
THE HOUSING COURT OF PITTSBURGH

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INTRODUCTION

The City of Pittsburgh Housing Court, now in its twelfth year of operation, was created at a time when Pittsburgh, like many other American cities, was in a state of housing crisis. The establishment of the Housing Court,¹ contemporaneous with the development of other local legal remedies,² was an attempt to provide an effective legal mechanism to cope with the increasing number of substandard dwellings in Pittsburgh. This Article will chronicle the history of the Pittsburgh Housing Court, examine its operation, assess its accomplishments and shortcomings, and analyze the crucial role that the court has played in the struggle against slum housing. This role has been two-fold. The court has acted as an indispensable component of an effective comprehensive housing code enforcement system, and, of greater importance, as a fundamental catalyst in the development of such a system.

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1. See notes 16-23 and accompanying text *infra*.

2. See, e.g., DePaul v. Kauffman, 441 Pa. 386, 272 A.2d 500 (1971); Klein v. Allegheny County Health Department, 441 Pa. 1, 269 A.2d 647 (1970); PA. CONS. STAT. ANN. tit. 35, §§ 1700-1 (Purdon 1977).

In 1949 Congress declared as national housing policy "the elimination of substandard and other inadequate housing . . . and the realization as soon as feasible of the goal of a decent home for every American."³ It is discouraging to realize that this country today may not be significantly closer to those ambitious, and perhaps unattainable, goals than when they were first articulated thirty years ago.⁴ A proper analysis of our country's housing problems, and the potential solutions to those problems, involves a myriad of complex and interrelated economic, political, social and legal factors, and is well beyond the scope of this Article. Although "housing courts" may not be equipped with the resources to deal with the basic economic issues of inadequate housing, they can serve an important function in the attainment of housing justice.

Pittsburgh's Housing Court belongs to the "code enforcement" genre of housing courts. Based on the Pittsburgh experience it is herein submitted that there is a clear need for this type of specialized court, albeit limited in its scope. Such a court can play a vital part in a program of housing conservation and neighborhood preservation, in addition to providing a suitable vehicle for the orderly resolution of housing disputes.⁵

BACKGROUND AND HISTORY

In the mid 1960's, the housing situation in Pennsylvania, in terms of

3. Preamble to the National Housing Act of 1949, 42 U.S.C. § 1441 (1976).

4. These goals have reaffirmed virtually every piece of federal housing legislation enacted since 1949. *See, e.g.*, the Housing and Community Development Act of 1968, 42 U.S.C. § 1441(a) (1976).

5. There are two underlying premises to this Article:

(1) The primary emphasis of any governmental housing strategy in the inner city today must be on the existing housing stock and the means available to maintain and preserve it. *See, e.g.*, the Housing and Community Development Act of 1974, 42 U.S.C. § 1441(c) (1976), and THE REPORT OF THE PRESIDENT'S COMMITTEE ON URBAN HOUSING: A DECENT HOME 104-10 (1968). New housing construction adds less than three percent each year to the existing housing stock. D. MANDELKER & R. MONTGOMERY, HOUSING IN AMERICA: PROBLEMS AND PERSPECTIVES 49-50 (1973).

(2) Vigorous and broad-based code enforcement is essential to stop the spread of dilapidated and deteriorated housing. *See generally* Grad, *Legal Remedies for Housing Code Violations* (1968) (National Commission on Urban Problems, Research Rep. No. 14). Such enforcement is necessary even though there exists the threat of adverse consequences such as the specter of widespread abandonment by absentee owners, prohibitive rent increases and mass evictions. *See also* HARTMAN, HOUSING AND SOCIAL POLICY (1975); Hartman, Kessler and LeGates, *Municipal Housing Code Enforcement and Low-Income Tenants*, 40 J. AM. INST. PLANNERS 90 (1974).

physical condition and shortage of available stock, was reaching critical proportions,⁶ prompting the following comment from the Pennsylvania Supreme Court:

We must recognize the fact that . . . critical changes have taken place economically and socially. Aware of such changes, we must realize further that more frequently today the average prospective tenant vis-a-vis the prospective landlord occupies a disadvantageous position. Stark necessity occupies a disadvantageous position. Stark necessity very often forces a tenant into occupancy of premises far from desirable and in a defective state of repair. The acute housing shortage mandates that the average prospective tenant accede to the demands of the prospective landlord as to conditions of rental, which, under ordinary conditions with housing available, the average tenant would not and should not accept . . . Premises which, under normal circumstances would be completely unattractive for rental are now, by necessity, at a premium.⁷

In Pittsburgh these conditions have been particularly severe and continue today. It has been estimated that of the 180,000 dwelling units in the City of Pittsburgh, between 42,000 and 69,000 are considered dilapidated or deteriorated; that is, from one-fourth to one-third of the city's housing is substandard.⁸ Census data demonstrate that of the occupied dilapidated units, sixty-eight percent are renter occupied, and of the units lacking some or all plumbing, eighty-one percent are renter occupied.⁹ The physical problems have been compounded by the age of Pittsburgh's housing stock: seventy percent of the dwellings are fifty years or older and sixty-two percent are more than sixty years old.¹⁰ The situation is further exacerbated by the severe housing shortage¹¹ and the long-standing im-

6. See, e.g., GOVERNOR'S TASK FORCE, COMMONWEALTH OF PENNSYLVANIA, BETTER HOUSING: A SOCIAL PRIORITY FOR PENNSYLVANIA (1969).

7. *Reitmeyer v. Sprecher*, 431 Pa. 284, 289-90, 243 A.2d 395, 398 (1968).

8. PITTSBURGH CITY PLANNING COMM., COMMUNITY DEVELOPMENT BLOCK GRANT PROPOSAL 20 (1976). The range in the estimates results from the lack of uniformity of definitions and standards used in the studies from which the statistics were derived.

9. *Id.* at 21.

10. PITTSBURGH CITY PLANNING COMM., HOUSING REPORT SUMMARY (March 1, 1968). It had been estimated that the factor of aged housing would contribute to the appearance of 30,000 additional substandard units in the 1970's. HEALTH AND WELFARE ASSOCIATION OF ALLEGHENY COUNTY, REPORT OF THE HOUSING INADEQUACIES TASK FORCE TO THE REAPPRAISAL AND DEVELOPMENT COMMISSION (1971).

11. See notes 6-7 *supra*.

balance in landlord-tenant law which has traditionally favored the landlord.¹²

Against this background, the organization known as Citizens Against Slum Housing (CASH) formed in Pittsburgh in 1966. CASH, an aggressive, broad-based, grass-roots citizens organization, prevailed upon the Pittsburgh city council to hold public hearings on slum housing conditions in the city.¹³ While the testimony at these hearings was quite divergent, there was one prevailing thesis: the pervasiveness of slum conditions throughout large segments of the city, and, most poignantly, the tragedy of the realities of daily living for those affected thereby.¹⁴

Central to CASH's campaign was its criticism of the housing code enforcement efforts of local government. CASH cited the inadequacy of existing housing and building codes, and the ineffectiveness of the code enforcement agencies in enforcing those codes.¹⁵ To remedy this situation, CASH proposed the establishment of a separate, specialized housing court for the City of Pittsburgh as the highest priority of its multifaceted reform platform.

As a direct result of these hearings, the Pittsburgh city council passed an ordinance in August 1967 establishing Pittsburgh's Housing Court as "a single magistrate's court with jurisdiction over all violations of

12. *See, e.g.*, *Commonwealth v. Monumental Properties, Inc.*, 459 Pa. 450, 329 A.2d 812 (1974); *Pugh v. Holmes*, 253 Pa. Super Ct. 76, 384 A.2d 1234 (1978).

13. The city council held an exhaustive series of public hearings beginning in April 1966 and continuing through July 1967. Scores of witnesses from each segment of the community testified, including community leaders, housing experts, lawyers, public officials, developers, representatives of public and private housing agencies, tenants and landlords (large and small, conscientious investors as well as slumlords).

14. As the United States Supreme Court has observed: "Miserable and disreputable housing conditions may do more than spread disease and crime and immorality. They may also suffocate the spirit by reducing the people who live there to the status of cattle. They may indeed make living an almost insufferable burden." *Berman v. Parker*, 348 U.S. 26, 32 (1954). *See also* REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 472 (N.Y. Times ed., 1968).

15. Despite the existence of various codes relating to housing and buildings, no effective program of prosecution of violations of these codes has been established. While exact figures are not available, it is estimated that prior to 1967, when the housing court began, there were seldom more than 50 housing code enforcement cases prosecuted in any year. Comay, *The City of Pittsburgh Housing Court*, 30 U. PITT. L. REV. 459, 462 (1969). The primary codes which serve as the basis for the overwhelming majority of housing court prosecutions today were in existence prior to the creation of housing court. *See* notes 17-19 *infra*. Their effectiveness as compliance tools, however, was severely limited by their relative non-enforcement beyond administrative efforts, without the backup of prosecutorial remedies.

statutes, ordinances and regulations relating to housing."¹⁶

The legal mechanics of creating the housing court were relatively simple. There was already in existence in the City of Pittsburgh a Police Magistrates System, which was empowered, *inter alia*, to adjudicate violations of any City of Pittsburgh ordinance.¹⁷ The most comprehensive code available which regulated housing standards, however, was the Health Code of Allegheny County,¹⁸ over which the Pittsburgh Police Magistrates did not have jurisdiction. In order to give the housing court an adequate jurisdictional base, the Second Class City Code¹⁹ was amended by the Pennsylvania legislature contemporaneously with the passage of the Pittsburgh Housing Court Ordinance. This simple amendment expanded the jurisdiction of the Pittsburgh Police Magistrates to include "cases of summary conviction . . . under the laws, ordinances, rules and regulations relating to housing and health, administered and enforced by a county department of health where a violation takes place in [the City of Pittsburgh]."²⁰ Simultaneously the legislature amended the Local Health Administration Law and thereby empowered the Allegheny County health department to institute actions before the Police Magistrates of the City of Pittsburgh.²¹

The Housing Court Ordinance directed the mayor of the City of Pittsburgh to designate one of the police magistrates as the "Housing Court Magistrate"²² and further provided for the following classes of cases to be brought before the Housing Court Magistrate: all violations of the Pittsburgh Building Code, Pittsburgh Electrical Code, Pittsburgh Fire Prevention Code, and all other statutes, ordinances and regulations which relate to housing, including those laws enforced by the Allegheny County Health Department.²³

A new judiciary article to the Pennsylvania Constitution which was adopted in 1968 completely overhauled and reorganized the judicial sys-

16. CITY OF PITTSBURGH, PA., ORDINANCE 375, § 1 (August 7, 1967).

17. PA STAT ANN. tit. 53, §§ 22261-68 (Purdon 1957) (*repealed* 1978), *superseded* by 42 PA CONS STAT ANN. §§ 1141-43 (Purdon Supp. 1979).

18. Allegheny County, Pa., Health Department Rules and Regulations, Art. VI, Houses and Rooming Houses (Jan. 1, 1957). Pittsburgh is located within Allegheny County and contains approximately one-third of the county's population.

19. Pittsburgh is the only city of the second class in Pennsylvania.

20. PA STAT ANN. tit. 53, § 22267 (Purdon 1957) (*repealed* 1978), *superseded* by 42 PA CONS STAT ANN § 1143 (Purdon Supp. 1979).

21. PA STAT ANN tit. 16, § 12027 (Purdon Supp. 1979).

22. CITY OF PITTSBURGH, PA., ORDINANCE 375, § 1 (Aug. 7, 1967).

23. *Id.* §§ 2-3

tem in Pennsylvania.²⁴ Pittsburgh's police magistrates, with explicit reference to the housing court, were specifically preserved to continue in existence as before and were declared part of the unified judicial system of Pennsylvania.²⁵

The housing court judge is appointed by the mayor of the City of Pittsburgh with the advice and consent of the Pittsburgh city council and serves a four-year term,²⁶ subject to reappointment and reconfirmation. With the appointment and confirmation of the first housing court magistrate²⁷ shortly after the passage of the enabling legislation, and the hiring of supportive staff,²⁸ the housing court was able to process and hear its first case in October 1967.

24. PA. CONST. art V.

25. See PA. CONST., Schedule to the Judiciary Article, § 21. In 1975 an action was filed in the Court of Common Pleas of Allegheny County challenging the constitutionality of the police magistrates system of Pittsburgh. The lower court held that the Constitution of 1968 had abolished the Pittsburgh magistrate courts and interpreted Section 21 of the Schedule to the Judiciary Article as merely "grandfathering" the then-presiding magistrates to enable them to serve out their terms of office. Commonwealth *ex rel.* Paulinski v. Isaac, Crim. Div. No. Misc. 307 (Pa. Ct. Com. Pleas 1975) and Civ. Div. No. Misc. 57 (Pa. Ct. Com. Pleas 1976). For more than a year thereafter, the future of housing court was uncertain even though the magistrates courts continued to function pursuant to a stay pending appeal.

In January 1979, the Pennsylvania Supreme Court overturned the lower court decision, concluding that Pittsburgh magistrates courts were incorporated into the unified judicial system of Pennsylvania. The Judicial Code of 1976 reinforces this interpretation and includes the "Pittsburgh Magistrates Court" among the delineation of the courts that make up the unified judicial system. Commonwealth *ex rel.* Paulinski v. Isaac, — Pa. —, 397 A.2d 760 (1979).

The Judicial Code of 1976 eliminated the title "Police Magistrates Court," and designated the Pittsburgh municipal court system as the "Pittsburgh Magistrates Court." 42 PA. CONS. STAT. ANN. §§ 1141-43 (Purdon Supp. 1979). The title "Police Magistrates" similarly has been eliminated and these judicial officers are now designated "Judges of the Pittsburgh Magistrates Court." 42 PA. CONS. STAT. ANN. tit 12, § 3131(d) (Purdon Supp. 1979).

26. 42 PA. CONS. STAT. ANN. tit 42, § 3152(a)(2) (Purdon Supp. 1979). The precursor to this section of the Judicial Code specified that the magistrates served for the term of the mayor. See Pittsburgh Home Rule Charter § 223 (1976). Interestingly, the judges of the Pittsburgh magistrates court are the only appointed judges in Pennsylvania that do not have to stand for election. See also PA. CONS. STAT. ANN. tit 42, § 3131(a) (Purdon Supp. 1979).

27. The Hon. Sholom D. Comay, former counsel to CASH, was appointed the first Housing Court Magistrate and served through 1971. He was succeeded by this author.

28. Housing court staff and its functioning will be described later. See text accompanying notes 62-63 *infra*.

JURISDICTION AND POWERS

The Pittsburgh Housing Court is considered part of the minor judiciary system of Pennsylvania.²⁹ It is not a court of record³⁰ and has limited jurisdiction. All of the cases processed by the housing court are filed by officials of various governmental agencies who are charged with the responsibility of enforcing the laws which are subject to the jurisdiction of housing court. The cases take the form of prosecutions for violations of local and state laws relating to housing. All of these laws provide for penalties in the nature of fines upon conviction in a summary proceeding and permit imposition of a sentence of imprisonment only in default of payment of the fine.³¹

Inasmuch as the laws that are enforced in housing court provide that the responsibility for enforcement lies with particular government officials, tenants or other private citizens are not able to initiate complaints directly with housing court, but must rely on the code enforcement agencies to follow up on their complaints to these agencies.³²

As the forum for prosecution of complaints alleging violations of municipal ordinances, the housing court exercises summary criminal jurisdiction and its proceedings are governed by the Pennsylvania Rules of Criminal Procedure.³³ Appeals from housing court decisions are as a matter of right to the Court of Common Pleas of Allegheny County, where the case is heard *de novo*.³⁴

29. In Pennsylvania, the minor judiciary consists of the Pittsburgh Magistrates Court (including housing court, city court and traffic court), Philadelphia Municipal Court, Philadelphia Traffic Court, and the District Justice System. See Judicial Code of 1976, chpts. 11, 13 & 15.

30. 42 PA CONS STAT ANN § 1141 (Purdon Supp. 1979).

31. Potential imprisonment would be subject to the limitations prescribed by PA. R. CRIM P., Rule 65. There is one exception to the exclusive remedy of fines in the relevant legislation. Section 665 of the Allegheny County Health Code provides that a person convicted of a second or subsequent offense shall be guilty of a misdemeanor and subject to imprisonment in lieu of or in addition to being fined. In practice, however, this option has yet to be pursued. All of the cases filed to date have sought only fines and no misdemeanor complaints have been filed.

32. The housing court will act as a clearinghouse and referral mechanism when matters are brought to the court's attention initially, and will refer matters to the appropriate agency. In the event that an individual is not able to pursue a complaint personally, the housing clinic is available to offer assistance.

33. PA R. CRIM P., Rule 1.

34. PA R. CRIM P., Rule 67. *But see* City of Easton v. Marra, 230 Pa. Super. Ct. 352, 326 A.2d 637 (1974) (failure to file resulted in sanction of appeal being stricken from the record).

During the last few years there has been considerable confusion in Pennsylvania regarding the criminal-civil dichotomy as it relates to prosecutions based on violations of municipal ordinances. On the one hand, the appellate courts of Pennsylvania have determined unequivocally that an action for violation of a municipal ordinance is a civil proceeding, inasmuch as it is a suit for the recovery of a penalty due the municipality.³⁵ According to the Pennsylvania Rules of Criminal Procedure, however, adopted by the Pennsylvania Supreme Court in 1970, 'criminal proceedings' include actions for the enforcement of the penal laws; 'penal laws' include, *inter alia*, ordinances which provide for imprisonment upon conviction *or* upon failure to pay a fine or penalty;³⁶ housing code enforcement cases generally fall into this latter category and thus it would seem that they are criminal. There have been several conflicting decisions³⁷ recently and the issue is far from settled. While the distinction may not seem a serious one from a substantive point of view, it does have important procedural ramifications affecting trial procedure, burdens of proof, evidence and method of appeal.³⁸ The Pittsburgh Housing Court has consistently treated the matters before it as criminal in nature, and will continue to do so until the issue is definitely resolved.

Prosecutions of violations of the following laws represent nearly all of the cases brought before the housing court:

(1) *The Housing Code of Allegheny County*.³⁹

The most comprehensive of all of the housing-related legislation in Pittsburgh, this code establishes minimum standards of housing fitness and maintenance and regulates such items as the structural condition of dwellings which include roofs, walls, floors, ceilings, porches, foundations and windows, and the condition of electrical fixtures and utilities,

35. *City of Easton v. Marra*, 230 Pa. Super. Ct. 352, 326 A.2d 637 (1974).

36. *York v. Baynes*, 188 Pa. Super. Ct. 581, 149 A.2d 681 (1959).

37. *See Lower Merion Township v. Schenk*, 247 Pa. Super. Ct. 494, 372 A.2d 934 (1977); *City of Easton v. Marra*, 230 Pa. Super. Ct. 352, 326 A.2d 637 (1974); *Pennsylvania ex rel. Allegheny County Health Dep't v. University of Pittsburgh*, 37 Pa. Commw. Ct. 117, 388 A.2d 1163 (1978); *Commonwealth v. Carter*, 36 Pa. Commw. Ct. 569, 377 A.2d 831 (1977).

38. In *University of Pittsburgh*, the court held that violation of a county regulation could substantiate the claim for recovery in a suit for a civil penalty. This was true even though the regulations permitted imprisonment in default of payment of the penalty. After a finding of not guilty at a *de novo* hearing on appeal from a summary conviction, the county was permitted to appeal to commonwealth court which held that the doctrine of double jeopardy did not apply inasmuch as the "prosecution" was civil in nature.

39. ALLEGHENY COUNTY, PA., HEALTH CODE, art. VI, Houses and Rooming Houses (as amended 1973).

heating fixtures and utilities, water supply, bathroom and kitchen facilities, plumbing and drainage systems, sanitation requirements, ventilation and light requirements, refuse storage facilities, and rodent and pest control. The code also sets standards of general fitness for human habitation. It is enforced by the Bureau of Environmental Health of the Allegheny County Health Department.

(2) *The Building Code of the City of Pittsburgh.*⁴⁰

This code is enforced by the Bureau of Building Inspection of the Department of Housing of the City of Pittsburgh. It provides for the regulation of, *inter alia*, occupancy standards, landlord registration, unsafe buildings by reason of structural defects, electrical deficiencies, inadequate egress and lack of safety apparatus. In addition, it provides the procedure for the condemnation and demolition of buildings.⁴¹ The Building Code incorporates the city's Electrical Code. A typical case filed under this code would be a prosecution for failure to correct an unsafe condition after having been ordered and given a reasonable time to do so.

(3) *The Zoning Ordinance of the City of Pittsburgh.*⁴²

This ordinance regulates and restricts the location, use and occupancy of structures and land in the city, and is enforced in housing court by the Bureau of Building Inspection. Housing court jurisdiction with respect to this ordinance is limited to prosecutions for violations of various provisions of the code. The typical case involves the failure to apply for and/or secure a certificate of occupancy for a particular use.

(4) *The "littered premises" ordinance of the City of Pittsburgh.*⁴³

This ordinance is enforced by the Bureau of Building Inspection and other city officials and prohibits the accumulation of garbage, rubbish or other debris on vacant or occupied premises, including yards, lots, courts, and abutting sidewalks and thoroughfares.

(5) *The "public nuisance" section of the Local Health Administration Law.*⁴⁴

This provision is enforced by the Allegheny County health department in primarily the same way as the city enforces its "littered premises" ordi-

40. CITY OF PITTSBURGH, PA., ORDINANCE 300 (as amended Nov. 4, 1947).

41. The housing court does not have the power to order condemnation or demolition of a structure, but in appropriate cases may "suggest" the Bureau of Building Inspection institute the proper action.

42. CITY OF PITTSBURGH, PA., ORDINANCE 192 (as amended May 10, 1958).

43. CITY OF PITTSBURGH, PA., ORDINANCE 17 (May 23, 1977).

44. 16 PA. CONS. STAT. ANN. § 12012(d) (Purdon Supp. 1979)

nance, whenever the county officials find such conditions to be a nuisance detrimental to the public health.⁴⁵

(6) *The Fire Prevention Code of the City of Pittsburgh.*⁴⁶

Enforced by the Fire Prevention Division of the Pittsburgh fire department, this code regulates, *inter alia*, conditions hazardous to life and property in the use and occupancy of buildings and premises by reason of fire or explosion, and prescribes necessary safeguards for the protection of life and property.

(7) *The Human Relations Ordinance of the City of Pittsburgh.*⁴⁷

Enforced by the City of Pittsburgh Human Relations Commission, it prohibits, in part, discrimination in housing on the basis of race, color, religion, ancestry, national origin or place of birth and sex. The ordinance details unlawful housing practices and provides for penalties for violations of its provisions.

The preceding list of laws, some of which overlap, when considered cumulatively, form a comprehensive network of regulation over the entire field of housing and its environment. It is within this framework that the housing court, the housing clinic,⁴⁸ the code enforcement agencies, and many of the other agencies, both governmental and non-governmental, must strive together to resolve the unending procession of cases that confront them.

The power of the housing court to deal with housing code violations is somewhat restricted. The jurisdictional base of the court, and the ordinances subject to its jurisdiction, clearly limit the court in its decision-making ability. The problem is essentially two-fold. On the one hand, ordinances enforced in the court provide for fines and penalties, but they fail to provide remedies that are within the jurisdiction of the housing court. Thus, the powerful remedies of injunction and receivership must be pursued, if at all, in another court, in a separate proceeding. On the other hand, from a pragmatic point of view, the housing court has no

45. Prior to 1977, the Allegheny County Health Department, by agreement with the City of Pittsburgh, received authority to enforce Pittsburgh's original "littered premises" ordinance. CITY OF PITTSBURGH, PA., ORDINANCE 248 (1948) (amended by Ord. 390, 1957). With the repeal of that ordinance and its replacement by Ordinance 17 of 1977, the county fell back on its "catch-all" legislation for enforcement.

46. CITY OF PITTSBURGH, PA., ORDINANCE 210 (as amended May 11, 1966).

47. CITY OF PITTSBURGH, PA., ORDINANCE 75 (February 29, 1963) (amended by Ordinance 395, July 3, 1969).

48. For a discussion of the Pittsburgh housing clinic, see text accompanying notes 55 *infra*.

landlord-tenant jurisdiction⁴⁹ and therefore is not in a good position to resolve landlord-tenant disputes that may be contributing to a code violation or preventing such violations from being corrected due to either physical or financial reasons. Similarly, the housing court lacks the authority to effectuate the Pennsylvania Rent Withholding Law⁵⁰ since it cannot order the disbursement of rent monies deposited into escrow for the purpose of making repairs to a dwelling subject to a housing court proceeding.

Some suggest that the solution to this dilemma lies in the expansion of the housing court's jurisdiction to include some or all of the above powers,⁵¹ or in the creation of a Housing Court Division of the Court of Common Pleas which is a court of general jurisdiction affording the division plenary jurisdiction over all housing matters.⁵² While it seems logical to have a housing court with plenary jurisdiction⁵³ to be able to adjudicate all aspects of a housing problem, one major concern with such a court is the potential for the landlord-tenant or eviction 'side' of the court to become overwhelmed with cases, thereby diluting the efforts of the code enforcement 'side' of the court.

While the Pittsburgh Housing Court has been limited by its code en-

49. Landlord-tenant cases (including actions in eviction, suits for rent, damages, tenant suits for return of security deposits and the like) are heard primarily by the 17 district justices in Pittsburgh. Cases are filed in the district in which the property is located; in 1978 there were approximately 3,000 eviction cases filed before these district justices.

50. 35 PA CONS STAT ANN. §§ 1700-1 (Purdon Supp. 1979).

51. See *City Housing Court Asks Wider Duties*, Pittsburgh Post-Gazette, Nov. 7, 1977.

52. See PA H.B. (1977).

53. Hypothetically, a single dwelling could be involved at the same time in five different proceedings before five separate tribunals, all arising out of the same fact situation: landlord sues tenant for eviction before district justice; tenant sues landlord for damages resulting from dangerous condition on premises and files action for hearing before board of arbitrators; health department brings action in housing court against landlord for failing to correct violations of health code; health department files injunction action in court of common pleas against landlord to force correction of emergency condition (such as leaking gas line); landlord files appeal of decision certifying his property for rent withholding and has hearing before administration hearing officer of health department.

It can even more complicated: appeal from eviction action goes to board of arbitrators (different from board that heard tenant damage suit); appeal from housing court decision goes to common pleas court judge (different from judge who heard injunction action); appeal from rent withholding decision by hearing officer goes to common pleas court (to a third judge); board of arbitrators decision in tenant damage suit is appealed to common pleas court (and still another judge). While the above example may seem extreme, there are many cases that involve several of the above issues, and a single forum to adjudicate them would be helpful.

forcement mode, it has been able to achieve good results with a variety of techniques designed to secure compliance.

Through the judicious use of fines, suspended fines, conditional sentences, extensions of time in appropriate cases, supervised probation, and the effective utilization of the services of and coordination with the many other governmental and private agencies in Pittsburgh, the housing court has achieved a remarkable level of success. For the recalcitrant offender, the imposition of a stiff fine may be the only remedy. In the case of the "good-faith" defendant who may need a little extra encouragement to comply within a reasonable time, a suspended fine may be the appropriate remedy under a sort of carrot and stick approach which often serves as an effective warning discouraging any future non-compliance. The conditional sentence is similar to the suspended fine approach but contains specific conditions with which the offender must comply in order to avoid paying the imposed fine.

Quite likely a specific timetable for repairs will be established as a condition which will be calculated with consideration to the severity of the violations, the defendant's financial situation, and, of course, the weather. Supervised probation is provided through the services of the housing clinic and is most appropriate in the cases involving low-income tenant violators having difficulty complying with the housekeeping and sanitary provisions of the health code, or, landlord offenders with financial, emotional, or other problems which make it difficult to deal with his responsibilities. Finally, by coordinating the housing court's role with other agencies and making resources and services available, many defendants can be assisted in their code enforcement compliance efforts.⁵⁴

HOUSING CLINIC

Early in the housing court's history, it became apparent that punitive action alone could not accomplish the goals of housing code enforcement. Innovative techniques were required since the imposition of fines would be counterproductive inasmuch as many chronic offenders are impoverished. Many code violators, both landlords and tenants, do not respond appropriately to the threat of punishment, but rather require understanding and education in housing codes and assistance in complying with these codes. Many defendants have difficulty coping with their re-

54. At the present time the most significant of these would be the low-interest loan programs that the City of Pittsburgh has created through its Community Development Block Grant Program.

sponsibilities as property owners. Some need counselling; others need instruction in code compliance, and still others need someone to help coordinate all of the factors necessary to secure abatement of their violations.

To assist the housing court with these difficult and challenging cases, the housing clinic was created in 1969 to serve under the direction of the court. The housing clinic was established with a \$50,000 grant from the Richard King Mellon Foundation and was subsequently funded under the regular city budget. The housing clinic acts as the probation, investigation and social service arm of the housing court, working with the hard-core cases assigned by the court. The clinic handles the problems that the court cannot resolve utilizing its limited range of remedies. There is no legislation specifying the functions of the clinic and its role has been shaped primarily by the needs of the housing court.

The housing clinic attempts to find solutions in matters involving recalcitrant defendants, landlord and tenant alike, as well as defendants who are poor, sick, elderly, senile, mentally retarded, mentally ill, physically handicapped, alcoholic and belligerent; in short, those suffering from the entire gamut of social ills associated with substandard housing conditions. Fines or imprisonment generally are not appropriate remedies in these kind of cases. The problems, however, cannot be ignored.

Through its skilled staff of probation officers, the housing clinic assists defendants in achieving compliance with health and housing codes, and coordinates all of the services necessary to bring about abatement of violations. In many cases this cannot be accomplished without resolving some attendant social problems involving various governmental and social agencies.

The cases referred to the housing clinic fall into three general categories:

(1) Cases where violations occur and go uncorrected primarily due to a lack of knowledge or understanding on the part of the defendant. In these cases the probation officer attempts to educate the responsible parties as to their obligations under the appropriate codes; for example, an explanation and demonstration of the public health aspects of code requirements, and advice as to the proper means of compliance.

(2) Cases where the defendant does not have the financial means to make the required repairs, or does not know how to arrange for them. In such instances the probation officer assists the defendant in seeking and obtaining, if possible, low-interest loans or grants which may be available through various programs, and/or assists the defendant with a plan for compliance, including obtaining reputable contractors.

(3) The final category, and the most difficult to solve, involves the wide range of personal and mental difficulties described above. Not only do these cases require intensive efforts by housing clinic personnel, but also they require the involvements of many other human service agencies in the city. The probation officer acts as the liaison between the various involved agencies and the defendant.

The umbrella-like role of the housing clinic in referring and coordinating various services to concentrate on a particular case, together with the probation officers' intensive involvement in the cases assigned to them,⁵⁵ have resulted in the abatement of violations in many cases which had been previously considered "hopeless." Since its inception, the housing clinic has handled more than 3,600 cases. The effectiveness of the housing court is significantly due to the work and assistance of the housing clinic. In a dramatic departure from traditional code enforcement prosecutorial procedure, the housing court and housing clinic attempt to follow up every case to satisfactory resolution.

PROGRESS AND THE PITTSBURGH COURT

During the past few months, there have been several significant milestones in housing court's history: the 20,000th prosecution was filed, the number of hearings scheduled is approaching the 27,000 mark⁵⁶ and, most significantly, the number of "abatements"⁵⁷ is more than 13,000.⁵⁸ Since its inception in 1967, the housing court has experienced a general trend of increases in the number of prosecutions brought before it, and

55. In many cases the probation officers provide physical assistance to the defendant, such as with the sick and elderly.

56. Multiple hearings are required in order to resolve many cases.

57. According to housing court records, an abatement is a case in which all, or substantially all, of the violations which gave rise to the prosecution have been corrected.

58. The difference between the number of abatements and total prosecutions is accounted for by those cases which are completed without the violations having been corrected. These include the following: defendant found not guilty, dismissals because of fatal defects in complaint, complaint not satisfactorily proven, procedural errors by code enforcement agency requiring dismissal, property or owner not cited properly, property sold or defendant deceased (an indication of poor record keeping by the enforcement agency), and defendant unable to be located or he is outside jurisdiction of the court. Also completed but not abated are cases where subject property has been vacated and sealed, or otherwise secured. While such cases are no longer a danger to the community and complaints are usually withdrawn, this is not considered an abatement since violations are not corrected and the current status is usually a temporary one. Finally, there are those cases in which a fine has been imposed and the violations go uncorrected.

corresponding increases in the number of successful resolutions of these cases. These successes are measured in terms of the number of abatements described above.⁵⁹

Contrasting starkly with the pre-housing court figures of less than fifty housing code prosecutions per year is 1968, the first full year of operation for the court, when more than 1,000 cases were filed. This number grew each year to a high of 2,230 in 1973, and has by now averaged about 2,000 cases per year over the last several years.⁶⁰ It is anticipated that the caseload will increase beyond the 1973 peak level. In 1978, 2,168 cases were filed, and projections from the first two months of 1979 indicate a significant increase above that figure.

The most meaningful measure of the housing court's effectiveness is the abatement rate which is the number of properties brought into compliance with the codes as the result of court action. Since violations are usually serious before a case is prosecuted, and the prosecution route is normally taken as a last resort by the enforcement agencies after administrative efforts have been exhausted and have failed to achieve compliance, abatement of violations in housing court normally represents a substantial upgrading of the property involved. Abatements have increased steadily over the years, from 360 in 1968 to a high of almost 1,700 in 1973. Expressed in a ratio of abatements to prosecutions, the results are dramatic. For the period 1967-1972, the rate of abatements was fifty-eight percent. As the court became more experienced and developed more effective techniques, and as the enforcement agencies became more efficient, the abatement rate saw a concomitant improvement. For the second-half of the court's short history, 1973-1977, the abatement rate was seventy-five percent.⁶¹

Even though there are a variety of reasons for the substantial results

59. The fluctuation in yearly caseload can be attributed to several factors, the most significant being personnel shortages in the enforcement agencies, changes among key supervisory personnel at those agencies and the availability of financial resources to assist property owners.

60. One meaningful area of study, not accessible at this time, would be the effect that the housing court, and the threat of legal action, has had on the rate of compliance with enforcement agency orders without the necessity of initiating prosecution. It is assumed that such a study would reveal a substantial effect. Analogously, the mere issuance of a summons by the housing court is a useful compliance mechanism. A recent study of the housing court by a University of Pittsburgh graduate student in Social Work indicates that in a random sample of 1973 cases, 41% were abated on or before the hearing date. Porter, Analysis of Pittsburgh's Housing Court (unpublished paper 1976).

61. Annual abatement rates were: 75% in 1973; 83% in 1974; 76% in 1975; 67% in 1976; 79% in 1977.

which the housing court has achieved in helping to improve the city's supply of safe and decent housing, two are of particular significance. First is the development and substantial upgrading of the intensive efforts by code enforcement agencies and the improvement of their work quality. Second is the growing sophistication of technique wherein efforts by the housing court and housing clinic staff, combined with that of the enforcement agencies, can be concentrated on the paramount concern in each case which is usually repairing the house.

The overriding philosophy of the housing court has been goal-oriented to ensure the health and safety of the community. Instead of merely trying to assess criminal blame, the court's approach is one of problem-solving; that is, utilizing the most expedient method to correct the violations in a particular case.

The Pittsburgh Housing Court has had a far greater significance than its statistical record of successes and failures indicates. It represents a vital force in the code enforcement efforts undertaken in Pittsburgh to upgrade its supply of substandard housing. These efforts have forced many slum landlords to withdraw from the marginal real estate market and have had a substantial long-term effect on the ownership patterns of low-income housing in Pittsburgh. Because of the previous lack of substantial legal or economic pressure to induce owners of low-income housing to maintain or upgrade their properties, these properties, for many years, had been highly profitable for a few landlords to the detriment of many tenants and their communities.

Beginning in the late 1960's, however, the slum housing climate began to slowly, but decidedly change. The development of systematic and aggressive code enforcement by the local code enforcement agencies with the housing court serving as "catalyst," coupled with the advent of rent withholding in Pennsylvania, and its mass utilization in Pittsburgh, signalled the end of an era for many slum landlords. Substantial numbers of deteriorated houses were acquired from large absentee owners by public agencies as well as private firms actively involved in rehabilitation programs; many of these were later put back on the market in renovated condition. Many other properties were sold to their respective tenants who were able to repair them with the aid of low-interest loans and grants under various home repair and rehabilitation programs. Numerous other properties were abandoned by their owners and many had to be demolished.⁶² Still others were acquired by speculators and new entre-

62. Pittsburgh does not appear to have a significant abandonment problem, and the demolition figures of the last several years have not been a cause for concern. Because of the age of Pittsburgh's housing stock, it is inevitable, and perhaps desirable, that each year

preneurs in the low-income communities.

An analysis of the housing court's caseload over its first ten years indicates a significant change in the ownership patterns among housing court defendants. The number of defendants with substantial holdings as well as the frequency of appearance of such defendants in housing court has decreased sharply between 1972 and 1977 as compared to the court's first five years. The caseload of the court has generally changed from a pattern of frequent offenders to first-time offenders, and from large landlords to smaller landlords. While the large-scale absentee owners have generally disappeared from the low-income housing market in Pittsburgh, the problems of deteriorating, aging housing, of course, remain.⁶³

The foregoing analysis still leaves many unanswered questions. While the pattern of ownership has changed over the years, one important issue that must be addressed is whether the new owners are less able to properly manage their properties, perhaps because of less experience and fewer assets. Also to be answered is whether code enforcement and housing court action have generated reinvestment by property owners or has the trend been toward abandonment or increased tax delinquency; whether rents have increased significantly because of code enforcement activity; and finally, whether the increase in the number of marginal owners will lead to increased abandonment. Before an accurate assessment of housing court and code enforcement in Pittsburgh can be completed, many of these questions will have to be answered.

CONCLUSION

As the Pittsburgh Housing Court proceeds through its second decade and reflects on its accomplishments and shortcomings, it would be instructive to review the arguments originally raised in favor of a separate

a certain portion of the worst housing be razed. This is particularly clear when one examines the population trend in Pittsburgh. In the last 25 years Pittsburgh's population has declined by approximately 200,000 people, with current estimates of a stable population between 450,000 and 500,000 people.

One other positive factor is worth noting. A possible contribution to the ability to economically maintain many of Pittsburgh's deteriorating housing is the general pattern of Pittsburgh housing with respect to density. The overwhelming percentage of dwelling units are in low-density buildings. The 1970 census data show that 79% of Pittsburgh's dwelling units are located in structures containing four units or less (with two-thirds of this figure in single-family homes).

63. See, e.g., Spatter, *Large Slumlords Gone, But Tenant Problems Remain*, Pittsburgh Press, Apr. 25, 1976, § C, at 1.

specialized housing court. A study prepared for the 1966 city council hearings on slum housing cited the following advantages.⁶⁴

(1) *The educational opportunity.* The judge becomes the expert on the housing law, and learns the special problems of the inspector and offender. Defendants, too, hear other cases and recognize the gravity of their infractions. Newspapers tend to follow the cases and educate a larger public. Citizens become aware of their responsibilities.

(2) *The hastening of the judicial process.* The specialization speeds the cases and still insures a more equitable disposition.

(3) *The effect on the habitual offender.* The housing judge quickly learns who are the chronic offenders and who are struggling owners or tenants. Slumlords quickly become obvious.

(4) *The inspection system itself.* Encouraged by prompt justice and attention, housing inspectors, policemen, prosecutors and others seeking better housing conditions soon sense the necessary support the court is lending to the cause. Rather than discouragement at seeing well-prepared, documented cases dismissed, the inspector watches a careful weighing of his evidence and, thus, feels his work is important and responsible.

While each of these factors has played an important part in the experience of the Pittsburgh Housing Court, the last item has been the most significant. The court has served a catalytic role for code enforcement activity in the city and has been instrumental in the development of vital programs.

The housing court has been no panacea for Pittsburgh's substandard housing problems. In an era when legal commentators have been bemoaning the failure of code enforcement in cities throughout the country, however, the Pittsburgh experience of the last decade has proved to be positive and encouraging. In the face of the increasing complexity of housing laws and regulations, and the pressing need to stem the tide of progressive housing deterioration and its serious social implications, the Pittsburgh Housing Court has proved its indispensability in this difficult area.⁶⁵ The Pittsburgh Housing Court, in its development as an inde-

64. *Hearings on Slum Housing Before the City Council of Pittsburgh* 72 (1966). Study prepared by Clifford C. Ham, Associate Professor of Urban Affairs, Graduate School of Public and Urban Affairs, University of Pittsburgh, cited in Comay, *supra* note 15, at 460.

65. See Editorial, *Keep the City Housing Court*, Pittsburgh Post-Gazette, March 9, 1974, at 4. See also *The Pittsburgh Housing Court and the Code Enforcement Process* (May 5, 1976) (joint project of the School of Urban Affairs, the program in Engineering and Public Affairs, Carnegie-Mellon University, and Dequesne University School of Law).

pendent and specialized court, has over the past eleven years served as stimulus for effective and efficient code enforcement and has enhanced the efforts and authority of the code enforcement agencies. It may, therefore, serve as a suitable model for many communities who are struggling with all of us toward that elusive goal of a decent home for every American.

