory resolution, the case may be continued for an hour, pending discussions with the housing specialists.

42. See *supra* note 36.



than finish the hearing on the date it was first called. The problem is that this may tend to disadvantage the plaintiff in what is supposed to be a summary process case.

(5) Also in landlord-tenant cases, the housing specialists may be used at the post-judgment stage.⁴³ Here, assistance is given to the litigants in a fashion similar to that described previously:⁴⁴ in eviction prevention counselling. It may be possible, for example, to avert an actual physical eviction by counselling the defendant-tenant as to special arrangements with his or her employer, or via emergency welfare assistance. Relocation assistance also may come into play.

(6) Many of the summary process cases move very quickly in most courts.⁴⁵ After a judgment has been rendered, the parties may be confused. The housing specialists, at least over time, may be able to develop services that help dispel much of this confusion. In this respect, they are innovators of procedures and information for the specialized court.

For example, the specialists could develop information forms for litigants. The material could help both tenant⁴⁶ and landlord.⁴⁷ (This also would apply in the code enforcement area⁴⁸ and in small claims cases.⁴⁹) In all regards, they would be working closely with the clerk of the court or the housing court administrator⁵⁰ as well as with the judge.

(5) Housing specialists may serve to counsel potential litigants even before they file court papers. (There is some debate about this function, and whether or not these specialists would be offering "legal advice".⁵¹) This task can be an

43 This is particularly necessary if the court does not have such services made available to it from other quarters: administrative agencies or volunteers serving at the courthouse.

44 See text at supra note 17.

45 See some typical criticisms in Fusco, supra note 18; Goodman, supra note 30.

46 Such a pre-printed form would have a few blanks filled in immediately by the assistant clerk, and then handed to the defendant before he or she left the courtroom. The form could explain what the judgment "means" and on what days it is "effective" (x days to move or to pay; x date the sheriff may forcibly remove belongings, etc.). Secondly, the form could explain what assistance is available, from housing specialists to other city or court-related personnel. (Thirdly, some persons would argue that information should be provided as to motions to set aside judgments or the right to appeal, as well as the phone numbers for legal assistance offices.)

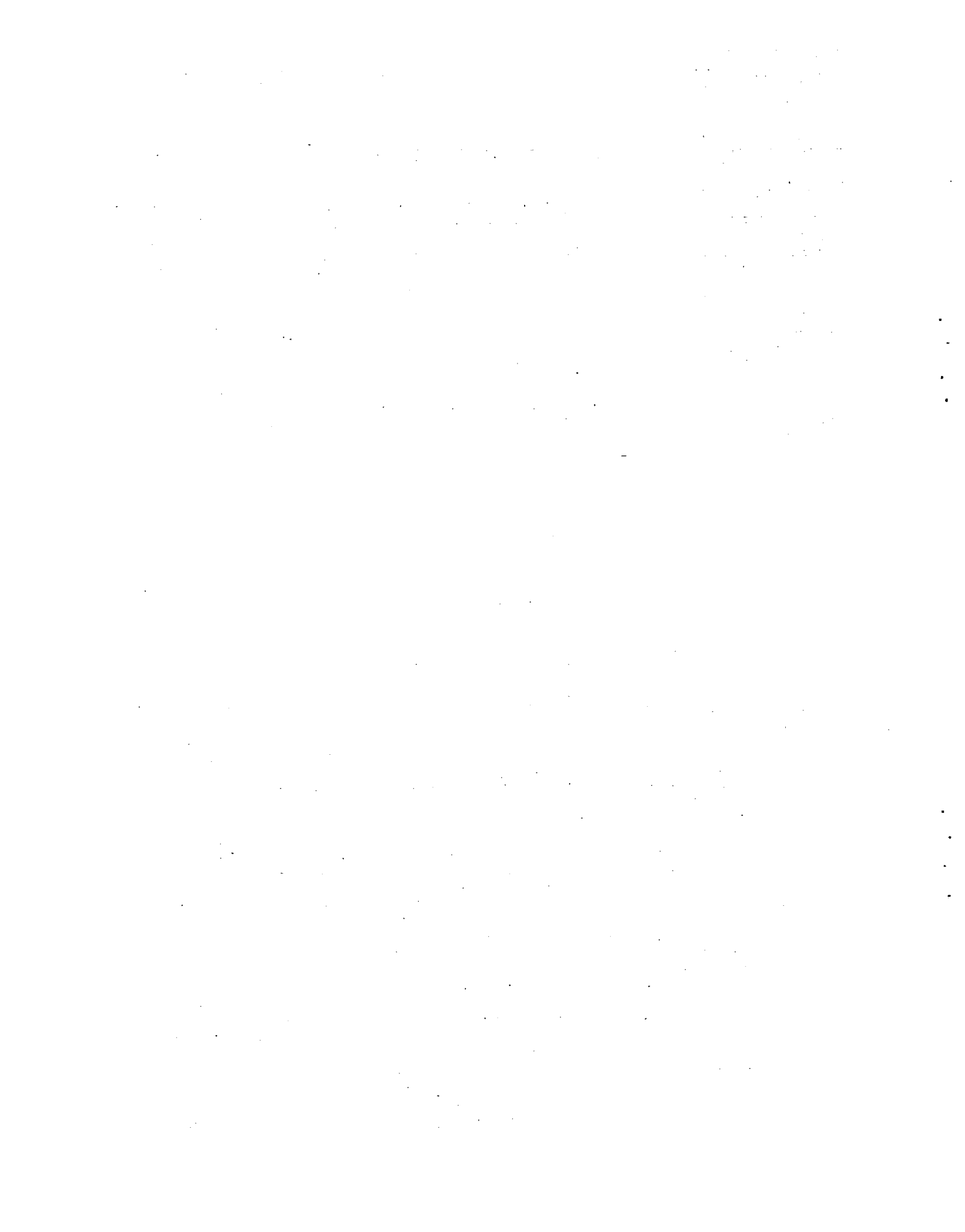
47 Not all plaintiffs are sophisticated in handling summary process matters. Again, it is conceivable that pre-printed information could be handed to a plaintiff. It would explain the next steps in an eviction case, such as how to file for the necessary writs, the time periods and costs, and other matters unknown to most unrepresented plaintiffs.

48 Information would describe the import of the decision in a code enforcement, including the role of the housing specialists, the date of the next court hearing, and the repercussions for failing to comply with a court order.

49 For parallel recommendations in the area of small claims cases, see chapter 17 of this Report.

50 See generally an earlier section of this chapter, titled "The Clerk's Office: Staffing and Operations".

51 Conversations between housing specialists in several courts, and the Report Editor (1979). In Hartford-New Britain, the clerk (who is an attorney) helps obviate such formalistic doubts about the roles of the specialists. See generally chapter 3.



an extremely valuable one, of real service to the public. However, the process should have safeguards installed, and it should be periodically monitored by the judge of the specialized court.⁵²

In many respects, this function is akin to that of the pro se clerks, described earlier in this chapter.⁵³ The comprehensive housing court making the most use of specialists in this fashion, is Boston.⁵⁴ There, they even man hotlines, in addition to handling a large number of "walk-ins" whom they counsel. The specialists in the code enforcement court in Pittsburgh also perform a significant amount of this type of work, in what has grown to be known as the pre-litigation caseload.⁵⁵

(6) The housing specialists also can provide one of the public out-reach arms⁵⁶ of the court. They may speak to community groups, participate in neighborhood sessions,⁵⁷ and meet with the citizens advisory commission.⁵⁸

(7) Other duties may be undertaken by the specialists, including: (a) the sharing, with the clerk, of responsibilities regarding follow-up on cases referred to other agencies; (b) occasionally, performing service of process in problem cases;⁵⁹ and, (c) researching the location of defendants when service of process is unclear, or where a bench warrant is about to be issued, in code enforcement cases.⁶⁰

(8) It should be reiterated that the housing specialists are not a duplication of the work of building department inspectors. This is a common misconception in communities that are considering housing courts.⁶¹ An examination of the above responsibilities of housing specialists would indicate that this is not true. In addition, it is obvious that the housing specialists, by handling the follow-up in many cases, can relieve the administrative agencies' personnel from most of the remaining compliance work. This frees the agency inspectors to deal with new inspections and to carry on with re-inspections and administrative efforts for compliance, prior to filing the cases in court.⁶²

52 The court should develop background materials: a type of benchbook (but for use by the housing specialists). Training sessions should be scheduled; and, the judge should exercise careful oversight in this area. These concerns also were noted in a previous section of this chapter. See "Judges and Quasi-Judicial Officers".

53 See a previous section of this chapter, titled "The Clerk's Office: Staffing and Operations".

54 See chapter 5 (Boston).

55 See chapter 9 (Pittsburgh).

56 Community awareness of the specialized housing courts, its responsibilities and its staff services, often is surprisingly quite low.

57 This is the case in Boston. See chapter 4.

58 This is done in Pittsburgh. See chapter 9. For information on citizen advisory commissions, see a later section of this chapter, titled "Mechanisms (such as a CAC) for Community Participation".

59 Pittsburgh and Hampden County have this procedure. See chapter 9; chapter 4.

60 See chapter 9 (Pittsburgh).

61 A housing court was created in Cleveland. See chapter 16 (re portion on that city). Questions were raised in this regard, including telephone calls from the local newspaper to the ABA project, as to whether or not this was in fact a duplication of effort in other cities that have housing courts.

62 For the administrative agency process, and an argument for stronger administrative hearings, see Walsh, Housing Code Enforcement in New York City: Another Look at an Administrative Tribunal, *supra* note 18, at 51.



HOUSING SPECIALISTS SHOULD MEET A HIGH SET OF STANDARDS REGARDING EXPERIENCE, EXPERTISE, AND ABILITY TO DEAL WITH THE PUBLIC. SUPERVISORY MECHANISMS SHOULD ASSURE PROPER TRAINING, MONITORING, AND UPHOLDING OF HIGHEST LEVELS OF INTEGRITY.

A housing specialist must have an excellent background in local and state housing programs, in codes and standards, in inspections, and in mediation skills. Some of the cities have recruited highly talented persons from the ranks of inspectors in administrative agencies. Others have come from the lay public.⁶³ Often, the selection process has benefitted from a highly competitive field of candidates.

A few of the housing courts have legislation that sets forth the requirements for the housing specialist positions. The legislation also may require that one of these persons be designated the "chief housing specialist". He or she is responsible for administering the activities of the other specialists and assigning the cases to various individuals.⁶⁴

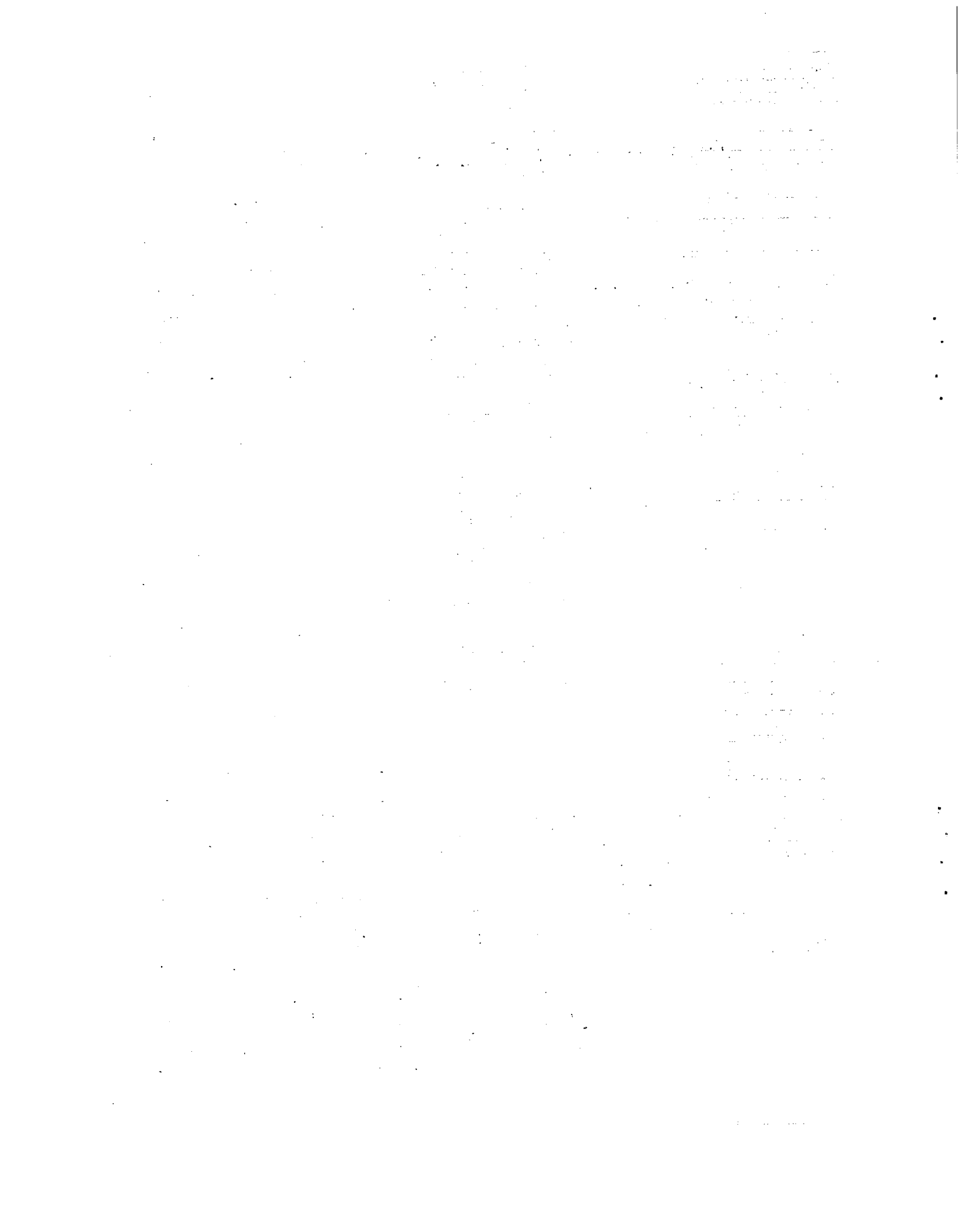
The head specialist is part of a policy-setting team. In tandem, the chief housing specialist, the clerk, and the judge form a "management triumverate" of sorts for the specialized court.

The housing specialist department may not be without its problems. (a) The first relates to salaries, which often are too low to retain experienced, qualified individuals. (b) The second is that, on rare occasion, an apparently inexperienced person is selected for the position.⁶⁵ (c) Some concern occasionally is voiced about a "Napoleonic" attitude of some specialists, who try to seize too much power.⁶⁶ This should be taken care of if there is the proper monitoring procedure, and citizen oversight mechanisms, established. (d) The rare accusation relates to the integrity of the individuals concerned.⁶⁷

None of these complaints can be dismissed lightly. As with all of the personnel functions of the court, to say nothing of parallel problems in the administrative agencies,⁶⁸ a need will continue to exist for the proper supervisory mechanisms and the will to do something about a problem as soon as it arises.

Then, there will be a high degree of assurance that the new or existing housing specialist department will live up to its full potential in serving the cause of housing justice.

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- 63 When the housing court was first begun in Boston, there was a wide divergence of backgrounds of the specialists. The first judge of that court found this approach to be a healthy and successful one. Conversation between the Report Editor and Judge Paul Garrity, ABA project national advisor.
- 64 See chapter 3 (Hartford-New Britain); chapter 4 (Hampden County); chapter 5 (Boston); chapter 16 (re Worcester's report, submitted as part of reporting to the ABA-HUD Program for its "planning stipend" work).
- 65 The underlying accusation is favoritism in the selection of the person by the appointing official. Another difficulty can arise if a CAC member later is employed; even if highly qualified, this can raise appearance problems.
- 66 This involves "pushing" litigants too hard in one direction or another. (In a strange situation, rumors persisted that one specialist had carried a side arm and did not hesitate to subtly let some litigants note this fact.)
- 67 In almost all of the cities studied, no questions were raised about the honesty of the individuals concerned. Only in one case were any real doubts expressed; if any questions were raised, they dwelt on whether or not some defendants were being too leniently treated by a particular specialist.
- 68 Allegations of corruption in administrative agencies were not in any way an appropriate subject for this particular Report.



ADDITIONAL STAFFING REQUIREMENTS

DEPENDING ON THE COURT--ITS JURISDICTION, CASELOAD, AND THE METHODS OF HANDLING ITS RESPONSIBILITIES--THERE MAY BE OTHER STAFFING NEEDS. THESE ADDITIONAL POSITIONS RELATE TO THE FUNCTIONING OF THE COURTROOM AS WELL AS GENERAL ADMINISTRATIVE TASKS.

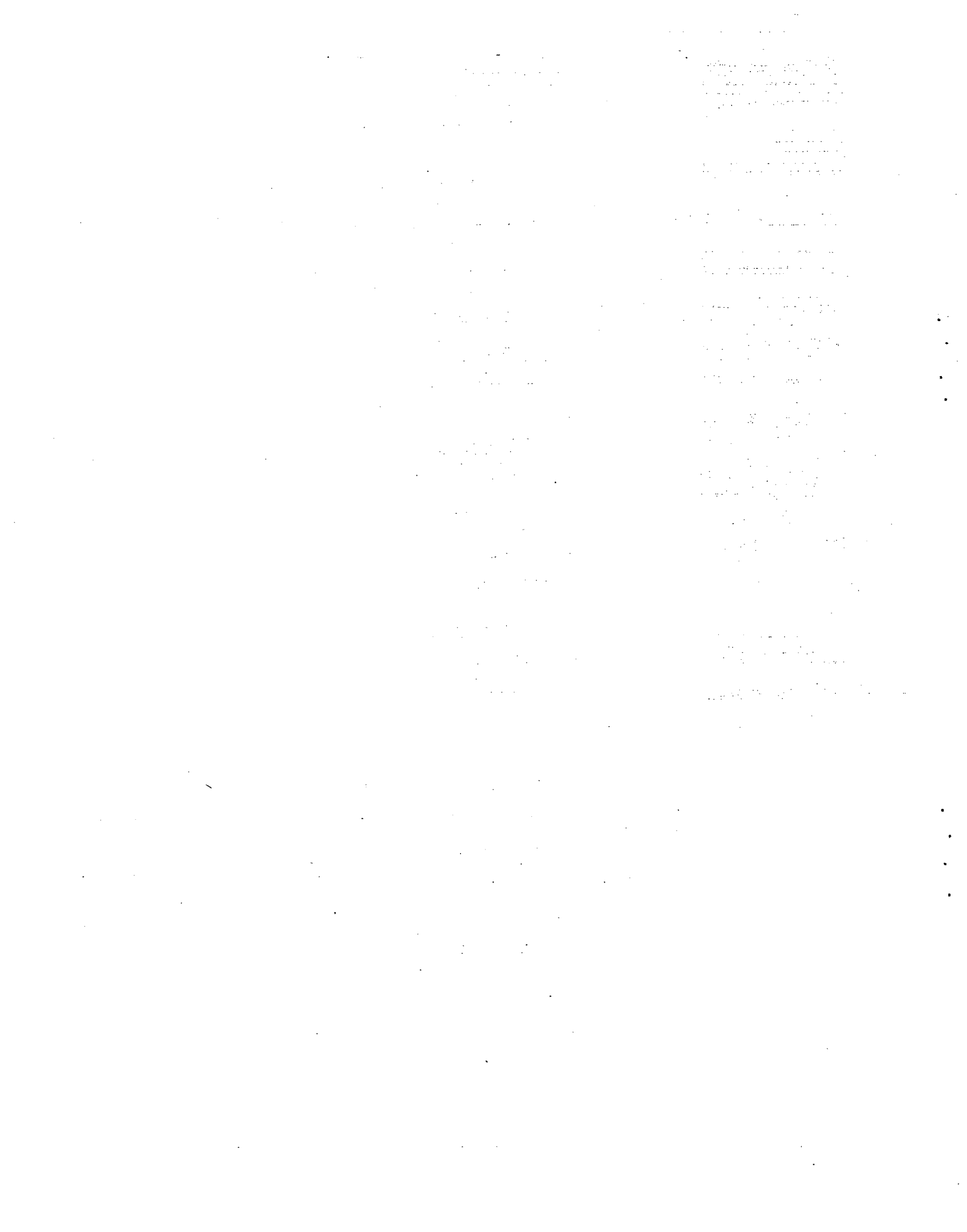
The staffing patterns of many of the courts studied for this Report differ greatly. The requirements for additional personnel depend in part on how other court positions are structured, such as those already discussed: the judges, clerks, and housing specialists.

Over time, each of the courts included in this Report has changed. This occurred in several different ways. (a) Some new positions have been created by legislation. (b) Others have occurred as courts themselves recognized new needs and acquired new types of personnel. (The above two situations are exemplified by the Massachusetts' housing court department's new Executive Secretary¹ and by Pittsburgh housing court's Court Administrator² positions.)

(c) Other positions have resulted from following traditional practices in that jurisdiction, such as the use of bailiffs. (d) Others come from reforms based on a recognition that certain procedures have been less than desirable.³ (e) Finally, some positions are a result of innovative thinking and attempts to use administrative and community resources in a new fashion.⁴

In any event, these positions can be of great assistance to housing courts. At least ten types can be distinguished; they are described in the material that follows. Careful consideration should be given to each when designing a new court. This can be done: (a) at the time of legislative enactments, either by mandating⁵ such positions; (b) or by making them "optional"⁶ (that is, "enabling" them to come into being at a later date). (c) Or, these positions can be created later when it becomes apparent that they are required. (The danger with this tack, however, is that court operations may be hampered in the short term,⁷ and the political "will" to create such new positions may have lost its momentum.)

- 1 The Executive Secretary position is created by legislation. See chapter 5 (Boston).
- 2 The position of Court Administrator was created administratively by the housing court magistrate in 1969. See chapter 9 (Pittsburgh).
- 3 Reform initiatives (such as the use of court stenographers in the Detroit and Chicago courts) and the bailiffs (whose duties differ greatly as among the courts studied) are discussed at length later in this section of the chapter.
- 4 See the next section in this chapter, on assignment of agency personnel and in regard to nonjudicial dispute resolution alternatives.
- 5 As discussed previously, housing specialists were mandated in the legislation for the Massachusetts' housing courts.
- 6 Such legislation might include an optional provision with the following type of language: "If the chief administrative judge finds that the housing court will benefit from the services of an administrator, then that judge may cause to be appointed a [position]...." (Obviously, certain layers of approvals or budgetary requirements also could be added.) The main point is to permit flexibility without necessitating later legislative amendments, assuming the housing court is established under statute.
- 7 An active CAC, analyzed at greater length later in this chapter, can (cont.)



administrator rarely performs any duties in the courtroom; this is handled by the tipstaff.¹²

In the Boston and Hampden County housing courts, the position of Executive Secretary is for the "housing court department" and is responsible to the administrative justice of the department (two housing courts are under one department¹³). The duties are primarily administrative in nature, including budgetary matters, personnel, and general management.¹⁴ The Executive Secretary serves, in effect, as a special assistant to the judge of that department. Overall, this new position is parallel to the executive secretaries for other court "departments" in the Commonwealth.¹⁵ As such, the position is unique and may not bear replication in most other jurisdictions unless a multi-city housing court system were established in that state.

In New York City, the clerk of the housing court holds an unusual position. Although titled "clerk", he acts as a professional housing court administrator under the chief judge for the civil courts of that city, reporting directly to him. Clerks of courts handle routine clerks' duties in the city's four boroughs where the housing courts are located.¹⁶

In most cities contemplating housing courts, it is likely that the size of the court will not necessitate a separate court administrator. If the court has a specialized and professional chief clerk, most of these duties can be performed by him or her.

The chief administrative judge (over all the courts in that jurisdiction) may wish instead to have a professional court administrator handle such matters, as in Hennepin County. Assuming that administrative functions are being handled adequately and that communications are good between the housing court and the

leeway to the judge in creating the position and in making assignments. (In many states, the duties of the clerks are prescribed by statute. Moreover, if the clerk is not specially assigned to the housing court, there is even less flexibility.) On the other hand, the duties of a clerk-magistrate, such as in Hampden County and Boston, could not be assumed by a court administrator; these duties and powers are prescribed by state statute.

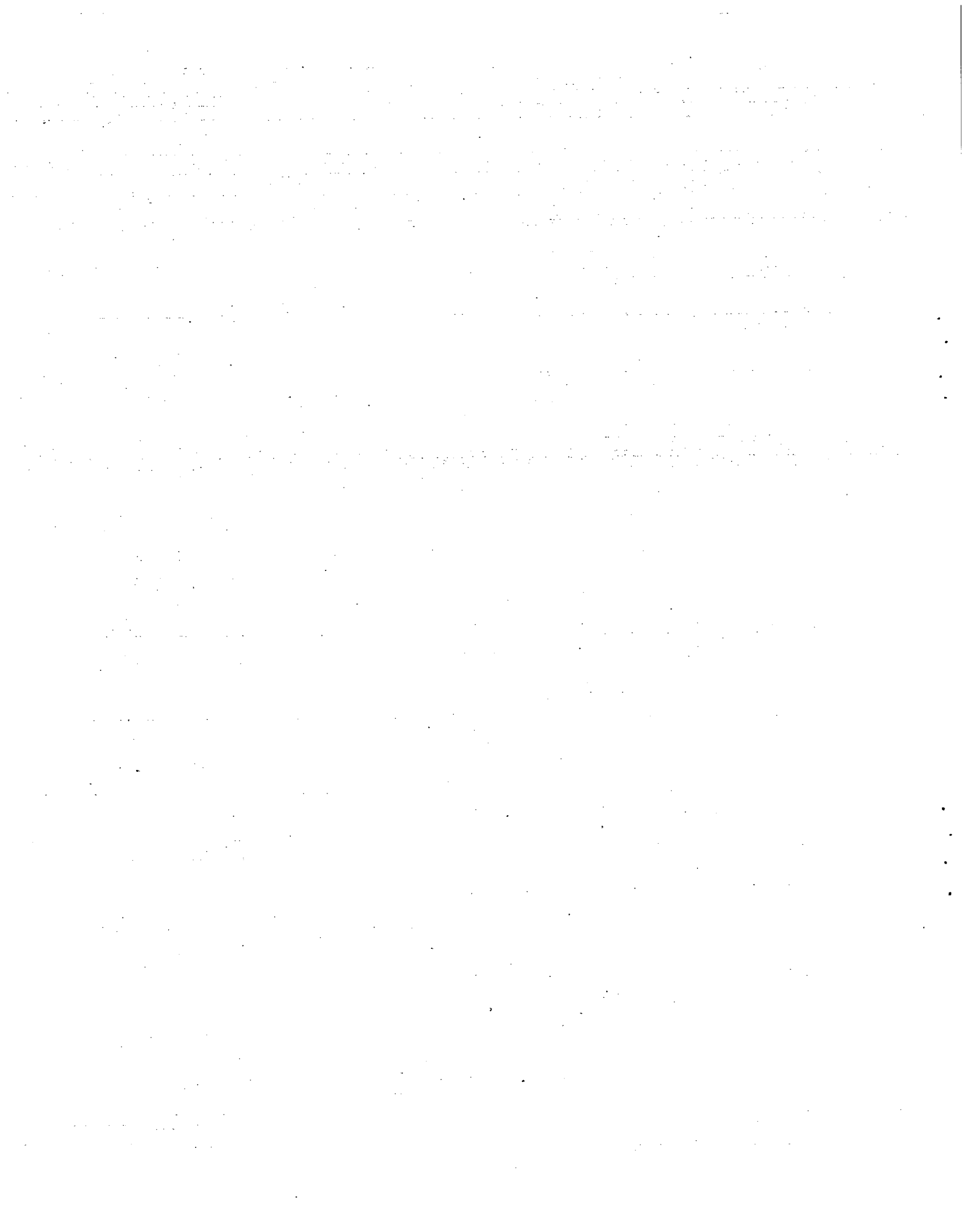
¹² See chapter 9 (Pittsburgh.)

¹³ The administrative justice of the housing court department (thus far only two cities--Boston and Hampden County--have housing courts, which are "divisions" of that department) is also the presiding judge of the Boston housing court division. See chapter 5 (Boston). As administrative justice, he appoints the Executive Secretary, whose office is housed at next to the Boston housing court.

¹⁴ The responsibilities of the administrative justice, the Executive Secretary, and the respective clerks of the two courts are not precisely described in the state statutes creating the two housing courts. Various passages in the legislation indicate that administrative responsibility flows to the administrative justice of the housing court department for full superintendence of the Massachusetts housing courts. His immediate "supervisor" is the chief administrative judge of [all] the trial court(s) of the Commonwealth, under the Supreme Judicial Courts. See *id.*

¹⁵ This came about as part of court reform in Massachusetts in 1978. Recognizing the need for improved court administration and court reunification, all departments were granted such positions pursuant to the statute. See *id.*

¹⁶ See chapter 6 (New York City).



There is some measure of strategy involved in these decisions. Going forward with too big a "package" of positions for a new housing court may offend decision-makers who are lukewarm to the idea in the first place. This may include not only legislators but the bench as well. In addition, the budget ramifications may inhibit creating some of these positions. Nonetheless, there are some lower-cost alternatives, which are mentioned in each of the three subsections that follow.

Finally, a distinction must be made between courts with high caseloads and those with much lower numbers of cases. As outlined in the beginning of this chapter, this will affect the numbers of staff and the separation/specialization of their duties.

FOUR POSITIONS MAY BE IMPORTANT TO THE FUNCTIONING OF THE COURT IN TERMS OF ITS JUDICIAL AND ADMINISTRATIVE RESPONSIBILITIES: THE COURT ADMINISTRATOR, THE LAW CLERKS, SECRETARIAL SUPPORT, AND PARALEGAL ASSISTANCE.

(1) Court Administrator. This position is created to relieve the judge of many of the administrative tasks and to assure smooth administration of the court. It exists as a separate position in only two or three housing courts: in Massachusetts and Pittsburgh.⁸ Also, for all intents and purposes, the "clerk" of the housing court in New York City is a court administrator (most of the usual clerks' duties are performed by the clerks in the four separate boroughs).

The position as found in these three courts is a hybrid of a number of different responsibilities, ranging from administrative and statistical duties to functioning almost as would the clerk of the court. (Other duties may be similar to those that a law clerk would perform, described in the next section, position type #2.)

The administrator of the housing court in Pittsburgh combines both types of skills.⁹ As there is no clerk for that court, he effectively serves in that capacity. (This combined function may be appropriate in most courts with moderate caseloads.) All files are inspected by him and calendared/scheduled before the court. In the absence of the magistrate, he can postpone cases. Moreover, he answers inquiries from the litigants and their attorneys. He maintains careful logs on all cases and sends follow-up memoranda to the code enforcement agencies where continuances or other not-final dispositions have resulted at previous hearings before the magistrate. Acting as a conduit between the magistrate and other persons, he also transmits the requests to the "housing clinic" staff¹⁰ and to the code enforcement agencies. Administrative responsibilities include supervising the support staff, performing statistical analyses, and carrying out other assignments made by the judge of the housing court.¹¹ The

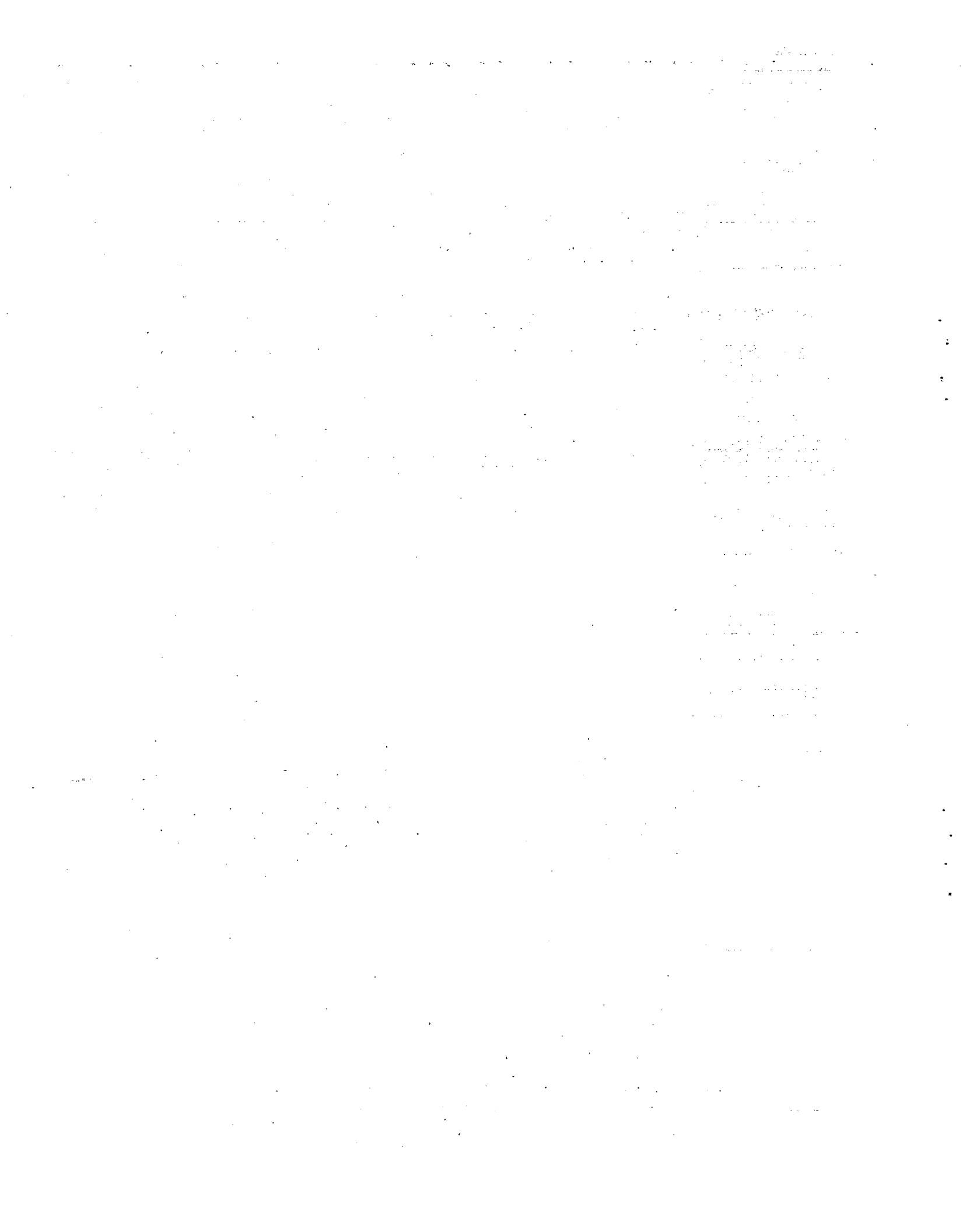
assist in maintaining this political momentum. See section titled "Mechanisms" (such as a CAC) for Community Participation".

8 A court administrator also exists for the overall general jurisdiction (not specialized) courts in Hennepin County. See chapter 13. However, the court administrator there performs these duties system-wide and not just relative to housing matters.

9 See chapter 9 (Pittsburgh).

10 Housing Clinic staff are akin to housing specialists, as described in an earlier section of this chapter. For further information, see chapter 9 (Pittsburgh).

11 Interview with Douglas King, Administrator of the City of Pittsburgh Housing Court, in Pittsburgh (October 16, 1978). Too, this gives greater (cont.)



other court and administrative offices, there will be little reason for an additional administrator at the housing court level. But the adequacy of the functioning of these other offices, given the prospective load of the new housing court, should be determined carefully before dismissing the idea of having a separate court administrator.

(2) Law Clerks. Only one housing court utilizes a "law clerk" on a fulltime basis. Almost all of the housing courts do not have any law clerks, even on a part-time or a seasonal basis.¹⁷ A few courts, however, have experimented with other positions that include some of the skills that a law clerk would bring to the court.

A number of judges have expressed their desire to have law clerks, especially where the housing court is handling landlord-tenant matters involving counter-claims or complex civil matters. It is in this area that the judge may prepare opinions that are other than brief (even sketchy) findings of fact and law.¹⁸

For example, in New York City, lengthy opinions by judges of the housing court have resulted in affecting the case law in that state,¹⁹ but they do not have a law clerk. In Boston, one of two judges hears most of the civil matters;²⁰ the presiding judge hears most of the criminal matters.²¹ Opinions are frequently prepared by that judge, which can impact on case law. Despite this situation, however, the law clerk has not been assigned to that judge for assistance in this type of work.²²

Yet these very judges are without part-time or full-time law clerks. Such a law clerk, perhaps shared by several judges, could assist in researching material for the judge and in polishing the opinions for review by the judge.

More than likely, this work is more necessary in some landlord-tenant cases involving complex legal issues. It would not be needed in day-to-day code

17 See also the discussion in the later section of this chapter, titled "Budgetary and Cost Implications".

18 As discussed elsewhere in this Report, most housing courts do not make many findings at all, much less actual opinions. This is especially true in summary proceedings. See generally Fusco, Collins & Birnbaum, CHICAGO'S EVICTION COURT: A TENANT'S COURT OF NO RESORT, 17 URBAN L. ANN. 93 (1979). Small claims courts make some brief findings. See generally J. RUHNKA, HOUSING JUSTICE IN SMALL CLAIMS COURTS (1979), published by the National Center for State Courts for the American Bar Association's Special Committee on Housing and Urban Development Law.

19 See generally chapter 6 (New York City).

20 Interview with Judge Patrick J. King, Boston Division of the Housing Court Department, in Alexandria, Virginia (September 17, 1979). This practice was followed at least until Judge King transferred to another court in Massachusetts in November of 1979. In mid-1980, he returned to the housing court.

21 Judge E. George Daher hears criminal matters (code enforcement). See chapter 5 (Boston). Judge Daher expressed the opinion that this division of cases prevented "forum-shopping" as between the two judges on the court. Interview with Judge E. George Daher, Presiding Justice of the Boston Division of the Housing Court Department of the Trial Court of Massachusetts, in Boston (September 18, 1979). Comments contra, see chapter 5.

22 The law clerk was assigned primarily to Judge Daher for various tasks including mediation in certain cases. Assisting Judge King with opinions was not done. Interview with Judge King, supra note 20.



enforcement decisions, for example. Moreover, a law clerk could do additional research and compilation work of significant benefit to the court and to the public.

Such tasks could include assembling and indexing all relevant housing case law, statutory materials, and local ordinances as well as administrative laws and procedures bearing on the housing court's work. Such complaints could be helpful to the court and the organized bar. Similarly, a law clerk could work on development of a benchbook to be used not only by the judges on the housing court, but elsewhere as well.²³

For sheer lack of staffing, many courts do not prepare opinions except in a rare case or two. This can lead to problems where an appeal is taken by the litigants,²⁴ since the record in the case may be inadequate or virtually nonexistent. Furthermore, without a good body of case law (opinions), other judges cannot benefit from utilizing prior decisions. This also can tend to make the case decisions more ad hoc.²⁵

A few courts have overcome some of these problems by using still other court personnel to perform some of these tasks. In Hartford, the two assistant clerks are attorneys who act as informed "sounding boards" for the judge on a number of matters, including court opinions.²⁶ In New York City, the court's clerk assembles and compiles the opinions from the 16 judges, prepares educational materials for the judges' continuing seminars, and develops statistical information and management reports.²⁷

Nonetheless, in almost all of the courts, judges are without the legal drafting assistance that could be provided by law clerks. Three reasons may stand in the way of obtaining such clerks: (a) financial limitations;²⁸ (b) the time it takes to properly train a law clerk; and (c) the competition with other more prestigious courts for the law clerkships that are available. It would seem, however,

23 Such benchbooks are described in an earlier section of this chapter.

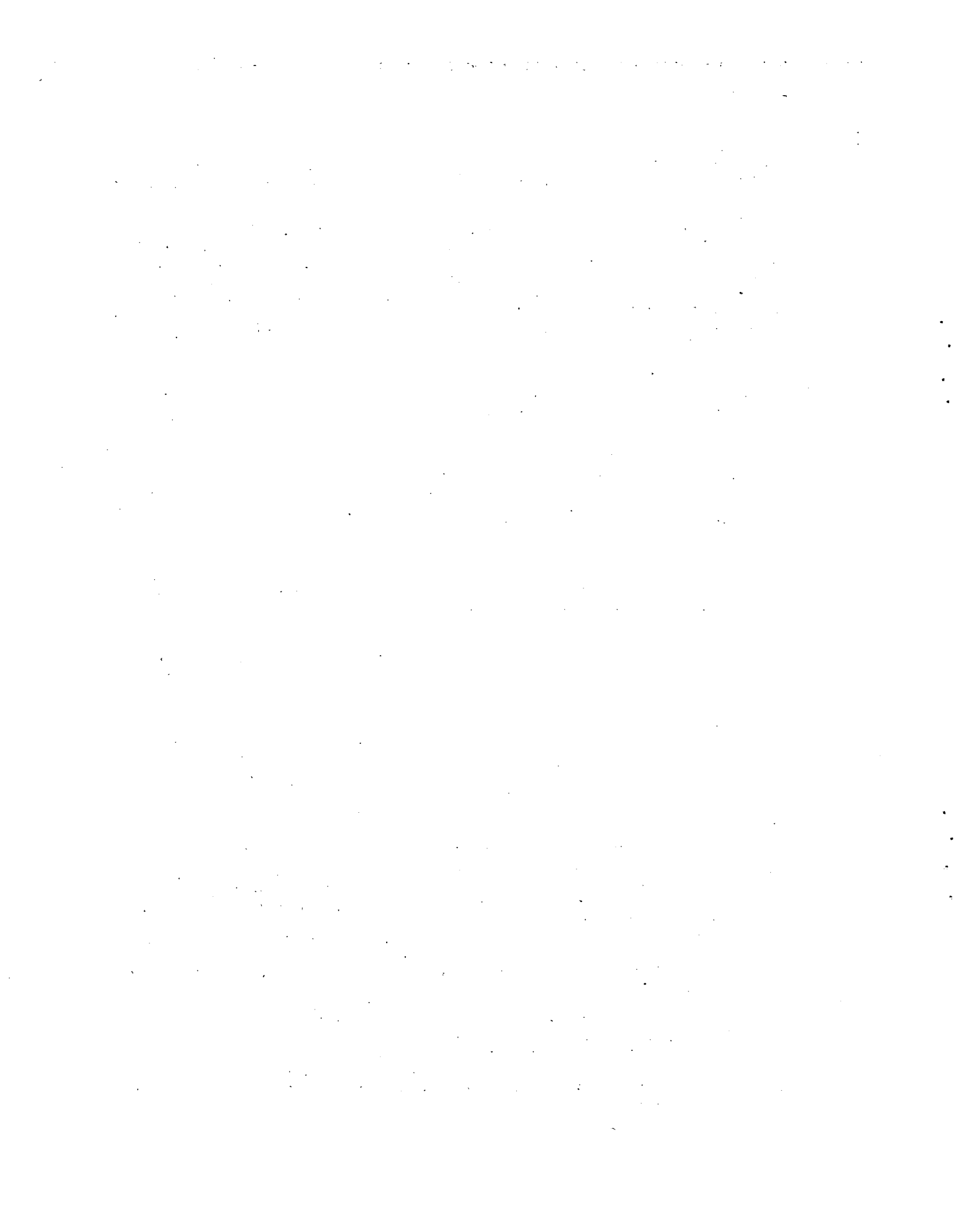
24 Interestingly, some judges have expressed a wish to have law clerks assist with opinions (as there is little time available to do quality research), in part due to the judge's perception that he or she often risks being reversed on appeal. (Moreover, a good opinion helps not only the litigants, but the development of the case law.) As a practical matter, very few appeals are taken, and usually only when free legal aid is available. In cases where it is evident prior to the hearing that such an appeal is likely due to the nature of the case, the proceedings often are recorded or taken down by a court reporter. Also, such cases usually find the judge preparing a more extensive opinion because, in some jurisdictions, the appeal is on the record and not by trial de novo.

25. In some states, landlord-tenant law is somewhat complex and requires a new judge to "catch up" with the law. This is one of the reasons for compiling opinions and benchbooks: to educate the judge and to permit consistent application of the law despite which judge happens to be hearing the cases. New York City holds judges' seminars; see chapter 6.

26 Interview with William Sadek, Assistant Clerk of the Housing session - Superior Court of the Hartford-New Britain Judicial District, in Hartford (July 17, 1979).

27 Interview with Harry Joslin, Clerk of the Housing Court - Civil Court of the City of New York, in New York City (August 7, 1978).

28 See later section in this chapter, titled "Budgetary and Cost Implications," for alternatives for reducing the costs involved.



that housing courts could explore possibilities with area law schools much more aggressively. Part-time assistance is available during the school year, and full-time assignments are possible during the summers.

The one court that has a law clerk is Boston. In actuality, he is an attorney who has been with the court for several years. He has special assignments from the presiding judge that range far beyond those that are usual for a law clerk (a third year student or a recent law school graduate). His role has not been spelled out by the court, and it appears to be an evolving one. Among other matters, he holds pre-trial conferences where the parties are represented by attorneys, and encouraging clarification of trial issues, motions, and possible settlements.²⁹

(3) Secretaries. These personnel provide the third type of assistance needed by most judges in housing courts. In some cities, several judges complained about having to do most of their own typing.³⁰

In Boston, on the other hand, both judges have secretaries assigned directly to them from the clerk's office.³¹ Some courts, as in Hartford, provide secretarial assistance out of a "pool", although the judge's work usually is handled by one person familiar with that work. In Hennepin County, the judges have administrative aides assigned near their chambers. In Detroit, the court reporter is assigned to the judge and pulls "double duty" as a secretary.

In Baltimore, the judge is so overloaded that he scarcely has time to prepare written materials; he can only enter information, by hand, into the case files as they come before him in court.³² Similar types of situations must be avoided as a community plans and budgets for a housing court.

(4) Paralegal Professionals. None of the courts studied for this report utilized paralegals.³³ Such paralegals could serve many functions, from some of the lesser aspects of a law clerk's work, to that of administrative aide and secretary, to certain aspects of a court administrator's position.

This lack of trained staff is surprising in the abstract, but not so given the budgetary limits in most courts. Indeed, this exemplifies what amounts to an extraordinary underinvestment in personnel for most court systems. Most attorneys' offices or legal aid offices have not only secretaries, but paralegals as well. Yet in comparison, the courts themselves -- which adjudicate, develop, and apply the body of the law -- are denied these very useful, and even essential, services.

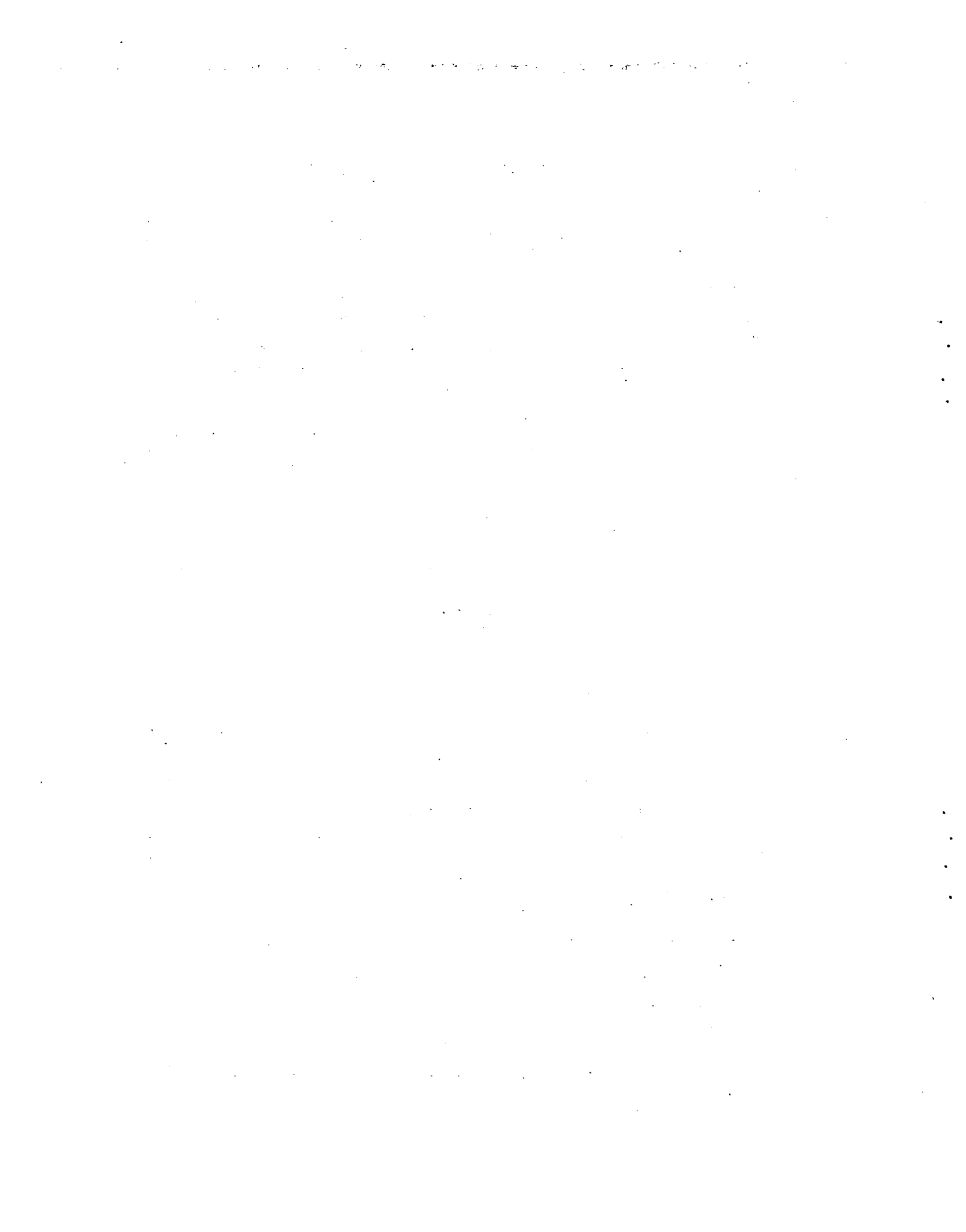
29 He does so in lieu of the judge or the clerk (who do so in other jurisdictions, depending on local practice). Interview with Harvey Chopp, Law Clerk at the Boston Housing Court, in Boston (October 31, 1978), regarding his overall duties.

30 Interviews with judges in one city City (September 18-19, 1978). Apparently, the situation has since been corrected.

31 Instead of a "pool" arrangement, the clerk and the judges in Boston determined that two of the clerk's office staff should be detailed to the respective chambers of the two judges. In Hampden County, the judge of the housing court does not have a separate secretary.

32 This appears to be a common practice; Abbreviated notes are put in the files of most cases. In another court that was studied, the judge simply writes down the case dispositions across the face of the complaints.

33 The term "paralegal" is meant here to include only persons who have completed the full training and have been so officially certified.



THREE OTHER POSITIONS MAY BE IMPORTANT TO THE FUNCTIONING OF THE COURTROOM PER SE: THE ASSISTANT CLERK, THE BAILIFF, AND THE COURT REPORTER OR STENOGRAPHER.

(5) Assistant Clerk. The role of the assistant clerk, who assists the judge by performing such tasks as calling the cases and making certain entries in the case jackets, has been discussed previously.³⁴

(6) Bailiff. The basic duty of the bailiff is to help maintain order in the courtroom. Generally, this is done by a uniformed officer of the court who is seated next to the "rail" separating the public seating area from the hearing and bench area in the courtroom. In busy courts, a second bailiff occasionally may act as a "messenger", perhaps taking information back and forth to other court offices or getting court personnel (such as housing specialists) to the courtroom if required by the judge.

In Boston's housing court, the bailiff performs a number of duties. Litigants, upon entering the courtroom, can ask brief questions about when their cases will be heard or ask directions to other court offices. In addition, outside of the courtroom per se these officers are authorized to perform service of process, warrants, and orders of the court.³⁵

In the New York City housing courts, bailiffs sit just inside the entrances to the hearing rooms (courtrooms).³⁶ They are the first persons with whom the public has contact upon entering the courtrooms. The bailiff calls the cases and performs such unique duties as physically organizing the case files (then handed to the judge) and recording the actions taken in each case in a bound volume.³⁷

A similar function is performed by the "clerk-tipstaff" in the housing court in Pittsburgh.³⁸ As his title suggests, his position is a combination of bailiff and assistant clerk. He sits at the far end of the conference table³⁹ with the magistrate. The information that he writes down, such as in the docket book pages, then goes to the Court Administrator.⁴⁰

In Hampden County's housing court, one of the court officers was also appointed as an acting assistant housing specialist. He divides his time between the responsibilities of these two jobs.⁴¹ This contrasts with the more traditional roles of the bailiff, such as in Baltimore where the bailiff basically only "announces" the convening of court and maintains order in the courtroom.

In Detroit's court, bailiffs perform a different function altogether. They are

34 This was described at length in a previous section of this chapter, titled "The Clerk's Office: Staffing and Operations".

35 See chapter 5 (Boston).

36 There also is a bailiff in the civil court, where the calendar call for the day is held. The bailiff helps call the cases and directs parties to the respective hearing rooms where housing court(s) is in session. See chapter 6 (New York City).

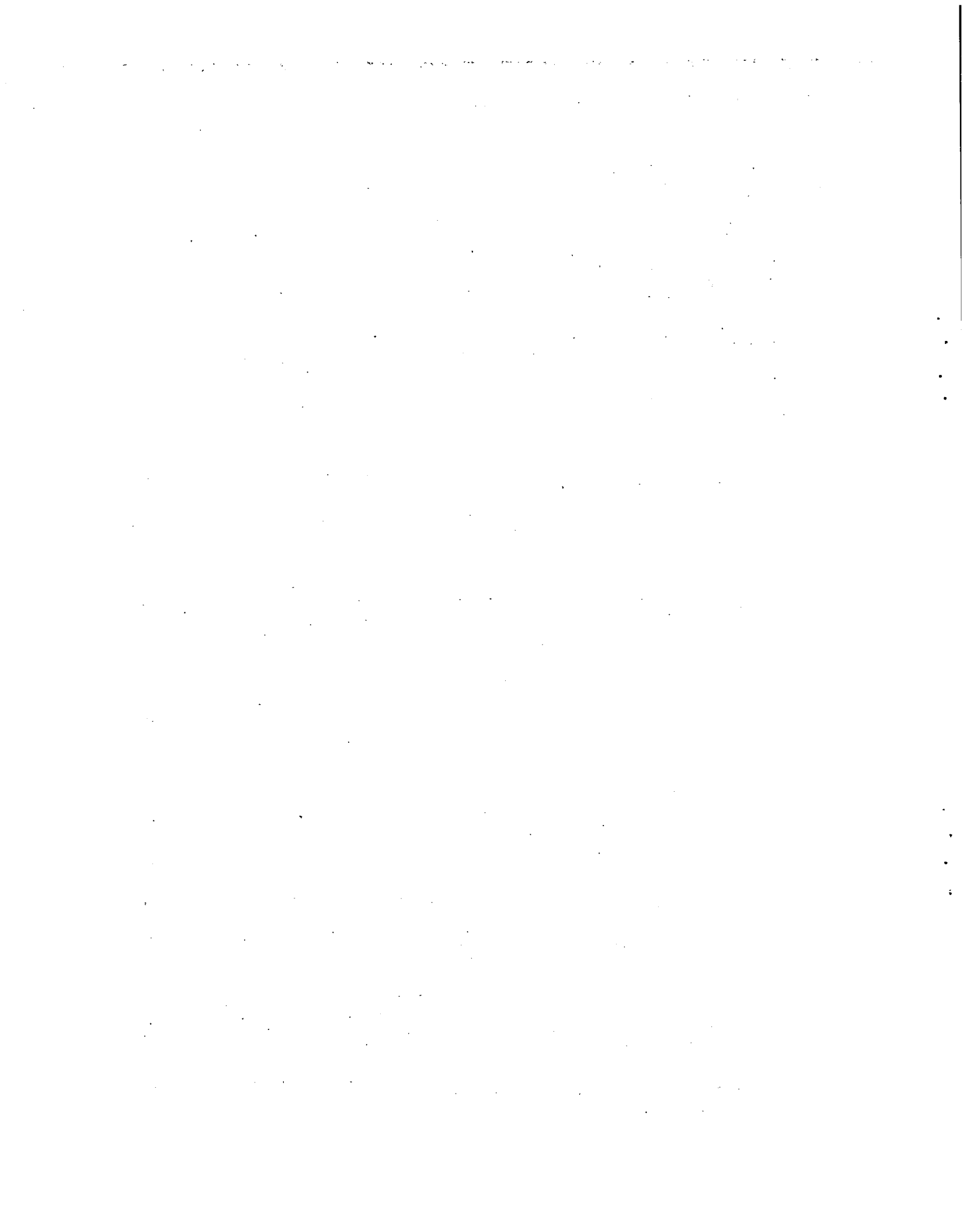
37 Such duties often are performed by assistant clerks in heavy caseload courts (except in New York City).

38 See chapter 9 (Pittsburgh).

39 See later section in this chapter, titled "Court Location and Physical Facilities". In Pittsburgh, the judge is not robed and does not sit at a raised bench.

40 The court administrator's position was described in the immediately preceding section of this chapter.

41 See chapter 4 (Hampden County).



appointed by the court solely for service of court papers and for carrying out court-ordered evictions. Separate fees are charged to landlords for the services of these bailiffs.⁴²

In Philadelphia's courts, there is an "assistant chief crier"⁴³ who does what the clerk-tipstaff does in Pittsburgh and what bailiffs frequently do in many other courts. There also are separate court officers assigned to the courtroom to maintain order. Thus, there is specialization within the full complement of courtroom personnel.

In summary, therefore, the duties and responsibilities of bailiffs differ significantly among the various courts studied. It is apparent, too, that housing courts may even have their bailiffs assigned to a wide variety of responsibilities, and even, to more than one type of position. (This offers the opportunity to reduce the costs of a new housing court, although much depends on tradition and practice in the local court system.)

(7) Court Reporters or Stenographers.⁴⁴ Some housing courts may be able to do without such positions, instead making use of mechanical devices for the purpose of recording the proceedings in the courtroom.⁴⁵ (On other occasions, such as in complex trials or hearings, the parties may request that a court reporter be present. In these cases, generally the party making the request pays for the service. The request is made in advance and the stenographer may be drawn from a "pool" available to the courts in that jurisdiction.)

In Boston, proceedings are tape recorded using a reel to reel recorder, as they are in Hampden County and New York City. In Pittsburgh, the housing court magistrate used a disc recorder that was akin to a dictating unit.⁴⁶ (Interestingly, the district justice who handles similar types of cases in the outlying [Allegheny] county area does not record the proceedings at all.⁴⁷)

The person actually operating the tape recording equipment differs among the courts studied. In Hartford, for example, an individual called the "court monitor" has the responsibility of running the recording equipment.⁴⁸ On the other hand, in Pittsburgh and New York City, the judges themselves operate the recorders from the bench. In other courts, the assistant clerks or other courtroom staff take care of this task.

The question arises as to whether all or only part of the proceedings in the courtroom "should" be recorded. The answer depends in part on local rules of practice as well as the legal implications in failing to do so. If the

42 See chapter 12 (Detroit).

43 This was discussed in an earlier section of this chapter, titled "The Clerk's Office: Staffing and Operations".

44 Herein, these terms are used interchangeably, although there is a difference as to use of special "typing" equipment or stenography.

45 See chapter 6 (New York City). There the court also can draw on stenographers in the event of malfunctions in the recording equipment.

46 As noted later in this chapter, in Pittsburgh the proceedings are held at a conference table. The equipment, which seemed adequate for this purpose, tended, however, to malfunction. Starting in 1979, proceedings are only rarely recorded. See generally chapter 9.

47 See chapter 9 (re Allegheny County). In fact, the general operations of this court and its minimal level of specialized personnel are in stark contrast to the city's housing court.

48 See chapter 3 (Hartford).



court is one of record and appeals are taken on the record of the proceedings below, a full transcript of the proceedings should be available. This will come from either the tape recording or from a court stenographer. In other situations, cases on appeal are accomplished by trial de novo.⁴⁹ In such instances (where the first hearing is not in a court of record), there is no legal reason per se to record or report the hearing.

Other reasons have been advanced for completely tape recording the hearings. Judges and others have asserted: (a) it is a convenience to the parties before the court; (b) the practice reduces the costs to litigants;⁵⁰ (c) as the findings of a court are often sketchy in terms of what is actually written down, the court may find it advantageous to "dictate" certain findings instead, with only a brief notation on the court records as to the "result" reached; (d) the tape recorder has a "psychological" impact on the decorum of the parties in the courtroom; (e) there is always the possibility that allegations will be made as to what the judge said or did (that he or she acted improperly), and the recording preserves "evidence" to rebut or substantiate such claims; and, (f) the very practice of recording the proceedings tends to instill in the public an impression that the court will act fairly and that everything will be "on the record" in that courtroom.

These rationales for recording the proceedings are weakened,⁵¹ however, in some courts. The judges have been observed to leave the tape recorder "off" during much of the hearings, turning it on again at certain points in the proceedings.⁵² Because this practice may lead to an impression in the minds of the litigants that the judge is arbitrarily selective, it should be avoided.⁵³

To make matters worse, some courts have been observed where the judge shuts off the tape recorder and makes various comments that he or she would not want to have recorded. For example, statements have been made such as: "Let's go off the record here. I think you ought to go out in the hall and try to settle this thing. We can't take the time in this court to...If you can't agree, another hearing date will be set and you'll have to come back in here." Sometimes the parties will object to this procedure, but usually unrepresented litigants feel uncomfortable about "debating" with the judge. The consequence is that the settlements typically are unsupervised, and the agreements may not even be reviewed

49 This term means that the "appeal" is a new hearing without regard to any prior hearing records, evidence, or decisions. In effect, it is a new trial. (At this stage, it is likely that the parties will be represented by attorneys, even though there may be no requirement to do so.)

50 The parties need not request stenographers and thus, need not pay for them. Only when a transcript is desired, if at all, would any costs accrue to the litigant(s) concerned.

51 The only rationale that would remain is item (c), supra text: a form of dictation used by the judge. The findings may or may not be subsequently transcribed and entered.

52 In some courts, the judge has a button at the bench which starts or stops the recorder. The first judge of the housing court in Boston had that button removed so that the public could be confident that the entire proceedings were being recorded. Comments by Judge Paul Garrity, national advisor.

53 If the court has reason to record only part of the proceedings, such as for the exclusive purpose of "dictating" findings, then the judge should explain this to the litigants at the beginning of each hearing. A note to to this effect also could be included in the informational brochure, if the court has developed one.)

by the judge.⁵⁴

One argument is that only full-scale hearings or trials ought to be recorded: not the arraignments or the uncontested cases, for example. This point of view tends to ignore all the reasons cited above for recording the proceedings, not the least of which is the impression this can have on the public.

The argument fails, too, for reasons explained elsewhere in this Report: very few cases actually reach a full-scale "hearing" or trial. The vast majority are disposed of at some point prior to a formal trial or hearing.⁵⁵ Consequently, the bulk of the litigation otherwise would be "heard" without any recordings having been made.⁵⁶

Another matter argues against recording only the "contested" cases. What constitutes a contested case is open to interpretation; not infrequently, it is interpreted erroneously. Moreover, if "uncontested" matters are heard before other than a judge,⁵⁷ there is good reason to have these matters recorded as well. Indeed, abuses of discretion found in some of the courts would have been less likely were the judging (including any attempts to persuade the parties to "settle") to have been recorded.

Practical objections have been raised to recording the proceedings. (a) The first is cost. There is an initial capital outlay for equipment, tapes, and methods of storage, but the costs are relatively small (at least, after the first year). (b) Another question relates to how long and where the tapes would have to be stored.⁵⁸ (c) A third objection is the time or extra personnel this process might require. The court's bailiff or assistant clerk should be able to load the tapes and keep them running. As each case begins, a short notation as to the counter number for the tape could be made either in the docket book or on the case jacket.⁵⁹

Court stenographers or reporters are used in some courts. In Chicago, for exam-

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- 54 The practice of encouraging, if not coercing, out-in-the-hall settlements that are unsupervised (without a neutral party being present) is discussed in another section of this chapter.
- 55 Excluding default hearings, many cases are heard in a "preliminary" fashion. If the judge then determines that there is a contested situation, he may set the formal hearing for a later date. In Hennepin County, on the other hand, contested cases are screened from the uncontested by a hearing officer. Judges then hear the contested cases the same day (unless a jury trial is requested). See chapter 13 (Hennepin County).
- 56 As noted throughout this Report, many cases are "continued" and a formal hearing is held at a later date. In code enforcement cases, this may happen repeatedly until compliance is achieved, without there ever being a formal "trial". It is relatively clear that these various proceedings ought to be recorded, in any event.
- 57 This may occur before a hearing officer, a court commissioner or magistrate, or a clerk or an assistant clerk. Mediation is a different matter altogether (as accomplished by housing specialists, volunteers, and others).
- 58 This may depend on the appeals period in that jurisdiction, which may be quite short. No real burden for storage need result. (At the same time, if there are complaints that might be lodged as a result of improper courtroom decorum and procedure, some consideration ought to be given to whether or not review of the recordings will be necessary.)
- 59 This would allow the tapes to be easily "indexed". In longer trials, certain segments could be coded, as by witnesses' names.

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ple, court stenographers transcribe the code enforcement proceedings, which are brought in the housing court. Moreover, court stenographers were added in 1978 in the city's forcible entry and detainer courts (evictions). This step was taken as one of the reform measures,⁶⁰ after the "eviction court" was severely criticized by lawyers' groups and recommendations for changes were made.⁶¹

As already mentioned, the court reporters in Detroit also double as the secretaries for the judges when their courts are not in session.⁶² In Philadelphia, court stenographers are present in the Landlord-Tenant Court as well as in the Code Enforcement Court.⁶³

In Hennepin County, contested cases before the judge are taken down by a court reporter in both code enforcement and unlawful detainer actions (evictions). Even the "uncontested" matters, brought before hearing officers, are recorded as well. (Small claims actions⁶⁴ are not recorded.)

It is evident that the practice of recording proceedings differs as among the cities studied, and within the courts as to the types of cases: code enforcement or landlord-tenant, and contested or uncontested. Some cities have changed their practices. As already mentioned, Chicago started using courtroom stenographers as a reform measure in 1978⁶⁵ in eviction matters. (The housing court, handling codes, has done so for quite some time.) Also in 1978, a Michigan appellate court decision caused court reporters to be used in the Landlord-Tenant Division; previously, this had to be requested.⁶⁶ (On the other hand, since early 1979, the Pittsburgh housing court records hearings only if requested to do so by one of the parties.⁶⁷)

There are definite advantages to recording or reporting (by stenographer) all hearings. In most court systems not currently doing so, this practice will not be a welcome one, and resistance to the idea may be encountered.

VARIOUS OTHER POSITIONS RELATING TO THE OVERALL OPERATIONS OF THE COURT MIGHT BE CONSIDERED LOCALLY: INTERNS AND VOLUNTEERS, CASHIERS, PROCESS SERVERS, AND CERTAIN SERVICE-ORIENTED FUNCTIONS.

(8) Interns and Volunteers. The use of law clerks and law students has been discussed previously. In addition, there are a number of creative options available to the courts, although few make use of them. In Boston, for example, the clerk's office has successfully employed summer undergraduate interns and graduate students without law training to perform certain administrative, management, and statistical papers. This has supplemented the work of the court staff,

60 See chapter 10 (Chicago).

61 See generally Fusco, *supra* note 18; Rothstein, *The Chicago Experience*, 17 *URBAN L. ANN.* 133 (1979); Klein, *The Politics of Housing Dispute Resolution: An Academic Perspective*, 17 *URBAN L. ANN.* 353 (1979).

62 See chapter 12 (Detroit).

63 See chapter 14 (Philadelphia).

64 See chapter 13 (Hennepin County). Small claims are heard in the "Conciliation Court", which is not a court of record. (In the housing court in Boston, small claims also are heard in that court as it has comprehensive subject matter jurisdiction. See chapter 5.)

65 This was meant as a safeguard to better ensure due process.

66 See chapter 12 (Detroit).

67 Pittsburgh's housing court is not a court of record, although code violations are criminal matters. See chapter 9.



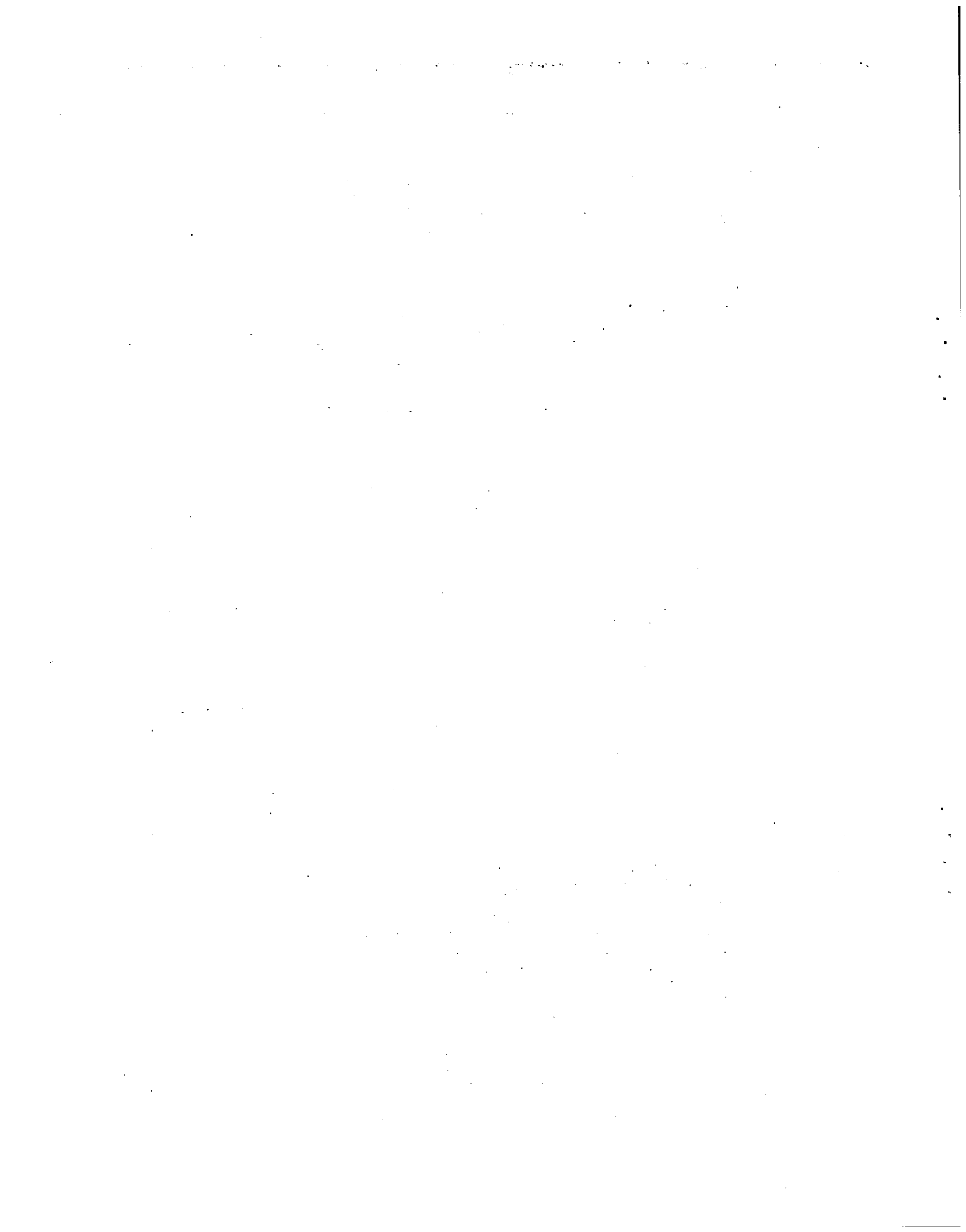
accomplished useful tasks,⁶⁸ and aided both the student and the court involved.⁶⁹

Many colleges and universities have such internship programs. Some last only a few weeks, and the undergraduates may need only minimal or no stipends.⁷⁰ Other internships may be part of seminars where the students are preparing course papers and, therefore, seek this type of learning experience. Others are full-time internships required as part of graduate school studies.⁷¹ (If the student is to be paid, there are some federal funds made available to the schools concerned, covering up to 90% of the wages.)

To date, few courts studied have made much use of other sources of assistance, such as volunteer help from the community. Innovative programs can be designed, including utilizing the resources of retired persons in the community.⁷² Such jobs could range from assisting with directing people on high caseload days, to using persons with private business experience in court management areas. This community service might well be welcomed by senior citizens. (The process of selection need not be time-consuming for court personnel.⁷³)

(9) Cashiers. In landlord-tenant matters as well as code enforcement proceedings, a cashier may be necessary in order to collect fines, small claims judgments, or rent escrow⁷⁴ deposits. In many courts, this job is not a separate

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- 68 This was done in 1979, when a student exhaustively examined the statistical and other records for the clerk. Telephone interview: R. Susan Dillard, Clerk-Magistrate of the Boston Division of the Housing Court Department (October 12, 1979). In 1972, the first housing court judge used a law student to prepare an exhaustive legislative history of the Boston Housing Court. See generally chapter 5 (Boston).
- 69 The Supreme Court of the United States, for example, has two programs (in addition to the clerks who serve the Justices). The Judicial Internship Program has seen more than 90 interns in less than a decade. Serving 3-6 months, without compensation, the students come from diverse backgrounds in the social sciences, management, and law. The Judicial Fellows Program, instituted in 1973, draws 2-3 early-career professionals to the program each year, for one year assignments. Of the first 14 (averaging 32.5 years in age), all but one were engaged in university teaching. Nearly half were not lawyers. See generally Cannon & Morris Inside the Courts: The Judicial Fellows Program, 12 PS [NEWS J. AM. POL. SCI. A.] (1979).
- 70 Connecticut College offers one such program, which the ABA-HUD program has utilized frequently.
- 71 This was a practice, for example, at the Fels Institute of Local and State Government (Wharton School) for all graduate students. Many other graduate schools of public administration have internships as well.
- 72 It is remarkable that the judicial branch has seen little of this sort of assistance (compared to the executive and legislative branches, where experimentation is more widespread).
- 73 This is a function that might even be handled by the CAC. See later section in this chapter, titled "Mechanisms (such as a CAC) for Community Participation".
- 74 Rents are paid into an escrow account(s) usually at the time a conditions defense is asserted. Generally, rents remain in the accounts pending a hearing on the merits (and sometimes, subsequent to the hearing, pending landlord repairs). Normally, the tenant already has withheld rent and the rent escrow arises in the context of a proceeding initiated by the landlord for an eviction. There are other variations, as in Pittsburgh. See chapter 9.



position, and the job is handled in the clerk's office at the counter. Also, one of the staff in the courtroom may handle part of this job. For example, in Pittsburgh the clerk-tipstaff is present at the conference table to collect fines that are paid that day. In Allegheny County, the district magistrate has a small office staff who can collect fines, if defendants wish to pay at that time.

Rent escrows are handled in a variety of ways.⁷⁵ In Baltimore, a "rent escrow clerk" handles what the title suggests, on a separate floor of the courthouse building. In Hennepin County, tenant-defendants go "downstairs" to the clerk's office to deposit their monies at the clerk's office. In Pittsburgh, a somewhat unusual method is employed. If the rented premises are certified as "uninhabitable" by the code agencies (according to a series of "points"), tenants deposit their rent into the Mellon bank escrow accounts.

A repeated problem seen in many courts is the failure to pay outstanding fines or judgments.⁷⁶ This is described elsewhere in this Report. Suffice it to say that the court may wish to designate one of its personnel, likely from the clerk's office, to actively pursue the collection of these fines.)

(10) Process Servers. Service of process can be a somewhat complicated function, as described elsewhere in this Report.⁷⁷ Depending on legal requirements as to service, as well as the efficiency (or lack thereof) encountered with the agencies concerned, this personnel aspect can become critically important.

One of the functions of a group studying the implementation of a housing court, whether for code enforcement or other housing-related cases, should be to pinpoint these types of needs. Opinions as to reforms in this area are likely to differ greatly in the community.⁷⁸

Service of process rules and laws may need to be changed. Moreover, streamlined methods of service may have to be considered, including either adjustments to administrative mechanisms or new procedures and staff within the courts. To the extent that service can be accomplished by the private party (usually, the landlord) rather than through "official" process servers, some of this personnel workload can be alleviated. Many court rules do not permit this type of service; others have additional steps for service.⁷⁹

In landlord-tenant cases before the FED Court in Chicago,⁸⁰ there must be personal or substituted service accomplished by the Cook County Sheriff's Office.

75 See chapter 8 (Baltimore); chapter 13 (Hennepin County); chapter 9 (Pittsburgh, re landlord-tenant aspects [which are not within the jurisdiction of the housing court *per se*]).

76 The failure of small claims courts to actively assist in collection of "private judgments is distinguishable from fines, which are amounts owed the government/public by "guilty" defendants. Nonetheless, both sets of problems are critiqued elsewhere in this Report. See chapter 17 (re housing justice in small claims courts).

77 See generally chapters (3-15) (city chapters).

78 The landlord and tenant sectors are likely to have proposals that address abuses under the current service ("war stories" may abound). The touchstone here is whether undue delays or faulty service seem to be recurrent, and what measures will cure these problems.

79 Service by mail, used in Baltimore, is accomplished by the court as an additional back-up (not required by law) to personal or "posted" service. See chapter 8 (Baltimore).

80 FED stands for Forcible Entry and Detainer (eviction cases).

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Writs of restitution (physical eviction) generally also are done by the Sheriff's Office, taking from three weeks to as much as two months.⁸¹ Code enforcement cases in the housing court of Chicago are hampered even more severely by lengthy delays. The Sheriff's Office requires a minimum of 90 days notice to serve the defendant (for appearance at the first court hearing). These delays have been criticized. One alternative, permitted under state statute, is "special process servers". These persons are selected by the Corporation Counsel of the city and are paid to accomplish service.⁸²

The Philadelphia courts have approached the situation differently. The Landlord-Tenant Court and the Code Enforcement Court utilize special "writ servers" and "landlord and tenant officers". The former serve summonses and complaints, the latter serve notices to quit and writs of possession for landlords. (It is interesting to note that actual physical eviction can take place at the time of service of the writ.) Many landlords use these officers, rather than waiting for the much longer process through the sheriff's office.⁸³

Baltimore's housing court uses "Special Enforcement Officers" from the city's Department of Housing and Community Development to accomplish service of the summonses in code violation cases. These experts are former agency code inspectors, and the approach is quite successful. The arrangement does not involve direct costs to the court, and places the responsibility in the hands of the code enforcement agency. In the Rent Court, constables do service of process; civil process also may be done by the Sheriff(s).⁸⁴

In Detroit's Landlord-Tenant Division, landlords pay court "bailiffs"⁸⁵ fixed fees to serve court papers and evict persons, if necessary.⁸⁶ In the Traffic and Ordinance Court, which handles code violation cases, three policemen are specially assigned for service of process and for bench warrants.

The above two court systems thus offer a series of interesting approaches, as do several of the courts mentioned below. The procedures in landlord-tenant and code violation cases may deserve replication in other court systems.

In Boston and Hampden County, the court officers, who are uniformed bailiffs, can serve process and orders of the courts when they otherwise do not have courtroom duties to perform. In addition, Hampden County's chief housing specialist is appointed as a deputy sheriff. In unusual circumstances, he or she can assist by carrying out civil process. This is an advantage, as the housing specialist tends to be aware of certain problem cases and can effectuate service when the opportunities present themselves.⁸⁷

Pittsburgh uses a different "first service" approach. Service is accomplished

81 See chapter 10 (Chicago).

82 The Corporation Counsel is authorized to do so when it would be "detrimental" to wait for the Sheriff's Office to accomplish service or where the defendant cannot be found. Thirty to forty such orders are signed daily. See *id.*

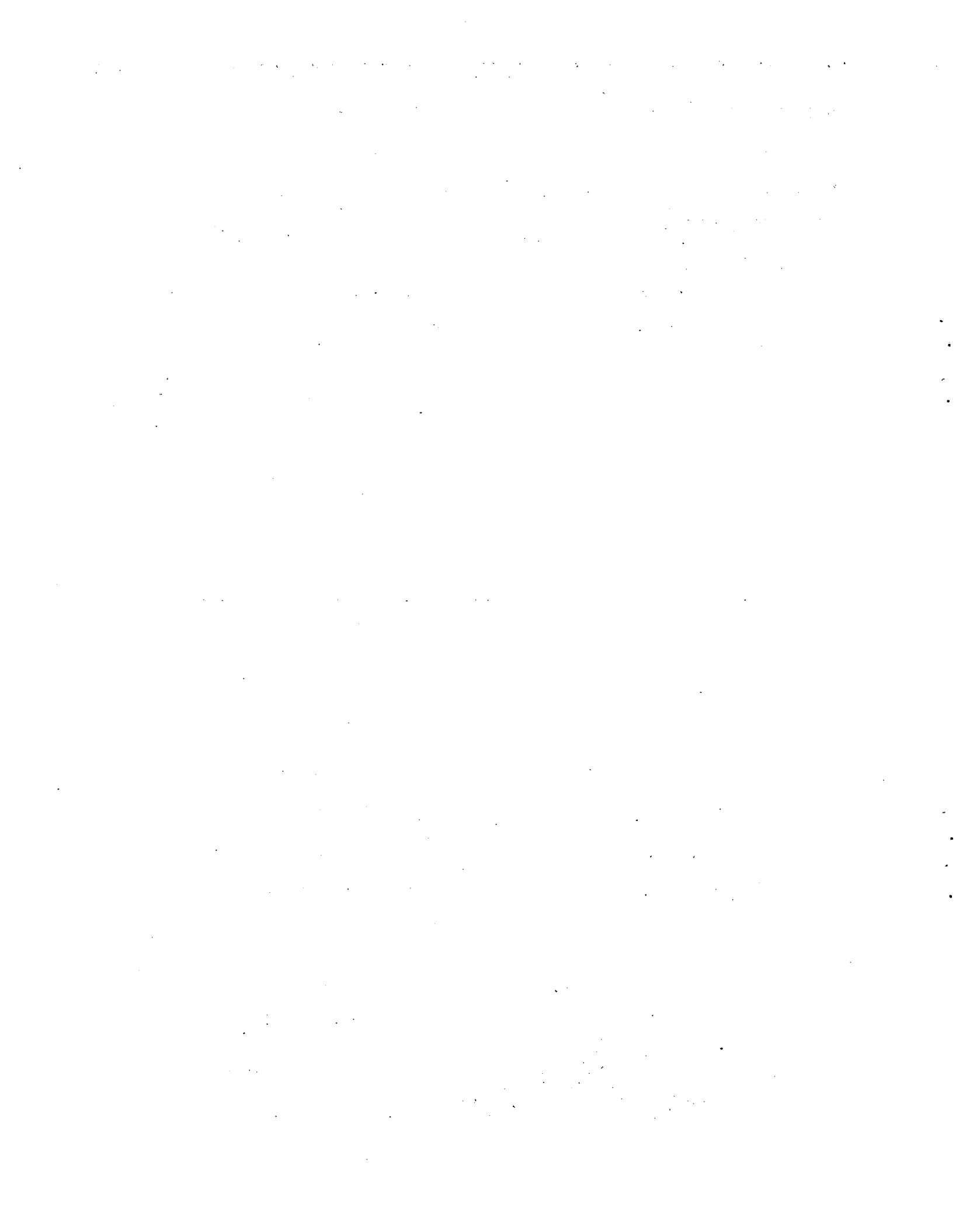
83 See chapter 14 (Philadelphia).

84 See chapter 8 (Baltimore).

85 These bailiffs, as explained in an earlier subsection of this chapter, are not courtroom bailiffs (i.e., they do not perform the usual function of maintaining order in the courtrooms).

86 See chapter 12 (Detroit).

87 No other housing specialists in other courts are deputized; but, see *infra* note 90.



through certified mail in code enforcement actions.⁸⁸ If service cannot be proven, the magistrate uses the Housing Clinic⁸⁹ to investigate for an arrest warrant. In so investigating, [the probation officers of the] Housing Clinic also may make personal service of the summons or subpoena, if necessary.⁹⁰ Overall, this unique methodology is advantageous; and, it starts with low-cost, mailed service.

Backing up the process servers are the personnel in the clerk's office. They are responsible for preparing the necessary papers, checking that they are in proper order, and routing them to the process servers. (This function, usually handled by assistant clerks, was described earlier in this chapter.⁹¹)

(11) Other Positions. In addition to the ten "additional staffing positions" set forth above, the court may have other needs as well. Reference should be made to preceding sections of this chapter and to later chapters in this Report, regarding: (a) the prosecutorial function for code violation cases;⁹² (b) the special investigation teams for code violations;⁹³ (c) the code violation "expert witness" approach used in New York City's housing courts;⁹⁴ (d) the eviction prevention centers used in some courts, once judgments by the courts have been rendered;⁹⁵ (e) legal aid services for persons before the courts;⁹⁶ (f) special counters for counselling persons wishing to file complaints;⁹⁷ (g) special counters for persons when they arrive at court on the day of their hearings;⁹⁸ (h) the many types of court-satellite programs that are important to the administration of justice in the community;⁹⁹ and, (i) oversight function provided by the citizens advisory Committee.¹⁰⁰

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- 88 Proof of service is by the court obtaining the return receipt. If this fails, only then is a form of "personal service" attempted. See chapter 9 (Pittsburgh).
- 89 The Housing Clinic is described in more detail in an earlier section of this chapter, titled "The Housing Specialists and Parallel Special Operations in the Courts". See also chapter 9 (Pittsburgh). Its personnel are called "probation officers" and have similar, but distinguishable, functions from the more typical "housing specialists" (as seen in Boston and in Hampden County housing courts; see chapters 5 and 4).
- 90 An alternative is to issue a bench warrant for the arrest of the defendant, signed by the magistrate of the housing court.
- 91 See supra note 89; Croteau, Housing Specialists in the Hampden County Housing Court, 17 URBAN L. ANN. 85 (1979).
- 92 Many different approaches prevail, from attorneys in corporation counsel's offices, see chapter 13 (Hennepin County), to attorneys within code agencies, see chapter 9 (Pittsburgh).
- 93 A team approach was developed in New York City. See chapter 6.
- 94 New York City's housing courts each had one code inspector stationed at the court to offer expert testimony in any case before the various courts in that borough. See id.
- 95 Two cities have special programs. See chapter 8 (Baltimore: re Eviction Prevention Center); chapter 10 (Chicago: re the program of the Department of Human Resources). See generally a previous section of this chapter, supra note 89.
- 96 One landlord-tenant court has a Landlord-Tenant Legal Aid Clinic, run by a local law school, at the court. See chapter 12 (Detroit).
- 97 New York uses pro se clerks. See chapter 6. See also to a previous section of this chapter, titled "The Clerk's Office: Staffing and Operations".
- 98 See id.; chapter 12 (Detroit).
- 99 See generally chapter 18 (alternatives to housing dispute resolution).
- 100 This approach is described at length in a later section of this (cont.)

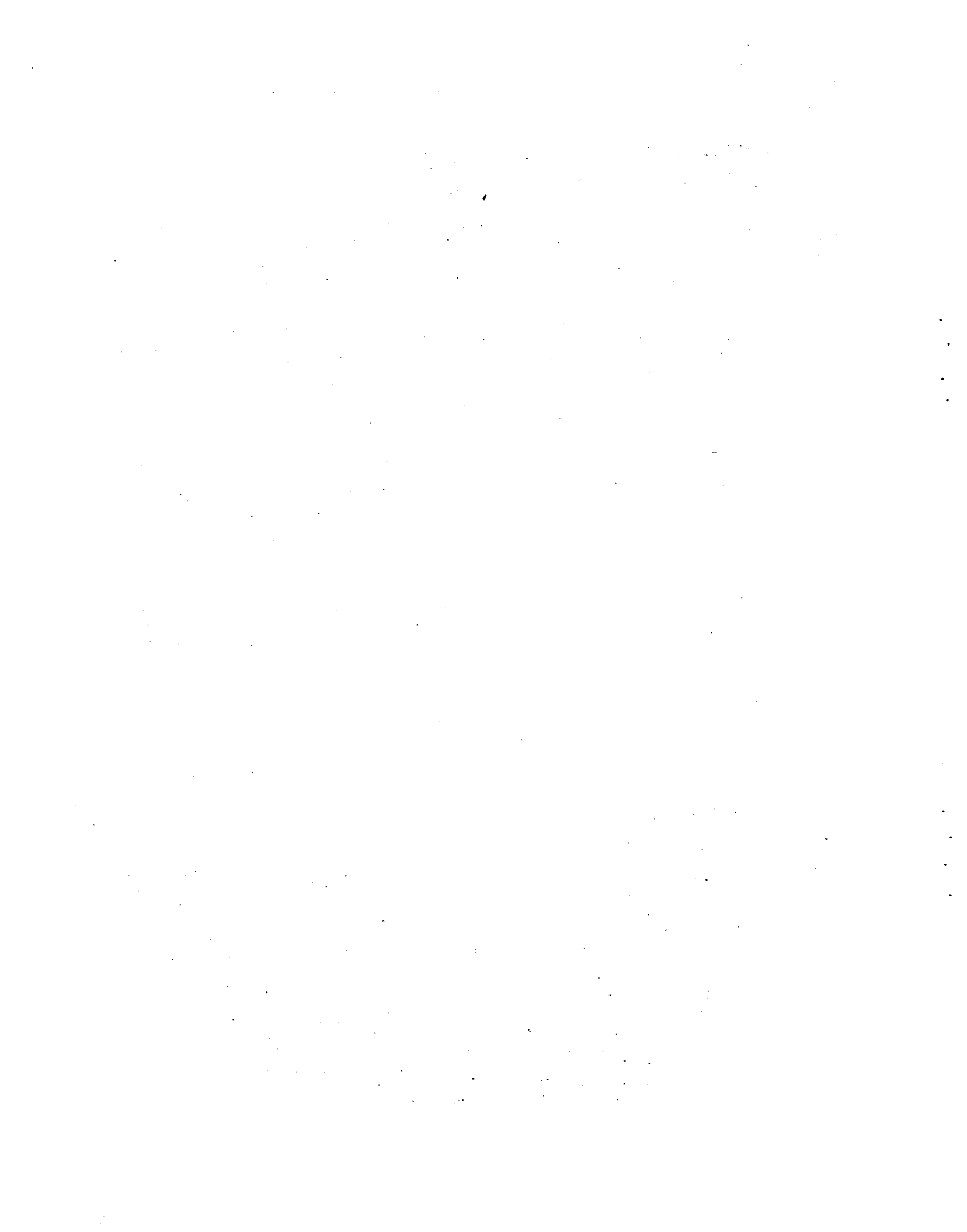
Conclusion

When a community is considering innovation and change in its courts, it must be realistic¹⁰¹ in its projections of what types of personnel are or might be needed to implement new approaches. Many of the positions that should be considered have been described above.

One of the ways to evaluate local requirements is to evaluate "systems": to begin to ask a series of questions. How does the court process work now? How are code violations, small claims, and landlord-tenant cases being handled? How are these cases processed, heard, and disposed?

By examining each of these many stages (the use of diagrams showing the various processes may help in analyzing this), it will be possible to obtain a good grasp of the personnel requirements. Each step of the way, the needs of the judicial system for properly serving the public should be borne in mind.

¹⁰¹ chapter, titled "Mechanisms (such as a CAC) for Community Participation". Practical limits, such as budgetary restraints, will have to be evaluated. Some of these concerns are detailed in a later section of this chapter, titled "Budgetary and Cost Implications".



MECHANISMS (SUCH AS A CAC) FOR COMMUNITY PARTICIPATION

A HOUSING COURT CAN BENEFIT FROM ACTIVE COMMUNITY GROUP PARTICIPATION, SUCH AS THAT PROVIDED VIA A CITIZENS ADVISORY COMMISSION (CAC). THIS FUNCTION SERVES NOT ONLY TO ADVISE THE JUDICIAL BRANCH, BUT OTHER AGENCIES AS WELL AS THE COMMUNITY IN GENERAL ABOUT THE EFFECTIVENESS OF THE COURT AND THE FULFILLMENT OF ITS RESPONSIBILITIES.

Active community groups that advise the courts, such as a well-formulated citizens advisory committee or commission (CAC), can be a valuable adjunct to the functioning of a housing court. Such CACs currently exist in New York City, Hartford, Pittsburgh, and Buffalo.¹ At one time, there were CACs in Boston and Hampden County during the early years of those courts.²

Most CACs arose as a result of citizen group concern about housing matters generally, and prior to the implementation of a housing court. As a community recognized the need for establishing a housing court, there also was serious concern with maintaining citizen input once the court started operating. The supporters of the new housing court(s) were concerned that these "experiments" would achieve all their important objectives. Not surprisingly, many of these individuals from active citizen groups became the first members of the CACs, once established.³ Typically, this brought sophistication and political astuteness about housing issues to the new CAC.

The purposes of a CAC are several-fold. (1) As noted above, the CAC can be a major force locally for sustaining support for the housing court. Thus, when adjustments are desirable in the political arena, particularly with legislatures or the executive branch, the CAC can provide a powerful citizen and group constituency. This may be crucial when consideration is given to the court's powers (as in Buffalo⁴), its budget (as in New York City⁵), or even its continued existence (as in Hartford, see below).

(2) The legislative or other body that creates the court may seek to use the CAC as a source of independent analysis about the court. In Connecticut, the state legislature required the CAC to file a report after one year. The report was one of two analyses performed to determine if the eighteen-month experimental housing

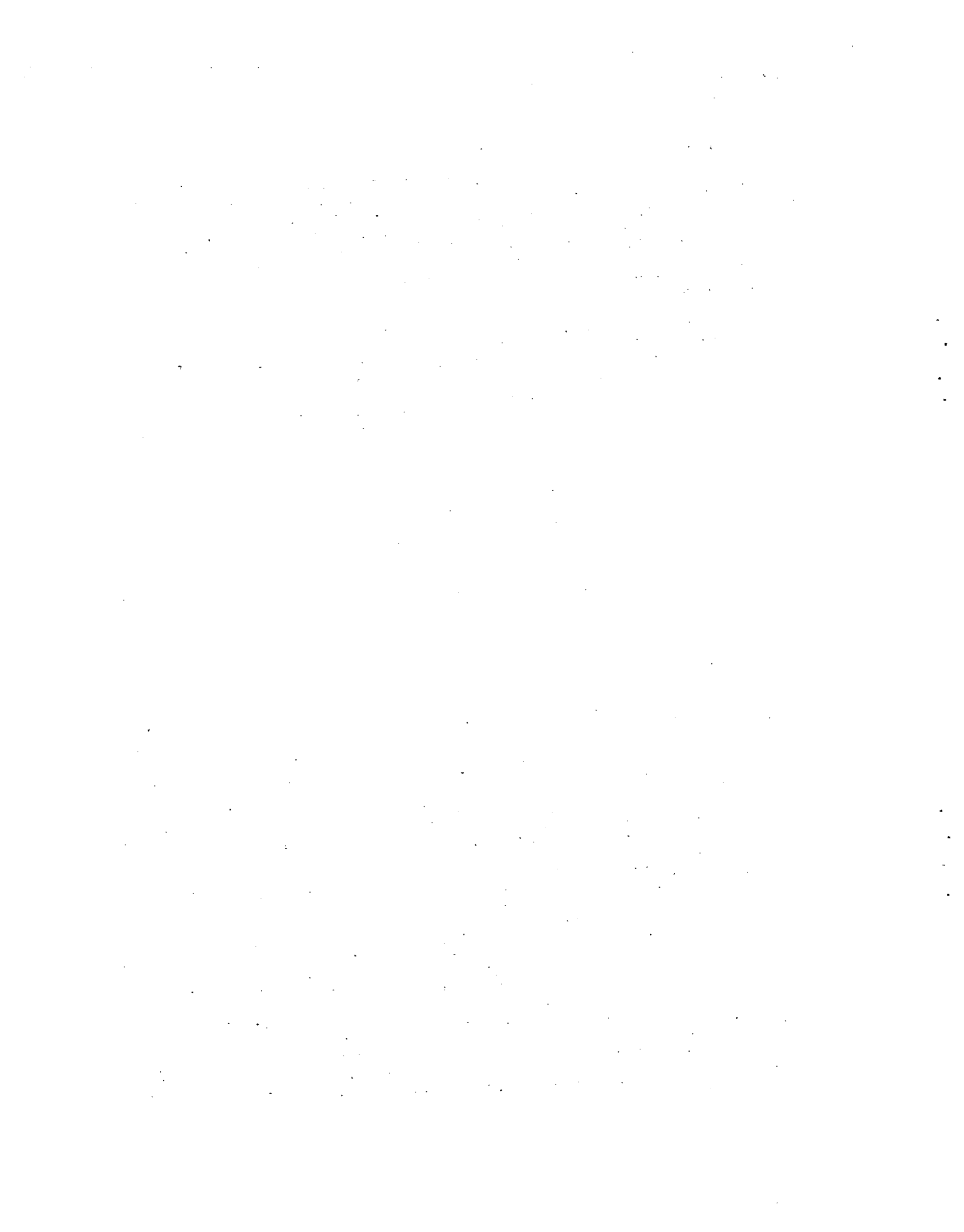
1 See chapter 5 (New York); chapter 3 (Hartford); chapter 9 (Pittsburgh); chapter 7 (Buffalo).

2 See chapter 5 (Boston); chapter 4 (Hampden County).

3 To obtain adoption of legislation for a housing court, community leaders necessarily will have to be involved. As they study the possibility of having a housing court and as they help draft enabling legislation, they obtain knowledge and information that they will carry to their CAC duties.

4 See chapter 7. The court in Buffalo currently handles only code matters. However, under certain circumstances the housing court eventually also may be assigned landlord-tenant cases. The CAC will play a role in advising the chief judge (who has the necessary administrative authority under the law) in this respect.

5 See chapter 6. In New York City, the CAC frequently has heard comments about understaffing and the need for a more realistic budget. In turn, this message has been strongly conveyed to city and state officials concerned with the courts' budgeting and staffing matters. This helped result in appropriations, use of inspection teams, and some computerization. Comments by Albert Walsh, national advisor.



court in Hartford should be continued.⁶

(3) Most importantly, the CAC serves as a forum for the exchange of ideas about the needs and problems of the housing court. Such discussions can surface issues or problems that litigants in general, or potential users, have with the court's overall operations.⁷ For example, in New York City, the public has the opportunity to testify at formal hearings.⁸ This also can be accomplished more informally at the regular meetings of the CAC, as was the case in Boston in the mid-1970s when anyone could attend the CAC's meetings and bring up general matters, suggestions, and complaints.⁹

(4) Government officials also may have concerns about the local court system. In Pittsburgh, the CAC functions with representatives from several city and county agencies.¹⁰ The problems with code enforcement in that area, therefore, can be thought through as an inter-related "system". Dialog among the parties can lead to cooperation, change, and innovation on a systematic basis. This approach, if adopted by other cities, can encourage initiatives that reach not only to what the housing court, per se, should be accomplishing, but to associated housing agencies and issues as well.

(5) The CAC need not be merely a reactive body. It can serve to help implement reforms and initiate new approaches. The CAC in Hartford has assisted in devising understandable court forms and multi-lingual brochures, with approval by the court.¹¹ In Pittsburgh, the CAC has undertaken still other important projects. Similarly, a CAC can urge both public and private sectors, including landlords' associations and bar associations, to provide still other assistance.¹²

By the same token, the failure to have citizen input can aggravate a lack of com-

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- 6 See chapter 3. The CAC made a written report to the state legislature in early 1980, favoring permanent establishment of the court.
- 7 Note that the focus is on "types" of cases or "general" housing stock problems. It would not be appropriate for the CAC to debate individual cases or particular individuals' problems.
- 8 See chapter 6. In September of 1978, for example, the CAC held hearings in the police auditorium for two days. Many persons from the community "testified". Others also distributed written summaries of their remarks. The full hearings were transcribed and summarized for use by the CAC and the judges.
- 9 Comments by Judge Paul Garrity, national advisor. During his tenure as judge of the housing court, very informal discussions were held with members of the public; these public colloquia at court were dubbed "CAC meetings".
- 10 Comments by Judge Alan Penkower, national advisor. See Chapter 9.
- 11 See chapter 13 (Hennepin County); a committee of judges performed a similar task in terms of redesigning court forms and attaching a brochure to all summonses regarding eviction matters. See Rogers, An Alternative to a Housing Court, 17 URBAN L. ANN. 177 (1979); examples of the forms are included. See also, Scott, Small Claims Courts in the Context of Housing Justice, in RUHNKA, HOUSING, JUSTICE IN SMALL CLAIMS COURTS (1979), published by the National Center for State Courts for the ABA's Special Committee on Housing and Urban Development Law.
- 12 The CAC could, for example, encourage landlord organizations and the organized bar to redesign standard lease forms to help correct often-seen landlord-tenant problems. Similarly, the CAC might encourage the bar to undertake a new program in mediation. See chapter 11 (Los Angeles); Ebel, Landlord-Tenant Mediation Project in Colorado, 15 URBAN L. ANN. 279 (1979).

munication between the courts and the community. It is no surprise that attorneys, litigants, governmental officials, and members of the public are reluctant to engage in individual, critical dialog directly with a judge or judges.¹³ The very presence of a CAC legitimizes this dialog, providing an appropriate forum for expressions of interest and criticism. (If necessary, anonymity can be retained by having the CAC undertake its own scrutiny of matters, and issue its own report).

Without a CAC, if the housing court begins to fail in its missions, there may be little or no outlet for timely expressions of concern.¹⁴ The CAC can address minor deterioration prior to what otherwise might become calls for the abolition of a troubled housing court. Some observers have suggested that problems with some housing courts might have been avoided, had a CAC been operational.¹⁵

The lack of a CAC can lead to the reverse of the advantages cited above. Inter-agency cooperation on certain housing problems may be difficult to engender otherwise, as with code enforcement reforms. New roles for the court, new opportunities for dispute resolution, and additional services for the public may not be forthcoming.

In fact, it can be anticipated that elected officials and others naturally will resist most new programs and increased expenditures.¹⁶ Community-wide support, such as that provided by a CAC, can help win approval for housing-related changes. A CAC can act as a additional force on the political structure.

The mere existence of a CAC does not mean that it will automatically be an effective oversight mechanism. Some critics maintain that if it is strictly a "blue-ribbon" CAC, it is of no help at all, that it can obfuscate public calls for needed reforms, and it can become "captured" by the court. Typically, a CAC has a life cycle of its own, vacillating between helpful activism and passivity

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- 13 At least three factors lead to this situation: (1) a perception about judicial ethics, which causes many judges to avoid nearly all ex parte contacts regarding litigation issues; (2) the reluctance of prosecutors and defense attorneys to engage in such discussions when they expect to be back in the courtroom at some future date; and, (3) the mystique of the court and its judges, which makes members of the public apprehensive about speaking directly to "the judge".
- 14 It is possible, of course, to bring gross cases of abuse, misconduct, or incompetence before the judicial branch or a special board. These formal charges and procedures, however, cannot really be compared with the role of a CAC. (1) The formal procedures are after-the-fact and usually involve only the most dramatic instances. (2) They are intimidating, complex, and imbued with due process considerations. (3) Importantly, the CAC focuses not on individuals' problems, but on "systems" problems. (4) Finally, the CAC can take positive steps for improvements; other formal procedures basically are punitive and complaint-based in nature.
- 15 See chapter 5 (Boston) for a brief elaboration. Privately, some parties have intimated that the operations of the court might have been addressed by the CAC and a report made at an early date. Instead, parts of the imbriglio escalated to the level of litigation, a transfer, and resignations.
- 16 Unless there is strong lobbying for such programs, a legislative body (particularly the state legislature) is liable to pursue a conservative fiscal posture in the absence of "proof" or wide support to the contrary. See chapter 16 for a description of on-going attempts to establish still other housing courts.

over a period of years.¹⁷

A CAC SHOULD BE BROADLY CONSTITUTED IN TERMS OF MEMBERSHIP. MEMBERS CAN BE FORMALLY APPOINTED, OR THE ENTIRE OPERATION CAN BE RELATIVELY AD HOC.

In establishing a CAC, thought must be given to whether it ought to be ad hoc and informal, or actually mandated in the legislation creating the housing court (as in Hartford, Buffalo, and New York City¹⁸).

Some observers argue that the CAC should be mandated and given certain responsibilities. They also suggest that then the CAC cannot be easily abolished or become defunct.¹⁹

Many others suggest that CACs fulfill a major function only in the beginning years of a housing court, when the situation is most volatile. It is argued that once the court is established, the CAC ceases to perform a major function.²⁰

With or without a CAC, there is little doubt that annual public hearings should be accomplished. These hearings could be summarized, and a public report made.²¹ This would encourage some modicum of continued community oversight and some impetus for change.

How a CAC's membership is constituted, is a matter of wide variation. (1) The first question is whether or not specific individuals should be named to the CAC. (2) Another question is whether or not to have fixed terms of office.

One approach is to provide for fixed terms of several years, with staggered appointments for the purpose of continuity (as in Buffalo). In Boston, on the other hand, there were no appointments at all; rather, the CAC attendees were any interested persons who chose to attend, with some repetitive attendance by key individuals. The Pittsburgh housing court's CAC is akin to that which existed in

17 Most Special Committee members and national advisors were against mandating ABA creation of a formal CAC mechanism. Some felt that various other very active community groups already performed these functions well, as in Chicago (comments by Judge Richard Jorzak) and Hennepin County (comments by Judge James Rogers, national advisor). They therefore believed that a CAC was unnecessary in such cities. Others, equally against a mandatory CAC requirement, thought that one contribution of an ad hoc CAC would be the encouragement it would give to other community and neighborhood groups to become much more active in housing issues (comments by Walter Washington and Daniel Epstein, members, and Judge Alan Penkower, national advisor). The sense of the Special Committee was that an informal CAC, with limitations as to its role (see later part of this section, on "improprieties"), might be a good device; but, that it should not be mandated (comments by Judge Laughlin Waters, Chairman).

18 See chapters 3, 7, and 6.

19 In Boston, a CAC meeting was advertised and only a few individuals appeared. The presiding justice concluded that this indicated a lack of interest in the CAC, and no further meetings have been called or held for the several years since. (From Boston interviews, 1979.)

20 This incorrectly assumes that the housing court has no real need for mid-course corrections or support for changes, expansion, budget, or innovations in relations with agencies and the public.

21 As noted, supra note 8, this public hearing approach has been used twice in New York City. See chapter 6.



Boston. There, however, the ad hoc attendees tend to be "regulars", and, they elect officers for the group.

A mixed approach could include some formally appointed members plus advertising all meetings as open to the public. This would insure a relatively expert and continuous membership while encouraging diverse inputs from other private citizens. The CAC also might utilize "sub-groups" of members and new attendees alike, who could work together on special projects (such as informational brochures for litigants).

(3) A third issue revolves around involvement of agency and judicial personnel. Serious thought should be given to regularly including agency representatives at the meetings.²² They would participate ex officio, contributing to the dialog and perhaps helping solve problems identified in the CAC discussions.

It is relevant to point out here that the CAC need not restrict itself solely to court issues. Housing questions extend to agency roles as well: for example, dealing with code violators. In Pittsburgh, the discussions tend to be wide-ranging, crossing various lines of the executive, legislative, and judicial branches. Thereby, the CAC seeks programmatic, and not merely judicial, changes across governmental lines of authority.

Similarly, consideration should be given to attendance by judicial personnel. Thoughts differ widely in this respect. Some judges pursued widespread community contact²³ and were heavily involved in the CAC meetings, as was once done in Boston. Other judges object to this role, believing that they should not be present at such meetings, since this conceivably could lead to incorrect assumptions about the judge's objectivity.²⁴ In some cities, judges are invited only to some of the meetings. In New York City, the judges are urged to attend a portion of the public hearings.²⁵

There are several other options available. The chief administrative judge might attend some of the CAC meetings or the annual public hearings (rather than the judge who actually presides in the housing court). An alternative would be for the judge to designate one of the housing specialists, chief clerk, or court administrator to attend all CAC meetings. A report then could be made back to the judge (assuming communications are good within the court). Still another approach, best used in combination with the above, would be for written "minutes" of the meeting to be prepared by the CAC and then given to the judge, among others.²⁶

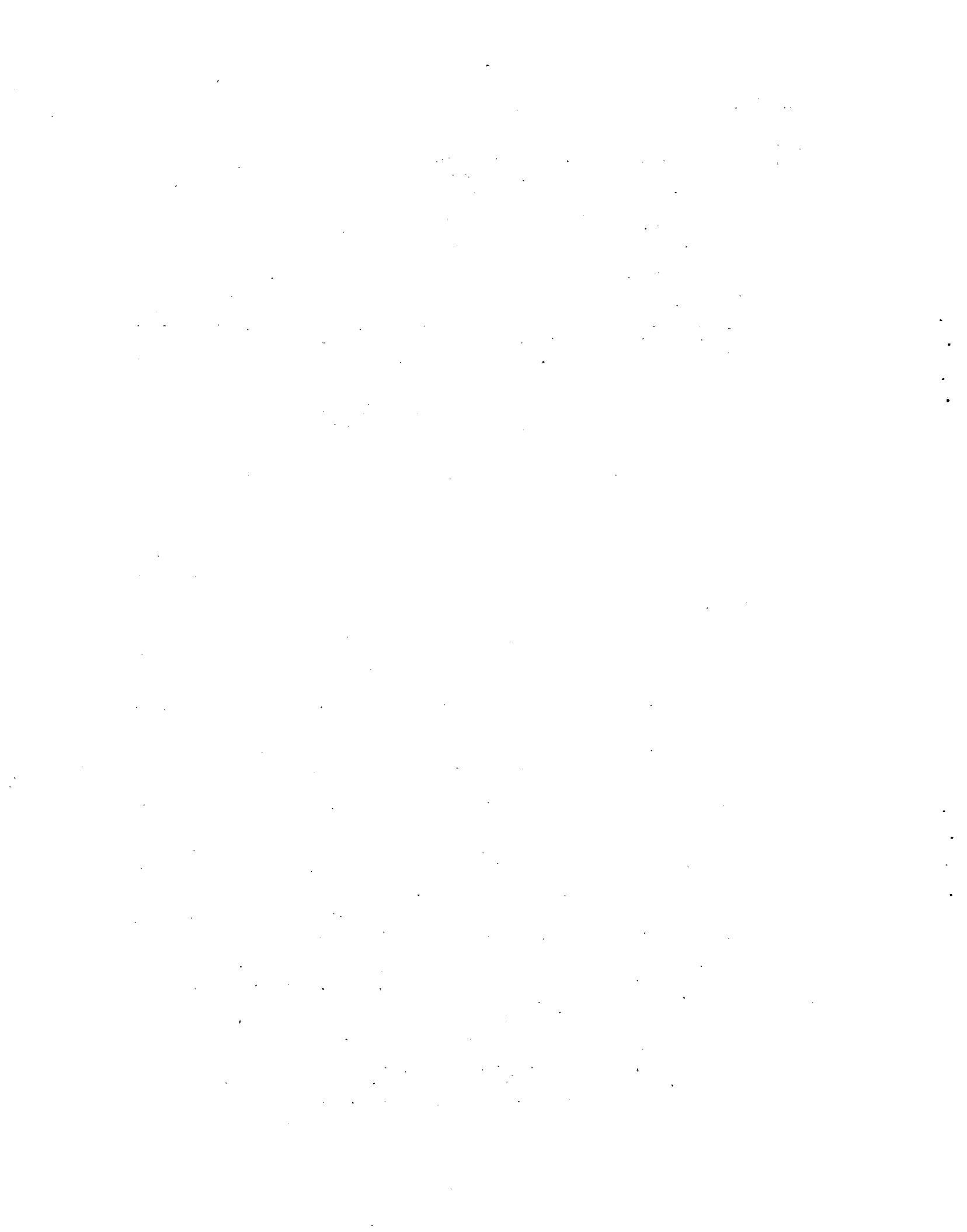
22 CACs probably would be well served by having regular attendees from the several local code enforcement agencies, the housing authority, the local housing and urban development department, the planning office, the welfare or social service agencies, the mayor's office, and the corporation counsel's office.

23 Comments by Judge Paul Garrity, national advisor. In Chicago, the housing court judge has done likewise. See chapter 10.

24 Interview with Judge E. George Daher, Presiding Justice of the Boston Division of the Housing Court Department of the Trial Court of Massachusetts (October 30, 1978). Concern was expressed that this could lead to perceptions that would compromise the integrity of the court. At the same time, the Clerk and the housing specialists do perform community contact functions.

25 They in fact did so at the public hearings, supra note 8.

26 This is done in New York City and in Pittsburgh (comments by Judge Francis Smith and Judge Alan Penkower, national advisors).



(4) The fourth question involves the method of selection of the CAC's members. Members should be drawn from a diverse set of community interests, including tenants, landlords, the bar, the business community, legal services, and neighborhood or consumer/civil groups. One method of selection might involve groups themselves nominating their own representatives to the formal appointing authority. Or, such representatives could be named directly, without further reviews.

If there is to be an actual appointing authority to the CAC, this probably will be a local issue, although one city suggested that the Governor should do so. In Buffalo, 10 of 12 CAC appointees are chosen by the chief judge in that jurisdiction, for definite terms of office. The mayor and the city's commissioner of licenses and inspections each choose one person, who serves at their pleasure. In New York City, the administrative judge, with presiding judges approval, makes most of the appointments.²⁷

A CAC'S ACTIVITIES COULD RANGE FROM PROVISION OF SERVICES TO A TYPE OF "COURT-WATCHING". HOWEVER, CERTAIN IMPROPRIETIES MUST BE GUARDED AGAINST.

As mentioned earlier in this section, the CAC can perform a host of functions. These need not be repeated here, but certain improprieties can arise.

(1) One central issue is that inevitably, there will be some discussion about the appropriate role of the CAC in the selection and retention of court personnel.²⁸ Sharp differences of opinion on this topic prevail. Many experts urge that the CAC should not address personnel matters at all, except in the most unusual of circumstances. Others suggest a limited role for the CAC via actual interviews of the candidates for the top positions within the court: judge, chief housing specialist, and clerk.

A more modest approach is to involve the CAC only in interviews of judges, if the housing court appointment is for an extended period.²⁹ The CAC could suggest two or more names rather than only one. The chief judge would take the CAC's suggestions under advisement as being only advisory, not binding.³⁰ (In a system where elections or frequent rotation is used for the judges in the housing court, this role for the CAC would not be workable.)

As to other court personnel, there is good reason to leave these selections to the judge(s) or to the prevailing civil service system. The CAC, after all, has the opportunity to scrutinize any serious performance failures in the system by commenting on public impacts (rather than personalities and internal court affairs).

(2) The CAC should avoid certain improprieties. (a) CAC members cannot be engaged in "day to day interference" in court affairs;³¹ (b) CAC appointees, if

27. See chapter 16 (re Worcester); chapter 7 (Buffalo); chapter 6 (New York City, where the mayor also makes a few of the appointments).

28. Generally speaking, the CAC must avoid any appearance of being a "grievance board" or exercising any superintendence over personnel matters. On rare occasions, however, the attention of the chief judge may have to be drawn by the CAC to an especially bad problem.

29. Generally, this should be at least one year. Or, the CAC might be involved in the interviewing of only the first judge, particularly if that judge is to be newly appointed (not coming from the existing bench).

30. This approach was taken in Hartford. See chapter 3.

31. In extraordinary circumstances, it may be necessary to have an extensive "court-watch", as was done in Chicago to correct serious abuses. (cont.)



they can reasonably expect to have regular appearances in court,³² should consider relinquishing their membership; (c) discussions relating to court operations should be reserved for CAC meetings, and not through individual meetings with the court personnel; (d) the activities of the CAC should avoid an "politicizing" of the court; (e) a reasonable approach in terms of relations with the media ought to be pursued; (f) generally, the CAC should not be involved in "hire-fire" decisions; (g) care must be taken not to interfere with judicial functioning or the independence of the judiciary; and (h) the CAC should not have line authority over the court, or try to exercise any.

(3) Finally, the CAC might adopt rules of procedure, so as to avoid discussion of specific cases before, or about the be brought to, the court. There should be a prohibition on discussion that would appear to influence case outcomes. In fact, if judicial system persons are present, it is clear that they would have to absent themselves during any unauthorized discussion of individual cases.³³ If the CAC is to successfully involve judicial personnel at the meetings or via written materials, such conflicts of interest must be avoided.

At public hearings, of course, this situation will be made somewhat more difficult to control. Even then, a strong chairperson can deal with this problem in most instances. Public hearings, if properly planned, can result in much more than off-the-cuff remarks. In New York City, many witnesses prepare valuable remarks and reform proposals; some are written and submitted for the record. These materials provide the CAC with additional information for discussion, distillation, additions, and submission to the judiciary and to appropriate decision-makers.

Conclusion

Thus, a well-defined CAC can provide an opportunity for ongoing "institutional therapy" that touches not only the housing court,³⁴ but other governmental agency and legislative responsibilities as well.³⁵ It can act both as a healthy check on, and stimulant for, seeing that the overall responsibilities of the court are served effectively. The CAC's periodic scrutiny illuminates both defects and opportunities. Moreover, it provides a source of continuing support for the housing court and the community that it serves.

See Fusco, Collins & Birnbaum, Chicago's Eviction Court: A Tenant's Court of No Resort, 17 URBAN L. ANN. 93 (1979), Rothstein, The Chicago Experience, 17 URBAN L. ANN. 133 (1979), Klein, The Politics of Housing Dispute Resolution: An Academic Perspective, 17 URBAN L. ANN. 353 (1979).

32 In several cities, CAC members have gone on to become members of the court system: New York City (a judge); Boston (the clerk); and Pittsburgh (a housing specialist). Whether this is appropriate depends on individual circumstances, the facts involved, and the public perception of such appointments.

33 This would not negate discussions about problem areas or neighborhoods in the city; for example, litter, debris, and deterioration problems on the "south side" of the city, etc..

34 One area that deserves scrutiny is the assistance being given unrepresented litigants. For example, the CAC could determine if the use of housing specialists in mediation of the litigants cases--versus unsupervised, out-in-the-hall settlements--is markedly helpful. (Comments by Ricardo Munoz, member.)

35 Even where no thought is being given to adopting a specialized housing court, an informal CAC still may be worthwhile for purposes of examining how housing-related cases are being handled in that jurisdiction.



BUDGETARY AND COST IMPLICATIONS

TO BE EFFECTIVE, A HOUSING COURT (AS WELL AS THE AGENCIES AND GOVERNMENTAL PROGRAMS TO WHICH IT RELATES), MUST BE ADEQUATELY FUNDED. YET, THE COSTS AND BENEFITS OF SUCH A COURT MAY BE DIFFICULT TO EXTRACT FROM EXISTING JUDICIAL SYSTEM BUDGETS. (EVEN IN TERMS OF THE BUDGET DATA ASSEMBLED FOR THIS REPORT, FIGURES FROM THESE OTHER COURTS ARE AT A GROSS LEVEL AND ARE NOT READILY COMPARABLE.)

In the court systems studied for this Report, only fragmentary budgetary information was able to be obtained. For example, individuals' salaries usually were not disclosed. Frequently, the only data made available were for salary "ranges", which were too broad¹ to be useful; and, total personnel salaries were at too gross a level to be very helpful. Costs given in the individual chapters (3-15), therefore, are only illustrative; they are not really comparable, for the reasons set forth below.

(1) Judicial budgets generally are "aggregated". Unlike most executive branch agencies, detailed information by type and location [of each court] is not available.² State and local court administrators may have some figures, but rarely on a separate courtroom-by-courtroom or a "programmatic" basis (such as housing litigation versus personal injury cases).

Moreover, judicial budgets often reflect only jurisdiction-wide allocations, so that any one court's expenses tend to disappear in a sea of other costs.³ Thus, it is unlikely that the public will be able to identify the costs associated with a particular court without cooperation and some work by court administrators.

(2) If local courts are part of a state court budget, there may not even appear to be an identifiable local budgetary portion.⁴ Budgets and decisions may be done at other than the local level (as the state office for court administration and the state legislature). Local budgetary control may be virtually negligible.⁵

Anomalous situations also may prevail. In New York City, the city comptroller does a "program audit" of the housing court. At the same time, the budget is approved at the state-wide level and is included in the overall appropriation for the New York Civil Court.⁶ (On the other hand, some budgets can be identified more easily, with some work. In Massachusetts, the Hampden County and Boston

1. In most merit systems, salary ranges are set relatively "wide" for professional classifications, in part to allow for merit and longevity increases. These ranges tended to total up to wide "spreads" of budget costs.
2. For example, all judges', professionals', and others' salaries often are "lumped together" for all of the district courts in any one jurisdiction.
3. The budgetary information that was obtained often had to be drawn up especially for release in this Report. Others, as in the case of Hennepin County, see chapter 13, simply could not be easily segregated by the court administration.
4. To some extent, this has been cited as a strategic advantage (in arguing for a housing court, there may appear to be no local cost repercussions). This can cut the other way, however, in that state administrators may be reluctant to allow any increase in budget for one community to establish a new court.
5. Of course, local officials can work through their state legislators to expand a local system under the state budgeting process.
6. Housing court expenses are estimated at one-seventh of the total budget. See chapter 6.



housing court budgets are administered by the "housing court department",⁷ approved by the state-wide trial court administrator, and then submitted as part of the entire judicial budget to the state legislature. If any new housing courts were begun in Massachusetts, they also would be part of the housing court department budget.⁸ At one time, the Boston housing court was "paid for" by the city of Boston: prior to state-wide court reunification.⁹⁾

(3) Jurisdictions with only some specialization (not a fully specialized and separate housing court) generally do not segregate the costs of the different types of courts.¹⁰ Judges, stenographers, clerks, bailiffs, and others are viewed as part of one overall operation. This is the case, for example, in Chicago, Los Angeles, and Detroit.¹¹

Where there is no specialized court at all, as in San Francisco, budget figures regarding housing matters were not available for this Report.¹²

Even where there is some limited "specialization" (as a special calendar for summary proceedings, which include evictions), separate program budgets are not maintained. This is the case, for example, in Hennepin County and Philadelphia (although the latter did extract new data¹³ for use in this Report).

(4) As already explained, housing cases are handled by a variety of different courts. Moreover, even with the specialized courts studied in this Report, one cannot easily compare many of them. This is because their jurisdiction differs remarkably. Hampden County's housing court handles most of the housing cases in the entire county.¹⁴ By contrast in Boston,¹⁵ the district courts continue to handle a significant volume of eviction matters. If the two courts were to be compared, there would have to some attempt to take into account the district

7 See chapter 5 (Boston); chapter 4 (Hampden County).

8 Worcester, Massachusetts has proposed a new housing court. See chapter 16. Note that this would place Worcester, as it currently does Hampden County, under the budgetary authority of the presiding judge in Boston as head of the Housing Court Department for Massachusetts.

9 See chapter 5 (Boston); Garrity, The Boston Housing Court, An Encouraging Response to Complex Issues, 17 URBAN L. ANN. 15 (1979). In fact, the Boston housing court was an "exception" to the general unification of the courts in the Commonwealth, having to be "specially preserved" (yet brought under the overall administrative control of the Trial Courts Department).

10 For relatively obscure reasons, some courts may be segregated (such as the juvenile courts or the domestic relations courts).

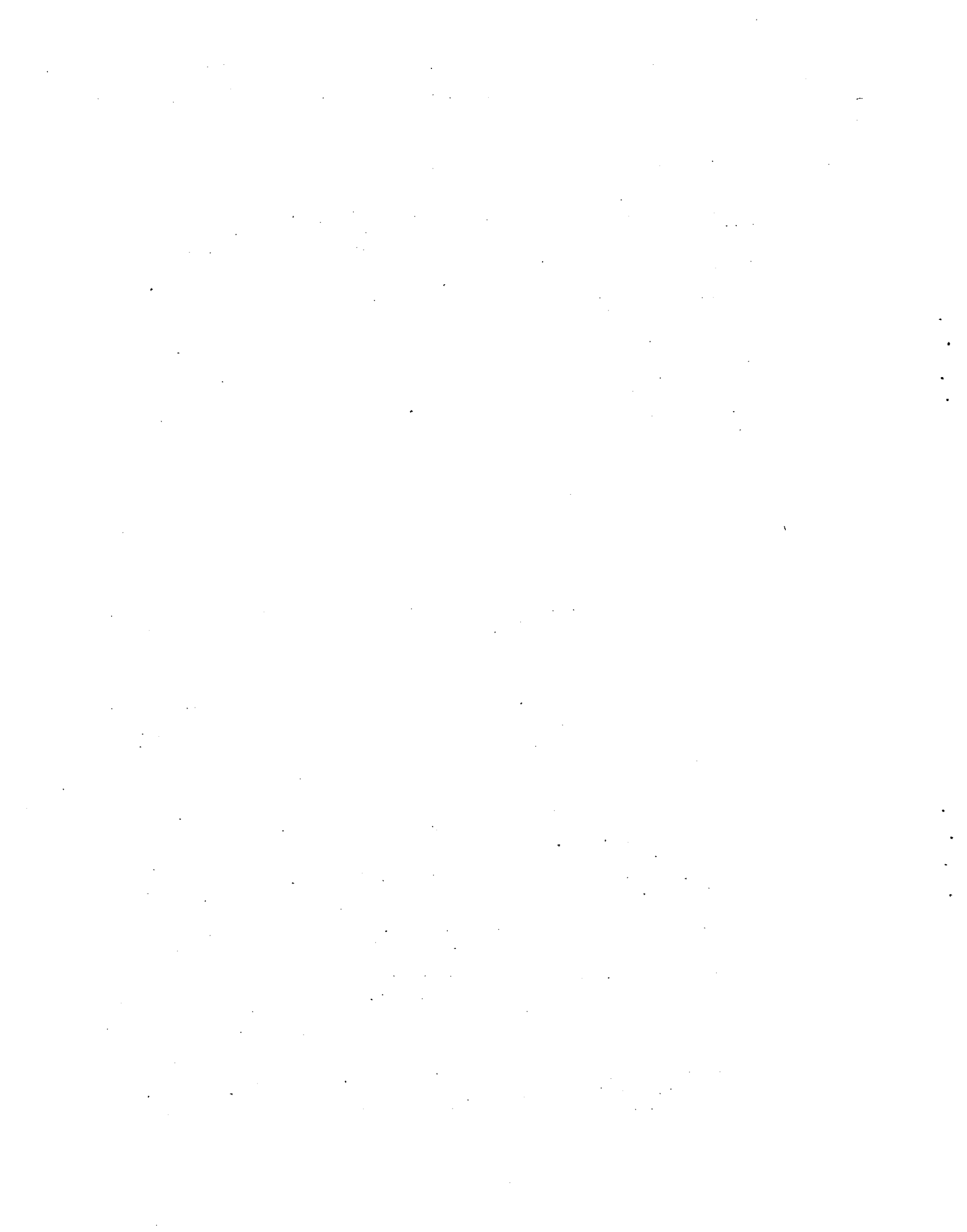
11 See chapter 10 (Chicago); chapter 11 (Los Angeles); chapter 12 (Detroit). In these courts, virtually all of the personnel are rotated in. Chicago, for example, has no specialized clerks or housing specialists; nor do the other two. In Detroit, the court reporter follows the judge to whatever assignments he or she has. The personnel are considered more or less interchangeable throughout most of the court system.

12 See chapter 15 (San Francisco).

13 See chapter 13 (Hennepin County); chapter 14 (Philadelphia).

14 See chapter 4 (Hampden County); Peck, An Overview of the Hampden County Housing Court, 17 URBAN L. ANN. 65 (1979); Winer, Pro Se Aspects of the Hampden County Housing Court: Helping People Help Themselves, 17 URBAN L. ANN. 71 (1979).

15 See chapter 5 (Boston). Comments by Judge Richard Banks, member of ABA Special Committee. Indeed, the way the cases are handled is different than in the Boston housing court.



courts' varied roles in these matters.¹⁶

Furthermore, most of the housing courts differ even more dramatically. The housing court in Pittsburgh handles only code enforcement matters.¹⁷ In Boston, a full range of matters comes before the housing court: code enforcement, summary proceedings, civil actions, small claims, to name a few.¹⁸ Moreover, the court has a full panoply of relief available to it, including equity jurisdiction. In Pittsburgh, jurisdiction does not include equitable remedies;¹⁹ thus, even in regard to only code enforcement cases, the budgets of these two cities' courts are not readily comparable.²⁰

In summary, therefore, it is apparent that: (a) budget figures often are not broken out by types of courts; rather, the costs are intermingled and only system-wide figures generally are available; (b) where figures are given, costs may be hidden (for example, bailiffs and clerical staff may be in still different budgets); (c) the functioning of the respective courts differs so much, that comparability is unsuccessful in most instances; and, (d) total costs associated with the courts are not completely reflected in the budgets.

THE "TRUE" COSTS (AND BENEFITS) OF A NEW HOUSING COURT MUST BE TAKEN INTO ACCOUNT. OTHERWISE, IMPORTANT CONSIDERATIONS ARE LIKELY TO BE IGNORED WHEN MAKING A FINAL DECISION AS TO WHETHER OR NOT A HOUSING COURT SHOULD BE STARTED.

In regard to point (d) above, it is clear that most judicial system budgets do not display all the "true" costs. There are several reasons for this.

(1) Capital facilities are not broken out by types of courts. In Boston, the housing court is lodged in relatively cramped space in the main court building.²¹ In Hampden County, the housing court was moved to the new court building; it was part of the "space demand" that necessitated such a new structure.²² In Hartford, the housing court was placed in a separate building: a former residence

16 Similarly, the district justices (formerly, justices of the peace) handle a wide range of matters in the Allegheny County courts. See chapter 9 (Pittsburgh).

17 See *id.*; Penkower, *The Housing Court of Pittsburgh*, 17 URBAN L. ANN. 141 (1979).

18 Note particularly that small claims cases as well as civil cases (the court has broad jurisdiction) can be brought in the housing court in Boston; the same is true in Hampden County.

19 Rather, these cases must be brought to the Court of Common Pleas, not the Pittsburgh housing court. See chapter 9 (Pittsburgh).

20 For example, one would have to "divide" the time of personnel in the Boston court by types of cases, and then compare only those types of cases to those found in Pittsburgh. This would be especially difficult for such positions as that of Executive Secretary. See generally chapter 5 (Boston).

21 These space limitations tend to affect the performance of court functions, particularly in regard to the housing specialists. See *id.* The court must "negotiate" to receive more space if and when it comes available. In terms of competing demands with other courts, this means a very real cost impact for capital facilities. (Usually, this becomes obvious only when new construction is required, but the "costs" exist nonetheless.)

22 The housing court occupies a significant amount of space in the building. See chapter 4 (Hampden County). Again, the public does not "see" the building costs as part of the housing court's budget in that jurisdiction.



remodelled to accommodate the new "housing session".²³

(2) Most budgets do not describe the court's impact on other governmental agencies and budgets. An aggressive code enforcement function, as with the Pittsburgh housing court for example, both relieves and creates demands on the agencies themselves.²⁴ On the other hand, in Indianapolis' housing court handles code enforcement matters, and major personnel impacts were not seen, until only recently; then the court experienced new costs for the new housing specialists that it had needed.²⁵

(3) Similarly, state and local laws can result in quite different impacts on personnel needs and thus, overall cost impacts. In Chicago, lengthy delays for personal service in code enforcement actions are commonplace because of a lack of sufficient personnel in the sheriff's department.²⁶ Yet, this shows up as "low" costs because of this deficiency. On the other hand, in Baltimore, personal service is commonplace; this necessarily has higher administrative costs associated with it.²⁷

(4) Likewise, the characterization of the law and how the courts apply it can affect the operations and costs of a housing court. Whether code violations are civil or criminal actions affects how the housing court works. In Boston, defendants are formally arraigned; then, separate hearing dates are set if the plea is not guilty.²⁸ In Buffalo, a separate arraignment rarely is accomplished.²⁹

Similarly, the way in which warranty of habitability defenses are handled, or the extent to which jury trials are requested, will impact on the personnel needs of the court. This, in turn, has effects on the court's and the agencies' budgets.

(5) Very importantly, the "true costs" of adjudicating housing disputes -- or failing to do so -- are not well understood. An "eviction mill" type of court may result in very low personnel needs and almost negligible budgetary impacts. Similarly, if code violations are rarely brought to court or if litigants avoid the courts because of frustration with the process,³⁰ court budgets will be low.

23 This is novel to any of the housing courts studied. See generally chapter 3 (Hartford).

24 The agencies established new procedures. See chapter 9 (Pittsburgh). Arguably of course, some of these steps might have been taken without a special housing court; others clearly are a direct result of the cases in the housing court. Interview with health department officials, in Pittsburgh (April 18-19, 1979).

25 The court is named the "Environmental Court". See generally chapter 16. It handles a wide variety of code matters as well as those involving housing. See Jester, *The Indianapolis Housing Court*, 17 URBAN L. ANN. 209 (1979). Interview with Judge David A. Jester, in Chicago (March 9, 1979).

26 Interview with Judge Richard H. Jorzak, Supervising Judge of the Housing Court, in Chicago (March 12, 1979). See chapter 10.

27 See chapter 8 (Baltimore).

28 See chapter 5 (Boston).

29 Comments by Father Denis Woods [in Syracuse, during a special meeting there], member of the Buffalo housing court's CAC (December 14, 1979). See generally chapter 7 (Buffalo).

30 Litigant satisfaction and dissatisfaction in small claims courts, for example, are discussed in RUHNKA, *HOUSING JUSTICE IN SMALL CLAIMS COURTS* (1979), published by the National Center for State Courts and prepared for the ABA's Special Committee on Housing and Urban Development Law. See chapter 17 (re a summary of this book).

It is likely, therefore, that a new housing court that is designed to do its job well will "cost more" than the system it replaces. If adequate court staff such as housing specialists are hired, the budgetary results will be quite noticeable. If the new court proceeds to correct former court problems, and if litigants become more satisfied with the new court and bring additional cases before it, the costs undoubtedly will escalate.

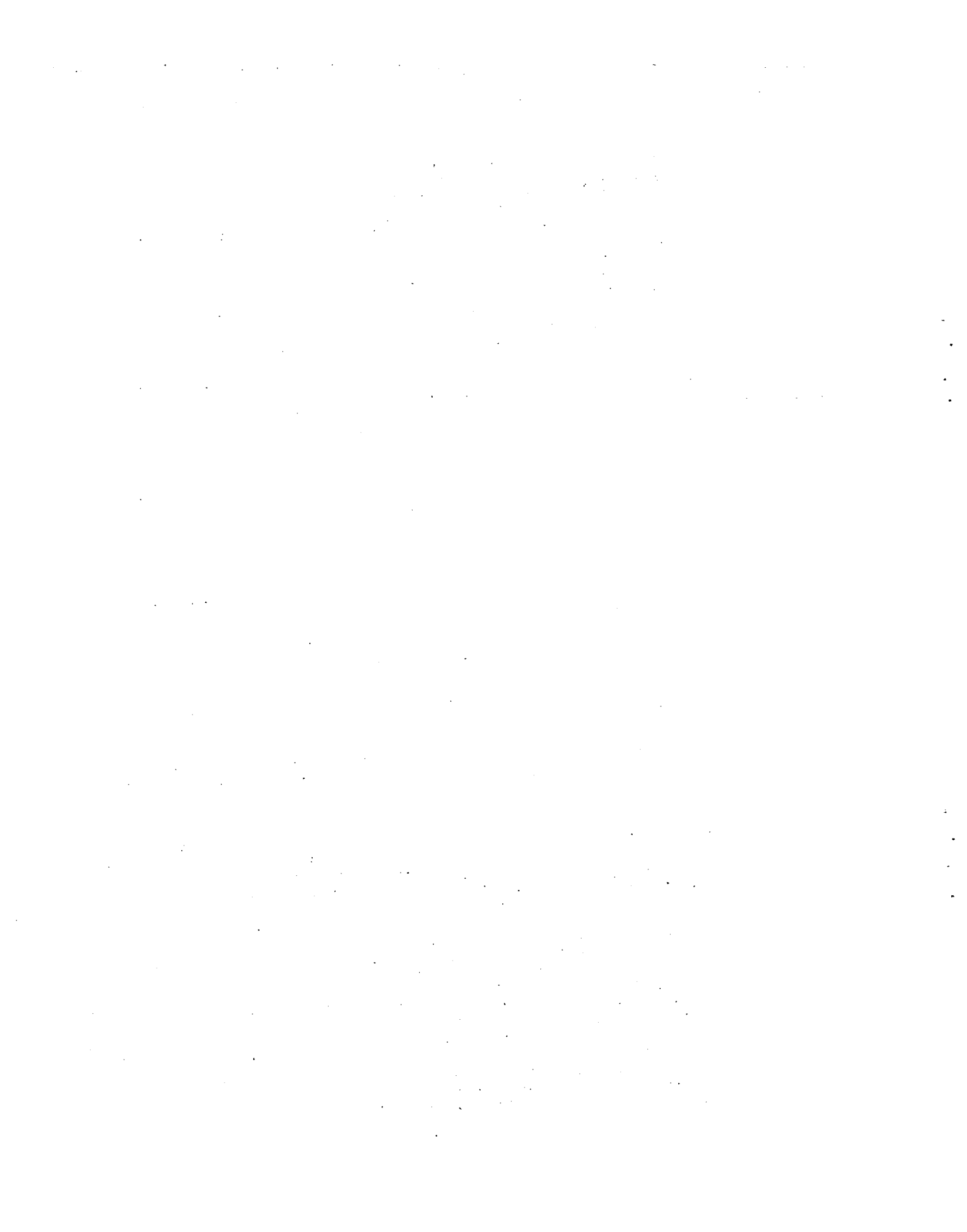
Since the judge and other court system personnel will be "specialized" in the new housing court, conventional wisdom would suggest that this would lead to "efficiency" in handling of housing cases and therefore, lower average costs. This simply has not proven to be true in all the specialized courts studied for this Report. The reasons are relatively straightforward.

- (1) Existing courts may be operating quite poorly;³¹ the new court is designed to change this state of affairs.
- (2) Sensitive handling of cases may require more, not less, time and resources per case. Housing specialists are likely to be involved in many cases, and, the new judge may be spending at least half the day on the bench, rather than only one or two hours.³² This is true in landlord and tenant matters, particularly if complex counterclaims and defenses are permitted. Likewise, instead of code enforcement cases being handled in a perfunctory manner, the new housing court may be taking more time with each case to assure compliance from the violator.
- (3) The addition of new personnel will have budgetary impacts. (See, however, a later section of this chapter on alternatives for deriving lower costs.)
- (4) New court facilities may be required.
- (5) The court will affect governmental agencies, as described previously. In fact, when the community analyzes the need for a housing court, it may discover other deficiencies in the governmental system. Code enforcement agencies may have had serious personnel cutbacks that have impaired the level of code enforcement in that community.
- (6) When a housing court is developed, still other supportive community services should be analyzed. For example, it may be highly desirable to consider low-interest loans for housing rehabilitation, emergency eviction services, and other housing-related programs.³³ All of these will have additional budget repercussions.
- (7) The court will draw "new business" to itself, once the community at large senses the important changes that have taken place. Yet this lead to a judicial management paradox. Improvements in the justice system may result in higher

31 In Chicago, this point has been made by court observers as well as the state's highest court on several occasions. See Fusco, Collins & Birnbaum, Chicago's Eviction Court: A Tenant's Court of No Resort, 17 URBAN L. ANN. 93 (1979).

32 In nonspecialized court systems, cases are "mixed in" with other cases in the calendar call as in San Francisco, see chapter 15, or are segregated as in Hennepin County, see chapter 13. The judge sits on other cases that day, with only a few hours per week being spent on housing matters. In Hennepin County, hearing examiners handle part of the caseload. In Hampden County's housing court, this is done by the Clerk-Magistrate. See chapter 4.

33 Comments by Kathleen Connell, national advisor.



caseloads, higher costs, and more resources spent on the average dispute. Yet these costs must be balanced against the benefits of an improved housing justice delivery system for the public and the community at large.

Although there are higher costs, on the "plus" side of the ledger several factors ought to be taken into account: (a) satisfaction of litigants appearing before the court (individuals and agencies alike); (b) the delivery of expeditious and effective "justice"; (c) the reduction of social costs, including positive effects on the community's housing stock;³⁴ (4) the reduction of caseloads in other courts, freeing those judges for other cases and thus having a beneficial judicial system impact;³⁵ and, (5) revenue from fines (although seldom is this really part of the local code enforcement strategy).³⁶

These factors should be part of any cost-benefit analysis, however crude. Moreover, they help provide the rationale for the new housing court approach. Still other factors should be considered, such as the expeditious handling of housing disputes. While the new housing court may not be more "efficient" in the conventional sense, it can succeed in terms of expeditiousness. Court's calendars can be cleared. Agencies' caseloads, often heavy with backlogs, can be brought to timely hearings. Landlords may find that earlier hearing dates are set for summary proceedings.³⁷ Tenants may find their cases heard more quickly and completely. Commercial enterprises and neighbor vs. neighbor cases may be brought to resolution faster. With adequate resources for the court, agencies, and supportive community services, there should be greater satisfaction with the new court processes.

In summary, then, the cost-side of the equation is not an easy calculation. In larger jurisdictions, where it is clear that full-time personnel such as housing specialists will be necessary, the calculation will start with "new" salaries. In smaller jurisdictions, the impacts will be less clear for reasons explained below. In any event, the types of personnel, as well as other costs, have been summarized in previous sections of this chapter. For specific court-by-court descriptions of the duties and responsibilities of each court and its personnel, reference should be made to chapters 3 through 15 (the thirteen court systems that was studied).

Finally, significant study must be given to the other costs outlined above. These, in turn, must be balanced with the complex set of benefits that the new court can bring.

34 Most housing court legislation denotes maintaining, enhancing, and preserving the housing stock as one primary mission of the new housing court. For a discussion of the Pittsburgh housing court, see Penkower, *supra* note 17.

35 If the new housing court is only for the central city and not the entire county, still other steps may be taken to replicate some of the advantages of the housing court in the outlying areas. See chapter 9 (Pittsburgh, re analysis of the district justices in Allegheny County, and the handling of code enforcement). Note too, that the creation of the housing court may be welcomed by some members of the bench, particularly if this relieves them from dealing with these housing cases.

36 However, as discussed elsewhere in this report, most housing courts eschew fines as a primary enforcement method. See generally chapter 9.

37 This very fact may engender intransigence by tenants' organizations when a proposal for a housing court is made. Unfortunately, the attitude to be that delays are not only acceptable, but to be encouraged. Enlightened groups, however, recognize that this "strategy" has unfortunate impacts on the rental housing market generally.

THROUGH INNOVATIVE APPROACHES, THE COSTS OF A NEW HOUSING COURT MAY BE MINIMIZED, PARTICULARLY IN SMALLER JURISDICTIONS. HOWEVER, CARE MUST BE TAKEN NOT TO SEVERLY HAMPER THE NEW HOUSING COURT THROUGH UNDER-INVESTMENT IN PERSONNEL AND FACILITIES.

(1) In many jurisdictions, it may be practical to assign an existing judge to the new housing court, thereby not increasing overall judicial salary costs. Such an approach is used in Los Angeles, Buffalo, and Hartford (terms are six months to a year, with various judges "rotating" into the housing court).³⁸ This even may be necessary politically, as was the case in Buffalo where the original legislative draft calling for an additional judgeship had to be dropped in order to secure political support for the proposed legislation.³⁹

Although the new housing court may have a "permanent" judge, this does not necessarily mean that the total number of judges authorized for that jurisdiction will have to be increased. A current judge, or a newly appointed or elected one,⁴⁰ may take on the new housing court role.

In smaller jurisdictions, it may be possible to have the housing court judge assigned on a half-time basis⁴¹ while presiding over different matters the remainder of the time. Still other communities may find it possible to "share" a judge who sits in one central location or who (as in a county-wide court) holds court in two or more locations.⁴²

It should be noted that still other jurisdictions may find that a new judgeship is immediately necessary or desirable, as was the case in Boston.⁴³ This may arise from expectations about the nature of the new court: partly a political decision, with local groups wishing to have a new judge appointed rather than see any of the members of the existing bench assuming the position.⁴⁴

(2) As to the clerk's office, it is possible that existing personnel can be reassigned without any new positions being added, as in Los Angeles.⁴⁵ However, depending on the type of clerk that is desired (see the clerk-magistrate system in Massachusetts⁴⁶ or the attorney-as-clerk approach in Hartford⁴⁷), new personnel may be dictated.

38 See chapter 11 (Los Angeles); chapter 7 (Buffalo); chapter 3 (Hartford).

39 Comments by Father Dennis Woods, *supra* note 29.

40 Cleveland's proposed housing court would have had one judge specifically elected to the housing court. See chapter 16. In Boston, the judges (two) are appointed "for life" to the housing court.

41 This approach is being discussed for an experimental housing court in Syracuse. See chapter 16.

42 In Hampden County, the judge sits in Springfield for the entire county. See chapter 4. In Hartford, the judge spends part of each week in two different cities: Hartford and New Britain. See chapter 3. In Boston, approximately monthly the judge sits for one evening in one of the city's neighborhoods. See chapter 5.

43 See chapter 5 (Boston); Garrity, *supra* note 9.

44 A search for someone interested in the assignment to the housing court, as a new judge, may provide another reason. (Current judges may resist such an assignment.) The judge in Pittsburgh was newly appointed to that city's housing court. See chapter 9.

45 See chapter 11. Similarly, in Hennepin County. See chapter 13.

46 See chapter 4 (Hampden County); chapter 5 (Boston); Winer, *supra* note 14.

47 See chapter 3 (Hartford); Spada, *The Hartford-New Britain Judicial District Housing Court: Connecticut's Eighteen-Month Experimental Court in* (cont.)

Special assistant clerks may also be desirable (see, for example, New York City's⁴⁸). These positions will be created if sensitive handling of eviction cases and small claims matters is sought.⁴⁹

(3) Housing specialists are new positions. They must be specially instituted for almost any housing court: a new addition to the existing personnel system.

In rare instances, it may be politically or financially necessary to do without specialists, as in New York City and, for a time, in Indianapolis.⁵⁰ In such instances, ameliorative measures can be taken. In Baltimore, agency personnel are "assigned over" to the court to run the emergency eviction program.⁵¹ In Buffalo, a CETA⁵² position was used to create a "court liaison officer". (Unfortunately however, when CETA funds ran out, the housing specialist position was effectively extinguished, to the chagrin of the court there.⁵³) One city is considering, in lieu of a permanent housing specialist as part of the court, having one of the city agencies "transfer" a person to the court on an experimental basis.⁵⁴ Nearly all housing courts, however, have strongly emphasized the need for permanent housing specialists as part of the court staff.⁵⁵

(4) Support staff, court stenographers, bailiffs, and other staff may be assigned to the new housing court on a regular or even permanent basis. If necessary in order to save costs, these personnel could be drawn from central court "pools" on an as-needed basis, although some desirable expertise may be lost.⁵⁶

Other cost-saving measures can be taken, as having the judge operate a recording device⁵⁷ in lieu of having a court reporter present at all times.

Housing -- An Evaluation, 17 URBAN L. ANN. 187 (1979).

48 Pro se clerks are used in New York City. See chapter 6.

49 As noted in an earlier section of this Report, the position of clerk with the court should not be reduced to the type of clerk found in other parts of the court system.

50 See chapter 6 (New York City); chapter 16 (comment re Indianapolis); Jester, *supra* note 25.

51 Bulkley, Eviction Prevention Program: Cooperative Efforts in Baltimore, in Housing Justice Outside the Courts: Alternatives for Housing Dispute Resolution (R. Scott ed. Aug. 1979) (preliminary draft version published by the ABA Special Committee on Housing and Urban Development Law).

52 See chapter 7 (Buffalo).

53 Comments by Father Dennis Woods, *supra* note 29.

54 Comments during meeting of community representatives, governmental agency personnel, and judges, in Syracuse (December 14, 1979). See generally chapter 16 (comment re Syracuse).

55 The "borrowing" of personnel from other agencies, mentioned above, is an attractive alternative, budgetarily speaking. It raises several problems, however, in that the person is not truly court staff. Certain confidentiality problems also may arise. The court may not be able to use the person for certain tasks. Moreover, the "allegiance" of the individual is likely to remain with his or her originating agency.

56. In some housing courts, such as Boston and Pittsburgh, even the bailiffs handle special duties on behalf of the court. For example, bailiffs in Boston often assist defendants as they come into or leave the courtroom in code enforcement proceedings. In Detroit, on the other hand, court stenographers remain assigned to one judge as he or she "rotates" to various assignments, and some expressed "unfamiliarity" with landlord-tenant terminology.

57 This was done in Pittsburgh. See chapter 9. In New York City, the (cont.)

(5) Innovative approaches can help save various personnel costs. Law clerks may be recruited from the various area law schools; few housing courts have yet pursued this course.⁵⁸ (In some instances, it even is possible to get most of the salaries of these clerks paid for by another institution.⁵⁹ Similarly, many colleges and universities run internship programs; unfortunately, most housing courts have yet to take advantage of such internships.⁶⁰)

(6) As mentioned earlier in this Report, additional help may be obtained from bar associations, such as Los Angeles for the in-court mediators.⁶¹ Court satellite programs,⁶² as in Denver,⁶³ may provide still other assistance with regard to landlord-tenant disputes.⁶⁴ (Under the Dispute Resolution Act,⁶⁵ it may well be that a number of these experiments will be federally funded⁶⁶ and made available to assist local court systems in reducing caseloads and providing better access to justice.) Still another approach is to utilize a system of hearing examiners to hear default cases and uncontested matters, as in Hennepin County.⁶⁷

(7) Certain space and physical facility considerations, described in a later section of this chapter, must be considered. For example, allocation for counseling or mediation facilities should be included.⁶⁸ Space planning also should

-
- judges operate recording machines as well. See chapter 6.
- 58 One explanation is the time consumed to "train" a law clerk; another is budget limitations. Too, to some degree such an assignment is not the usual "glamorous" clerkship; judges are concerned, therefore, with the potential performance of a lackluster candidate for a such clerkship.
- 59 The federal government funds such a work-study program.
- 60 Undergraduate students, for example, can be used for special assignments within the court's various offices. For example, depending on the background of the student concerned, data and statistics might be developed which court staff otherwise would not have time to collect or analyze. Students also could prepare issue papers (court satellite programs and nonjudicial dispute resolution programs being one such area) for review by other court personnel.
- 61 See generally chapter 18 (alternative dispute resolution mechanisms). For Los Angeles' approach, see chapter 11; Epstein, The Los Angeles Landlord-Tenant Court, 17 URBAN L. ANN. 161 (1979).
- 62 See chapter 18; McGILLI's, Neighborhood Justice Centers and the Mediation of Housing Related Disputes, 17 URBAN L. ANN. 245 (1979); Roehl, Landlord/Tenant and Other Housing Issues: In the Neighborhood Justice Centers, in Scott, supra note 51; Drew & Williams, Resolution of Housing Disputes Outside the Courts: A Glimpse of 10 Projects, in Scott, id.
- 63 See chapter 18; Ebel, Landlord-Tenant Mediation Project in Colorado, 17 URBAN L. ANN. 279 (1979).
- 64 See chapter 18.
- 65 The ABA has been particularly active in securing passage of this proposed legislation; for elaboration, see id.
- 66 The formula calls for 100% funding to be reduced over a period of four years (local governments or others to find funding sources to maintain the programs thereafter).
- 67 See chapter 13 (Hennepin County).
- 68 As noted in chapter 5, the Boston court has too many persons in an office, affecting the ability of the housing specialists to deal with the public. During counselling or dispute mediation, the experience can be demeaning for litigants. Baltimore's housing court, with its eviction prevention center, uses whatever offices are available on the first and second floors of the court building. See chapter 8.

take into account the massive numbers of persons utilizing the court, particularly for the summary proceedings calendar.⁶⁹

Still other budget considerations are relevant. These are noted briefly, below. Each item should be considered in light of what the housing court will be doing differently in contrast to what current courts are doing.

(8) For instance, the court should have funds for informational brochures for the litigants. Such reforms have been undertaken in Hennepin County, Hartford, and the Massachusetts' housing courts.⁷⁰

(9) Budget allocations for direct expenses (supplies, travel, etc.) will be necessary for duties of the housing specialists, for other court personnel, and for the CAC. Also, modernization of court records and record-keeping should be considered.⁷¹

When the community is ready for improving the handling of housing litigation, basically it should assure that the budget issues are not inadvertently allowed to hamper the reforms that are about to be undertaken.

(10) Not all costs need find their way into the judicial budget, however. System costs may be reflected in the budgets of the governmental agencies. In Pittsburgh, new administrative staff were added to the health department to work cooperatively with the code enforcement court.⁷² In Miami, assignment of a person from the state's attorney's office was discussed as one answer,⁷³ and in New York City, it was possible to encourage the corporation counsel to add new attorneys;⁷⁴ moreover, a special code enforcement and inspection team was assembled to work with the court, without judicial system budgetary change.⁷⁵ Cooperative relationships between the court and agencies, and with the private sector or volunteer groups, have been tried in many jurisdictions successfully, as noted previously.⁷⁶

In preparing for a new housing court, or a modification of existing courts, the jurisdiction concerned can explore many of these options. Depending upon the size of the jurisdiction and the nature of the problems currently being experienced, the budgetary impacts can be minimized. In turn, this should reduce some of the resistance to implementation of the new court.

69 As discussed in the later section on "physical facilities", this is especially important if the court is to have any semblance of humanity and effectiveness in its operations.

70 See chapter 13 (Hennepin County); chapter 4 (Hampden County); chapter 4 (Boston); chapter 3 (Hartford).

71 An intensive study locally may show severe problems with current record-keeping and docket management. Other reforms, as with court reporters or recording equipment, should be borne in mind. A wealth of materials in this regard is available from the National Center for State Courts; information also may be secured from the National Conference of Special Court Judges, Judicial Services Division of the ABA.

72 For extraordinary new approaches, see chapter 9 (Pittsburgh).

73 That office has expressed interest in improving local code enforcement efforts. Moreover, Miami was one of the recipients of ABA-HUD planning stipends to encourage local court reforms in the housing justice arena. See chapter 16.

74 Comments by Judge Francis X. Smith, national advisor.

75 See chapter 6 (New York City); comments by Robert Gould, national advisor.

76 See chapter 18 (alternative dispute resolution mechanisms).

IN STUDYING THE POSSIBILITY OF CHANGING THE LOCAL COURT SYSTEM RELATIVE TO HOUSING DISPUTES, CONSIDERATION SHOULD BE GIVEN TO SYSTEM-WIDE IMPACTS ON OTHER COURTS AND ON TRUE SOCIAL COSTS.

As described earlier, the costs of a new housing court -- or other, less dramatic changes -- should be analyzed as against system-wide benefits.

(1) There are the direct costs that may be alleviated, including the hoped-for beneficial effect on the housing stock in the community: one of the stated goals of most housing courts.⁷⁷

(2) There are the social costs and benefits. As described previously, the reforms and innovations undertaken should effect the delivery of justice to the public.

(3) There are the "internal" effects that the changes are likely to have on the many other parts of the area's local court system. Caseload relief may be anticipated in other courts for summary proceedings, code enforcement, small claims, and other litigation.⁷⁸ (However, this may be difficult to prove; and, with access to justice improved, system-wide caseloads may accelerate, rather than decrease.)

The housing court, and particularly its CAC, may well have to investigate nonjudicial alternatives for dispute resolution⁷⁹ as a result. It should do so in any event, constantly attempting through critical analysis to determine what the changing needs of the community are.

It is likely that caseloads will increase, especially as the community matures and housing conditions deteriorate. Too, the evolution of the law, as in the doctrine of warranty of habitability, will have its impacts on the court.⁸⁰

Eventually, the new housing court may find itself strained badly, requesting the assignment of more personnel and higher budgets to fulfill its stated missions. Cynics might denigrate this as an inevitable accompaniment of a self-perpetuating bureaucracy. Yet this Report finds many of the housing courts' claimed needs are valid. The judge may be overloaded, as he is in Baltimore.⁸¹ The housing specialists and clerks may be too few in number (as in Buffalo and Hartford) or even nonexistent (as in New York City and previously, in Indianapolis). In still other courts, too much may be expected of the court's personnel. Priorities will need to be clearly set, and not every conceivable service offered.

These dilemmas must be monitored and handled carefully. For communities contem-

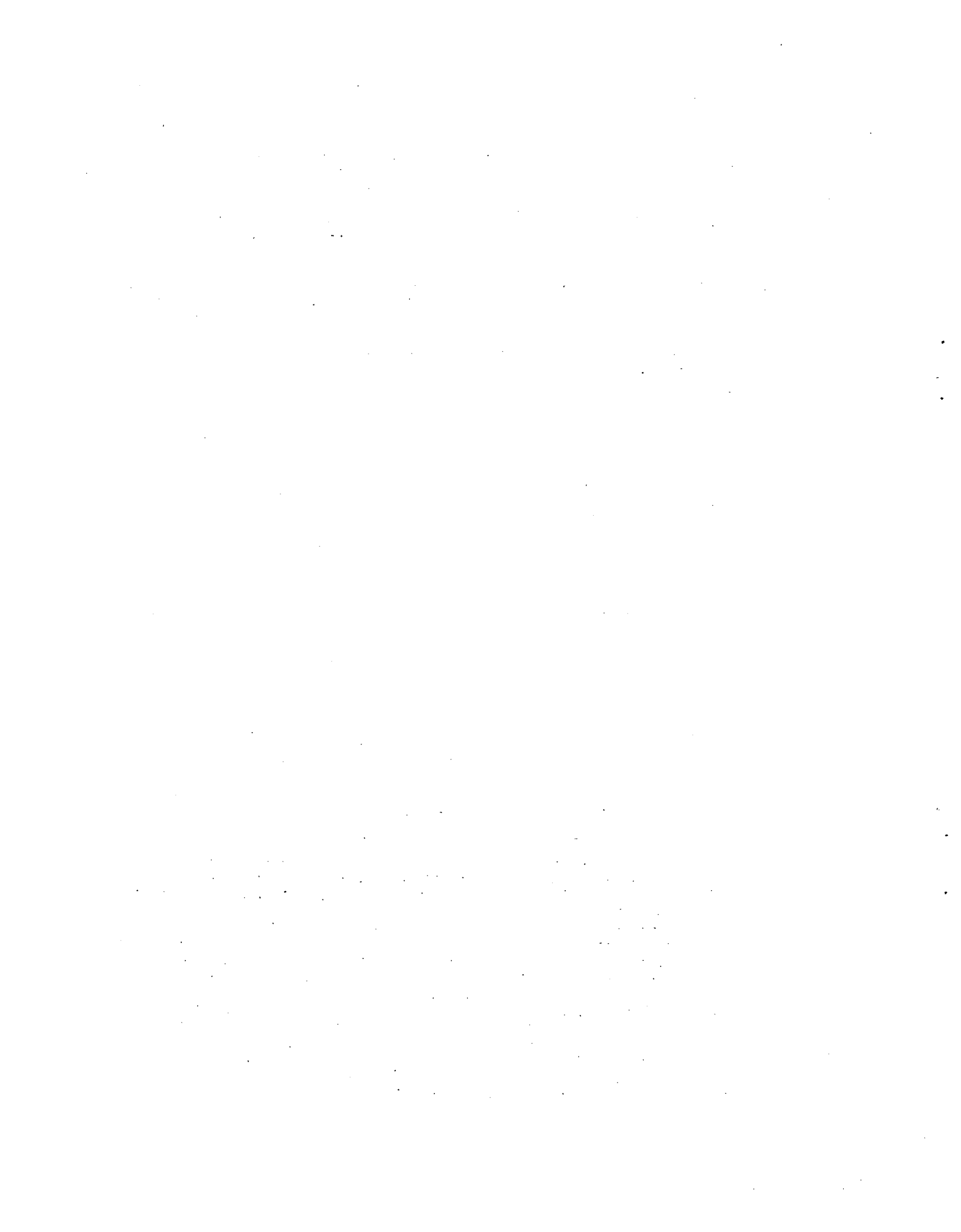
77 In this regard, see earlier comment, *supra* note 34.

78 In a "closed system" such as code enforcement, where only governmental agencies can bring code violation actions, the effect is relatively simple to trace in terms of court impacts. In "open systems" (where members of the public can initiate actions), and particularly where jurisdiction among courts is "shared" (concurrent), trends will be more difficult to estimate.

79 See generally chapter 18 (nonjudicial); *supra* notes 61-64.

80 Sensitive treatment of this issue clearly will have workload implications for the court. For a discussion of the difficulties when this is not done, see *supra* note 31.

81 See chapter 8 (Baltimore). There, one judge presides over extraordinary caseloads in the Rent Court and the Housing Court; judicial burnout is rapid. Moreover, the two courts are badly understaffed.



plating new housing justice approaches, it is important: (a) to attempt to anticipate some of these issues and to allow the court system, in its very design, to accommodate change;⁸² (b) to provide adequate resources for the new housing in the first place; (c) to establish monitoring systems that will perform appropriately as the court continues to mature;⁸³ and, (d) to build a responsive and interested "constituency" for the court (such as a viable CAC).

THE BUDGET PROCESS SHOULD BE DESIGNED TO REINFORCE, AND EVEN FORCE, THE APPLICATION OF MODERN JUDICIAL MANAGEMENT IN LOCAL COURT SYSTEMS TO IMPROVE THE ADMINISTRATION OF JUSTICE.

It should be noted that there tends to be an abdication of responsibility in many jurisdictions for managing housing justice. It would appear that in these courts, judicial management simply has not caught up to the state of the art in governmental and business administration.

Few judicial systems monitor their "business" by "program". Translated into the context of this Report, this means that judicial administrators have little sense of the types and extent of the housing cases in that jurisdiction; of typical caseloads, dispositions, or time spent on the average; of allocations of personnel; of costs and benefits. Instead, gross data is assembled without regard to priorities, needs, or opportunities for change and innovation. (Poor caseload statistics are an indication of this state of affairs.) Budgetary information typically is not analyzed from these perspectives either.

To understand the needs of the public and thus, how courts may deliver justice, such analysis should be taking place. Judicial systems should be able to provide data across local court "organization". First generation analysis should be able to answer the question: What numbers and types of housing cases are brought in small claims courts, in district courts, and in superior courts?⁸⁴ What is the disposition of these cases? What is the cost of operating these courts in regard to these (housing) cases?

Second generation analysis should result in the ability to improve judicial administration in each of the courts. It should be able to address the questions: What improvements can be made in the calendaring of cases and in docket management? What methods can be utilized to provide faster resolution, including the use of pre-hearing conferences? What approaches could be tried to assure compliance with court orders or judgments? These questions are only a few examples of those that ought to be asked and answered.⁸⁵

82 As discussed previously, it may be appropriate to leave "options" in the legislation so that the court is not too rigidly delineated. For example, see chapter 7 (Buffalo), whereby the court may expand beyond code enforcement matters to landlord-tenant cases at some future date.

83 One approach is to place firm responsibility with a professional court administrator (at other than merely the state level) as well as the chief administrative judge. Sufficient training, personnel, and other resources must be provided. Another approach includes an active CAC function, described previously in this chapter.

84 Names of local courts will differ. For one of the most complete sets of statistics, see the data for the Pittsburgh housing court and the district justices, in chapter 9 (the first time such data was assembled in that county for other than the housing court *per se*). Similar information in Boston for the district court could not be obtained, for example.

85 For further guidance, see sources listed, *supra* note 71.

Third generation analysis would result in programmatic overviews: an inter-
gration of this court-by-court data and analysis. As an illustration, the
question should be asked: Would the elimination of concurrent jurisdiction
result in substantial benefits? (District courts having concurrent jurisdic-
tion with the housing court present one such example.) What approaches might be
pursued in this regard? (Obviously, legislative enactments, rule changes, or
docketing of cases⁸⁶ might effectuate the desired results.)

Hypothetically, the analyst should be able to ascertain the need for, and the
effect of, giving a housing court new subject matter jurisdiction (as small
claims) or the power of equitable relief. For, he or she should be able to
evaluate the effect of "decriminalizing" most code violations.⁸⁷ Similarly, it
should be possible to scrutinize the advantages of substituting a hearing exami-
ner⁸⁸ or a clerk-magistrate⁸⁹ for a judge in certain uncontested matters,
once a system-wide analysis has been completed.

The application of other management improvements to court systems is essential.
Some inroads are being made, such as the computerization of code violation
records, or the retrieval of this data via a terminal on the judge's bench (as
in New York City⁹⁰) during any court hearing. Surprisingly, little is being
done in most of the court systems studied for this Report.

Even though caseloads are higher for housing matters than almost any other type
of litigation before the courts,⁹¹ the emphasis on analysis is extraordinarily
low. Part of the reason lies in the fact that the court system personnel appear
to be overtaxed in their work duties. As a result, it was difficult in this study
to extract even the most elementary court system data.⁹² Crude data⁹³ existed
in some courts (in others, none was kept even as to the court's fines or other

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- 86 Great latitude may be available to the chief judge, or the state supreme
court, in many jurisdictions. This approach should be explored in con-
junction with proposals for legislative change, since modest rule or
docketing approaches may be able to be used if the legislative route is
politically difficult.
- 87 This is the subject of a new study of the ABA Special Committee on Housing
and Urban Development Law, to be completed in 1980.
- 88 See chapter 13 (Hennepin County); Rogers, An Alternative to a Housing Court,
17 URBAN L. ANN. 177 (1979).
- 89 See chapter 4 (Hampden County); Winer, supra note 14.
- 90 See chapter 6 (New York City). Moreover, the print-out is prima facie evi-
dence under a provision of the law.
- 91 As pointed out previously in this Report, housing litigation constitutes a
surprisingly high percentage of total cases when summary proceedings,
code violations, small claims, civil actions, and other litigation are
taken into account.
- 92 Some court personnel pointed out that housing specialists, for example,
have no records of most public contacts unless actual litigation is in-
volved. Comments were made that the figures that were "bandied about"
in budget reports and elsewhere tended to be manufactured estimates:
there simply is "no time to worry about statistics". Records on case
dispositions by the courts, surprisingly, often were not in much better
shape.
- 93 Gross numbers such as "cases heard" or "number of jury trials" are not at
the level of sophistication to be helpful to a court administrator;
very few courts had up to date or detailed information. Fortunately,
court system personnel were cooperative in pulling together what data
they could for this Report.

dispositions⁹⁴). Seldom was it aggregated and detailed.⁹⁵ Rare was the case that the chief administrator or administrative judge was aware of what good data could disclose and how it could improve management opportunities. This is not to suggest that management is totally lacking in local court systems. Rather, management seems often to be "instinctive" or "collegial"⁹⁶ or otherwise accomplished on a "crisis" or "requirement" basis.⁹⁷ This lack of overall judicial management sophistication is surprising since a number of court systems have personnel designated to perform some portions of this task. The job simply is not getting done, even in many of the housing courts. (Indeed, when questions about caseloads, budgets, or alternative management approaches were raised in some of the courts, good data often was collected for the first time and, almost immediately, this occasioned an adjustment in court operations.⁹⁸)

Conclusion

Thus, the budgetary process is part of an overall judicial management strategy; it is not simply "line-item"⁹⁹ control of court expenditures. It can force the asking of hard analytical questions on a programmatic¹⁰⁰ basis.

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- 94 For example, most courts did not know how often the average case was "continued" nor for what average period of time. Even more revealing was that totals of uncollected fines were not available; and, rarely was there any method to regularly "purge" the judicial system of these problems.
- 95 Many court personnel, including professionals who normally would be responsible for these activities, deplored their inability to accomplish these tasks. Frequently, they also expressed the sense that the chief administrative judges would dismiss the work as petty or not meaningful. Thus, a clear tension exists in some courts as to priorities and management capabilities.
- 96 The "instinctive" school of management is characterized by having the administrator concerned wait until he or she has a "sense" of an appropriate course of action. Without regular information on a systematic basis, the management style tends to be quite ad hoc. The "collegial" management style is one that was professed by a number of judges. It depends on a type of ultimate consensus or "democratic decision" by all the judges. Some chief judges even were so candid as to admit that this approach was followed because their job (of "chief") was rotated among the judges in that jurisdiction and that any strong administrative hand would be resented.
- 97 "Crisis" management is a "wait and see" approach: if there are major problems, they will surface later and be resolved at that time. The "requirement basis" approach tends to be a gloss on management. Certain data is required for the annual reports, so it is prepared late in the year; thus, a management information system is not implemented unless a top administrator, in effect, requires it.
- 98 After collecting information in some cities, questions were asked of court personnel. To the credit of many, steps often were taken to correct situations about which they were not previously aware. The real point, however, is that this information could have been derived earlier if a management system were structured so as to encourage this type of regular analysis.
- 99 Line-item budgeting is a method of summarizing costs by types of expenditures, such as costs for office equipment. It is the oldest and least sophisticated approach toward budgeting; in fact, it is merely a fiscal control technique.
- 100 Program budgeting tends to force questions along lines of established (cont.)

For jurisdictions considering new housing courts, it may be asking too much to answer all of these questions before embarking on a new course. This is particularly true when local problems are severe and the time is opportune for reform.¹⁰¹ Nonetheless, exploring these "budget/management" areas may help establish whether a housing court is needed. It will help determine what the costs and benefits are for these, or alternative, courses of action.

The day will come when the judicial branch begins to apply these techniques to the housing justice arena. In the meantime, a few judicial administrators will continue to press for the resources to accomplish these sorts of analyses. Citizen groups and legislators alike also should be urged to support, to help develop, and to and participate in, these management tools. (One such mechanism -- the CAC -- already has been discussed at length in an earlier section of this chapter. This provides one way in which a viable citizens' lobby¹⁰² can become important for, and regarding, the operation of the courts.) This approach, then, can better accomplish system-wide innovation and reform in our courts.¹⁰³

"functions", "objectives", and "goals".

101 Political realities should not be understated. Where there is community awareness of the need for change, it may be appropriate to try a new course. See reasons for some of the housing courts, as in chapter 4 (Hampden County). However, a significant amount of analytical work can, in fact, be accomplished even in a short time frame. This is important to accomplish in order to measure and to buttress the need for reform.

102 Comments of Walter Washington, member of ABA Special Committee.

103 Thus, suggesting the title of this Report (forthcoming, 1981; approx. 1000 pages): HOUSING JUSTICE IN THE UNITED STATES: RECOMMENDATIONS FOR CHANGE AND INNOVATION IN OUR COURTS.

LOCATION AND PHYSICAL FACILITIES FOR THE COURT

THE LOCATION, SPACE, AND PHYSICAL FACILITY NEEDS OF A HOUSING COURT MAY BE DIFFERENT FROM THOSE OF MANY OTHER LOCAL COURTS. THESE NEEDS--THOSE OF THE PUBLIC, THE COURT STAFF, AND VARIOUS COURT-RELATED SERVICES--SHOULD BE CAREFULLY TAKEN INTO ACCOUNT DURING THE PLANNING AND BUDGETING PROCESS FOR ANY NEW OR EXISTING HOUSING COURT.

From the preceding sections, it is evident that the operations of a specialized [housing] court tend to be significantly different from those of most other local courts.¹ In designing the housing court, consideration must be given: first, to the geographical location of the court within that jurisdiction; and second, to the actual courtroom and court facilities.

In most larger urbanized areas, courts generally are sited in two basic types of locations. "District courts"² are located more or less by large neighborhoods or sectors of the city or county. "Higher-level" courts are in one central location in that jurisdiction;³ typically, a court building in the downtown. The most immediate question is whether the new housing court should be sited in that one downtown location. What are the pros and cons of a central location, and what can be done to ameliorate possible inconveniences?

Certain practical considerations may intervene in this decision, requiring that the housing court be placed in the central, downtown court building. For example: (1) there may be no resources available to house/locate the new court elsewhere; (2) it may be desirable to keep the court "near" other courts generally;⁴ and, (3) it may be helpful to have it close to other courtrooms to which the judge

- 1 Small claims courts, however, may have similar types of needs, given the types of disputes that they handle and the heavy caseloads that occur. See generally RUHNKA, HOUSING JUSTICE IN SMALL CLAIMS COURTS (1979); also, chapter 17 of this 1980 REPORT summarizes this book, prepared for the ABA's Special Committee on Housing and Urban Development Law.) Nonetheless, small claims courts do not have all the specialized personnel and services as do comprehensive housing courts. In addition, due to generally better case docketing procedures, small claims court calendars are less "flooded" than may be the situation, for example, in most courts that handle high numbers of eviction cases.
- 2 District courts are of different varieties: for example, a district court in Boston, see chapter 5, is quite different from a district justice's court--formerly, justice of the peace--in Allegheny County, see chapter 9.
- 3 Very large cities may have some of these higher trial courts (such as Superior Courts) located in several different sites as well as in a central location.
- 4 The "proximity" of the courts is primarily an issue involving internal judicial management. There even may be a feeling among the bench that the housing court should not be "isolated" administratively. More importantly, if other alternatives discussed in this Report--such as those mentioned below--are adopted, then physical proximity to other courtrooms may become important. As to use of other judges and courtrooms in complex cases, see Los Angeles (chapter 11). For a comment about "spinning off" some cases (jury trials set for later hearings) to courtrooms literally "just across the street", see chapter 3 (Hardford). In New York City, see chapter 6, the situation is unique in that the calendar call is performed by other than a housing court judge; then, all cases are assigned to the various individual hearing rooms, which are "down the hall".

is assigned if he or she is not sitting full-time in the housing court.⁵ Other considerations may include having the court: (4) near city records and other record-keeping functions;⁶ (5) in proximity to nonspecialized staff, of whom the court may have need;⁷ and, (6) in a location that is convenient to the general public in terms of time and transportation.⁸

This last aspect is especially important to the "litigant community". An ideal location is one that is well served by mass transportation, both from places of work and residence. Tenants, for example, otherwise may have to go to significant costs including lost pay, to attend one or more sessions of the court.⁹ Owners and managers of buildings will have to appear as defendants in code enforcement actions. Landlords and their agents also should find the facilities convenient to use. To a lesser extent, attorneys will need access as well.

Landlord organizations may resist the creation of a housing court if it is less accessible than current courts. (This might happen if the jurisdiction in the new housing court becomes exclusive, whereas before, landlords used neighborhood courts.) This has been one objection in Allegheny County to the proposal of having a centralized landlord-tenant court.¹⁰ New York City is not faced with this problem because the housing courts are in four different boroughs. Tenant organizations also may be initially suspicious of a central court, with or without exclusive jurisdiction. Concern was expressed in Los Angeles, for example, that some landlords would file in a central ("downtown") court rather than the outlying courts in the county, thereby so inconveniencing tenant-defendants that they would be much more likely to default by failing to go to court.¹¹

Code enforcement courts may be somewhat different. Pittsburgh's court is centrally located and is very close to the offices of the building department. Moreover,¹² defendants can go to see persons at other offices and counters in the same building, where they can secure permit forms, financial assistance

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- 5 Most housing courts have a full-time judge and a separate calendar. Courts having specialized calendars, but not full-time housing judges, will find that the courtrooms will change and thus, must be in the central court building.
 - 6 It may be desirable to be near, for example, the city's records regarding code violations. See chapter 9 (Pittsburgh).
 - 7 Especially where a general clerk's office handles all case filings (where there is no specialized housing court clerk), it is quite important to the court and to the litigants that the courtroom be nearby. See generally chapter 6 (New York City). If other staff are drawn from a "pool" of personnel including secretaries, court reporters, bailiffs, etc., then the central location may be required.
 - 8 It is critical that this aspect be taken into account. It is one rationale behind innovations in the small claims courts area, including evening and weekend sessions, neighborhood hearings (on circuit), and the like. See generally RUHNKA, SMALL CLAIMS COURTS: A NATIONAL EXAMINATION (1978): RUHNKA, *supra* note 1.
 - 9 Examination of the effects of state and local laws may indicate that in contested hearings where tenant-defendants appear at the hearing, but have not filed the required answer, a second hearing must be held (unless the parties agree or stipulate otherwise). See chapter 4 (Hampden County); chapter 3 (Hartford).
 - 10 See generally chapter 16 (planning stipends, re Allegheny County).
 - 11 See chapter 11 (Los Angeles); chapter 6 (New York City).
 - 12 This convenience is much appreciated by defendants. See chapter 9 (Pittsburgh); also, comments from Judge Alan Penkower, national advisor.

information, and the like. The county health department is not nearby, and its staff, must go downtown to prosecute the city-area cases. However, the district justice's court that handles code violation cases outside of the city--that is, in the outlying county--is within walking distance of the county health department's offices.¹³

Several possible disadvantages of a central location have been mentioned above. There are ways to ameliorate these difficulties, nonetheless. (1) The housing court's jurisdiction in landlord-tenant matters may be left concurrent with other courts; yet the defendant, if he or she so chooses, can have the case "removed" to the central housing court.¹⁴ (2) The court may sit in two or more locations on a frequent basis. This is done in the housing court of Hartford-New Britain, every other day.¹⁵ (3) For certain cases where time is not of the essence,¹⁶ the court could return occasionally to that neighborhood to hold a day or even, an evening session. This is one practice used in Boston. (4) The community, if it is highly urbanized, may even have permanent "branches" in several locations. This is the approach in New York City.¹⁷

As already described, there are advantages to having the housing court housed in the same court building as many of the other "central" courts. Care should be taken, however, to see that the space needs of the housing court can and will continue to be met (rather than being confined to inadequate rooms and offices).

IN MOST OF THE COURTS STUDIED, SPACE NEEDS HAD NOT BEEN MET. NOT ONLY DOES THIS RESTRICT THE FULL POTENTIAL OF A HOUSING COURT, BUT THERE ARE NEGATIVE EFFECTS ON THE PUBLIC AT LARGE AND ON ADMINISTRATIVE AGENCIES' PERSONNEL.

In nearly every jurisdiction studied for this Report, the overall space was inadequate for the unique operations of the housing court. The exception was Hampden County, where the housing court was borne in mind when space was allocated in a new court building. In Hartford, a novel approach was taken, with the housing court placed in a separate building; nonetheless, the space was cramped almost from the time the court began operations in early 1979.¹⁸

As is evident from the discussion that follows, the actual location of the court, its space needs, and the availability of appropriate facilities are integrally related issues.

The public tends to think of the court's facilities only in terms of those of the courtroom per se. That aspect is covered as point #8, below; discussed first are seven other aspects of the court's space physical facility needs, which can

13 See chapter 9 (Pittsburgh, re discussion of the operations of the District Justice's court in Allegheny County).

14 This is done in Boston. See chapter 5.

15 See chapter 3 (Hartford). Moreover, two court staffs are maintained (but with some difficulty regarding the housing specialists). Only the judge is "on circuit". See generally Spada, The Hartford-New Britain Judicial District Housing Court: Connecticut's Eighteen-Month Experimental Court in Housing - An Evaluation, 17 URBAN L. ANN. 187 (1979).

16 Summary proceedings are unlikely to be able to be delayed. However, most code violation cases could be so scheduled, particularly if this pattern is acceptable to the code enforcement agency. Similarly, the housing court's jurisdiction over small claims could be handled in this way.

17 In four boroughs. See chapter 6 (New York City).

18 See chapter 4 (Hampden County); chapter 3 (Hartford-New Britain).

deeply affect the court's operation. Major failings observed in many of the courts that were studied or surveyed for this Report, are listed below.¹⁹

(1) Corridors outside courtroom areas in some cities such as New York, are jammed. They rarely have seating available of any type. Moreover, the noise carries into the hearing rooms or courtrooms.²⁰ To make matters worse, out-in-the-hall settlement negotiations must take place under quite undesirable conditions.

Proper space planning could avoid many such problems. Adequate seating inside and outside the courtrooms, separate rooms for negotiations, and new procedures for reducing the public's confusion in the first place (dealt with at greater length in point #2, below),²¹ should be included and budgeted.

(2) There rarely are facilities directing the public where and how to ask questions and to receive assistance. What few signs exist, generally are inadequate. A sign having "Clerk's Office" and a room number is hardly useful for the usual tenant-defendant.

Few courts have thought of establishing an information desk where brief questions (such as, "How will I know when my case will be heard?" or "Do I have the right papers?") can be asked. Such a desk should be just inside the public entrance on the floor where persons are to "appear" for court.²² Some defendants show up and wait hours to be heard, only to learn that they did not necessarily have to come to court at all.²³ Not atypically, defendants simply go into the courtrooms, if they are not full, and wait in the hope that somehow they will find out what to do.²⁴

Some courts have tried new approaches. Detroit has a waiting room and a special counter, staffed by court personnel.²⁵ In Boston, a bailiff is stationed next to the "rail"; in New York City, the bailiff is situated just inside the hearing room entrance.²⁶ In Los Angeles, the judge starts the calendar call

19 Specific facility defects and changes for the 13 court systems are described in detail in separate sections in each of chapters 3-15.

20 Sometimes this is disruptive to the hearings in progress. More often, those in the back of the courtroom cannot hear very well and may even miss their cases during the first calendar call. See chapter 6 (New York City).

21 One of the causes for this logjam of people is poor calendaring practices by many courts. Instead of using staggered calendar calls, all the cases for much of the day are scheduled to start at the same time. While this may serve to convenience the bench, it clearly inconveniences the public and unnecessarily overburdens court facilities and court staff.

22 This desk could simply be one for "quick" questions. For detailed answers, persons could be sent to the pro se clerks or the housing specialists. See earlier sections of this chapter.

23 Often a tenant-defendant who does not have a "defense", or who has already paid but against whom an eviction action was brought earlier, will show up in court. (Even better than an information desk would be information on the summons itself. See later sections of this Report).

24 Again, courts should adopt some method of providing informational materials that would assist the defendants in organizing their "cases". Preferably, brochures would be made available to the litigants well before they come to court. See generally infra note 30.

25 The basic purpose, however, is to determine which cases that morning will be defaults. See generally chapter 12 (Detroit).

26 As these court officers are stationed inside the courtrooms concerned, (cont.)

with a presentation, explaining to the defendants generally what the procedures are in the courtroom.²⁷ Other courts, such as in Hampden County and Hartford, have the clerks' offices close to the courtroom; they are readily seen by the general public upon entering the building. One court has an audio-visual device, which the public can use by pushing a button.²⁸

At the very least, there should be signs or instructions immediately obvious to the public. A better idea is to have a glass-enclosed display board, and not just a plain sign, graphically showing "legal information" as well as suggesting what type of assistance is available from the clerks or the housing specialists.

Secondly, a desk such as that in Detroit could reduce the massive confusion reigning in some high caseload courts. Such desks could be staffed by assistant clerks (or even, volunteers). These persons should be able to explain simple procedures, rendering a certain amount of pre-trial and post-hearing assistance.²⁹

Third, inexpensive printed information could be made available, which litigants could learn from while waiting for their cases to be called. Or, this information could be attached to the original summons that was sent to the parties.³⁰

(3) Many courts are remote from records-keeping offices. This means that litigants have to go to government offices³¹ in other buildings in order to complete simple matters.³² If these offices cannot be brought closer, one solution is for courts to simplify paperwork procedures, as with the papers that have to be filed with the clerk. Another is to computerize certain records (with remote terminals), as for code violations.

(4) Most of the courts fail to have any mediation or settlement facilities available. Nonetheless, these very courts urge litigants to try to settle, apparently expecting these sensitive discussions to occur in the crowded corridors.³³

often they can do little but quietly and very quickly answer a question as to which case is being heard (how far down the docket the court is at that point). In Boston, however, the bailiff may "interpret" a court order (such as a continuance) to the defendant as he or she leaves, or as the bailiff guides that person to the housing specialist department. Other questions sometimes are asked, but the bailiff takes care not to exceed his or her authority.

27 See chapter 11 (Los Angeles); Epstein, The Los Angeles Landlord-Tenant Court, 17 URBAN L. ANN. 161 (1979).

28 See chapter 13 (Hennepin County).

29 This also is a recommendation regarding small claims courts. See RUHNKA, supra note 1; chapter 17 of this 1980 REPORT. For relatively complex matters, the litigants may be directed to the housing specialists. Moreover, given the volume of persons in court that day, the clerks may be able to handle only some of the simplest questions prior to the first cases being called.

30 This is discussed elsewhere in this chapter. See also chapter 19.

31 As mentioned previously, the Pittsburgh housing court is well-situated in terms of proximity to the building department and other city services.

32 Multiple trips to clerks' offices should be unnecessary. In some cities, court forms often have to be shipped between buildings for required signatures. Too, in most jurisdictions the law requires the prevailing litigant to return to court to get a judgment executed (rather than being done by mail); or, the litigants are not made aware of by-mail opportunities when they first come to court. See generally supra note 29.

33 This practice is analyzed elsewhere in this Report. See Chapter One.



(For some brief settlement discussions, this may work if the corridors are not already overflowing with persons at court that day). There should be, however, a supervised settlement program³⁴ with at least two rooms scheduled for that purpose.

(5) In most of the courts studied, there were inadequate facilities or offices for housing specialists. Time and again, two or more persons were in one office and the housing specialists were expected to carry on counseling work as well as their regular paperwork.³⁵ This results in a poor work environment, especially during peak hours. It also is demeaning to the public that has to contend with these conditions during discussion of quite personal matters relating to their cases and their problems.

(6) General office space conditions are less than desirable in most courts.³⁶ Clerks' offices, for example, are quite noisy and crowded. Finally, little or no space planning has been done in terms of future staff expansion.³⁷

(7) Equipment for purposes of record-keeping is antiquated. Almost all of the courts work with hand-kept, hard copy records.³⁸ The use of memory typewriters and computer terminals by staff persons was almost nonexistent. Any hint of modernization, apparently because of insufficient resources, was lacking in nearly all of the courts studied.³⁹

(8) Courtrooms per se differed greatly in the various cities. Some were on a par with any other courtrooms in the building (as in Boston, Hampden County, Baltimore, Chicago, Los Angeles, and Hennepin County). The courts were spacious and well-appointed. The only reason these courts ever appeared inadequate were for reasons of poor calendar management⁴⁰ or acoustics⁴¹.

34 Los Angeles, see chapter 11, has such a program; see generally supra note 27.

35 A primary example of this type of situation is found at the Boston housing court. See chapter 5. The eviction prevention program in Baltimore often has similar problems, with persons temporarily using offices on the first and second floors during the peak hours of the Rent Court's operations. See chapter 8.

36 Excellent facilities are available in Hennepin County. See chapter 13. In Pittsburgh, which handles only code enforcement, the facilities are relatively adequate, although an additional "counseling" area would be advantageous. See chapter 9.

37 New York City is an example. The question of how to house staff close to the courtrooms could be a problem if any additional personnel were to be acquired (such as housing specialists). See generally chapter 6.

38 There is little cross-indexing or cross-referencing capability in courts.

39 For example, computer modernization could "pull up" pending cases, indicate fines not yet paid, assist in "tracing" continued cases, aid in finding owners of record or showing repeated violators, ad infinitum. Automated typing also could help with papers and opinions, saving many hours. Court data and statistics could be kept more easily as well. Yet in Boston, the clerk's modernization requests were denied. See chapter 5.

40 As noted previously in this section, the lack of staggered calendar calls literally creates peak-hour crowding in the courtrooms.

41 In New York City, Baltimore, and elsewhere, it is difficult even to hear the first call of the calendar. This can cause some litigants to have to wait for second calls. In any event, they are unable to learn from the proceedings in other cases. In Chicago, greater abuses have been alleged. See Fusco, Collins & Birnbaum, Chicago's Eviction Court: A Tenant's Court of No Resort, 17 URBAN L. ANN. 93 (1979).

Several other courts had courtrooms that were small to the point of disruption when the litigants appeared en masse in the mornings. Hartford had this problem frequently, with persons moving in and out among a small number of folding wooden chairs⁴². New York City's hearing rooms and passageways literally are overwhelmed, and the atmosphere is less than conducive to judicial proceedings.⁴³

CONCLUSION

Other physical facility and locational aspects need not be dealt with at any greater length in this Report. (One interesting sidelight, however, is that almost all the courts chose to have the judges formally robed and seated behind a raised bench. Pittsburgh's court was the only one not to do so. The judge holds court at a conference table; he is not robed.⁴⁴ The setting is akin to that of an administrative hearing in many respects, but here, the defendant⁴⁵ sits at the judge's conference table, along with the code enforcement agency personnel and the assistant clerk.)

In summary, close scrutiny should be given to the facility and space needs of any new or existing housing court. Unfortunately, its unique operations generally are not taken into account when "normal" court planning and building space allocations are done. Part of this may be due to a perception that housing matters are one of the least desirable and least prestigious of court assignments.⁴⁶ The space assigned to a housing court must be adequate; it must not be, or suggest, a second-class court.

If anything, this type of court sees more people coming through its doors than nearly all other courts in the community. Its facilities should be designed to meet the very real needs that result.⁴⁷ To do otherwise may inhibit the fair administration of housing justice.

42 See chapter 3 (Hartford-New Britain).

43 See chapter 6 (New York City) for critical commentary; Fusco, supra note 41 (re Chicago).

44 At one time, a similar approach (avoidance of the "black robe syndrome") was discussed for the new housing court in Boston. The judge was willing to proceed in this fashion, but tenants' and landlords' groups urged that the new housing court "must be taken seriously" by instituting the full formal appearances. (Comments by Judge Paul Garrity, national advisor.) In Pittsburgh, contra, the judge feels that the approach adopted there has worked "relatively well", although thought has been given to change, from time to time. (Comments by Judge Alan Penkower, national advisor.)

45 The defendant is one in a code enforcement proceeding. The Pittsburgh housing court does not handle other housing matters. See chapter 9.

46 This attitude has been identified repeatedly by housing court judges, and made by judges rotated temporarily into housing assignments.

47 Yet other courts may be handling only a few trials or hearings a day. Despite the heavy caseload burden, the "low court on the totem pole" seems to be either traffic court or the court handling housing matters. There is no real legal basis for this, with the possible exception of New York City (the historical reason being that until relatively recently, housing court judges were "only hearing officers"). See chapter 6.

GENERAL AND REMAINING ISSUES

During the field work involved in studying the various cities -- highlighted in chapters 3-15 and 16-17 of this Report -- it was apparent that a number of general issues were recurrent. For example, service of process, the procedures used by judges regarding evidence offered by the litigants, and warranty of habitability doctrine problems seemed to occur in many jurisdictions.

These problems are briefly described in each of the case studies. They are mentioned also in Chapters One and Two, in conjunction with the descriptions of the courts' personnel functions.

In the cities where these types of problems arose, there often was no consensus as to what should be done. Not surprisingly, landlord and tenant groups disagreed on solutions and, sometimes, even on whether or not any such problems existed. Other sharp differences of opinion were expressed by legal aid attorneys, the private bar, and members of the bench.

The ABA's Special Committee on Housing and Urban Development Law recognized that it should not go beyond a description of these problems to the actual design of "answers", at least in this study. The reasons for this were several-fold.

As already mentioned, this particular national research study was designed to describe the advantages and disadvantages associated with specialized housing courts. Its focus was the organizational and administrative aspects of the housing courts, so as to assist other communities that might consider such approaches. The field work, research, and review sessions for the project were tailored to meet these objectives.

An appropriate research base, therefore, simply was not present to derive other types of national recommendations that would have involved important alterations or clarifications to substantive and procedural law. Such a study, if properly designed, would be extensively comparative and would involve different research methodologies. An example of part of the necessary approach is the one utilized in chapter 18 of this Report, involving small claims court data.

Moreover, the Special Committee decided that the fields of inquiry on these issues would have to be substantially narrowed and the depth of scrutiny intensified. For example, the application of the law of warranty of habitability, in itself, would be a major undertaking. Indeed, one area (code enforcement agencies' procedures and their interaction with courts and substantive law) is the subject of a two-year study of the Special Committee, which was launched in late 1979.

The Special Committee concluded that a set of recommendations on these issues would require substantial and exhaustive reviews by many organizations and other scholars in these and allied fields. Law reform investigations of this nature are a lengthy, deliberative process that frequently demands many years of study.

Nevertheless, the Special Committee urged that notes be developed on some of the issues by the Editor and included as a separate section in Chapter Two. These editorial notes do not express any findings or recommendations of the Special Committee. They provide only a series of initial observations that are relevant to the other materials in this Report. The notes offer a point of departure for further analysis by other groups and individuals in the future. Too, some of the communities that are experiencing similar problems may wish to make their own local inquiries at the time they are considering development of a new housing court.

Several overriding issues are not reiterated in the pages that follow. These include broad housing law and social policy matters such as rent control, warranty of habitability, condominium conversion, and the like. Instead, what is set forth below are specifics on procedures relating to landlord-tenant and code enforcement matters. Each note is presented in the form of a question. Comments then follow, which are intended to stimulate further discussion and debate.

NOTE ONE: What procedures should courts use to reduce problems with landlord-tenant cases, such as defective service and inadequate proof? At all hearings, should judges require a plaintiff-landlord to establish a prima facie case, plus proof of service? (This pertains to summary proceedings, including those where there is no appearance by a defendant-tenant.)

Consideration could be given to two approaches: first, examination of all papers; and second, requiring the plaintiff or his or her representative to make a full prima facie case prior to examining the defendant (or, if defendant is not present, prior to rendering a default judgment).

In regard to the latter, a plaintiff would prove identity, existence of a tenancy relationship, and nature of defendant's breach. Service also would be carefully examined to assure that the requirements of the law have been met. Where monetary claims are involved, plaintiff would prove up the amounts pleaded.

This careful examination by the judge or quasi-judicial officer at the time of the hearing need not be lengthy. Utilizing the other approach as well--via adequate prior examination by the clerk or other examiner--the papers should be in order so as to permit them to be scrutinized and to have the case proceed expeditiously at the hearing.

Too frequently, cases that are defective move to judgments without this examination or any real "proving up" by the plaintiff. Of particular note is defective service, which may mean that the tenant-defendant is unaware of the proceedings against him or her. (After-the-fact "show cause" or "set aside" motions by the defendant, against whom a default judgment has been entered, are not an adequate safeguard. Moreover, reliance on this practice can place a burden on defendants who, for all practical purposes, may have to seek legal advice in order to learn of or to avail themselves of this remedy. Moreover, this motion is at the discretion of the judge to grant; and, it may have to come before a motions calendar judge, rather than a specialized housing judge, for argument.)

Another practice that is permitted in many jurisdictions, is simply to "call" all the cases and, where no defendant appears, simply to enter an automatic default. Unless the plaintiff's papers have been carefully examined by a competent court officer, this practice may lead to the severe detriment of defendants.

An allied practice is found in some jurisdictions: the requirement that the defendant file a written answer or an appearance a certain number of days prior to the hearing. If there is no response by the defendant (filing of a responsive pleading), the case is automatically scheduled for a "default". (An appearance by the plaintiff may not be required.) Many other courts do not permit this practice. If it is permitted, and if the papers are not examined prior to the entry of a default judgment, this practice also can lead to abuses. The plaintiff's pleadings ought to be examined for proof of service and elements of proof, as described above.

One preferred practice would be examination by a judge or quasi-judicial officer both of the court papers filed and then, an actual "proving up" by the plaintiff or plaintiff's representative. Where court rules allow the scheduling of de-

faults based on "no answer" from the defendant, such papers should be examined carefully for defects. This could be done by competent court officers. Any papers found to be defective could be brought to the judge, if there were any questions in this regard. (See also the discussion below.)

NOTE TWO: Should court rules provide that a tenant-defendant must provide a written answer within a period of no less than x days prior to the scheduled hearing?

Frequently, tenant-defendants simply "show up" at the hearing. They may present no defense and express only their inability to pay and their need for more time. This generally leads to a "judgment for landlord".

If, however, the defendant-plaintiff raises a defense, this can lead to surprise for the plaintiff. The plaintiff may have to request a continuance, involving costly delays, or try to proceed with trial. (Often, only the plaintiff's representative is present and is unable to offer further proof or personal testimony). In still other cases, the plaintiff or his representative may not be present at the hearing, if the court rules provide for a default when the defendant has not filed a timely answer.

Some courts may want to consider requiring that defendants state a defense (file an answer) in advance of the hearing. Thus, there will be no surprise or the necessity for a continuance.

Some jurisdictions do not require plaintiffs to be present at the hearing if no answer was filed by the tenant. Others require plaintiffs or their representatives always to be present (otherwise, no default judgment can be entered) and to "prove up" the case before the judge or quasi-judicial officer.

NOTE THREE: Should simple forms be developed by the court, by which defendants may "check off" their defenses, if any?

Regardless of which practice is followed (#2, above), defendants are disadvantaged by being required to devise their own answers without assistance. Defendant forms or pro se clerk assistance could be provided by the court.

It sometimes is alleged that such forms can, however, result in "manufactured" defenses. While this can result, the danger is greater that many unrepresented defendant-tenants are unable to formulate or articulate their defenses, and need some assistance in this regard.

If the defendant appears at the hearing, the judge then can ask him or her to explain any defenses that have been "checked off". Great care and sensitivity must be exercised in exploring these defenses, to ascertain their validity and to render a fair judgment in the case.

NOTE FOUR: Should court systems experiment with innovative approaches to assist defendants in using these forms? (One approach might be a form answer attached to the summons; another might include an experiment with telephoned-in answers.)

Tenant-defendants may not be able to go to the courthouse for assistance and forms, prior to the date of the actual hearings. This can present a major problem for many tenants, and courts should try innovative approaches to rectify this situation.

One extreme is not to require answers and to allow "anything" to be pleaded by a defendant who happens to appear at the hearing (at which the plaintiff may or may not be present). This, however, is likely to result in surprise and delays. It is obvious that plaintiffs should not be expected to come to the hearings fully prepared with documents and witnesses for every defense or contingency that defendants conceivably might raise. (This is true given the extremely high rate of defaults in summary process actions.)

If an answer is required, courts could explore a series of alternatives besides those of having defendants literally appear at the clerk's office to obtain forms and assistance. Citizens advisory commissions, courts, and others could devise experiments, such as providing form answers that are convenient and effective.

NOTE FIVE: If court rules provide for written answers prior to hearings, and yet defendants appear without so filing: (1) if plaintiff accedes, should the hearing proceed (but with plaintiff retaining a right, if a timely request is made, to be granted a continuance)?; and, (2) if plaintiff so requests, should a second hearing date be set, with the defendant instructed that he or she must reduce the defenses to writing within x days, or that a judgment will automatically ensue for plaintiff at that time?

Plaintiffs should be given the opportunity to have their cases proceed immediately, and yet retain the right to obtain a continuance if surprised by defendants' oral defenses. These cases should not be automatically continued, postponed, or otherwise unilaterally rescheduled by the court. To do so presents an undue hardship on the plaintiffs and adds to the court's caseload as well.

At the same time, some persons argue that defendants must not be denied an opportunity to be heard on the merits of the case, despite their failure to provide written answers (if this is "required" by court rules).

There are good reasons for not denying this opportunity (at the first hearing) for defendants to be heard. One is that the statutory requirement as to notice or service may not have been met. The complaint should be dismissed or amended immediately, depending on court rules.

Another is that otherwise, the defendant may be forced to file a separate motion to set aside the default judgment and to obtain still another hearing: all of which may prove quite inefficient for the litigants and the court.

Finally, the court may be able to use this as a chance to encourage the parties to avail themselves, that same day, of the resources for supervised settlements.

NOTE SIX: In such cases [as item #5, above], and prior to scheduling a second hearing, should the judge inquire as to whether or not the defendant is raising a conditions defense?

If the court makes such an inquiry, this may prove helpful to moving the case forward at the next hearing. The issues can be clarified for the information of both parties. Moreover, the judge may order up an independent inspection of the subject premises prior to that second hearing.

Alternatively, if a hearing examiner learns of these matters during the "default calendar", then he or she could bring this matter to the attention of the judge. The inspection then could be ordered up, and accomplished either by the housing specialist or by an agency inspector.



NOTE SEVEN: If the court rules provide as above (written answers prior to the hearings) and the defendant appears without so filing, yet the plaintiff is not present: (1) should the court, as mentioned previously, determine whether a conditions defense is likely at the second hearing?; (2) if a prima facie case has been made out, determine whether there is any meritorious defense and, if not, grant judgment for a plaintiff?; and, (3) if there is a meritorious defense, set a second hearing date, give a conditional judgment for plaintiff in the event of non-appearance by defendant at the second hearing, and require as a further condition that any defenses be reduced to writing within x days of the second hearing?

These procedures would require the judge to give sensitive treatment to the defendant's orally-stated defenses (even if there were court rules "requiring" a written answer to be filed). The initial threshold for a "meritorious" defense would be low: that is, a preliminary presumption would be given the defendant, with the actual evidence introduced and evaluated at the second hearing.

The second alternative above (namely, proceeding without the plaintiff) would proceed only where the defendant simply expresses an inability to pay and has no legal or technical defenses.

Alternatively, number three above (conditional judgment for plaintiff) could be utilized in these same instances. If there is no appearance by the tenant-defendant at the second hearing or a failure to reduce defenses to writing (and assuming a prima facie case plus proper service), judgment for plaintiff would ensue at that time.

NOTE EIGHT: Regardless of whether or not jurisdictions require answers in advance of the hearings, should procedures be designed to avoid postponements and continuances?

The complaint and summons should clearly indicate to the tenant-defendant that if he or she chooses to dispute the plaintiff's claim, all material documents and witnesses should be brought to court the date of the first hearing. If this is set forth, then if the defendant were to fail to do so or to exercise good faith in trying to do so, then he or she could not obtain a delay or a continuance (absent substantial reasons to the contrary).

In all fairness, expeditious handling of these cases is called for. At the same time, there is every reason to believe that many tenants do not know "what to bring" with them or what to "say" once they get to court. The material provided to the tenant with the official summons should clearly and understandably describe what the tenant may need to put on an adequate defense.

This practice also would help negate the predicament of the judge who, in many instances, is forced to decide whether or not to accept the defendant's representations as to why a postponement is believed necessary.

Additionally, this provides advantages to both defendants and plaintiffs. Tenants would not have to appear in court a second time. Obviously, however, they thereby lose the chance for obtaining additional delays prior to a court decision.

Landlords would be less likely to have to wait an additional period of time before a judgment, one way or another, was rendered by the court. Such delays are quite costly to plaintiffs, in that further rental income is lost. (This frequently is the single most common complaint voiced by owners about the operations of most courts in the handling of summary process matters.)



NOTE NINE: Should courts have personnel available to make immediate inspections and to report on the subject premises, permitting hearings to proceed within hours on the same date as the parties first appeared (if they so desire)?

In an over-loaded court system, or where major distances are involved, this procedure may have to be modified somewhat. In many jurisdictions, such an approach should be workable, using housing specialists or others for this job. The hearing would be completed the same day, if the parties were willing to wait. Moreover, the existence of the procedure, over time, may dissuade litigants from making falacious or unsupportable statements at the landlord-tenant hearings.

NOTE TEN: Should the court be designed, and follow appropriate procedures, to carefully probe for the tenant's defenses? Should the court specifically inquire of the tenant-defendant if there are "any other reasons" he or she does not owe the rent or should not have to pay the full amount claimed?

In many jurisdictions, there is tension between too rapidly handling the cases in order to clear the calendars, and the need for taking time to scrutinize and draw out the litigants' arguments. Commonly, and especially in over-loaded court systems, hurry-up procedures prevail: to the detriment of doing or appearing to do justice may be pushed. Cases may be pushed through the court in a minute or two, with unrepresented tenant-defendants frequently overwhelmed by the proceedings and unable to articulate their defenses. They may even be cut off, without any attempt by the court to find out if there is "something else" the defendant wishes to state.

The judge should ask questions that allow the tenant-defendant a real opportunity to state, however inarticulately, his or her defenses. Simple questions regarding "any other reasons" (possible defenses) could be asked. If done in a non-intimidating manner, this would better serve the purpose of affording a fair opportunity to be heard.

Some judges feel that any such questions can lead to "manufactured claims". However, these types of questions, although taking some additional time in each case, are appropriate. They do not constitute leading questions that are beyond the bounds of judicial propriety. On the contrary, perhaps there should be minimum levels of questioning that courts should be expected to adhere to.

NOTE ELEVEN: Should the court develop a section of the benchbook to assure consistent questioning of both plaintiff and landlord?

Such a benchbook could describe the forms of appropriate questions to be asked by the judge. (This also would eliminate the concern of some judges that they may be engaged in improper levels of inquiry.) This would ensure consistency among judges, which often is a serious problem. Just as importantly, it would aid in curing an abuse: the failure to have unrepresented defendants explain the circumstances of their nonpayment of rent when this may well involve unarticulated conditions defenses.

NOTE TWELVE: When the conditions of the premises are a factual and legal issue in a summary proceedings case, should the court utilize this opportunity to begin to deal with the inherent problems of code violations?

In many, if not most courts, the summary process calendar has no subject matter jurisdiction over code violations per se. (In comprehensive housing courts,



there is much greater flexibility.) Nonetheless, at the very least, the court can use its limited leverage including reducing back rents due or even denying the prayers for eviction.

Moreover, it can dwell on the "conditions" problem with the owner concerned. As long as this is not abused (such as leading an uninformed landlord into believing that he or she is being "ordered" to repair the premises), the court can use its power to educate and persuade.

If the court has "comprehensive jurisdiction", it may be able to consolidate other actions against the building, such as pending code violations. (If the building has not been cited, but it is apparent that it should have been, see below.)

NOTE THIRTEEN: Should the court order inspections of the premises prior to the second hearing dates, with the secondary result possibly being agency citations for code violations?

The agency inspectors responsible for code inspections, or the housing specialists, may be able to perform court-ordered evaluations. Subsequently, code violation cases may be filed, if the violations are not cured. The objectives being served are both justice and code compliance.

It should be noted that violations may involve both tenants and landlords, from owner or manager neglect of the subject premises to tenant "housekeeping" violations.

Finally, the inspection may lead to coordination among city departments and the officers of the court as to the litigants' real needs. Other services needed may include emergency relief, low-interest rehab loans, or social services.

NOTE FOURTEEN: Should courts take care: to scrutinize the terms of settlements; to ensure that the parties understand the agreement; and, to explain the repercussions of failure to abide by it? Should it be entered as part of the decision in the case?

An ill-informed tenant-defendant, especially one who is unrepresented and unaware of such defenses as the warranty of habitability, is unlikely to enter an "out-in-the-hall" settlement in a position of equal or fair bargaining power. One remedy, as suggested earlier, is providing information with the summons. Another is the provision of other services at the court to let both parties know of their legal rights and obligations. (For supervision of settlements, see below.)

An important reform could include having the judge: carefully read over the terms of the agreement; correct any legal errors, if necessary; and, briefly question the parties as to their understanding of its terms. The court rules also could provide that settlements would be made part of the record, as part of the "judgment" of the court, adding to the "dignity" and enforceability of the agreement. The parties then would be told that the conditional judgment of the court was that if there were a default as to the terms of the settlement, there would be definite repercussions (for example, the tenant's failure to pay back rent would mean a writ for eviction could be issued upon demand). Thus, the case would not be dismissed, but held open for a period of time, as agreed.

NOTE FIFTEEN: Should courts utilize regular mediator-specialists to assist the parties to resolve disputes through supervised settlements? Should certain practices be avoided?



Such mediators should be specially-trained, being either full-time court personnel or volunteers. They could facilitate the settlement process and help reduce the terms to writing (then to be reviewed by the judge).

They could serve other special roles. For example, persons engaged in a dispute may have problems not legally germane to the litigation and, therefore, unable to be heard by the judge in court. But these same central issues might come out and be resolvable through a specially-trained mediator. He or she may be able to assist the parties in understanding how to deal with complex issues. If the issues are more straightforward, such as inability to pay, mediation could deal with a host of possible "solutions" that are much broader than under the appropriately-narrow decisions by the judge.

A number of courts, apparently out of a perceived "necessity", send many cases out into the halls for unsupervised settlements. While this helps "get through the calendar", many persons have heavily criticized this practice. For example, a landlord thus can avoid drawing any attention (by the court) to existing code violations. Similarly, if unsupervised agreements are questionable or unconscionable, scrutiny by the court can be avoided if the plaintiffs request the cases to be dismissed.

While such practices are predictable, given the desire to clear the calendars and not to delay other litigants unduly, they are noxious to the concepts of justice. It may be a myth that the parties are fairly and equally "contracting" their settlements if they are not represented or equally knowledgeable. In any event, they can miss opportunities for compromise as well as positive services otherwise available to them (such as special governmental programs).

NOTE SIXTEEN: For settlements that are reached, should the court provide an "expedited process" for reviewing and approving these agreements?

At the beginning of the calendar call, the judge could explain that litigants choosing to avail themselves of settlement opportunities would not experience further delays. When a settlement was reached, the written agreement could be sent by the mediator to the bailiff or assistant clerk in the courtroom.

As soon as the case then being heard was completed, the judge would be given the agreement to review. This would take precedence over the next case to be called. The settlement would be reviewed, clarified if necessary, the parties questioned, and the agreement entered.

If the settlement failed, the parties would have the case heard immediately if it already had been "passed" on the calendar. If not passed, it would be heard in turn, as originally scheduled on the calendar.

NOTE SEVENTEEN: To avoid significant delays on a daily basis, should the judge ascertain which cases are contested and "spin off" some of them to other courtrooms, in order to have a caseload that is manageable and without half day delays?

Very heavy caseload courts might use this system. The judge first could determine the number of cases in which both parties were in the courtroom. Any attorneys present could be questioned as to probable complexity and duration of the hearing (a short response being given). These cases might not require the expertise of a specialized judge, but could delay other litigants. The vast

cases, involving unrepresented parties, would be heard by the housing court judge who is specialized in landlord-tenant matters. Some of these cases could proceed to mediation.

Finally, other procedures would be followed for the handling of default cases, without any real delay to the many litigants still present in the courtroom. (As explained earlier, this requires competent, and not pro forma, reviews.) A quasi-judicial officer of the court could be scheduled to handle these cases and to review the files. If court rules so provide, they would be "proved up" by the plaintiff. Assuming no contest or nonappearance by the tenant-defendants, the cases would be declared defaults and the judgments entered.

NOTE EIGHTEEN: Should the court "lecture" all litigants prior to each calendar call, as to the process to be used, their rights, and the availability of mediation?

This procedure could be followed in many more courts. Given the special nature and problems with eviction cases, the judge could deliver a short talk. (This has been done regularly in one of the courts that was studied for this Report. See chapter 11.)

Courts also could provide understandable literature and visual display areas (even a "push-button" film) explaining the overall process. In tandem with a talk or lecture by the judge, much headway could be made in assisting the litigants with their cases. Some would also choose learn of, and choose, supervised settlement procedures that are fair and desirable to both sides.

NOTE NINETEEN: In lieu of mere "continuances" in many code enforcement cases, should courts consider the use of fines, some of which may be suspended or partly suspended, to encourage timely compliance by defendants?

Mere continuances in code enforcement cases can invite dilatory tactics on the part of many defendants. Courts could consider greater use of suspended fines for the purpose of encouraging compliance. Monetary or other disincentives may be necessary in a larger number of cases, to provide clear and visible reasons at the first hearings why the defendants should cure the violations as quickly as possible.

At the second hearing, the defendant may have to pay all or part of the fine, depending on many different circumstances. This practice may be preferable to repeated hearings after a series of "continuances", none of which clearly indicates to the defendant the gravity of the situation.

NOTE TWENTY: Should the court consider greater use of at least some fines, rather than only dismissing the cases?

It is a widespread practice in many jurisdictions to levy virtually no fines, even where the defendants have been in continuing violation of the codes. This practice is defended by some, on the basis that the "goal" is to "obtain compliance, not prosecution and collection of fines".

At least minimal fines may be called for, however. The defendant, by the time he or she is in court, probably has ignored the administrative agency's efforts to assure compliance: notices, citations, warnings and orders. Thus, the process already has involved substantial public costs, from inspections and subsequent

re-inspections, to formal adjudication in court.

Secondly, it can be argued that the court's failure to levy fines only makes it clear that the administrative code enforcement process can be ignored with impunity (at least until the first judicial hearing) without any real economic or penal effect on the violator. (In fact, system-wise defendants may not even show up at the first court hearing, knowing that the case is likely to be "continued" until service of process can be verified.)

NOTE TWENTY-ONE: Should the court's practice of indefinitely "continuing" code enforcement cases be avoided? Should a date certain for the second hearing be set at the first hearing, and this made clear to the violator?

Some courts simply "continue" the case, under the presumption that it is up to the prosecution or the city agency to request, at some later date, a second hearing if compliance has not occurred. If the agency is able to follow-up on the cases, if it can convince the city prosecutor to regularly request new hearings, and if it is not discouraged by court procedures generally, this practice may be somewhat workable.

Lacking these circumstances, the public interest may not be served: that is, violations continue and compliance does not take place. Nor are defendants put on any real "schedule".

It may be advisable, therefore, for the court to schedule a second hearing date immediately, if any continuance at all is to be granted. While some persons argue that this can "unnecessarily" clog the court's calendar for future dates, there are clear counterarguments. First, the court must be interested in expeditious justice. Second, it is simple for a routine check to be made by the clerk's office, and thus to handle docket management effectively. Third, this stimulates all parties involved to move toward resolution of the cases and to ensure that justice is done.

NOTE TWENTY-TWO: Collection of fines may be a serious problem; should the court make aggressive efforts to correct this situation.

In many court systems, a large number of fines remain "on the books". Again, the deterrent effect for code violators may be lost. Some defendants may become "system-wise". Several approaches are possible.

The first includes regular follow-up by mail. A second involves periodic "cleaning" of the rolls. (For example, every six months in a few courts, there are attempts to locate and even, in some instances, to issue arrest warrants on former defendants.) Third, liens may be placed by the city against the properties in question. These liens, of course, can be enforced in a variety of ways.

NOTE TWENTY-THREE: Should courts enter various and specific findings, and not merely dispositions, in code enforcement cases?

Frequently, judges enter cryptically-brief notations as to the "dispositions" in the file jackets of cases (such as, 90 days to make repairs). This practice can cause problems if judges are frequently rotated in the code enforcement calendars of the courts. The next judge to hear, or to rule on motions in, the case may be at a loss to make an appropriate decision. This practice also can invite "manipulation" of the judicial system by wily defendants.



Furthermore, adequate court records can be significant both to the court staff and to administrative agency personnel, especially during any continuances. If certain post-hearing follow-up and compliance efforts are to be undertaken, the judge's findings and directives should be clearly indicated on the record.

The 23 questions raised in this section are a sampling of the procedural and substantive law problems encountered in many of the cities studied or contacted in the ABA-HUD Program. No prioritization or taxonomy is implied in this last section of the chapter. In fact, still other vital and equally significant points are highlighted in the preceding 150 pages of Chapters One and Two.

The ideas for reform and innovation are many. They are mentioned frequently in the previous sections on judges, clerks, housing specialists, and others. Further information is contained in the chapters (3-19) that follow.

Some of these issues, hopefully, will receive even more attention by this Special Committee and by many other persons over the decade to come.

**Publications of the Special Committee
on Housing and Urban Development Law**

Housing for All Under Law (1978) (available from Ballinger Publishing Co., Cambridge, Massachusetts)

Executive Summary: Housing for All Under Law (1979) (available from United States Department of Housing and Urban Development)

Housing Justice in Small Claims Courts (1979) (available from the National Center for State Courts, Williamsburg, Virginia)

Executive Summary: Housing Justice in Small Claims Courts (1979) (available from the United States Department of Housing and Urban Development).

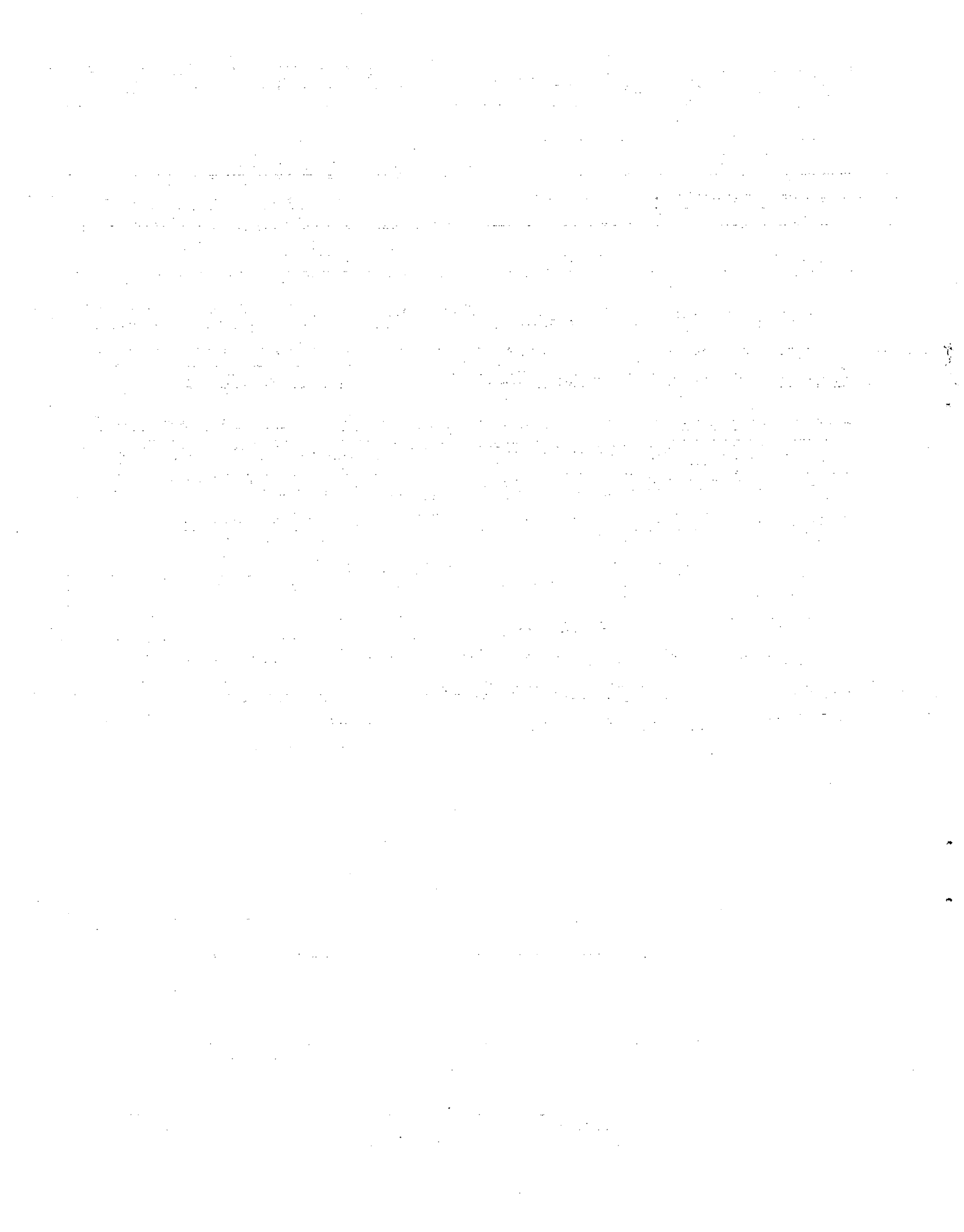
Housing Justice Outside the Courts (in two parts) (1979) (available from the Special Committee on Resolution of Minor Disputes, American Bar Association, 1800 M Street, N.W., Washington, D.C. 20036)

17 Urban Law Annual 1, (1979) (available from Washington University, School of Law, St. Louis, Missouri)

Quarterly Information Bulletin (1978-81) (available from the Special Committee on Housing and Urban Development Law, American Bar Association, 1800 M Street, N.W., Washington, D.C. 20036)

Forthcoming:

Housing Justice in the United States: Recommendations for Change and Innovation in Our Courts (two parts) (available from United States Government Printing Office, Summer 1981).



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