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The District of Columbia Landlord and Tenant Court: An Obsolete Structure in Need of Reform

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Introduction

In December of 1970, Hon. Harold H. Greene, Chief Judge of the District of Columbia Superior Court, addressed the Young Lawyers Section of the District of Columbia Bar Association and proposed the creation of a Landlord-Tenant Agency to handle more expeditiously and more equitably the cases brought before the Landlord and Tenant Court. This paper will focus on the reasons underlying Judge Greene's proposal, the response it generated, and the current status of the reorganization efforts.

The Background For Change

With rare unanimity, all of those who are in any way connected with or come before the Landlord and Tenant Court—be they judges, tenants, lawyers for either side, clerks, landlords or spectators—agree the court is badly in need of reorganization of some sort. The criticisms of the present structure range from the fact that it is too slow and inflexible to the

† The author wishes to express his appreciation to Ms. Nancy Wynstra, Director, Planning and Research of the D.C. Superior Court, for her assistance and direction in the preparation of this article.

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2. Presently, the cases are set for trial two weeks after the complaint is filed with the clerk of the Landlord and Tenant court. However, unless a praecipe is entered at that time, the landlord is rarely prepared to go forward at that time and will request a continuance. A continuance is also requested when a housing code violation is ad-
lack of judicial expertise and social realism. Because of the phenomenal number of cases filed each month, the court is pressured into disposing of them as quickly as possible to avoid a logjam in the revolving door. Consequently, as one critic wrote: "The Landlord-Tenant Branch . . . is truly a rent collection agency."  

3. See note 5 infra. At present the judges are rotated every month through the Landlord and Tenant court. Except for those who have developed expertise from prior practice before the court or from a number of assignments to the court, the one month period does not allow sufficient time to develop the in-depth knowledge of landlord-tenant law necessary for adequate adjudication of the claims and defenses raised. The criticism has been made that some of the judges sitting in Landlord and Tenant Court have refused to follow appellate court decisions. Neighborhood Legal Services Program's Report and Recommendations To Chief Judge Greene Concerning Reform of Landlord and Tenant Court at 8 (July 28, 1972) [hereinafter cited as Neighborhood Report]. Neighborhood Legal Services Program recommended a three to six months rotation. Id. at 21.  

4. In the calendar year 1971 there were approximately 10,000 cases filed per month. Over the past six years the numbers have steadily increased.  

<table>
<thead>
<tr>
<th>Year</th>
<th>Cases Filed</th>
</tr>
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<tbody>
<tr>
<td>CY '62</td>
<td>94,187</td>
</tr>
<tr>
<td>CY '66</td>
<td>110,814</td>
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<tr>
<td>CY '67</td>
<td>117,651</td>
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<tr>
<td>CY '68</td>
<td>119,078</td>
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<tr>
<td>CY '69</td>
<td>121,444</td>
</tr>
<tr>
<td>CY '70</td>
<td>120,813</td>
</tr>
<tr>
<td>CY '71</td>
<td>122,357</td>
</tr>
</tbody>
</table>

Part of the reason for such a large number of cases being filed is the almost automatic filing procedure used by many of the large rental agencies as soon as the rent is due. Knowing that it will be two weeks before the case is first heard, these companies file complaints as insurance against the event of non-payment within that period of time even if they know the rent will be paid. This idea is given some weight by the number of complaints dismissed before judgment.  

<table>
<thead>
<tr>
<th>Year</th>
<th>Cases Dismissed</th>
</tr>
</thead>
<tbody>
<tr>
<td>CY '62</td>
<td>21,875</td>
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<tr>
<td>CY '66</td>
<td>27,012</td>
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<tr>
<td>CY '67</td>
<td>27,303</td>
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<tr>
<td>CY '68</td>
<td>29,198</td>
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<tr>
<td>CY '69</td>
<td>30,621</td>
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<tr>
<td>CY '70</td>
<td>33,621</td>
</tr>
<tr>
<td>CY '71</td>
<td>39,607</td>
</tr>
</tbody>
</table>

[Statistics compiled by Mr. Jack Martin, Clerk of Landlord and Tenant Court, and submitted June 9, 1972 to Chief Judge Greene.]  

5. It has been suggested that landlords be required to wait until seven days after the rent is due before filing. Letter of Mr. Frank Emmet to Chief Judge Greene, February 18, 1971. The legality of this requirement would appear questionable since technically speaking landlords have an immediate right to the rent, and such a requirement may operate as an unconstitutional denial of access to the courts. One company has experimented with such a system, but discontinued the procedure since they found they were losing more money than before. A number of landlords interviewed stated that many tenants look upon the summons and complaint as nothing more than a final notice to pay. This may be borne out by the fact that many of those sued in Landlord and Tenant Court are multiple repeaters. Investigations uncovered one instance where a tenant had been sued for non-payment of rent every month for the past twelve years.  

6. TAUB, THE DISTRICT OF COLUMBIA LANDLORD-TENANT COURT 3 (1967) (this report was prepared for the Washington Planning and Housing Association and Yale Law School). Ms. Taub reflected the general feeling about the court when she wrote:  

The initial encounter with this process is distressing, if not shocking. The small part played by the tenant in this automatic processing suggests that the tenant is being treated without elemental fairness; while the small part played by the judge suggests that the judicial system is completely irrelevant.  

Id. at 2. This same opinion was recently echoed in an article by B.D. Colen entitled Busy Landlord-Tenant Court: Inefficient Collection Agency: Although it was established for the swift legal settlement of disputes between rental housing owners and their tenants, D.C. Superior Court's landlord and
It was against this background of inefficient travesty, as well as the fact that the entire court system was preparing to undergo a vast reorganization, that Judge Greene initiated what he had hoped would be a community response to remedy the Landlord and Tenant Court situation. The proposal, which was nothing more than a general plan, envisioned an independent, self-contained agency which would have its own investigative and legal staff. Attached to the Mayor's Office rather than the judiciary, the body would have appropriate fact-finding power and decisional authority, subject only to narrow review by the courts. In addition to passing on evictions for non-payment of rent, the agency would determine whether a defense based on housing code violations existed, conciliate housing disputes, conduct broad-ranged studies of housing and code enforcement problems, and conduct a thorough review of the housing code with the aim of preparing recommendations for legislative action.

The advantages of such an agency were apparent. It would consolidate the efforts of many other agencies that focused some, if not all, of their efforts upon landlord-tenant problems. By applying well-defined expertise to these problems, this consolidation would hopefully result in greater efficiency of operation and a fairer determination of the issues involved. Affirmative actions by tenants for housing code violations were also a possibility, so long as the agency could enforce the sanctions it imposed.

At that time, one of the reasons for hesitancy in implementing such a proposal was the uncertainty surrounding the constitutional right to a jury trial in landlord-tenant cases. It was thought at the time that so long as a tenant branch has over the years become an inefficient, overloaded, slow-moving collection agency for landlords.


7. This reorganization was codified in The District of Columbia Court Reorganization Act of July 29, 1970, P.L. No. 91-358, 84 Stat. 482. The Court was renamed from the Court of General Sessions and was divided into five divisions: criminal, civil, tax, probate and family. See D.C. Code § 11-902 (Supp. V, 1972).


9. Id. at 30-32.

10. U.S. Const. amend. VII:

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall otherwise be reexamined in any Court of the United States, than according to the rules of common law.

right to a trial de novo was preserved, the agency concept might still be legally permissible; yet it was also feared that the only effect of such a provision would be to create just one more bureaucratic hurdle before allowing a person into court. This question, however, has been at least temporarily resolved by the District of Columbia Court of Appeals decision in Pernell v. Southall Realty\footnote{11} which held that no such right exists absent an authorizing statute.

Aside from the constitutional considerations, Judge Greene's proposal received criticism from numerous community groups. It should be pointed out that Judge Greene himself was not wholeheartedly in favor of the agency, but saw it only as one of many possible alternatives to the present system, and he hoped that by proposing one alternative, it would have the effect of initiating constructive and perhaps creative response. As it turned out, only three community groups came forward with recommendations, and only one of those merited serious consideration.

The Real Property Law Committee of the District of Columbia Bar Association (made up mostly of landlords' lawyers) passed a resolution, which was unanimously adopted, that the forum for landlord and tenant disputes should remain within the present system.\footnote{12} The proposal of the Bar Association committee was that a Review Section be established in the Landlord and Tenant Court composed of examiners who would have full fact-finding power, but who would defer to the court matters of law pertaining to the individual cases. This recommendation was more in the form of a suggestion as it was not accompanied by detailed research dealing with the obvious problems of powers, duties, and jurisdiction, nor was any case made by the committee for the implementation of such a proposal.

**The Housing Court**

Judge Greene's proposal for the Landlord-Tenant Agency was referred to the District of Columbia City Council which appointed an advisory com-

\footnote{11} Relying on the opinion of Mr. Justice Gray in Capital Traction v. Hof, 174 U.S. 1 (1898), the court in Pernell rejected Judge Braman's conclusion in Urciolo, stating that "[i]n our view, Hof shatters the picture of a continuous history of jury trials protected by the seventh amendment in summary landlord-tenant possession cases since the founding of the District." 294 A.2d at 495. It also appears that the implications of a finding that there was a right to a trial by jury would be such as to preclude possible court reform as was proposed by Chief Judge Greene, supra note 1. See 294 A.2d at 499. The issue, however, is not yet dead since it is presently on appeal to the Supreme Court. Pernell v. Southhall Realty, supra note 10, cert. granted, 41 U.S.L.W. 3527 (April 3, 1973).

\footnote{12} See Letter to Chief Judge Harold Greene from Mr. Geoffrey L. Munter, Chairman, Real Property Law Committee, March 12, 1971. The Real Property Committee also made a recommendation for the establishment of a "Review Section", however, the Committee did not communicate its reasons either for the recommendation for the Review Section or against the proposal of the Chief Judge.
mission on landlord-tenant relations to study the proposal and report its findings and recommendations to the Council. The Advisory Commission recommended against the establishment of such an agency and proposed in its stead the establishment of a Housing Court.\(^\text{13}\)

The main objections of the Commission were both practical and traditional in nature:

Apart from the practicalities of creating and funding an administrative agency, we firmly believe that the public, landlords as well as tenants, will continue to rely upon the courts for justice. Additionally, ultimate appeal to the court system from an administrative agency would have to be allowed, and where agency procedures were initially incorrect, valuable time might be wasted.\(^\text{14}\)

The Commission found many problems existing in the present system which it felt must be remedied:

1. that the present Landlord-Tenant Court system operates too slowly in many cases. Often the owner's right to possession is unreasonably delayed because the tenant has demanded a jury trial, regardless of the merits of his defense;
2. that the landlords' attorneys' fees and court costs are a considerable operating expense ultimately paid by the tenants;
3. that the present system is too complex for a tenant to make his defense successfully without an attorney or expert witness;
4. that the present system of rotating judges in Landlord-Tenant Court every thirty days prevents judges from developing expertise in the housing area;
5. that the dependence of judges in the Landlord-Tenant Court on the testimony of each side's witnesses makes it difficult for the judges to determine the causation of property conditions or the reduction in rental value caused by these conditions;
6. that the present system is too rigid and limited in the kind of disputes that can be heard;
7. that the Housing Regulations do not distinguish sufficiently between major and minor code violations;
8. that the present system does not deal effectively with those aspects

\(^{13}\) See District of Columbia City Council Landlord-Tenant Advisory Committee: Findings and Recommendations Relating to Resolution of Landlord-Tenant Disputes (appended to Letter to Chief Judge Harold Greene from Mr. J. Kirkwood White, Executive Assistant to the Vice-Chairman), August 4, 1971 [hereinafter cited as City Council Memo].

\(^{14}\) Id. at 2.
of the landlord-tenant relationship which might require judicial supervision, such as abandoned buildings or poor housekeeping by tenants; and

9. that the present system does not have the flexibility to handle the tremendous variety of disputes that come before it, nor does it have enough appropriate remedies.

Concluding its findings, the Commission stated: "[W]e are convinced that the current judicial mechanism must be thoroughly revised, improved and expanded to deal promptly and fairly with the wide range of disputes which arise between landlords and tenants."15

The criticisms generally voiced were adequately echoed by the Commission's findings.16 In line with its recommendation for a thorough revi-

15. Id. at 3.

16. The District of Columbia is not the only jurisdiction which has recently attempted to reorganize its landlord-tenant courts in order to deal with housing matters more fairly and expeditiously. Three of the surrounding jurisdictions have taken action in this area. Montgomery County, Maryland, was the first to pass a landlord-tenant law, which was vetoed by its County Executive; the veto was overridden later by the Council. The Washington Post, Oct. 7, 1972, § B, at 2, cols. 3-8. The new law set up a nine-member commission which had powers to investigate landlord-tenant disputes, issue cease-and-desist orders, apply fines and damages where the situation warranted such, and revoke licenses. The law also codified case law defining the rights of tenants. The law was effectively emasculated three weeks after it went into effect by Judge John Moore in a test case, Investors Funding Corporation v. Montgomery County, Eq. No. 44,380 (Md. Cir. Ct., Mont. Co., 1972), in which certain sections were held to be unconstitutional. See also The Washington Post, Oct. 17, 1972, § B, at 1, col. 8. The constitutional deficiencies found by Judge Moore included the lack of procedural due process hearings, slip op. at 9, the unconstitutional delegation of judicial authority, id. at 14, and the impairment of contract, id. at 15. The landlord-tenant law was considered vital by the Council, and they have indicated that an appeal of the ruling would be forthcoming. The Washington Post, Nov. 1, 1972, § B, at 1, col. 4.

Prince George's County, Maryland, has also enacted a similar bill which is to become effective July 1, 1973. It too set up a landlord-tenant office charged with investigating complaints and issuing orders. The bill further provided a codification of tenant and landlord rights as well as a grievance procedure. See The Washington Post, Nov. 28, 1972, § A, at 1, col. 1. The landlords, however, plan to challenge this law as soon as it goes into effect. Id. § A, at 6, col. 1.

Fairfax County, Virginia, has drafted a housing ordinance which it planned to submit to the Board of Supervisors after the first of the year. It is somewhat duplicative in draft form of the provisions mentioned above, but also provides the added right not to be evicted so long as the tenant pays his rent and abides by the lease agreement. The Washington Post, § D, at 1, cols. 6-7. Landlords anticipate a court battle over this provision as well. Id. § D, at 4, col. 1.

The Council of Governments (COG) has been concerned for some time about the plight of tenants in the metropolitan area, and has conducted extensive studies of the problem throughout the area. See, e.g., COUNCIL OF GOVERNMENTS, STUDY OF LANDLORD-TENANT RELATIONS AND RECOMMENDATIONS FOR THE METROPOLITAN AREA, (Preliminary Draft, July 9, 1971). The COG recommended that there be an area-wide ordinance, a licensing of rental facilities, annual inspections, creation of a landlord-tenant commission, and the adoption of a model lease. Id. at 14-15. The National Conference of Commissioners on Uniform State Laws has also attempted to deal
The Commission proposed two measures: the establishment of a Housing Court and a revision of the Housing Regulations.17

The Housing Court, as envisioned by the Commission, would have jurisdiction over civil actions involving real property as well as over criminal prosecutions brought pursuant to the Housing Code. Judges would be specially assigned to the court for an extended period of time, thus enabling them to develop an expertise in the area of landlord-tenant law. The Commission's proposal contemplated the use of hearing examiners, appointed by the court, who would conduct the initial proceedings in the civil cases. The examiner would have the authority to enter judgment where no legal defense had been raised. In a case where a defense had been raised, he would make an initial determination concerning the amount of rent to be paid into the registry of the court preceding and during the litigation phase. The hearing examiner could also order an investigation of the property involved in litigation to be conducted by court investigators or court assigned housing inspectors. If the parties agreed, the examiner could also refer cases to a court arbitration-mediation service or refer tenants in need of assistance to the Social Services Agency. In all other situations, cases not resolved at this stage would be certified for trial.

The Commission also proposed that the Housing Court have the power to impose fines against landlords or tenants for violations of the Housing Regulations, that the tenant have the right to initiate the escrow of rents, with the court deciding what percentage should be used for repairs, and that the court have the authority to appoint a receiver for abandoned property.18

The initial problem in establishing a Housing Court is one of authority. It was suggested during a preliminary study of the Commission's proposal that this could be accomplished only by legislation.19 Such would be the

with this problem on a nationwide basis. See Uniform Landlord and Tenant Relationship Act (3rd Working Draft April, 1972).

17. The City Council recommended that the “regulations be revised to weigh the relative severity of various code violations.” Beyond this and a few simple changes relating to access by the landlord, notice by the tenant, and notice of abatement of violations, the City Council did not delineate specific revisions. See City Council Memo, supra note 13, at 6-7. Compare Study of Landlord and Tenant Relations and Recommendations for the Metropolitan Area and Uniform Landlord and Tenant Relationship Act, supra note 16.

18. City Council Memo, supra note 13, at 5-6.

19. See Letter to Chief Judge Harold Greene from Ms. Nancy Wynstra, Director, Division of Planning and Research, D.C. Superior Court, dated November 21, 1971. This position was advanced during hearings on the proposal before the Special Subcommittee on Landlord-Tenant Rules appointed by Chief Judge Greene, and it appeared to the author at the time of his testimony that the panel of judges concurred with this conclusion.
case certainly if any attempts were to be made to confer both civil and criminal jurisdiction upon the Housing Court, since Congress only recently had separated the courts and its divisions along the lines of jurisdiction of subject matter. Thus, it was doubtful that Congress could be persuaded to grant dual jurisdiction to a Housing Court this soon after the Court Reform Act. Additionally, the Chief Judge wanted to avoid having to wait for Congress to act before any reform of the court could be accomplished as nearly a year and a half had already passed since he first proposed the Landlord-Tenant Agency. A further consideration was that if any proposal were to be implemented within the next fiscal year, a budget submission would have to be made later that same summer. A decision was made at the time that whatever proposal was finally accepted it would have to be one which could be implemented without recourse to Congress and be within the powers already conferred to the court by the Court Reform Act. Consequently, it was decided that the Housing Court would not have any criminal jurisdiction, but that possible recourse could later be had to the City Council to establish new civil penalties which would make such jurisdiction unnecessary.

Under the Court Reform Act, Congress defined the divisions of the Superior Court, but also allowed for those divisions to be subdivided into whatever branches the Court needed. This would allow for the creation of a Housing Court branch under the civil division, and this branch would have jurisdiction over all housing matters as defined by the Board of Judges.

20. See supra note 7 and accompanying text.
21. There has been some discussion within the past few years regarding the value of criminal sanctions in housing matters. It has been suggested that such sanctions be abolished and replaced by civil penalties, reasoning that economic offenses require economic sanctions. These sanctions would, however, need to be more than a slap-on-the-wrist type of penalty. See generally Gribetz & Grad, Housing Code Enforcement: Sanctions and Remedies, 66 COLUM. L. REV. 1254, 1286-88 (1966); Sax & Hiestand, Slumlordism as a Tort, 65 Mich. L. Rev. 869, 871-73 (1967); Note, Enforcement of Municipal Housing Codes, 78 HARV. L. REV. 801, 820-30 (1965). Consideration should possibly be given to a greater use of injunctions, orders to vacate, mandatory civil penalties and receivership proceedings. See, e.g., N.Y. MULT. DWELL. LAW § 309 (McKinney Supp. 1972); ILL. STAT. ANN. ch. 24, § 11-31-1 et seq. (Supp. 1972). The ineffectiveness of criminal sanctions is perhaps best expressed by the fact that in 1971, of the 184 cases referred to the D.C. Corporation Council's Office by the Housing Division of the Division of Licenses and Inspections for prosecution of code violations, only 15 cases received any judicial attention, and most of these received only a fine.
22. See Gribetz & Grad, supra note 21, for a similar proposal of a Civil Housing Court which would have jurisdiction almost identical to that proposed by the City Council.
23. D.C. CODE § 11-902 (Supp. V, 1972) states that "[t]he divisions of the Superior Court may be divided into such branches as the Superior Court may by rule prescribe."
24. The jurisdiction of the Housing Court over all housing matters could be defined by the Board of Judges pursuant to D.C. CODE § 11-946 (Supp. V, 1972) which reads in part:
Admittedly, this would appear to do nothing more than change the name of the present Landlord and Tenant branch, however, the underlying premise was that eventually the Housing Court would take jurisdiction over all housing matters once City Council had enacted the necessary legislation.

The jurisdictional problems, however, were not the major hurdles which had to be overcome in order to implement some sort of reorganization. The role of the hearing examiner and the basis for his power was a more crucial concern. Initially, the hearing examiner's position was seen essentially as an administrative one, and the delineation of his duties could be done by the Board of Judges through their rule-making power. It was later decided that a fuller utilization of the examiner should be attempted since both the City Council and the District of Columbia Bar Committee had suggested that he be given substantial power. Such a position was analogized to the role of the master in both the federal judicial system as well as the Superior Court. Congress had already established positions for various court personnel in the Court Reform Act, and one of these provisions, 11 D.C. Code § 1724, provided that:

There shall be an Auditor-Master of the Superior Court who shall (1) audit and state fiduciary accounts, (2) execute orders of reference referred by the Superior Court and perform duties in connection with the execution of such orders in accordance with Rule 53 of the Federal Rules of Civil Procedure or other applicable rule, and (3) perform such other functions as may be assigned by the Superior Court. . . .

Section 11-1724 specifies two unrelated duties of the Auditor-Master and includes a third "catch-all" duty which should probably be interpreted to include duties collateral to or within the general scope of the first two functions. However, this provision is susceptible to much broader interpretation. The functions of the hearing examiner would more closely fall within the second duty, since the powers of a master with the scope of a referee

. . . The Superior Court may adopt and enforce other rules as it may deem necessary without the approval of the District of Columbia Court of Appeals if such rules do not modify the Federal Rules [of Civil and Criminal Procedure]. . . .

25. An analogous situation presently operates in the Family Division. See SCR-General Family D, which authorizes the Chief Judge to appoint one or more persons to serve as hearing officers on a full or part-time basis. Compare SCR-Small Claims 1-5 which provides for the mechanics of arbitration in Small Claims court. However, there exists specific statutory authorization for this court rule in D.C. CODE § 11-1322 (Supp. V, 1972).


are closely analogous to the powers and duties which are contemplated for the hearing examiner. The duties are compatible, within the required expertise of the auditor-master and, depending on the number of orders of reference made by the court, could be performed by one person. The main consideration was, however, whether the court would want the auditor-master to exercise the duties of a hearing examiner for the Landlord-Tenant court. As was then envisioned, this would be a full-time job, depending upon the assigned duties and delegated powers.

An alternative source of authority was section 1725(b) which allowed for the appointment of "all other non-judicial personnel for the courts . . . as may be necessary . . . "28 subject only to the regulations approved by the Joint Committee and the approval of the Chief Judge of the court to which the personnel are or will be assigned.29 Given the general tenor and scope of the Court Reform Act, the position of hearing examiner would seem to fall better within the purview of this section since his function is certainly seen as necessary and directly relates to the more effective administration of the court.

Section 11-1725(b) authorizing the appointment of other non-judicial personnel is merely a codification of a power which the courts have always had. As early as 1920, the Supreme Court in the case of In re Peterson stated that the "Courts have (at least in the absence of legislation to the contrary) inherent power to provide themselves with appropriate instruments required for the performance of their duties."30 The Court went on to say that:

This power includes authority to appoint persons unconnected with the court to aid judges in the performance of specific judicial duties, as they may arise in the progress of a cause. From the commencement of our government it has been exercised by the federal courts, when sitting in equity, by appointing, either with or without the consent of the parties, special masters, auditors, examiners, and commissioners. To take and report testimony, to audit and state accounts, to make computations, to determine where the facts are complicated and the evidence voluminous, what questions are actually in issue, to hear conflicting evidence and make findings thereon; these are among the purposes for which such aids to the judges have been appointed. Whether such aid shall be sought is ordinarily within the discretion of the

28. Id. at § 11-1725(b).
29. It is unclear what the precise scope of "all other non-judicial personnel for the courts . . . as may be necessary" was intended to be by Congress. Since the language is susceptible of a broad interpretation, it was given such, but it is also possible that the language was meant to refer only to the necessary supportive staff.
30. 253 U.S. 300, 312 (1920).
trial judge; but this Court has indicated that where accounts are complex and intricate, or where the documents or other evidence voluminous, or where extensive computations are to be made, it is the better practice to refer the matter to a special master or commissioner than for the judge to undertake to perform the task himself. (citation omitted).

The powers delineated in Peterson are substantial, however, it should be pointed out that the function which the auditor in Peterson served was essentially that now provided for in Rule 53 of the Federal Rules of Civil Procedure. The Court took notice of this when it pointed out the fact that because of the complex nature of the case, the "judge would be unable to perform his duty of defining to the jury the issues submitted for their determination and of directing their attention to the matters actually in issue" without the assistance of the auditor.

In addition to the "inherent power" theory, courts have always been competent to make and enforce reasonable rules regulating the practice of cases pending before them. In some jurisdictions this power has been conferred either by constitutional provisions or by statute. However, courts have likewise stated that they have inherent power to prescribe such rules of procedure and practice as may be necessary for the proper administration of justice. The rules of the court, if properly promulgated and within the power of the court have the force of law. The Superior Court has been given this rulemaking power by Congress, subject to the approval of the D.C. Court of Appeals, only if such a rule or rules would modify the Federal Rules of Civil or Criminal Procedure.

It was in light of this rulemaking power that the third alternative, that of providing a master for the Housing Court was advanced. Superior Court Rule 53(a) allows for the appointment of one or more standing masters.

31. Id. at 312-13.
32. Id. at 313-14. The Court later referred again to the special nature of this appointment when it spoke of "complicated questions of fact [referred] to a person specially appointed." Id.
33. See generally 20 AM. JUR. 2d Courts § 82 (1965).
34. See Fall v. Eastin, 215 U.S. 1 (1909). While the Court addressed itself specifically to the "full faith and credit" aspect of an in rem proceeding, it appears to have accepted without comment the use of a commissioner to determine the just disposition of property in a divorce proceeding. For other cases discussing the rulemaking power of the courts, see generally Washington-Southern Navigation Company v. Baltimore & Philadelphia Steamboat Company, 263 U.S. 629 (1924); Barber Asphalt Paving Company v. Standard Asphalt & Rubber Company, 275 U.S. 372 (1928); Bronx Brass Foundry, Inc. v. Irving Trust Co., Trustee, 297 U.S. 230 (1936).
and the appointment of a special master. Rule 53(b) defines the order of reference to such a master:

A reference to a Master shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, save in matters of account and of difficult computation of damages, a reference shall be made only upon a showing that some exceptional condition requires it.

The plain meaning of the language would appear to discount immediately the possibility of this provision having any application to the Housing Court. It was suggested that the present Landlord and Tenant Court problem as a whole was exceptional, and thus would fall within the Rule. However, the applicable case law requires that an “exceptional condition” must exist within the individual action and not by virtue of a general logjam in the court. This is especially true since specific orders of reference must be given in each case, detailing in clear and specific terms the matters to be passed upon by the Master. Nevertheless, as brought out during hearings on the proposal in early December of 1972, this problem in application might easily be resolved by removing the word “exceptional” from the provision thus allowing for a much broader application. This would require recourse to the rule-making power of the court pursuant to § 11-946 as a provision could be included to provide for a hearing examiner or special master in the Housing Court.

Powers and Duties of the Hearing Examiner

As a rule, no effort is made in state constitutions or in the Federal Constitution to define the scope of judicial powers with any degree of precision. Such powers are generally determined in light of the common law and the history of the various courts. Generally, a judicial inquiry investigates,

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37. This position was adopted by Mr. Joseph Schneider during a meeting of landlords and their attorneys with Chief Judge Harold Greene on July 5, 1972. The same position was advanced by Mr. Curt von Kann, who had served on the Landlord-Tenant Rules Subcommittee, in an interview with the author.

38. Cases stressing the exceptional character of a cause of action before reference to a master can be made are LaBuy v. Bowes Leather Co., 352 U.S. 249 (1957); Bartlett-Collins Co. v. Surinam Navigation Company, 381 F.2d 546 (10th Cir. 1967); McGraw-Edison Co. v. Central Transformer Corp., 308 F.2d 70 (8th Cir. 1962) (unnecessary appointment of master may amount to denial of due process); Burgess v. Williams, 302 F.2d 91 (4th Cir. 1962); In re Watkins, 271 F.2d 771 (5th Cir. 1959); Rogers v. Societe Internationale, Etc., 278 F.2d 268 (D.C. Cir. 1960); Schwimmer v. United States, 232 F.2d 855 (8th Cir. 1956), cert. denied, 352 U.S. 833 (1956). See also 5A J. MOORE, FEDERAL PRACTICE § 53.05 (1971) and cases cited therein.

39. See supra note 24 and accompanying text.

declares and enforces liabilities as they stand on the facts and under the law. While a judge may not delegate his duties in such a manner as to deprive the parties of their basic rights, this does not prevent him from appointing another person to aid him in the exercise of his duties. Thus in Peterson, the Court held that reference to an auditor did not operate as an unconstitutional deprivation of the right to a jury trial since the auditor's findings were not final but only tentative. The Court stated that seventh amendment problems prohibit the agent of the judge from exercising any greater power.

The Court reaffirmed this in United States v. Wood:

In construing the seventh amendment . . . we have said that the aim of the amendment was "to preserve the substance of the common law right of trial by jury as distinguished from mere matters of form or procedure." (Citations omitted). We held in Ex Parte Peterson . . . that there was no constitutional obstacle to the appointment by a federal court of an auditor in aid of jury trials although the practice in question had not obtained prior to the adoption of the Constitution either in England or in the colonies in connection with trial by jury.

The Wood Court, quoting from Peterson, stated, "[N]ew devices may be used to adapt the ancient institution to present needs and to make of it an efficient instrument in the administration of justice. Indeed, such changes are essential to the preservation of the right." 

In light of this language, it would appear that the hearing examiner could have all powers to hear evidence, subpoena witnesses, and make preliminary findings of fact and tentative conclusions or recommendations of law, short of actually determining the case. These are essentially the powers of a master under Rule 53, pursuant to statute, and as specifically defined by the appointing judge. Because of Rule 53(c), such a delegation of power would not be unconstitutional per se. It would appear that, with the rewriting of the present Rule as suggested, and with the powers of the examiner, apparently employed under the authority of D.C. Code § 11-501 (1967):

The United States District Court for the District of Columbia may appoint an auditor for the court, a messenger for each judge, and all of the officers of the court necessary for the due administration of justice.

42. 253 U.S. 300, 314 (1920). See also Field v. Holland, 6 Cranch 8, 21 (1810) ("[the auditors] do not decree, but prepare material on which a decree is made."); Railroad Co. v. Swasey, 23 Wall. 405, 410 (1874) ("[the auditor's] office is to present the case to the court in such a manner that intelligent action may be there had, and it is this action by the court, not the report, that finally determines the rights of the parties.").
43. 299 U.S. 123, 143 (1936).
44. Id. at 143-44.
45. An analogous situation exists in the District Court's use of the pre-trial examiner, apparently employed under the authority of D.C. Code § 11-501 (1967):
iner clearly and specifically delineated, the role of a hearing examiner would be the same as the role of an auditor-master in an order of reference. Furthermore, landlord and tenant matters, are by their nature already narrowly defined, encompassing only suits for possession and the recognized legal defenses thereto, thus the traditional role of a master would be maintained.

**Operation of the System**

The proposed process would begin with the filing of the complaint by the landlord. At that time a hearing date would be set approximately two weeks from the date of filing to allow for service upon the tenant. During that time, the parties may request either arbitration or mediation, and may suggest either a mutually acceptable arbitrator or mediator, or agree to have the hearing examiner fulfill this function. This type of procedure would probably be most effectively utilized in a rent strike situation.

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46. One of the main concerns voiced at the numerous meetings held with various individuals directly or indirectly connected with the Landlord and Tenant Court and its problems was the question of who the person would be filling the spot and what his or her qualifications would be. While the research staff felt that the question was premature, since the qualifications would depend on the amount and scope of authority and responsibility defined only after the jurisdictional problems had been solved, it was indicative of the concerns which these persons felt to be most pressing.

47. It has been suggested that there be a delay period between the date the rent is due and the time of filing to prevent the “automatic filing procedure.” But see the discussion supra note 5. See also Cohen, “Busy Landlord-Tenant Court: Inefficient Collection Agency,” The Washington Post, Dec. 17, 1972, § D, at 1, col. 1. The complaint procedure, filing and hearing would presumably also apply to affirmative suits by tenants should the D.C. City Council amend the present Housing Regulations so as to provide only civil sanctions. See supra note 21 and accompanying text.

48. It has been suggested that service be accomplished by either registered mail or certified mail, however, this would require a change in the Rules of the Landlord and Tenant Court since SCR-LT Rule 4 (1971) provides for personal service by a U.S. Marshall or a “process server.” The sham of the D.C. summons procedure was recently exposed by the Washington Post in a series of articles detailing the abuse. See The Washington Post, Jan. 29, 1973, § A, at 1, col. 5; id. at 11, col. 1. The following day an article appeared in the Post stating that both the U.S. Attorney’s Office and the D.C. Superior Court had initiated an investigation of the abuse. The problem with adequate service may account in large part for the unusually high number of default judgments entered pursuant to SCR-LT Rule 3 (1971). The statistics from the Clerk of the Landlord and Tenant Court show:

<table>
<thead>
<tr>
<th>Year</th>
<th># Complaints Filed</th>
<th># Default Judgments</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>1962</td>
<td>94,187</td>
<td>63,190</td>
<td>64.9</td>
</tr>
<tr>
<td>1966</td>
<td>110,814</td>
<td>74,945</td>
<td>66.7</td>
</tr>
<tr>
<td>1967</td>
<td>117,651</td>
<td>80,269</td>
<td>68.2</td>
</tr>
<tr>
<td>1968</td>
<td>119,078</td>
<td>81,412</td>
<td>68.4</td>
</tr>
<tr>
<td>1969</td>
<td>121,444</td>
<td>79,637</td>
<td>65.6</td>
</tr>
<tr>
<td>1970</td>
<td>120,813</td>
<td>74,980</td>
<td>62.1</td>
</tr>
<tr>
<td>1971</td>
<td>122,357</td>
<td>71,570</td>
<td>58.5</td>
</tr>
</tbody>
</table>


50. One author recently questioned whether the “rent strike” should be institutionalized. See Johnson, *Collective Tenant Action: Should the Rent Strike Be Institution-
The normal case would come before the hearing examiner on the set date, at which time the tenant would be interviewed by a paraprofessional intake worker who had a specialized knowledge of the landlord and tenant law. The paraprofessional would elicit basic background information: whether the tenant had paid the rent, what reasons he may have had for not paying the rent, whether there would be any housing code violations (using a checklist procedure) and whether there may be any legal defenses. Once this had been completed, the tenant would appear before the hearing examiner. Also present would be the landlord's attorney and a Legal Services Attorney assigned for that day.51

At this juncture a number of alternatives could arise:

(1) If there were no legal defenses, no housing code violations and no extenuating circumstances, the examiner could order eviction or payment, whichever remedy the landlord had demanded in his complaint;52

(2) if there were no legal defenses, no housing code violations and no extenuating circumstances other than the agreement by the tenant to pay if given a few days, and this was agreeable to the landlord, a praecipe could be entered to that effect;

(3) if there were no legal defenses, no housing code violations, but there were extenuating social circumstances, such as a lost welfare check, the case would be immediately referred to the Landlord and Tenant Consultant Service for the appropriate action.53

51. It is possible that the tenant may not have to appear if he or she has retained counsel or an NSLP attorney is prepared to represent the tenant at the hearing. It is not an unusual proposition since the landlord himself rarely appears, and is represented only by his lawyer who verifies the pleadings and any other information his records may contain.


53. The Landlord-Tenant Consultant Service (LTCS) was originally set up as a demonstration project by the Washington Planning and Housing Agency and the
(4) if there were no legal defenses, yet there was a possibility of a housing code violation, the nature and extent of which appeared substantial after questioning by not only the hearing examiner, but also the Legal Services attorney and the landlord attorney, a housing inspector, attached to the hearing examiner’s office, would be immediately sent out to investigate and report back to the hearing examiner within 24 hours;

(5) if legal defenses (other than ones involving housing code violations) were raised, such as retaliatory eviction, the case would be certified for trial at the earliest possible date. (It is possible that the Legal Services attorney would know this beforehand, and upon his representation at the time of the hearing it could be certified without need for the tenant to be present at the hearing.)

It should be stated that since the hearing is not a formal adversary proceeding, the attorneys for both sides, with the hearing examiner, would be allowed to ask questions to elicit information from the tenant necessary for a fair determination and appropriate disposition.

In situations #1 and #2 above, the matter would terminate with the hearing. In situation #3, Landlord and Tenant Consultant Service would be expected to return a recommendation for appropriate action to the examiner who would enter a final recommendation to the effect, unless opposed by the landlord’s attorney. In the latter case, a suitable agreement would be attempted by the hearing examiner. In a case where the landlord’s attorney

League of Women Voters in 1940. It began to function as a public agency in 1941 after the Commissioners recommended that the funds necessary for its operation be included in the budget for the Board of Public Welfare. At present, LTCS is part of the Division of Special Resources—Family and Children Division of the Department of Human Resources.

The present staff of nine has a working knowledge of the regulations and laws relating to housing in the District of Columbia; acts as an advisor and conciliator for the Landlord and Tenant Court; and renders advice on cases requiring a social disposition before the court. LTCS also serves as an intermediary by attempting to arrange out-of-court settlements in cases where installment payments of rent in arrears can be made. Because of its connection with the Department of Human Resources, LTCS has a good accessibility to various community resources, and thus can expedite referrals for immediate actions. However, due to its small staff, LTCS has been able to handle only about two percent of all cases filed in Landlord and Tenant Court (above five percent of the non-default judgment cases). The staffing proposal for the reorganization of the Landlord and Tenant Court included an expansion of the LTCS staff.

opposed any agreement, the examiner would enter his final recommendation, and allow the landlord’s attorney and a Legal Services attorney to appear that afternoon before the judge for a final ruling on the matter. In cases of no opposition, a praecipe would be entered by the parties and the case would be terminated.

In situation #4, where there was some evidence of a housing code violation which was not de minimis, and a housing inspector had been sent out, his report would be reviewed by the examiner the next day. If there were no violations, or the violations were such as not to be sufficient to warrant an abatement, the parties would be notified immediately to appear in court the following day, at which time a praecipe or order would be entered. The second hearing date could possibly be set at the time the housing violation was first raised.

In the event that a violation was found, the case would both be referred to the code enforcement section for action and the parties would be notified of a trial date, which could have been set at the first hearing. At this time the parties may agree to a mitigation or abatement of rent to avoid trial, in which case a praecipe would terminate the case. It is unlikely, however, that such agreement could be reached.

In situation #5 where legal defenses are raised, a fact-finding hearing would be held, after which the examiner would make preliminary findings and recommendations. The parties could agree to these findings and recommendations, in which case a praecipe would be entered to that effect, or they could challenge either the findings or the recommendations, or both, in which case it would be certified to the court for trial. In those instances where cases were certified for trial, the examiner would also make a preliminary determination as to the advisability of protective orders requiring money to be placed in escrow pending outcome of the suit. These orders would be reviewable the same day by the court.


56. The serious legal considerations regarding the deposits which are ordered to be made into the court registry are beyond the scope of this article. However, the law in the District of Columbia, prior to Lindsey, has been that such deposits are to be ordered only in “limited circumstances” and the cases have emphasized the necessity of a judicial decision based upon specific findings. See Blanks v. Fowler, 437 F.2d 677 (D.C. Cir. 1970), supplemental opinion, No. 24,548 (Jan. 12, 1971); Bell v. Tsintolas Realty Co., 430 F.2d 474 (D.C. Cir. 1970); Cooks v. Fowler, 437 F.2d 669 (D.C. Cir. 1970) supplemental opinion, No. 24,546 (Jan. 12, 1971). In Lindsey v. Normet, 405 U.S. 56 (1972), the Court in dictum approved such requirements. See also Comment, Landlord Protective Orders—A Lack of Guidelines for Appellate Use, 9 San Diego L. Rev. 132 (1971).

57. The use of escrow deposits by tenants protesting housing code violations has
One of the major problems in the court at present is the one of default judgments. It is major in its dimension, not in its strain upon the system. Numerous theories have been advanced attempting to explain the problem, the most frequent being the adequacy of notice. Since no one knew for sure what the real causes were, it was difficult to attempt a solution. Under the system as designed this summer, if a tenant or his attorney failed to show, a default was entered, as is presently done, but this could be set aside at the trial date (which was a different date than the hearing). If the tenant showed for the trial, he would be referred to the examiner and the process described above would begin on an expedited basis. If he did not appear, a default judgment would be entered at the date of trial. This obviously does not solve the problem, since the inequities are still present, but the only solution that was advanced was that of providing service through certified mail. Admittedly the problem was left in limbo because of the unknowns.

Will It Work?

In a moment of unnatural bureaucratic candor, the research staff could not answer the question. They simply did not know. The difficulty of designing a system—any system—is that it is generally done in a vacuum. In spite of the fact that a number of representatives from all concerned areas were contacted for their input and criticism (constructive and otherwise), most were generally neutral in their attitudes. Neighborhood Legal Services Program staff members were highly critical however. They saw in the proposal elements of racism, increased judicial disinterestedness, and a reversal (however subtle) of tenants’ rights. They saw the interest of judicial economy and procedural efficiency as an end rather than as a means to a higher quality of justice which the system was intended to produce. The NLSP staff did pinpoint one problem—judicial attitude—which may be at the heart of many other problems in the court. But they failed to

an indirect effect of showing the tenants’ good faith in not paying the rent due. This is sometimes dubious in situations of rent strikes or rent withholding, in that, it has happened that by the time judgments are handed down, the rent owed is not available since it has been spent on more pressing needs. This recently happened after a series of rent strikes in the District of Columbia in 1970. By depositing money into escrow, the landlord is assured of back rent should he win, even though he does not presently have use of it. See generally 1970 Wis. L. Rev. 607.

58. See supra note 48.
59. This problem was one of the more serious that the staff attempted to deal with, since before a solution could be formed, the full scope and cause of the problem had to be understood. See also supra note 48.
60. See Neighborhood Report supra note 3. The local legal services program handles about 14,000 cases per year and has been in existence since 1964. The Washington Post, Feb. 8, 1973, § D, at 1, col. 8.
realize that no system, short of divine appointment, will rid the administration of justice of the problem. It is present in the civil and criminal divisions; it is inherent in any system that allows one man to judge other men. Many of the obvious injustices, such as the lack of adequate code enforcement complained of in the NLSP proposal, are not problems with which the court itself can deal. Most require either executive initiative or legislative action. For example, NLSP recommended that Landlord and Tenant Court be elevated to the status of a division rather than a branch of the court. This is quite definitely a legitimate matter, one which the court has no power to effect. Other proposals merit discussion:

(1) Upgrading physical facilities and judicial attitudes—the physical facilities are undignified, but this is a budgetary consideration which has been often requested but always severely limited if not denied; judicial attitudes are not changed by judicial fiat;

(2) Assigning judges to hear cases on a 3-6 months rotating basis—a longer period on the bench has been seriously considered, but it cuts as a two-edged sword, and the overwhelming reluctance of the judges to such an assignment, while advising against such a move, may be indicative of the judicial attitude complained of;

(3) Studying the problem of defaults and improving notification procedures—this suggestion is presently being acted upon;\(^6^1\)

(4) Providing for an initial briefing by trained personnel—this is included in the proposal;

(5) Establishing a full panoply of civil remedies—this is essentially a legislative function which has been strongly urged and which was anticipated in the Housing Court system, but presently is a jurisdictional problem so long as criminal penalties are attached to code violations;

(6) Establishing evening and Saturday morning sessions—this was also suggested by the committee;

(7) Providing allowance for all counterclaims—this is a legislative problem over which the court has no jurisdiction;\(^6^2\)

(8) Establishing mediation as a voluntary service—this was also suggested as part of the system;

(9) Developing a closer liaison with the Department of Licenses and Inspections—under the proposed system inspectors would be specially assigned to the office of the hearing examiner;

(10) Requiring the landlord’s attorney to inform the court of the current state of the tenant’s account before issuing a default judgment—this

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61. See supra note 48.
is reasonable in light of the practices complained of by NLSP and could be accomplished by court rule;

(11) Enforcing a requirement that the plaintiff's suit be dismissed for want of prosecution if the landlord's attorney does not answer the initial call—failure to answer at initial call should be subject to the same result as default and such a procedure is appropriate for court rule, providing that default and dismissal are both later allowed to be set aside should the party appear.

(12) Providing for limited discovery—this would seem appropriate since the Landlord and Tenant Court is a branch of the Civil Division, and discovery, similar to that in civil cases, could be allowed by court rule;

(13) Providing for automatic certification of cases to the assignment commissioner upon the filing of a jury demand—until the Supreme Court passes on the question of the right to jury trial in Landlord and Tenant court proceedings, this suggestion cannot be acted upon.

These comments to the NLSP recommendations are not meant in any way to belittle their merit with flippant answers. Legal Services attorneys are faced everyday with the shortcomings of a system in which they seek a modicum of justice for their clients. However, their suggestions were not proposals for a more efficient system which could improve the quality of justice. No alternatives, only criticisms of the system were proposed.

Surrounding areas have attempted to deal with the same problem of landlord and tenant proceedings with mixed success in the past year. To date slumlordism has become more and more of a problem, and the tenants' position vis-à-vis the law a tenuous one at best. Until an effort

63. See supra note 16, and accompanying text.
is made which reduces the disparity of justice dispensed in the Landlord
and Tenant Court and the judicial machinery becomes a responsive mechan-
ism for that justice, tenants will remain disenfranchised as a class from that
justice.

Judicial Attention and Response

The proposed reorganization of the Landlord and Tenant Court is not and
was not meant to be the ultimate panacea for all that ails the system. It
was an attempt to meet some of the major problems head-on in an effort
to reduce the present inequities. As mentioned above, the general response
of the community at large was apathetic and less than concretely construc-
tive. This apathy may have been borne by the generalized frustration
which usually accompanies any attempt to modify an unwieldy bureauc-
rvacy; it may also have been the result of a common belief that what was
said would not actually make any difference in the end. The author
questions whether those involved in the community actually considered the
Chief Judge to be serious in his desire for reform.

The Chief Judge was not only serious, he was determined to rectify,
as best he could, marshalling what talents and ideas were available, the
system about which so many complained. He appointed a five-judge spe-
cial subcommittee to consider the proposals, hear testimony, and arrive at a
consensus as to the most desirable system. Hearings were held in Novem-
er and December during which the testimony of twenty-four persons rep-
resenting various interested groups was given.67 It was not until almost
two months later that the Board of Judges Special Landlord and Tenant
Committee reported its findings in a disappointing four-page memorandum
to the Chief Judge.68 Given the magnitude of the task and the impor-
tance of the work, the final report demonstrated either a disinterest on the
part of the committee or a lack of understanding of the operation of the
proposed system. The general findings and recommendations of the Com-
mittee were:

(1) That the use of hearing examiners (which the committee likened to
administrative law judges) would require a different delineation of power
than is the common practice;

(2) That the system of hearing examiners was unworkable, would de-
prive the tenants and landlords of "judicial presence", and superimpose
one more layer of procedure;

67. See Report of Committee on Landlord & Tenant Court Reorganization (Feb.
21, 1973), (Attachment).
68. Id.
That prior to trial, greater recourse, should be had and greater utilization made of the Landlord and Tenant Consultant Service;

That the court should have a staff of housing inspectors attached to and paid by the court;

That appropriate forms should be made available and assistance provided for the tenant to answer the complaint should he or she desire, and therein raise any defenses which may be valid;

That the office of the Clerk of the Landlord and Tenant Court have an increase in its staff so as to double the existing staff;

That the abuses of service of process should be investigated and dealt with;

That landlords be required to certify the non-existence of code violations as a pre-condition for filing suit.

The Committee deferred action on a number of other problems until some indeterminate future date. The report included a minority report of Judge Taylor, joined by Judge Doyle, which supported the concept of a hearing examiner. It was the minority report’s summation of the powers of the hearings examiner which more closely approximated the original intention and staff proposal. It is the author’s opinion that the role of the hearing examiner and the powers delegated to him were not clearly understood by many of those commenting upon it. While the majority felt that the system was “unworkable”, there was no indication of how this conclusion had been reached. It is also apparent that the concept was not clearly understood when the majority states in recommendation (3) that recourse should be had to LTCS without realizing that such a referral was part of the

69. The Committee stated:
Other suggestions—such as having landlord and tenant sessions at night and having the landlord and tenant judge start sitting during the first call of the calendar, so as to be personally available in an assignment capacity, much as a examiner would do, in part—need to be looked into at a future date.

Id. at 4. The Chief Judge responded to these suggestions by noting that the first had been tried unsuccessfully in 1967 when it was found that 75 percent of the judge’s time was unoccupied. He also pointed out that having the judge take the bench at calendar call had been the practice for several years. Chief Judge Greene stated that:

This practice was changed only when it was concluded that his somnolent presence during the monotonous call demeaned the judicial function rather than to enhance it, and the Court was subject to frequent and pointed criticism on this account.

Memorandum of the Chief Judge to the Committee on Landlord and Tenant Reorganization at 5 (March 5, 1973).

70. Memorandum of Judge Taylor to Judge Margaret A. Haywood, Chairman, Special Landlord and Tenant Committee (Feb. 22, 1973). It should be noted, however, that Judge Taylor also signed the Report of Committee on Landlord & Tenant Court Reorganization.

71. Id. at 1.
tasks outlined for the examiner. It is also interesting that while the Committee expects a greater use of LTCS, no supplemental funds for increased staffing was recommended.

The Committee did adopt the idea of having housing inspectors attached to the court, but did not define exactly how they were to be used as officers of the court during a court proceeding. Presumably they would be called by the court, rather than by either party in the suit, to testify as to their findings. In addition to the housing inspectors, the only additional staff recommended was an increase for the clerk's office. Unfortunately, although the clerk's office is understaffed, it was not the most critical of personnel shortages. As mentioned before, nothing was said as to increasing the staff of LTCS, nor adding an additional judge to the court, nor employing paraprofessionals to assist the tenants or the court. The staff of the clerk's office did not need to be doubled; it needed to be computerized as the other branches of the Superior Court are being computerized. The tremendous amount of a paper shuffled through the office can be much better managed if the clerk were given the equipment he needs at a much reduced expense.

In effect the Committee recommended nothing which was not already being done or contemplated in the way of court reorganization. Its recommendations left the Landlord and Tenant Court still floundering in the morass of paper and delay, and left justice as illusory as it always was. The lack of any substantive proposal for reorganization also left the Chief Judge in a rather obvious quandry, since he had appointed the Committee. Given the amount of time and the number of witnesses testifying and the material submitted, it could be presumed that the Committee would be able to understand the complexities of the problem as well as the subtleties of the proposals, and thus its recommendations would be well-reasoned and appropriate. Unfortunately, the Chief Judge was caught in the position of having to criticize the Committee he had established to deal with the problem. This is not meant to say that the Committee was to be a rubber-stamp for what had been proposed. The Chief Judge had hoped that the expertise the Committee would develop as a result of their work would enable them to arrive at a recommendation for a system which was both workable as well as designed to meet the needs of the court. It was obvious that, in the end, this was not the case. The final report was totally inadequate. Consequently the Chief Judge wrote to the Committee:

However, as you know, it is my general practice to support committee recommendations to the Board of Judges even if I have some disagreement with them. However, in this case, inasmuch as the subject matter was originally proposed in a public speech
I made after long and careful consideration—a speech that was based not only on my own observations but also on those of a number of other judges—and inasmuch as the committee report departs radically from the goals I had in mind, it will not be possible for me to support the Committee's conclusions.72

The Chief Judge regarded the central problem in the Landlord and Tenant Court as "one which would rectify serious problems of unfairness in that Branch arising from the imbalance created when one side has legal representation and the other does not."73 This imbalance, as the Chief Judge pointed out, would not be ameliorated merely by diverting tenants to LTCS which would require a massive infusion of funds and staff to handle the cases.74

The Chief Judge also rejected the Committee's disapproval of the hearing examiner concept, and indicated that it has been used successfully elsewhere.76 In those jurisdictions, the decision of the hearing examiner is final unless clearly erroneous or contrary to law, and the demands for trial de novo are very infrequent. The focus is upon expertise in the area of landlord and tenant law as well as the practical realities of tenancy in the District of Columbia. With the aid of the housing inspectors and the expertise gathered from litigation before him, the examiner would be able to sift quickly through much of the factual data submitted to him and arrive at a just result.

The Chief Judge pointed out that his proposal had met with unanimous approval of the City Council and that the Mayor had specially marked it as one of the two new programs which should be funded notwithstanding the general retrenchment of the budget.78 Additionally, the Chief Judge addressed himself to a few of the other problem areas and suggestions which the Com-

72. Memorandum of the Chief Judge to the Committee on Landlord and Tenant Reorganization at 1 (March 5, 1973).
73. Id.
74. Id. at 2. The Chief Judge also pointed out that . . . there is something inappropriate in the suggestion that most defendants probably have no legal defense anyway and that they might as well be diverted to a social agency in advance of an adjudication of their legal rights. Id.
75. The Chief Judge stated:
Hearing examiners function not only in administrative agencies where they typically handle complex matters, but they are not unknown as adjuncts of courts. Examples that come readily to mind are the hearing examiners attached to the Court of Claims who often try extremely complicated actions involving millions of dollars; examiners who try most traffic violations in New York City, arbitrators in such places as Philadelphia who decide negligence matters; and the thirty or forty hearing examiners attached to the Superior Court of Los Angeles who make decisions in a whole variety of cases.

Id. at 2-.
76. Id. at 4.
committee made. He strongly criticized the Committee's suggestion that the staff in the Landlord and Tenant clerk's office be doubled at the expense of nearly $50,000 as being completely out of balance with the entire proposed court budget.\textsuperscript{77}

In conclusion, the Chief Judge stated:

\textit{... I am not convinced that the Committee's posture or approach are [sic] correct, and accordingly I shall ask the Board of Judges to endorse the following program:}

(1) If the Congress approves the budget item reproduced on page 4 of this memorandum [$117,343], the Superior Court will establish a Landlord-Tenant Hearing Commissioner Section with two hearing commissioners, investigators, and appropriate supporting personnel.

(2) The function and powers of the hearing commissioners shall be established by Court Rule, such Rule to incorporate the principle that the decision of a hearing examiner shall be binding unless clearly erroneous or contrary to law, in which event the parties shall be entitled to a trial de novo before a judge of this Court.

(3) The functions and powers of the investigators shall likewise be established by Court Rule, such Rule to incorporate the principle that an investigator shall inspect premises which are the subject of landlord-tenant litigation either on motion of a party or on motion of the hearing examiner with a view to rendering a report with respect to the existence of housing code violations and their apparent origin.\textsuperscript{78}

On April 6, 1973, the Board of Judges adopted the Chief Judge's recommendations.\textsuperscript{79} However, Congress must first approve the budget request before the system can be implemented, and undoubtedly the legality of the system will be challenged as has been the case elsewhere when new procedures have been attempted. The crucial testing of the temper of the system will come with its implementation, since it is only then that a realistic appraisal can be made, rather than in the vacuum of theory and legal analysis. The step which the Chief Judge has taken is a bold one, and one long overdue. It remains to be seen whether it will meet up to the expectations.

\textsuperscript{77} Id. at 4-5.

\textsuperscript{78} Id. at 6-7.

\textsuperscript{79} The Washington Post, April 1, 1973, § B, at 1, col. 1.