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Judicial Approaches to Urban Housing Problems: A Study of the Cleveland Housing Court*

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I. Introduction

THE INADEQUACIES OF THE JUDICIAL SYSTEM in addressing housing problems have been a recurring theme in discussions of urban housing policy reform. The courts—both civil and criminal—have been criticized for their inability to efficiently process and resolve landlord-tenant disputes, especially those involving code enforcement, and to contribute to the preservation and improvement of the lower-income housing stock.

In response to this criticism, many cities have created urban housing courts. The ABA-HUD National Housing Justice and Field Assistance Program studied thirteen of these courts. That study, together with articles about most courts, is discussed in the special 1979 symposium issue of the *Urban Law Annual* (ULA) on *Housing Courts and Housing Justice*.¹

This article reviews the role and impact of urban housing courts. It analyzes the findings of a detailed empirical study of Cleveland's housing court, which began operations in April 1980, and discusses the relationship of this court to code enforcement and resolution of landlord-tenant disputes. The court's role in innovative remedies,

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1. Scott, *Housing Courts and Housing Justice: An Overview*, 17 URB. L. ANN. 3 (1979). The major housing courts studied included: Baltimore, Boston, Buffalo, Chicago, Detroit, Hartford, Los Angeles, New York, Philadelphia, and San Francisco.

especially the appointment of receivers for abandoned housing, is also discussed and reforms are suggested. The article concludes with an overall assessment of the potential of housing courts to deal effectively with urban housing issues.

II. Criticism of the Courts

Randall Scott, director of the ABA-HUD program, summarized criticism of the courts as follows: (1) inadequate case management; (2) inadequate statistical data on case loads; (3) dysfunction related to the first two factors; (4) low priority for housing-related cases; (5) judicial ignorance and incompetence in housing law; (6) inefficient courtroom procedures; (7) the appearance of unfairness to litigants; (8) inadequate materials for serving process; (9) administrative delays; (10) jurisdictional technicalities; and (11) refusal to implement reforms.² While much of this criticism has been directed to courts generally, some are peculiar to housing.

There seems to be general agreement as to the desirability of creating specialized urban housing courts to overcome these many problems. Scott notes that housing courts can be limited (e.g., code enforcement or evictions only) or comprehensive in their jurisdiction.³ He defines a housing court as having an exclusive focus on housing cases, whatever its jurisdiction, and specialized, experienced personnel (both judges and staff).⁴

In evaluating the role and impact of housing courts, the evaluator must distinguish between the internal and external impact of urban housing courts. Internal indicators of the impact of a housing court concern such issues as the efficiency of case management. Faster processing of eviction and code enforcement cases is a typical goal. External impact should be measured by changes in such areas as landlord-tenant relations, the physical qualities of the housing stock, and housing affordability. To the extent that judicial reform results in more efficient processing of housing-related cases, the creation of a housing court can increase the effectiveness and reputation of the judicial system. However, the latter standard presents the more important question. Increased judicial effectiveness should lead to better housing conditions. Otherwise, problems confronting housing courts will simply fester or grow.

2. *Id.* at 5-8.

3. *Id.* at 8.

4. *Id.* at 8-11

This leads to the question of the scope of a housing court's role. What can a trial court do to address urban housing problems? Of course, the answer is affected by local housing conditions, as well as the limited authority of trial courts generally. Generally, comprehensive housing courts with broad jurisdiction, adequately staffed and funded, and headed by able, energetic, and efficient judges can certainly contribute to the resolution of many, if not all, urban housing problems. Perhaps the most obvious impact is securing speedy legal remedies intended to promote enforcement of minimum housing quality standards (through municipal code enforcement and tenant rent withholding) and to resolve landlord-tenant disputes (e.g., over rents, including the return of security deposits). Beyond this, the reach of a housing court's influence will depend upon its relations with counterpart municipal courts and local bureaucracies concerned with housing, the availability of programs to provide affordable housing, and the extent to which it is generally recognized as a viable forum for resolving housing problems.

The different types of urban housing courts, including varying types of jurisdiction and staffing, have been described in the ULA symposium. What type of court exists in a particular locality depends upon factors such as the constituency supporting the creation of the court, available resources, and the views of the judiciary.

III. Cleveland Housing Court

This article next analyzes Cleveland, Ohio's housing court. Cleveland's housing court, a division of Cleveland's municipal court, began to hear cases in April 1980. The court's historical setting, statutory foundations, and jurisdictional powers have been analyzed previously.⁵ This court has now been in operation for more than six years. Its performance is analyzed next, primarily on the basis of an evaluation conducted in 1984-85.⁶

This court is a comprehensive housing court, the only such court in the state of Ohio. Its criminal jurisdiction includes actions to enforce local building, housing, air pollution, sanitation, health,

5. White, *The Cleveland Housing Court Act: New Answer to an Old Problem*, 30 CLEV. ST. L. REV. 41 (1981).

6. P. Star and W. Keating, *An Evaluation of the Cleveland Housing Court* (1986) (unpublished report). (All data, conclusions and recommendations are from this report, on file with *The Urban Lawyer*.)

fire, and safety codes. Its civil jurisdiction includes landlord and tenant claims (e.g., eviction actions for nonpayment of rent). Its equitable powers include injunctive remedies.⁷ In 1985, the court had a single judge and a staff of seven (including two housing specialists).⁸ Its annual budget was \$227,000, provided by the city of Cleveland primarily through its Community Development Block Grant. The court's 1985 case load was 9,124.⁹

A. Judges

During its first four years, the effectiveness of the court was adversely affected by a steady turnover in judges—four in four years. In addition to the problems associated with any judicial reorganization, this instability hampered the operations of the court. For example, the court did not have formal procedural rules until September 1982.¹⁰ Once the current incumbent judge assumed office in 1984, the court finally achieved the stability and continuity necessary for its efficient operation. One of the major features of a housing court is supposed to be a judge with a sufficiently long term and experience to better deal with housing problems rather than the typical system in which rotating judges preside over housing cases.

B. Jurisdiction

The major jurisdictional challenge to the court came when a landlord seeking damages in an eviction action argued that the housing court lacked jurisdiction in housing cases involving claims of \$10,000 or more. Generally, municipal court jurisdiction in Ohio is limited to cases involving damage claims of \$10,000 or less.¹¹ However, tenant advocates argued that the court's exclusive civil jurisdiction, expressly granted in its enabling legislation, overrode this general limitation.¹² In *McGraw v. Gorman*,¹³ the Ohio Su-

7. White, *supra* note 5, at 45-46; OHIO REV. CODE ANN. § 1901.181(a) (Page 1984).

8. See White, *supra* note 5. The original staff consisted of only five members, including judge and bailiff; it was estimated that the court needs a staff of at least fourteen. *Id.*, note 5 at 52. See court's staff authority. OHIO REV. CODE ANN. § 1901.051 (Page 1984).

9. CLEVELAND MUNICIPAL COURT ADMINISTRATIVE SERVICES, ANNUAL REPORT (1985).

10. See OHIO REV. CODE ANN. § 1901.14(B)-(C) (Page 1984).

11. *Id.* §§ 1901.17, 1901.181 (Page 1984).

12. Citing *Maduka v. Parries*, 14 Ohio App. 3d 191, 470 N.E.2d 4, the tenants pointed to the Ohio Supreme Court's declaration that the housing court possesses "exclusive jurisdiction" over forcible entry and detainer actions.

13. 17 Ohio St. 3d 147, 478 N.E.2d 770 (1985).

preme Court unanimously ruled that the court's enabling legislation did not create a special exemption from this jurisdictional monetary ceiling. The court was not swayed by the argument that this conclusion would allow landlords to bypass the housing court by seeking monetary damages exceeding \$10,000. If forum shopping by plaintiffs does pose a serious problem, then remedial legislation to create an exception might be required in the future to preserve the court's exclusive jurisdiction.

C. Rent Depositing

The other major litigation affecting the housing court involves rent depositing. Ohio's 1974 reform of landlord-tenant law authorized tenants to deposit rents with the clerk of courts of local municipal courts.¹⁴ Tenant rent depositing is an alternative to code enforcement in securing decent housing. Since substandard housing is a major, longstanding problem in Cleveland, this is an important remedy. A 1979 study of rent depositing in Cleveland's municipal court concluded that it was infrequently used in a city in which almost half of the rental units were considered substandard.¹⁵

In neighboring Cleveland Heights, a landlord challenged the constitutionality of the rent depositing statute. The plaintiff-landlords particularly objected to the *ex parte* nature of the initial rent depositing procedure claiming that this statute violated their right to due process under the fourteenth amendment.¹⁶ In an unreported 1986 decision, the federal trial court upheld the constitutionality of the statute.¹⁷

14. Examination of Ohio law regarding forcible entry and detainer (Chapter 1923) and landlord-tenant law (Chapter 5321) is beyond the scope of this article. See Baillis, *Ohio Landlord-Tenant Act of 1974*, 3 OHIO N.L. REV. 122 (1975); Haley, *Landlord-Tenant Reform in Ohio*, 2 N. KY. ST. L. F. 212 (1975); Note, *Covenant of Habitability and the Ohio Landlord-Tenant Legislation*, 23 CLEV. ST. L. REV. 539 (1974); Note, *Forcibly Ejected Tenant—Damages, Possessions, Both or Nothing?*, 28 U. CIN. L. REV. 369 (1959). See also WHITE, OHIO LANDLORD-TENANT LAW (1984).

15. McIntyre, *URTRA in Operation: The Ohio Experience*, 1980 AM. B. FOUND. RES. J. 587, at 594-95.

16. *Chernin v. Welchans*, 641 F. Supp. 1349 (N.D. Ohio 1986). The trial judge rejected the plaintiff-landlord's claims of unconstitutionality except for one provision. He ruled that the provision of OHIO REV. CODE ANN. § 5321.09(B), allowing for an extension beyond 60 days of a trial as to rightful ownership of the deposit, was invalid because this violates the landlord's guarantee of due process.

17. In *Chicago Bd. of Realtors v. City of Chicago*, No. 86 C 7763 (N.D. Ill. Nov. 3, 1986), a trial judge rejected a facial constitutional attack on Chicago's newly enacted municipal Residential Landlord and Tenant Ordinance, which authorizes tenant rent withholding.

In Cleveland's municipal court, the housing specialist of the housing court usually advises tenants as to the propriety of rent depositing after their initial contact with the clerk of court. Unfortunately, available data concerning the total number of tenants who rent deposited from 1975 through 1985 were incomplete. The annual total number of tenants who rent deposited increased from seventy-seven in 1975, when the statute first took effect, to 294 in 1980, the year in which the court began operations. This figure has not been surpassed since. In 1984 only 110 tenants rent deposited.

One indicator of the heightened visibility of the housing court could be an increase in tenant rent depositing. Other factors affecting this process would be: the extent and nature of substandard housing conditions, the number of eligible tenants (since only those current in rent payments may rent deposit), the degree to which tenants are organized and aware of their rights, tenant fear of landlord retaliation (including eviction), and ease or difficulty of rent depositing. Since a significant percentage of Cleveland's rental units are substandard, the number of tenants engaged in rent depositing in 1984 (the last full calendar year available during the study) seemed surprisingly low. To determine the impact of rent depositing, the evaluators attempted to survey randomly 20 percent of those tenants who had rent deposited in 1984, and also 20 percent of those tenants who were actively rent depositing as of early 1985. Of the total sample of sixty-six, only seven responded. The small number of respondents made it difficult to generalize. The most striking finding was that 39 percent of the overall sample had moved (without leaving a forwarding address) and five of the seven respondents had also moved after rent depositing. These five tenants were dissatisfied, they claimed, because their landlords had not made necessary repairs. This limited data suggests that rent depositing was not a widely used or effective code enforcement tool. Relatively few tenants seemed to be using it at all.¹⁸ If this remedy was working, tenants who benefitted from repairs presumably would not move. The high mobility rate suggests the contrary.

While the housing court itself was not fully responsible for

18. Other empirical studies of tenant use of rent withholding have discovered a similar pattern. See, e.g., Heskin, *The Warranty of Habitability Debate: A California Case Study*, 66 CALIF. L. REV. 37 (1978). For a discussion of mediation of landlord-tenant disputes, see Salsich and Fitzgerald, *Mediation of Landlord-Tenant Disputes: New Hope for the Implied Warranty of Habitability?*, 19 CREIGHTON L. REV. 791 (1986).

overseeing rent depositing, the study recommended changes to facilitate rent depositing. Development and dissemination of a simple pamphlet on rent depositing (e.g., through the city of Cleveland's housing inspection staff and neighborhood housing organizations) was suggested. Currently, such pamphlets are only available to tenants through the Cleveland Tenants Organization and the Cleveland Legal Aid Society. Information could also be provided directly by the housing court. Another set of recommendations involved changing the role of the housing specialist and the referees employed by the housing court to simplify the rent depositing procedure.

The institution of such reforms could lead to higher tenant awareness of their right to rent deposit and how to do it. However, if the major impediments to rent depositing are tenant ineligibility due to rent arrearage and tenant fear of landlord retaliation, then remedial legislation and effective deterrence of illegal landlord retaliatory threats or action will be necessary.

IV. Code Enforcement

Rent depositing is an important remedy because Cleveland's major housing problem is housing deterioration. It is estimated that in 1986 at least 20 percent of Cleveland's housing stock was substandard.¹⁹

A major criterion for the success of the housing court was said to be an increase in the processing of code violation cases.²⁰ The number of code violation cases filed by the Cleveland Law Department, the city's prosecutor, did increase after 1980 but then levelled off.²¹

In 1980 the majority of Cleveland's housing units (56.3 percent) were non-owner-occupied. However, according to data available

19. CUYAHOGA COUNTY REGIONAL PLANNING COMMISSION, CLEVELAND HOUSING AND COMMERCIAL CONDITION SURVEY (May 9, 1986). A "windshield" survey found that 24,000 of 127,000 one-to-four-family structures were substandard. The surveyors had greater difficulty conducting an external evaluation of multi-family buildings and only identified 258 that were considered substandard.

20. White, *supra* note 5, at 56.

21. See LAW DEPARTMENT, CITY OF CLEVELAND, ANNUAL REPORTS (1980-1985). In 1979 only 389 code enforcement cases were filed. This increased to 924 in 1981 and then levelled off. Of course, the number of prosecutions depends upon such factors as the initiative of housing inspectors in presenting cases for prosecution, the judgment of prosecutors as to the necessity for prosecution, the prosecutors' case loads, and the likelihood of effective litigation in the housing court.

from the Cleveland housing court, only 21.5 percent of the housing court's code enforcement case load in 1984 consisted of multifamily buildings. The great majority of the code violation cases in the housing court consisted of one- and two-family units. A majority were absentee-owned.

While the number of code enforcement cases comprised only a small percentage of the overall case load of the housing court, its handling of this important issue was said to be a key indicator of its acceptance and success.

A 1967-68 study of code enforcement in Cleveland found enforcement of housing codes through criminal prosecution to be ineffective.²² Criminal convictions resulting in small fines did not necessarily result in corrections of code violations. A 1981 analysis of the newly created housing court estimated that it typically took a year from the date of the initial code violation notice until the first court hearing and another year before existing violations were corrected.²³

The 1986 evaluation included an analysis of the court's code violation case load. It proved infeasible to analyze sufficient data to compare the housing court's operations with those of the municipal court prior to its creation. Instead, a random sample of 516 cases, both active and closed, for the period 1976-84 were analyzed. The preponderance of the sample (72 percent) were cases from 1983 and 1984. More than half (53 percent) involved housing code violations. The next two largest categories were health (25 percent) and building code violations (14 percent). Where known, most occupied units were single and duplex buildings (78.5 percent). While a majority of the owners were absentees (53 percent), 37 percent involved owner-occupants.

The data suggested that after the appointment of a judge, who finally lent stability to the court's operations, it began to process code violation cases more efficiently. From 1983 to 1984 the average period between the initial inspection request and the date of final judgment was reduced from 720 to 436 days. The period between the date the case was filed until the date of final judgment was reduced from 430 to 255 days. The average number of hearings fell from 10.4 to 7.4, as did the number of continuances granted from 6.2 to 3. The court has largely overcome the problem of

22. Marco and Mancino, *Housing Code Enforcement—A New Approach*, 18 CLEV.-MAR. L. REV. 368 (1969).

23. White, *supra* note 5, at 53.

delays caused by the nonappearance of defendants by instituting a bailiff service ensuring their appearance. This noticeable improvement in efficiency is one of the anticipated benefits of a housing court which is proficient and knowledgeable about this type of case.

Almost all defendants pleaded guilty or no contest. However, almost all the defendants had their fines suspended pending correction of the violations. This practice is the policy of the court, both to encourage compliance and to consider the stated inability of many defendant landlords and homeowners to pay for necessary repairs. There was no difference in the treatment of absentee landlords versus owner-occupants. In the sample the average reported initial fine in 1984 was \$110. This compares with a 1969 figure of \$70.²⁴ However, virtually no data were available concerning the amount of the final fine ordered (whether or not the required repairs were made). The City of Cleveland's Law Department reported average final fines of only \$30 in 1984 (unchanged from 1983). It is probably safe to assume from this data that the housing court continues to levy nominal fines, preferring to suspend most fines to obtain compliance. Whether even small final fines were regularly paid was not ascertainable. To what extent fines include court costs is unknown.

The housing court judge's policy of reducing or suspending fines has been sharply criticized by the city of Cleveland's commissioner of building and housing, as well as some neighborhood groups. The commissioner supported severe and automatic fines, especially for repeat offenders and defendants who failed to make promised repairs after being granted a continuance to do so. The judge was also criticized by the commissioner, many housing inspectors and some neighborhood groups for having too liberal a policy toward granting continuances.

These are familiar issues in the longstanding debate over how best to enforce housing codes.²⁵ Complicating the question in Cleveland is the economics of Cleveland's housing market. The 1980 income of both homeowners and renters is low compared to suburban Cleveland—\$17,675 and \$8,160, respectively.²⁶ The me-

24. Marco and Mancino, *supra* note 22 at 53.

25. See, e.g., LIPSKY, PROTEST IN CITY POLITICS: RENT STRIKES, HOUSING AND THE POWER OF THE POOR 112-16 (1970).

26. 1980 U.S. Census. All 1980 U.S. Census data are from the Northern Ohio Data and Information Service, Urban Center, College of Urban Affairs, Cleveland State University.

dian value of owner-occupied housing was only \$34,000 and rents were \$145 monthly in 1980, both much lower than in suburban Cleveland.²⁷ There is no data on landlords' incomes. What is known is that 21 percent of Cleveland's population is poor.²⁸ This means that enforcement of the housing code is often difficult, if not impossible, either because the income of owner defendants is too low to qualify them for unsubsidized rehabilitation loans or because the tenants' income is too low to allow the owner to pass on repair costs through rent increases. Imposing severe penalties through fines to poor owners and landlords is unlikely to achieve the primary goal of improving housing quality.

Exacerbating the dilemma of the housing court judge and the court's housing specialists is the paucity of municipal programs to subsidize housing rehabilitation for lower income owners. Cleveland has provided two housing rehabilitation subsidy programs, for lower income owners, financed through the federal Community Development Block Grant (CDBG) program.

The Variable Interest Rate (VIP) program provides subsidized loans for moderate- to middle-income owner-occupants.²⁹ The Cleveland Action to Support Housing (CASH) program provides subsidized rehabilitation loans to both owner-occupants and landlords.³⁰ Both the VIP and CASH programs have been of limited value for several reasons. The demand for these loan programs far exceeds their availability.³¹ This funding shortage has been aggravated by federal cutbacks in the CDBG program.³² Many owners are unable to afford even subsidized loans. There are four Neighborhood Housing Service (NHS) programs in

27. *Id.*

28. *Id.*

29. White, *supra* note 5, at 46-47 n.28. For an analysis of Cleveland's housing rehabilitation programs, see Margulis and Staneff, *Neighborhood Revitalization: An Examination of Housing Rehabilitation Strategies in Cleveland, Ohio*, 20 E. LAKES GEOGRAPHER 44 (1985).

30. *Id.*

31. In 1985 Cleveland's Community Development Department spent \$3.611 million for the VIP program and \$1.581 million for the CASH program. CLEVELAND COMMUNITY DEVELOPMENT DEPARTMENT, ANNUAL REPORT (1985).

32. In 1985 CDBG metropolitan entitlement cities spent 50 percent of their housing-related expenditures on single-family rehabilitation and 11 percent on multi-family rehabilitation. HUD, CONSOLIDATED ANNUAL REPORT TO CONGRESS ON COMMUNITY DEVELOPMENT PROGRAMS (1986) [hereinafter referred to as "HUD, 1986 CD REPORT"] at 11, Table 1-7. For an analysis of federal housing cutbacks, including the CDBG program, under the Reagan administration, see R.A. HAYS, THE FEDERAL GOVERNMENT AND URBAN HOUSING: IDEOLOGY AND CHANGE IN PUBLIC POLICY (1985).

Cleveland.³³ These programs are not only limited geographically but also provide only conventional financing. Finally, Cleveland did participate in HUD's Rental Rehabilitation program.³⁴ However, the requirement that landlords provide half the financing, along with scarcity of section 8 rent subsidies for poor tenants, means that few landlords can participate.

Without sufficient publicly supported housing rehabilitation programs available, the ability of the housing court to improve housing quality by ensuring rehabilitation even by those defendant owners unable to afford conventional financing is severely hampered. To make matters worse, there has been no priority system to assist those owners appearing in housing court. If substandard housing conditions are primarily an economic program of lower income owners, there is little the housing court can do by itself to induce repairs. More severe fines and fewer continuances cannot overcome the problems of a weak housing market in a city with a high poverty rate whose population declined by 24 percent between 1970 and 1980.

The study recommended that Cleveland's Community Development Department: (1) develop a systematic code complaint system and develop priorities for prosecution; (2) conduct systematic annual inspections for multifamily buildings requiring certificates of occupancy; (3) establish a housing assistance center which would review any owner claims of financial inability to undertake repairs; and (4) develop a targeted system for providing rehabilitation assistance to lower income owners.³⁵

Some of these recommendations have already been implemented. The community development department established a code complaint center in 1986 to centralize and screen complaints. The division of building and housing announced that it will attempt to conduct systematic inspections and concentrate its enforcement efforts on serious violations. It established a joint administrative review process with the law department in 1986 to consider owner

33. The Neighborhood Housing Service Program is subsidized by the National Reinvestment Corporation and requires the participation of local government, private lenders, and neighborhood organizations. See White, *supra* note 5, at 46-47, n.28.

34. Section 17, U.S. Housing Act of 1937, codified as amended, 42 U.S.C. § 1437 (1984). See HUD, 1986 CD REPORT, *supra* note 32, at 90-107.

35. For comparative analyses of municipal code enforcement, see Howe, *Code Enforcement in Three Cities: An Organizational Analysis*, 13 URB. LAW. 65 (1981); Symposium, *Code Enforcement: Issues and Answers for the 80s*, 60 U. DET. J. URB. L. 349 (1983).

claims of financial inability to comply, prior to prosecution, in housing court. The city is also considering giving priority to lower income owners for what rehabilitation assistance is available. This will require more cooperation between the community development, housing inspection, and rehabilitation financing programs.

It was also recommended that the housing court develop a presentencing financial disclosure form to be completed by defendants still claiming indigence as the reason for noncompliance with repair orders. Other recommendations included eliminating any necessity for housing inspectors to appear automatically at all hearings in order to avoid wasting their time due to delays, nonappearances by owners, and the use of postjudgment compliance reports to determine the nature of repairs made.

Other externalities limit the effectiveness of the housing court in enforcing housing codes. The housing inspection staff of the city of Cleveland declined from eighty-three in 1980 to only forty-two in 1985. Housing inspectors are not only responsible for inspections, but also for initiating prosecution by the city's law department. The shortage of inspectors meant that the city was not conducting systematic or targeted inspections. Instead, it was simply responding to complaints. Since Cleveland has had no system for processing complaints on a priority basis, those cases which do reach the housing court are only those which reach it through this rather haphazard process. In 1985 the city's division of building and housing received 9,031 code violation complaints.³⁶ Only 382 (4.2 percent) were sent to the law department for prosecution. Continuing cutbacks in the CDBG program portend reduced federal support for local code enforcement.³⁷

The city of Cleveland's law department has only a small prosecutorial staff available to prosecute code violation cases pre-

36. BUILDING AND HOUSING DIVISION, CLEVELAND DEPARTMENT OF COMMUNITY DEVELOPMENT, ANNUAL REPORT (1985).

37. In 1985 47 percent of the \$5.328 million budget for code enforcement of the building and housing division of the Cleveland Department of Community Development came from the city's Community Development Block Grant (CDBG) from HUD. In 1984 this figure was 50 percent. In 1986 the Mayor's Office estimates that federal support will further decline to 45 percent. *Mayor's Estimate for the Year 1986*, Cleveland City Record, Jan. 31, 1986, at 189. Nationally, in 1985, only 5 percent of the housing expenditures of CDBG metropolitan entitlement cities went for code enforcement. HUD, 1986 CD REPORT, *supra* note 32, at 11, table 1-7. Cleveland's 1986-87 CDBG grant was \$24 million, a significant reduction as a result of the cutbacks in CDBG funding by the Reagan administration. In 1980-81 Cleveland's CDBG allocation was \$40 million. In reaction, the city has proposed an increase in its permit fees to support code enforcement.

sented by the housing inspection staff. While prosecutors seem to proceed reasonably efficiently, including filing injunctive actions, their case load capacity is limited and code enforcement is not always a prosecutorial priority.

Given the limited number of housing inspectors and prosecutors, which limits the number of citations and delays the filing of cases, the study recommended that *pro se* citizen prosecution be encouraged. Citizen filing of complaints with the Boston Housing Court has been authorized by state legislation and upheld by the Massachusetts Supreme Judicial Court.³⁸ To date there is no state or local authorization for such actions in Cleveland. Likewise, there is no authorization for case filings by housing inspectors themselves.³⁹

The housing and building division initiated a neighborhood code enforcement partnership in 1986. Funded by a local private foundation, this partnership program includes eight neighborhood organizations, six residential (including four neighborhood housing services' neighborhoods) and two commercial.⁴⁰ This program is aimed at promoting citizen generation of code violations to supplement the efforts of the city's inspection staff.

This innovative approach, if successfully implemented, could expand code enforcement. However, the cautionary note sounded by a previous commentator bears repeating:

Despite the presence of this new Housing Court, it is clear that many of Cleveland's housing-related problems will not soon disappear. The agencies charged with assisting in remedying the proliferation of substandard housing surely are overworked and understaffed; additionally, many of those persons whom they would seek to have comply with city housing-related laws are not in a position which enables them to do so.⁴¹

In view of continuing underfunding of code enforcement and housing rehabilitation programs, there should be regular discussions about code enforcement and rehabilitation programs, policies and problems between the housing court judge and staff, the clerk of courts, the city's community development and law departments, and neighborhood organizations. This type of coordination has not existed in the past.

38. White, *supra* note 5, at 53 n.64-65.

39. White, *supra* note 5, at 53, n.63.

40. The Plain Dealer, Aug. 29, 1986, at 3-A, col.1.

41. White, *supra* note 5, at 56.

V. Receiverships

In their 1969 article on housing code enforcement in Cleveland, Marco and Mancino proposed the appointment of receivers to rehabilitate "economically sound buildings."⁴² They argued that the municipal court could appoint receivers under its equitable powers and cited a 1967 example.⁴³ They did not explain how this single example could be applied systematically nor whether it could be applied to seriously deteriorated and uneconomic buildings, whether occupied or vacant.

In the 1970s, abandonment had become a major problem in Cleveland. It accelerated neighborhood decline and triggered neighborhood demands for action. The city's response was to demolish thousands of abandoned housing units.⁴⁴ Eventually, concerned neighborhood groups sought an alternative to continuation of this demolition policy. Receivership was considered to be the most viable approach. While one community organization did succeed in persuading the housing court to appoint a receiver in 1982, it was felt that state legislation authorizing receiverships would be more likely to result in the effective use of this equitable remedy. Therefore, the Union-Miles Development Corporation (UMDC) commissioned a national study of receivership legislation and programs.⁴⁵

Armed with this study, released in 1984, UMDC and other neighborhood housing groups drafted state receivership legislation which was enacted in December 1984.⁴⁶ This legislation applies only to abandoned buildings.⁴⁷ In contrast, many receivership statutes and programs are aimed at occupied but substandard buildings.⁴⁸ The appointment of a receiver is codified as a remedy to abate the nuisance created by abandoned buildings. Nonprofit corporations are empowered to bring injunctive actions to abate the nuisance and may be appointed to act as receivers.⁴⁹ Once

42. Marco and Mancino, *supra* note 22, at 376.

43. *Id.* at 378-79.

44. The Plain Dealer, Jan. 24, 1984, at 6-A, col. 3. A Cleveland State University study reported that the city razed 3,600 houses (single, double and triple units) from 1977-82.

45. See Listokin, Allewelt, and Nemeth, *Housing Receivership: Self-Help Neighborhood Revitalization*, 27 J. URB. AND CONTEM. L. 71 (1985).

46. OHIO REV. CODE ANN. § 3767.41 (Page 1984).

47. *Id.* at § 3767.41(B) (Page 1984).

48. Listokin, *supra* note 45.

49. OHIO REV. CODE ANN. § 3767.41(B) (Page 1984).

appointed, receivers may obtain financing and issue receivers' notes to fund the rehabilitation of abandoned buildings.⁵⁰

UMDC initiated the first receivership action under this new statute in 1985 in the Cleveland housing court and UMDC became the receiver in 1986.⁵¹ It also spearheaded the formation of a Cleveland Housing Receivership Project (CHRP), comprised of those neighborhood housing groups interested in the use of receivership as a response to housing abandonment.

To date, the housing court has welcomed the use of the statutory receivership remedy. No major procedural problems have yet appeared in the initial test case. Until the completion of repairs and the release of the receiver in this initial experimental case, it is difficult to predict what problems may arise. Whether the receivership is widely used is likely to depend primarily upon the interest and capacity of CHRP members in seeking receiverships and the availability of public and private funding to rehabilitate abandoned buildings.⁵²

The major legal question which the housing court may have to resolve concerns the definition of "abandoned" property. The Ohio receivership statute, unlike some of its counterparts, does not define abandonment. Under Ohio common law, abandonment of property must be unconditional, intentional, and voluntary on the part of the owner.⁵³ In determining the circumstances of a particular substandard building, the court can and should consider a number of factors, including: whether the building has been declared a public nuisance or condemned by the city; whether the building is vacant and, if so, for how long; the type of code violations and the length of their existence; whether and for how long taxes, water, sewer, and other utility charges have been delinquent; and whether vandalism or arson have occurred. It is

50. *Id.* § 3767.41(F).

51. The Plain Dealer, July 22, 1986, at 6-D, col. 1.

52. The CHRP 1986 operating budget of \$63,000 was funded by two foundations and the City of Cleveland through its CDBG program. To finance repairs CHRP has a \$200,000 line of credit from a Cleveland bank and James Rouse's Enterprise Corporation.

53. For a general explanation of Ohio law regarding abandoned property, see *Davis v. Suggs*, 10 Ohio App. 3d 50, 460 N.E.2d 665 (1983); *Kiser v. Bd. of Comm'r*, 85 Ohio St. 129, 97 N.E. 52 (1911); *New York and Ohio R. Co. v. Parmless*, 10 C.C. 239 (1885); *Platt v. Penn Co.*, 43 Ohio St. 228, 1 N.E. 420 (1885); *R. Co. v. Ruggles*, 7 Ohio St. 1 (1857); and *Williams v. Champion*, 6 Ohio St. 169 (1833).

presently assumed that only vacant buildings will be the subject of receivership actions. Should any controversy arise concerning the definition of abandonment, the issue can be resolved by a statutory amendment establishing a minimum vacancy period as constituting abandonment.

The housing court should assist in the implementation of this remedy. But, funding for rehabilitation is an essential ingredient that this court cannot provide.

VI. Landlord-Tenant Relations

A. Evictions

1. PRIVATE

Private landlords bring eviction actions for possession and/or damages against tenants in housing court under Ohio's Landlord and Tenant Act.⁵⁴ Eviction cases are heard by a referee. In 1984 landlords filed 10,846 eviction cases in housing court.

The 1979 study of Cleveland's municipal court concluded that Ohio's 1974 landlord-tenant reform legislation had little effect on most landlord eviction actions based on nonpayment of rent.⁵⁵ Most tenants did not appear or, if they did appear, were not represented by attorneys and did not raise a warranty of habitability defense against eviction. Those tenants who are knowledgeable about their rights, including rent depositing, generally had been counseled or were represented by either the Cleveland Tenants Organization (CTO) or the Cleveland Legal Aid Society.

The 1984-85 study did not include a systematic analysis of eviction cases to determine, for example, patterns of tenant appearances, legal representation of landlords and tenants, and jury trials. Impressionistic data, including interviews with knowledgeable observers, indicated that the 1979 pattern still prevailed except that funding cutbacks for CTO and Legal Aid have limited their ability to assist tenants in housing court. However, the housing court judge and staff have made every effort to assist poor tenants facing eviction and in need of emergency shelter to obtain assistance through public agencies.

The study recommended that a pamphlet be prepared for landlords and tenants explaining the housing court and its implementa-

54. See *supra* note 14 and OHIO REV. CODE ANN. § 5321 (Page 1984).

55. McIntyre, *supra* note 15, at 589.

tion of landlord-tenant law. Unlike some other cities, no such pamphlet exists to inform those using the court about its procedures and their rights and obligations. It was also recommended that the court implement a more systematic mediation program to prevent evictions if possible.

2. PUBLIC HOUSING

A significant percentage of the housing court's 1984 eviction case load (19.4 percent) was comprised of cases brought by the Cuyahoga Metropolitan Housing Authority (CMHA)—Cleveland's public housing agency. CMHA is required by federal policy to utilize state eviction proceedings.⁵⁶ According to CMHA's data, only 31 percent of the 1984 eviction actions (totaling 2,103) resulted in either settlements or actual evictions. Each filing cost CMHA \$232. At the end of the year CMHA was still owed \$313,413 by delinquent tenants. In 1985 CMHA was declared a "troubled" agency by HUD in part due to rent delinquencies.⁵⁷

This inefficient use of the housing court to try to force payment of delinquent rents by public housing tenants has resulted in unnecessary paperwork by the court and misuse of desperately needed funds. For example, in June 1985 it was disclosed that CMHA had failed to collect more than \$30,000 in court fees that it had incurred during the previous four years in filing eviction actions that were later settled.⁵⁸

The study recommended that the housing court and CMHA should discuss alternative methods of collecting delinquent rents and evicting troublesome tenants. While CMHA proposed reforms in June 1985 to collect delinquent rents without resorting to housing court, these proposed reforms had no discernible impact a year later. This is another housing problem over which the housing court itself has little influence but which has reduced its efficiency and effectiveness. Hopefully, CMHA will implement proposed reforms and reduce its resort to the housing court to collect delinquent rents.

B. *Emergencies*

In 1985 the Cleveland law department filed fifty-two injunctive

56. See 24 C.F.R. § 966.58. Public housing tenants are entitled to an administrative hearing prior to CMHA initiation of an eviction action under HUD's lease and grievance procedures.

57. The Plain Dealer, Oct. 20, 1985, at 23-A, col.1.

58. The Plain Dealer, June 5, 1986, at 20-A, col.1.

actions in emergency cases (e.g., lack of heat during winter).⁵⁹ According to all accounts, the housing court very efficiently issued orders responsive to such actions, resulting in the quick restoration of essential services.

C. *Security Deposits*

Ohio tenants have a right to the return of their security deposit.⁶⁰ This often requires the filing of an action by the tenant in small claims court. Since it proved to be infeasible to retrieve those small claims cases which involved tenant security deposits, an analysis of this forum for resolving landlord-tenant disputes over the return of security deposits was not possible. The study recommended that such cases should be heard by housing court referees since this falls within the ambit of its jurisdiction.

D. *Case Management and Record Keeping*

One goal sought by housing courts is more efficient case management and improved record keeping. Without adequate information about the Cleveland municipal court's practices prior to the establishment of the housing court in 1980, it was not possible to accurately determine the general impact of the housing court on the processing of housing cases by the municipal court.

The improvement since 1984 in the processing of code enforcement cases was discussed previously. The municipal court, including the housing division, has begun to computerize its case data. However, the housing court's code enforcement data system does not correspond to the data systems of Cleveland's building and housing division and law department. What is needed is an integrated, comprehensive computerized data system. This would allow the more efficient tracking of code enforcement cases, including cross-referencing those cases in which tenants are rent depositing or landlords are attempting to evict tenants.

E. *Relations with Neighborhood Groups*

Cleveland's neighborhood groups were in the forefront of the effort to create the housing court. With the cooperation of the center for neighborhood development of Cleveland State University's College of Urban Affairs, thirty-five neighborhood groups were surveyed. Of the fourteen which responded, only a

59. LAW DEPARTMENT, CITY OF CLEVELAND, ANNUAL REPORT (1985).

60. OHIO REV. CODE ANN. § 5321.16 (Page 1984).

few had appeared in housing court or worked with the housing specialist during the past two years. Criticism expressed by these groups included: fines are too small; absentee landlords receive too many extensions; the eviction process favors landlords; the rent deposit procedures should be improved; residents should be allowed to file complaints; and better information should be available concerning the court's procedures and activities, including its docket.

In order to keep neighborhood groups better informed about the housing court's activities, the study recommended that upon request they regularly receive the housing court's docket. While this has been occasionally provided, a more systematic distribution was felt likely to keep neighborhood groups better informed about and interested in the housing court. Chicago instituted this type of system in 1964.⁶¹

It was also recommended that the housing court establish a citizen advisory group, including neighborhood, landlord and tenant representatives. This group would meet periodically to discuss the court's procedures and policies and make recommendations, where appropriate. A similar group—the Citywide Task Force on Housing Court—exists in New York City.⁶²

F. Foreclosures

Typically, residential mortgage foreclosures are handled by local civil courts. In Cuyahoga County (which includes Cleveland) they are generally handled by the county's court of common pleas rather than the city's municipal court because of the \$10,000 limitation on the municipal court's jurisdiction and because most foreclosed residential mortgages exceed that ceiling.⁶³

Between 1981 and 1984 the annual rate of foreclosures adjudicated by the Cuyahoga County Court of Common Pleas rose from 595 to 885 cases.⁶⁴ Many of these foreclosures reflect unemployment in Cleveland's distressed economy. Ohio's high foreclosure rate has led to a continuing effort to enact state foreclosure relief legislation.⁶⁵

61. See CHICAGO DEPARTMENT OF CITY PLANNING, *AFFIRMATIVE NEIGHBORHOOD INFORMATION PROGRAM* (1984).

62. 10 CITY LIMITS 16 (June–July 1985).

63. OHIO REV. CODE ANN. § 1901.181 (Page 1984).

64. This data was obtained from the Land Sales Department of the Civil Division of the Cuyahoga County Court of Common Pleas.

65. The Cleveland Council of Unemployed Workers has proposed state emergency foreclosure aid legislation based upon Pennsylvania's Homeowners Emergency Mortgage Assistance Program. See 35 PA. STATS. ANN. § 1680.401(c).

If the housing court is to have exclusive jurisdiction over all housing cases, then it would be appropriate to amend its jurisdictional ceiling to allow it to hear mortgage foreclosure cases exceeding \$10,000 in the city of Cleveland.⁶⁶

VII. Conclusion

This study of the Cleveland housing court, after more than a half-decade of existence, is one of the few detailed evaluations to date of an urban housing court.

The study indicates that its impact has been mixed. Internally, at least since 1984, it has made improvements in the processing of code enforcement cases, and contributed to the implementation of an innovative receivership remedy. However, its staffing is limited and its record keeping and data systems need further improvements.

Externally, the court has little control over the inadequacies of federal or local housing rehabilitation and code enforcement programs and the increases in unemployment and poverty that have contributed to Cleveland's substandard and abandoned housing (both public and private), eviction, and foreclosure problems. The court can and should try to coordinate its efforts with public agencies and concerned community organizations. Without similar comparable data from other courts, it is difficult to generalize about its relative impact compared to its counterpart courts.

However, several conclusions can be drawn from this study of one housing court. Within the context of the judicial system, there is little doubt that a specialized court like an urban housing court can improve the judicial response to housing cases of all kinds—landlord-tenant disputes over eviction, living conditions, rents, and security deposits; code enforcement; and foreclosure. Housing courts can provide more efficient and sensitive review of such cases if they are adequately staffed by judges and qualified support personnel interested in addressing housing problems. To achieve this, there must be continuity on the bench, sufficient staff, efficient case management, and sufficient outreach to make the housing court a well-known and readily accessible forum.

Beyond this operational view of justice, housing courts are not likely to be the linchpin of urban housing reform. The pervasive

66. OHIO REV. CODE ANN. §§ 1901.17, 1901.181 (Page 1984).

problems of substandard buildings, unaffordable units, discrimination, and displacement do not readily lend themselves to judicial resolution.⁶⁷ These persistent problems are rooted in societal causes and conflicts. All require national, state, and local policies designed to provide adequate funding to address these issues.

If such resources are available, then local housing regulatory and administrative agencies dealing with code enforcement, housing rehabilitation, rent and eviction controls, condominium conversions, and consumer (e.g., tenant) and neighborhood organizations are best situated to provide the impetus for the resolution of most housing problems. Courts by their very nature are reactive and are unable to exercise the requisite leadership. A housing court cannot be expected to assume or supersede the role of these agencies and organizations.

However, the housing court can act as both a conscience and also a mediator and referee of disputes between housing owners and consumers that cannot be resolved by the system of regulatory and administrative agencies and advocacy groups. In this limited role, housing courts can contribute, as part of comprehensive local housing programs, to the resolution of urban housing problems and are preferable to the traditional judicial system.

67. See Hartman, Kessler, and LeGates, *Municipal Housing Code Enforcement and Low-Income Tenants*, 40 J. AM. INST. PLAN. 90 (Mar. 1974).

