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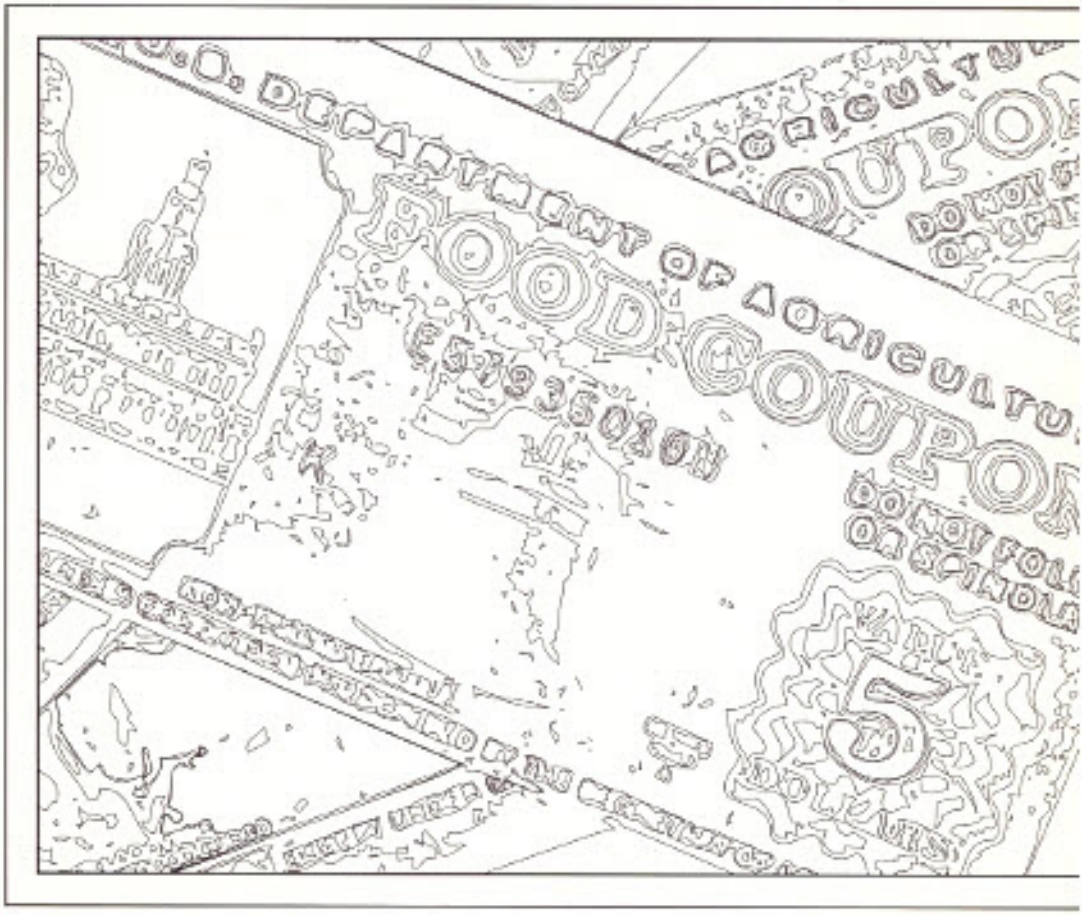


# Recent Developments in Food Stamp Program Law

# Receivership as a Remedy for Poor Agency Performance

*By Lynn E. Cunningham and Dennis Foley*

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## I. Introduction

Advocates for poor people should strongly consider asking the courts for receiverships and the appointment of special masters to oversee necessary reforms in public agencies that are failing low-income clients.

Injunctive relief, coupled with motions for contempt and fines, may be sufficient to bring relatively well functioning public agencies into compliance with applicable mandates. However, when an agency is simply incapable of reforming itself within the political context of a local or state government, receivership offers several important advantages.

### *A. Receivership Severs the Past*

Troubled public agencies usually have a long history of being troubled. Rather than assigning blame or making minor modifications to an obviously broken system, it is important to distance the unsuccessful past from the hopefully reformist present and future. "[I]t is critical . . . to sever the relationships between previous priority setters and the agency in order to turn around a [public agency]." /1/ It is better to begin anew than have the current, inept leadership attempt reform.

### *B. Receivership Can Ensure Appointment of an Effective Manager*

Effective management means knowledgeable as well as unimpeded, long-term management. In the housing field, leaders who have reformed troubled agencies recognize the importance of freedom from political interference that stifles good management. "[P]robably, [of] utmost importance in any housing authority is to keep politics and patronage out. . . . Public housing and the housing field have become too complex to have people in positions who don’t understand the system and the wherewithal of goals management." /2/ These principles apply to other kinds of public agencies as well.

A court-appointed receiver is answerable only to the court. Therefore, the receiver is much more free from politics than a traditional head of a troubled agency. /3/ A receiver can shelter the agency from inappropriate political interference from the mayor (or governor) and local legislators, guide the agency from the top toward stability, recruit a competent management team of individuals who know how to make an agency work, and help foster a culture among agency staff of competence and good performance in place of a culture of deceit and incompetence. The process is likely to take several years.

Receivership helps alleviate shortsighted political pressure by insulating the appointed expert manager for a defined period while basic systems of management and a culture of professionalism are restored to the agency. /4/

### *C. The Receiver Can Institutionalize Reforms*

Ideally, the receiver will hire highly qualified, top managers as permanent staff for the agency so that, when the receivership ends, the agency is left in the hands of qualified people who are committed to stay for the long term and keep the agency working properly. For example, if the agency has been performing poorly because none of its top officials really understands the federal mandates governing the program for which the agency is responsible, the receiver may hire a manager who has worked successfully with the program in another state. Or, if the agency lacks experienced financial managers, the receiver may hire a qualified comptroller and finance officer. The receiver can work with them to work out bureaucratic procedures so that the agency, for example, timely prints beneficiaries' checks and applies for all available federal reimbursement.

The receivership must build local and permanent operational capacity within the agency in order for real, long-term improvements to take place. Any good consultant can draft a three-year plan for how to correct the deficiencies in an agency. Troubled agencies usually need to hire qualified permanent staff who can implement good plans and continue to develop new plans as the agency's situation evolves.

## II. Authority and Legal Standard for Appointment of a Receiver

The term "receiver" historically referred to a court-appointed person who took charge of a third party's property. /5/ The Federal Rules of Civil Procedure contemplate the appointment of receivers by federal courts. Neither the text of the rule nor the advisory notes, however, mention criteria for such appointments. The rule concerns itself only with how receivers are to be handled postappointment. /6/

Similarly, the only section in the judicial procedure title of the U.S. Code dealing with receivers also delineates the receiver's duties and responsibilities once appointed but does not address criteria for appointment. /7/

While the appointment of receivers is an equitable remedy that modern courts possess, state statutes specifically authorizing the appointment of receivers also exist. /8/ Despite these statutes, most

receiverships result from courts exercising their equitable powers rather than enforcing a remedy created by a legislature. /9/

The legal standard for the appointment of a receiver is similar to that for preliminary injunctive relief: courts consider the adequacy of available legal remedies and the necessity of receivership to protect the plaintiff's interest in the property. /10/ "The appointment of a receiver is not a matter of positive right but rather lies in the discretion of the courts." /11/

Although the appointment of receivers is squarely within a court's equitable powers, receiverships are nonetheless generally "considered a remedy of 'last resort' [and] not often applied in practice." /12/

In the now classic public housing receivership, Perez v. Boston Housing Authority, the court placed the Boston Housing Authority into receivership after trying a series of injunctive measures over a number of years. /13/ The Perez court came to the conclusion that no other remedy short of receivership would achieve the goal of the litigation, which was to bring public housing into compliance with the city sanitary code. Other institutions have also been placed into receivership, but again this was usually done only after a court had tried other equitable remedies to no avail. /14/

If an agency is in such poor health bureaucratically that an injunction will prove nugatory, advocates should consider urging a court to appoint a special master to study the problems confronting the agency and thereby to lay the factual groundwork for the appointment of a receiver. "The power to compel affirmative action by injunction draws with it a power in the court to call to its assistance any agents or officers . . . whose services appear reasonably necessary to attain a legitimate objective." /15/

The Supreme Court has recognized the flexibility courts possess in appointing parajudicial officers to effectuate relief once legal standards are found to have been violated. /16/ Lower courts have also recognized the "broad and flexible" power they possess to fashion remedies, even if those remedies are "administratively awkward" or "bizarre." /17/

While receiverships are still often considered a last-resort remedy, the litigation leading to the appointment of a receiver need not be lengthy. The crux of the matter is determining the injunctive relief required to stem the legal violation. /18/ If a lesser remedy suffices, it should be employed before receivership. /19/ But if intractable problems exist and legal violations are long running, then a court can opt for receivership. The length of the legal violations and the means necessary to stop them matter; the length of the lawsuit does not. /20/

Historically, receivers have been appointed to take over discrete entities, such as a single business /21/ or, in the housing arena, a single building, rather than entire government agencies. However, over the last 20 years the use of receivers has expanded into the realm of institutional reform litigation -- beginning with the school desegregation cases /22/ -- as courts looked to specialized managers to formulate long-term solutions to difficult problems: "Many governmental violations of individuals' rights occur in an institutional setting: in prisons, mental health facilities, and school

systems. The judiciary has not limited its response to these encroachments to forbidding the impermissible governmental action; rather, courts have attempted to reform the institution. . . ." /23/

The complexity of overseeing an institution's transformation lies beyond a court's traditional expertise, necessitating a receiver to manage the affair. /24/ "[C]ourts generally seek one final answer," in contrast to the "continuous adjustment" and "incremental" nature of planning that is required to reform institutions. /25/ Another reason that courts are increasingly resorting to receivership is a realization that, for some badly mismanaged agencies, contempt orders will no longer ensure compliance. /26/

Several years ago Congress added receivership to the arsenal of tools of the Department of Housing and Urban Development (HUD) for remedying poor performance by public housing authorities. /27/ The statute conferred upon federal and state courts the power to appoint receivers to manage public housing agencies without regard to the availability of alternative remedies /28/ if the Secretary of HUD petitions the court for a receiver. /29/

By conferring an explicit right of action for the Secretary of HUD to seek receivership in federal or state court, the statute gives currency to the idea that receivership is an effective tool to break a cycle of mismanagement and that this tool needs to be wielded more frequently. /30/ The statute directs courts to appoint receivers based on just two criteria: (1) the petition of the Secretary of HUD and (2) substantial default by public housing agency management. /31/ This congressional approval of the receivership remedy, coupled with the increasingly frequent appointment of masters and receivers by the judiciary during the past 20 years, creates a friendlier legal landscape for institutional reform litigators.

## III. Strategies to Obtain a Receiver

Seeking receivership, even at an early stage in litigation, may be justified for particularly troubled agencies. "In every instance that a court has been forced to utilize a less common equitable remedy [such as receivership], there have been findings of an inability to comply substantially with court remedial orders." /32/ Normally, courts will try various remedies before resorting to receivership. This does not have to be the status quo. Courts will turn to receivership early on if receivership demonstrably can reform the troubled public agency.

For the receivership strategy to be effective, advocates need to convince courts that resort to receivership is not legally rash. /33/ Strategies include:

-- emphasizing the length of the legal violation prior to the filing of the litigation;

-- emphasizing the ineffectiveness of any lesser legal remedies;

-- emphasizing the complexity and intractability of the problem, thus necessitating new expertise rather than the obviously failed expertise of the current administrators; and

-- emphasizing that the only performance criteria that matter are whether the plaintiffs' rights are being vindicated, not how hard the agency tries to do its mission or how well intentioned the agency is. /34/

The appointment of a receiver is not a legally valid final solution to a problem. The receiver's appointment must serve as a means to an end, not an end in itself. /35/ The advocate must persuade the court that receivership is a truly effective method to halt the continuing legal violation and to effectuate the plaintiffs' rights, whatever the ultimate goal of the litigation. Alas, for many public agencies, this should be an easy thing to show.

Finally, receivership is merely a tool and may prove harmful if it is badly designed or improperly used. For example, HUD took over the Chester, Pennsylvania, public housing authority in 1990 and simply placed a private real estate management company in charge of the authority, as a sort of informal receiver. /36/ The management company was not particularly well qualified to manage public housing, and the staff brought in to run the agency made a series of poor policy decisions. As a result, quality of life for public housing residents in Chester continued to decline.

Great caution should be exercised when the proposed receiver for a housing agency is a real estate management firm or a private consulting company that will simply bring in temporary staff to "consult" with local agency employees about what changes to make. As noted above, the best option is a full-time, well-qualified receiver who stays on site for the several years that are necessary to turn the agency around.

## IV. Legal Issues with Agency Receiverships

"The increased use of receivers in a form that is substantially different from earlier applications raise[s] some new legal issues for the judiciary and the parties." /37/ The major concerns include separation of powers, federalism, and an increased administrative burden on courts. /38/

The most effective counterargument against a separation-of-powers challenge applies to any remedy imposed on an executive agency found to have violated the law, that is, the truism that courts exist to remedy violations of law, no matter who commits them. /39/ In long-running litigation with a history of various orders being issued and deemed ineffective before receivership is instituted, the separation-of-powers argument can be used against the agencies themselves:

[I]t is a function of the judicial branch to provide remedies for violations of law, including violations committed by the executive branch, [and] an injunction with that intent does not derogate from the separation principle, nor, by extension, does a receivership otherwise properly instituted. To the contrary, when the executive persists in indifference to, or neglect or disobedience of court orders, necessitating a receivership, it is the executive that could more properly be charged with contemning the separation principle. /40/

Concerns over judicial interference with executive functions are nearly as old as the country. But the role of the judiciary in remedying legal violations is equally old. "It is a settled and invariable

principle, that every right, when withheld, must have a remedy, and every injury its proper redress." /41/

Recent courts have reaffirmed the principles articulated in Marbury v. Madison and recognized the judicial role in remedying executive branch legal violations. /42/

Sensitivity to agency concerns about separation of powers is evidenced by the judiciary's reluctance to reach for receivership as an initial remedy. However, if a court has tried various other remedies in a case before using receivership, then plaintiffs should argue that all due deference has already been given to the separation principle.

Federalism concerns can be disposed of similarly. If a federal court is instituting receivership for a state agency, the court may be hesitant to involve itself in the local political process. Advocates should simply argue that courts in general exist to remedy violations of law and that federal courts exist to remedy violations of federal law and of the Constitution.

The assertion that receiverships constitute an extra administrative burden on the courts is counterintuitive. While the court may be "involved" in the case for the length of the receivership, the whole purpose of receivership is to appoint a specialist to take care of the remedial process, rather than to have a court attempt to implement complex planning and strategy for which it is not qualified.

## V. Practical Aspects of How Receiverships Work

When a court determines to appoint a receiver for an agency, the judge should normally ask the plaintiffs' counsel to recommend a person and then give defense counsel the opportunity to comment on the proposed choice(s). In some cases, however, the judge simply picks a candidate without advance consultation with the parties. The judge issues an order spelling out the duties and powers of the receiver in some detail. Plaintiffs' counsel should take care to propose an order governing the receivership that is best calculated to result in the specific agency changes needed by the plaintiffs.

The receiver, like a consultant, is compensated by the defendant agency or government.

The receiver normally files periodic progress reports with the court, with copies to parties. The judge may be expected to hold periodic status hearings concerning the work of the receiver and the effects on the agency.

Either side may move the court to modify the terms of the receivership or to modify an action by the receiver. Thus, the receiver is under the supervision of the judge at all times and is in this sense answerable to the parties to the litigation.

## VI. Case Study: Pearson v. Kelly

Most public housing in the United States is well run and successful. In fact, a total of 25 large public housing authorities have moved off and stayed off the HUD-designated troubled list since that list was created in 1979. /43/ Other public housing agencies remain in receivership, including Kansas City, Missouri, and Chester, Pennsylvania. Recently, pursuant to the court's order in Pearson v. Kelly, and after years of litigation, negotiation, and other advocacy, the District of Columbia agreed to the appointment by the court of a receiver for its 12,000-unit public housing program. /44/

The District's public housing agency had been troubled since the 1970s. Many housing projects were a shambles, and the agency was unresponsive to tenants' entreaties for repairs and for a safer living environment. Tenants had effected a major, citywide tenant rent strike over bad public housing conditions, and the appellate courts had created the warranty of habitability in part in response to bad public housing conditions. /45/

Advocates for public housing residents in the District had tried everything. They filed suits against the agency over conditions in individual units and class actions on behalf of all tenants within a particular public housing property. They sued to get the public housing grievance procedure instituted and to correct utility allowances. /46/ Nothing worked particularly well, and the agency seemed to get worse over time. The agency and the District of Columbia government were simply impervious to injunctive relief.

In 1991, a new, reform mayor, Sharon Pratt Kelly, took office, and pro bono attorneys, including attorneys at Covington & Burling and the Washington Legal Clinic for the Homeless negotiated for two years with the mayor's staff to seek improvements in the way the public housing program was operated. No agreement was reached, and the situation continued to deteriorate. The mayor and her staff refused to take effective steps to reform the agency and instead perpetuated the old practice of sending incompetent political appointees to run it. No apparent alternative to litigation was in sight.

By the fall of 1993, $150 million in modernization funds were unspent, while 12,000 units were dilapidated or vacant for long terms. Over 20 percent of the units were vacant, most of them for several years. Properties were falling apart through neglect. Frequent teenage gang slayings, violent crime, and rampant drug dealing faced tenants on most properties. Fifty percent of the rent was uncollected and probably uncollectible. No grievance procedure was provided for most tenants. Middle management staff levels were bloated, while frontline maintenance staff needed to repair units were scarce. This was (and is) the state of the District of Columbia public housing authority after 30 years of effort by legal services advocates and community organizations, HUD monitoring studies and audits, tenant rent strikes, and endless local legislative oversight hearings and community meetings.

All over the country, public housing officials were mortified that major public housing properties sat vacant within sight of the Capitol and HUD's headquarters. In 1993, when advocates filed Pearson v. Kelly /47/ on behalf of all applicants for public housing in the District of Columbia, the agency was rated the worst public housing agency in the country.

Citing the high vacancy rate in the public housing program (nearly 20 percent), plaintiffs claimed that defendants violated the federal mandate, contained in the United States Housing Act of 1937,

that public housing authorities must not demolish public housing units without first obtaining HUD permission. By leaving units vacant for long periods of time and allowing them to deteriorate to a point requiring demolition, the local public housing agency, plaintiffs alleged, was "constructively demolishing" its housing stock. Plaintiffs also claimed that defendants violated the annual contributions contract with HUD for the operation of public housing, which required that units be maintained in decent, safe, and sanitary condition.

Plaintiffs asked for, and the court appointed, a special master to review thoroughly the conditions in the agency, including the agency's operational systems, and to recommend to the court what should be done. Because a special master was appointed to analyze the agency's conditions, plaintiffs did not have to conduct pretrial discovery to lay the factual groundwork for the judge's appointment of the receiver. The special master's report, which took nearly a year to prepare, gave ample factual grounds for the appointment. The court accepted the special master's recommendation and issued an order placing the agency in receivership. The District of Columbia appealed. However, after Marion Barry, Jr., was elected mayor in January 1995, he agreed, under pressure from HUD and the local legislature, to the court-appointed receivership. The receiver began work in June 1995.

The receiver, who is the former director of the successful Seattle public housing authority and a former member of the team that was receiver for the Boston Housing Authority, has extraordinary powers. He has been freed from the local governmental procurement and personnel regulations. He is not beholden to the mayor or the local legislature for funding, or for approval of his actions, although he has been granted all the powers that the mayor has over the agency. The receiver also has the power to waive local regulations in an emergency, provided the court approves the waiver. His tenure runs for a maximum of nine years, unless he succeeds in turning the agency around before that time, as everyone expects him to do. He is answerable only to the judge who handled the court case that prompted his appointment.

## VII. Conclusion

Receivership should be recognized more widely as an effective means to reform troubled public agencies. Legal services attorneys or their colleagues in pro bono firms should consider asking for receivership more often, and at earlier stages of litigation, when the problems at an agency justify such an appointment.

Footnotes

/1/ Techniques for Revitalizing Severely Distressed Public Housing, Hearing Before the Subcomm. on Housing and Urban Affairs of the Senate Comm. on Banking, Housing and Urban Affairs, 103d Cong., 1st Sess. 15 (1993) (statement of James Stockard).

/2/ Id. at 9 (statement of Stephen O'Rourke, Providence, R.I., Housing Authority).

/3/ In Washington, D.C., the beleaguered Department of Public and Assisted Housing had had 13 executive directors in 16 years. It has never gotten off the list of "troubled" housing authorities of the Department of Housing and Urban Development (HUD) since being placed there in January 1979, when the list was initiated. Such a high turnover in leadership undermines the long-term goal setting and patience necessary to reform a troubled agency.

/4/ Clearly not all political pressure is bad, but the pressure must be balanced and not used to sabotage the effective operation of the agency.

/5/ Frank Bennett, Receiverships 1 (1985).

/6/ Fed. R. Civ. P. 66.

/7/ 28 U.S.C.A. Sec. 959(b) (1993).

/8/ A 1984 study lists ten states with a total of 16 receivership statutes in the area of housing alone. David Listokin et al., Housing Receivership: Self-Help Neighborhood Revitalization, 27 Wash. U.J. Urb. & Contemp. L. 71, 85 (1984) (examining receivership laws of Connecticut, Delaware, Illinois, Indiana, Maryland, Massachusetts, Minnesota, Missouri, New Jersey, and New York). Federal housing law also contemplates the appointment of receivers. The Secretary of HUD can petition federal courts to appoint receivers to take over troubled housing agencies. This power of petition does not seem to create any new statutory authority for receivers but merely relies on the court's traditional equitable powers. 42 U.S.C. Sec. 1437d(j)(3)(A)(ii).

/9/ "In general, every federal court having equity jurisdiction is said to have inherent power to appoint receivers in proper cases." 12 Wright & Miller, Federal Practice and Procedure: Civil Sec. 2985 (1973).

/10/ Id. Sec. 2983.

/11/ Id.

/12/ Perez v. Boston Hous. Auth., 400 N.E.2d 1231, at 1249 (Mass. 1980) (Clearinghouse No. 15,154). "The best argument against appointing a receiver is to show that the situation can be resolved without one . . . to show the court some workable alternatives. . . . Typically the judge himself tries to convince the petitioner to try an alternative remedy." Stuart Walzer, A Primer on Receivership, 10 Litig. 29 (1983).

/13/ Perez, 400 N.E.2d 1231.

/14/ See Shaw v. Allen, 771 F. Supp. 760 (S.D. W. Va. 1990) (Clearinghouse No. 46,293) (placing county jail in receivership after "a dismal history of noncompliance" with court orders); Reed v. Rhodes, 500 F. Supp. 363 (N.D. Ohio 1980) (school desegregation administrator appointed after court "continually and intimately" involved in case for eight years); Newman v. State of Alabama, 466 F. Supp. 628 (M.D. Ala. 1979) (Clearinghouse No. 9061) (appointing governor as receiver of state prison).

/15/ Perez, 400 N.E.2d at 1248.

/16/ "[I]f . . . authorities fail in their affirmative obligations under these holdings, judicial authority may be invoked. Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies." Swann v. Charlotte-Mecklenberg Bd. of Educ., 402 U.S. 1, 15 (1971) (Clearinghouse No. 16,632).

/17/ Shaw, 771 F. Supp. 762 (quoting Morgan v. McDonough, 540 F.2d 527, 533 (1st Cir. 1976)).

/18/ "The fundamental test governing the imposition of a temporary receivership is one of reasonableness under the circumstances." Reed, 500 F. Supp. 363.

/19/ Petitpren v. Taylor School Dist., 304 N.W.2d 553, 558 (Mich. Ct. App. 1981).

/20/ Newman, 466 F. Supp. 628 (prison placed in receivership).

/21/ "[Receiverships] are commonly a vehicle for court supervision of distressed businesses, but have not been limited to that role." Morgan v. McDonough, 540 F.2d 527 (1st Cir. 1976) (Clearinghouse No. 13,159).

/22/ "[Brown v. Bd. of Educ. of Topeka, 349 U.S. 294 (1955)] did not create new equitable remedies; it highlighted the desirability of expanding traditional equity powers to accommodate new circumstances." Jaroslawa Zelinsky Johnson, Equitable Remedies: An Analysis of Judicial Utilization of Neoreceiverships to Implement Large Scale Institutional Change, Wis. L. Rev. 1161, 1178 (1976).

/23/ Debra Dobray, Public Receiverships: Policy Considerations, 10 S.U. L. Rev. 9 (1983).

/24/ "As 'generalists' who are rotated from problem to problem on awesome dockets, judges do not possess the special skills and knowledge needed to supervise reform efforts effectively." Id. at 9.

/25/ Id. at 27.

/26/ "Contempt proceedings were a possible alternative to receivership. Historically, in this case, matters have been remedied following a motion for contempt filed by inmates. . . . However, we do not feel contempt is an appropriate vehicle to remedy the panoply of noncompliance in this case. Thousands of jail operations transpire each day substantially out of compliance with the final judgment. Bringing each of these operations into compliance through a 'motion for contempt/settlement' cycle would be inefficient and seemingly endless. The trial court correctly reached the realization that contempt proceedings would never bring full implementation of its orders." Wayne County Jail Inmates v. Chief Executive, 444 N.W.2d 549, 561 (Mich. Ct. App. 1989) (Clearinghouse No. 5035) (affirming decision placing county jail in receivership).

/27/ Cranston-Gonzalez National Affordable Housing Act, Pub. L. No. 101-625, Sec. 502(a); 104 Stat. 4079 (1990).

/28/ "In any proceeding under subparagraph (A)(ii), upon a determination that a substantial default has occurred, and without regard to the availability of alternative remedies, the court shall appoint a receiver to conduct the affairs of the public housing agency in a manner consistent with this chapter and in accordance with such further terms and conditions as the court may provide. The court shall have power to grant appropriate temporary or preliminary relief pending final disposition of the petition by the Secretary." 42 U.S.C. Sec. 1437d(j)(3)(C) (emphasis added).

/29/ Under 42 U.S.C. Sec. 1437d(j)(3)(A)(ii), the Secretary of HUD may petition for the appointment of a receiver (which may be another public housing agency or a private management corporation) of the public housing agency to any district court of the United States or to any court of the state in which the real property of the public housing agency is situated.

/30/ The legislative history highlights the need for the mismanagement cycle to be broken and urges HUD officials "aggressively" to seek receivership in order to improve conditions. "The conferees intend for HUD to use this authority [petitioning for a receiver] to move aggressively to improve living conditions for tenants in severely troubled public housing." H.R. Conf. Rep. No. 943, 101st Cong., 2d Sess., reprinted in 1990 U.S.C.C.A.N. 6119 -- 20.

/31/ At writing, Congress was considering legislation to repeal significant portions of the United States Housing Act of 1937, including sections dealing with the appointment of receivers for public housing. See United States Housing Act of 1995, H.R. 2406, Secs. 108, 261, 104th Cong., 1st Sess. (introduced Sept. 27, 1995).

/32/ Reed, 500 F. Supp. 363.

/33/ "An experienced receiver can be a real help to a lawyer drafting a motion asking for receivership. Since the attorney will probably have to draft the receivership order if successful on the motion, it may be wise to work backward. Start with the order. Once you have written the order you want the court to grant, it becomes an even easier job to draft the motion asking for it." Walzer, supra note 12, at 55.

/34/ "The statutory rights of tenants were not to be equated merely with the Board’s best efforts." Perez, 400 N.E.2d at 1251.

/35/ 12 Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure: Civil Sec. 2981 (1973).

/36/ Telephone conversation with Roger Ashodian, counsel for Chester, Pennsylvania, public housing tenants. "A receivership is ancillary. There is no action for the appointment of a receiver, except to enforce some other right." Walzer, supra note 12, at 29.

/37/ Johnson, supra note 22, at 1161.

/38/ Id. at 1175.

/39/ "Obviously the substitution of a court's authority for that of elected and appointed officials is an extraordinary step warranted only by the most compelling circumstances. . . ." Morgan, 540 F.2d at 527 -- 28.

/40/ Perez, 400 N.E.2d at 1252.

/41/ Marbury v. Madison, 1 Cranch 137, 147 (1803). "Where a specific duty is assigned by law, and individual rights depend upon the performance of that duty, it seems equally clear that the individual who considers himself injured, has a right to resort to the laws of his country for a remedy." Id. at 166.

/42/ Michaud v. Sheriff of Essex County, 458 N.E.2d 702, 709 (Mass. 1983) (court fashioned remedy after finding unconstitutional conditions at county jail); Attorney General v. Sheriff of Suffolk County, 477 N.E.2d 361, 364 (Mass. 1985) (upholding lower court's decision ordering city council to build a new jail); Petitpren, 304 N.W.2d at 558; Wilson v. Superior Court of Santa Clara County, 240 Cal. Rptr. 131, 139 (Ct. App. 1987).

/43/ These 25 reformed agencies are: El Paso (Texas), Memphis (Tennessee), Paterson (New Jersey), Wilmington (Delaware), Lowell (Massachusetts), East Baton Rogue (Louisiana), Houston (Texas), Elizabeth (New Jersey), Durham (North Carolina), Charleston (South Carolina), Bridgeport (Connecticut), Tampa (Florida), Providence (Rhode Island), Portland (Oregon), Peoria (Illinois), Hawaii, Fall River (Massachusetts), Kansas City (Kansas), Montgomery (Alabama), Trenton (New Jersey), Oklahoma City (Oklahoma), Oakland (California), Austin (Texas), Columbus (Ohio), Dade County (Florida). Distressed Public Housing, Hearing Before the Subcomm. on Housing and Urban Affairs of the Senate Comm. on Banking, Housing and Urban Affairs, 102d Cong., 2d Sess. 105 (1992).

/44/ Pearson v. Kelly, No. 94-CA-14030 (D.C. Super. Ct. Aug. 18, 1994) (Clearinghouse No. 48,607).

/45/ See Javins v. First Nat'l Realty Corp., 428 F.2d 1071 (D.C. Cir.), cert. denied, 400 U.S. 925 (1970); Knox Hill Tenant Council v. Washington, 448 F.2d 1045 (D.C. Cir. 1971); National Capitol Hous. Auth. v. Douglass, 333 A.2d 55, 56 (D.C. 1975); Coleman v. United States, 311 A.2d 496, 498 (D.C. 1973).

/46/ Samuels v. District of Columbia, 770 F.2d 184 (D.C. Cir. 1985); Stone v. District of Columbia, 572 F. Supp. 976 (D.D.C. 1983), vacated and remanded, 799 F.2d 773 (D.C. Cir. 1986).

/47/ Pearson, No. 94-CA-14030.