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P U B L I C H E A R I N G

Before

SENATE JUDICIARY COMMITTEE

on

Assembly Bill No. 323 (Division of
Tax Appeals - Procedure - Salary)

Held:

November 24, 1958
Senate Chamber
State House
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

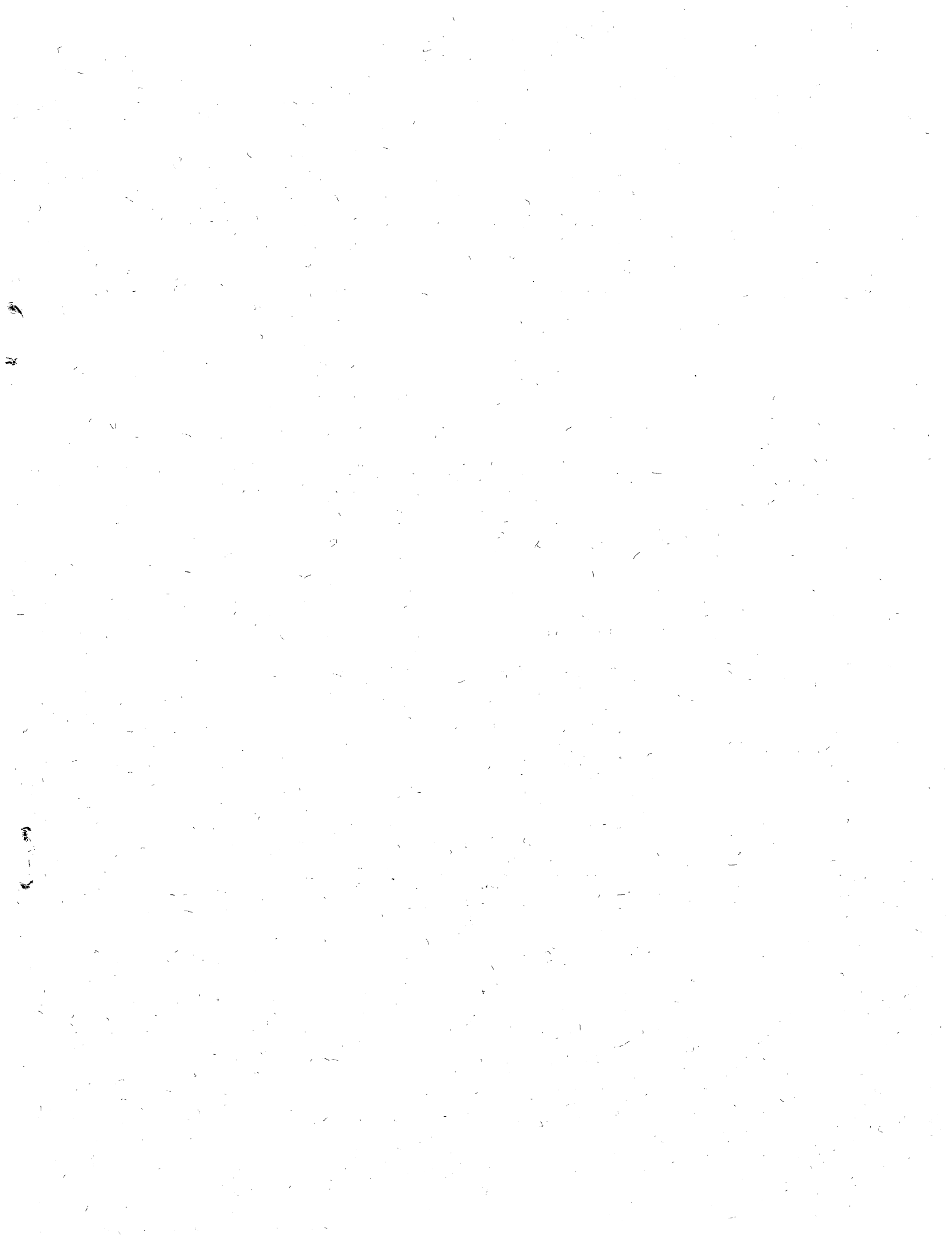
Senator Wesley L. Lance (Chairman)

Senator Thomas J. Hillery

Senator W. Steelman Mathis

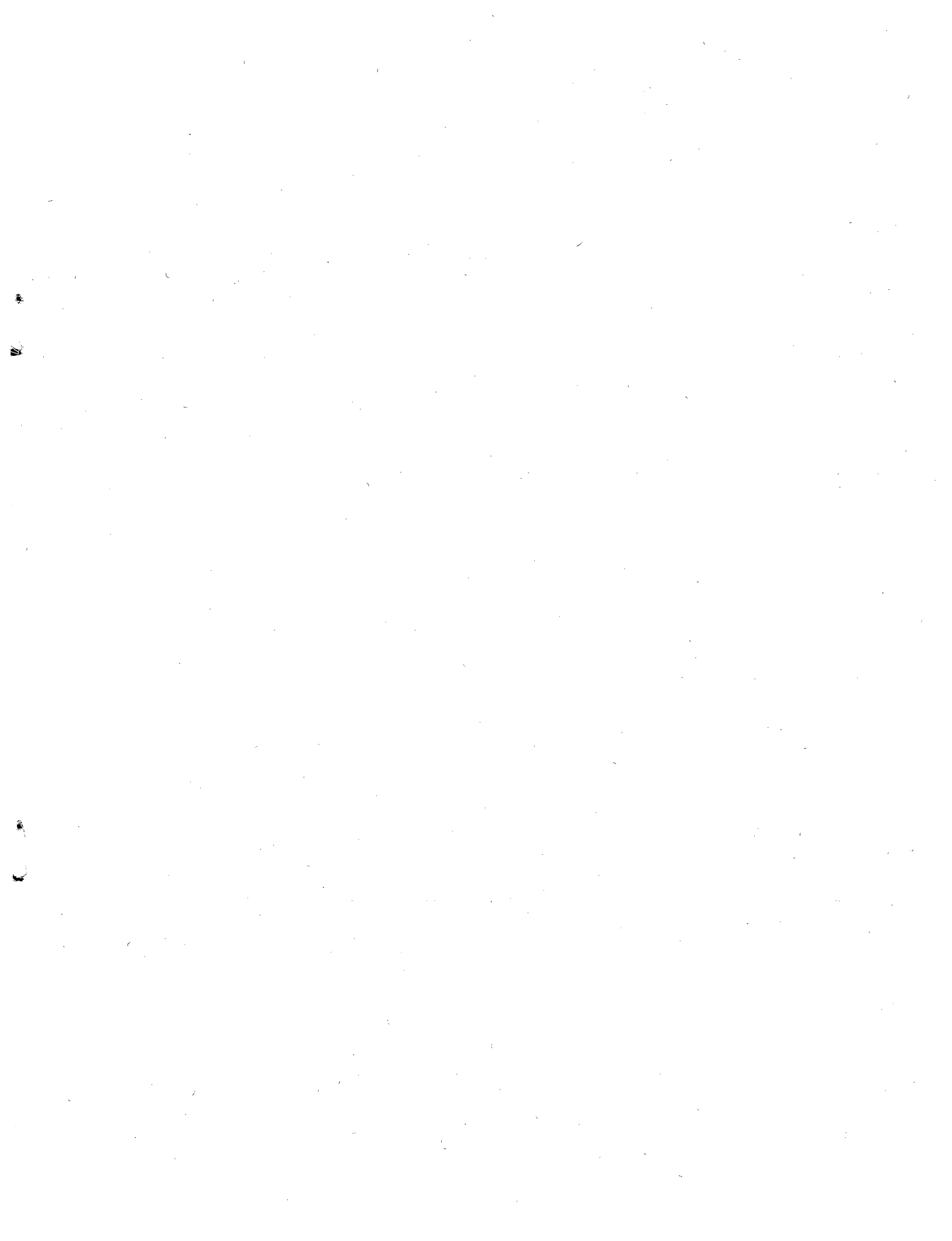
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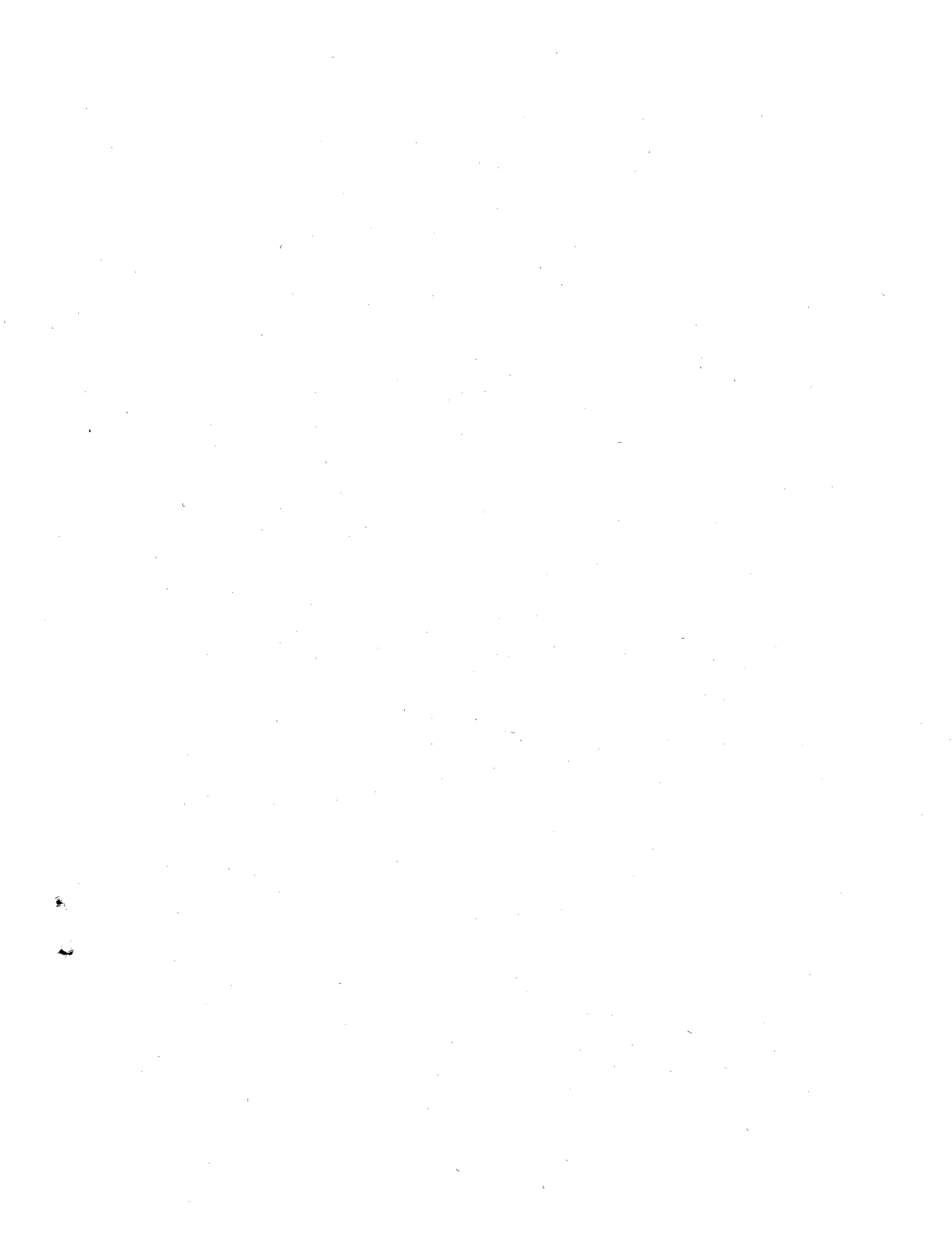


SENATOR WESLEY L. LANCE (THE CHAIRMAN): Gentlemen, the purpose of this hearing is to discuss Assembly Bill 323 which has already passed the House together with such other suggestions as may be put forth concerning the composition and the procedure for the State Division of Tax Appeals. Basically, it seems that there are several problems: first, to what extent should the members of this Board be attorneys-at-law; second, should it be part-time or full time; third, what salary adjustments should be made if the Board members must devote full time; fourth, as to the procedure, to what extent should a single member of the Board be permitted to give a decision which would be a final decision in behalf of the whole Board or to what extent should a panel of two or more members be used or should there be certain circumstances where it would be mandatory or discretionary for a panel to be used although in most circumstances a single Board member would give the decision; and fifth, what other changes in procedure and over all supervision should be discussed?

Sitting with me is Senator Hillery, another member of the Senate Judiciary Committee.

Our first witness is Mr. Labreque, who is President or Chairman of the existing State Division of Tax Appeals. And he has very kindly consented to come and give us a statement on this subject. Mr. Labreque.

MR. THEODORE J. LABREQUE: Gentlemen, members of the Senate Commission: I have here with me today our secretary, Mr. Carlin, and the remaining members of the Division. We purposely carried over our meeting of last week until today so that we might be available for the Committee and when I am finished, if there is

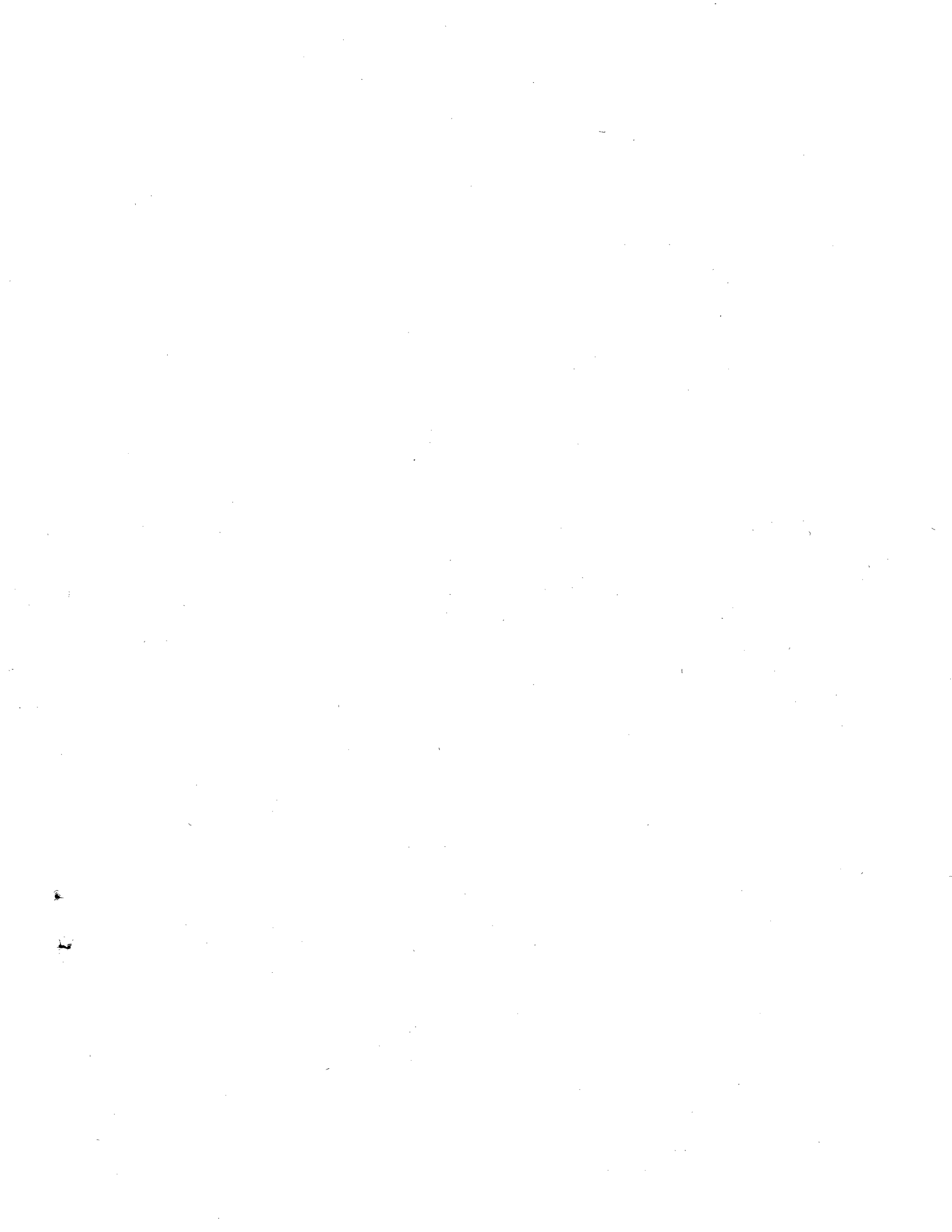


any information which they can supply or if they can be of any assistance, they are at your service.

It is my feeling and that of my colleagues on the Division that the enactment of Assembly 323 as presently amended will go a long way towards clearing up the current backlog of the Division of Tax Appeals and placing its work on a current basis.

The present setup of the Division is the result, as you know, of several related pieces of legislation enacted in previous years, as subsequently amended by Chapter 161 of the Laws of 1946. The Division itself was formerly known as the State Board of Tax Appeals and assumed its present title on July 1, 1944. I will not take time to go into the jurisdiction which has been bestowed upon the Division by various legislative enactments. Suffice it to say that the Division is clothed with jurisdiction to hear two general types of appeals: Appeals from County Boards of Taxation which involve among other things local valuations, discrimination and County Equalization, and appeals from the Director of the Division of Taxation which includes corporation taxes of various types, franchise taxes, beverage taxes, cigarette taxes, railroad taxes and a number of others, including school aid appeals under the provisions of R.S. 54: 1-35.1 et seq.

Under R.S. 54:2-18 authority is given for the hearing of cases by panels of two or more members of the Division, at least one of whom shall be an attorney-at-law. These panels are directed to take testimony and to report "on such matter and the testimony so taken" to the Division, but it provides that no determination shall be made therein except by the Division. The



reports are required to be in writing and signed by the members of the panel and must include in substance the facts and the particulars of the testimony so taken. The Division is authorized to dispose of the case on the basis of the report of the panel without having a transcript of the testimony and without seeing the witnesses.

In practice, practically all hearings of the Division have been conducted by panels of two or more members. But these panel reports, while required only to refer to the facts, have now come to consist of a factual review and analysis, plus recommended findings of fact and conclusions of law. It is not unusual for the panel report to consist of thirty or more pages, although the average length is less than this. Our secretary here has some samples of these panel reports, some of which are current and some of which are in the past, but they will give you an idea of what these are like. These reports, after being prepared in final form, are submitted to the Division and if approved, are filed with the Division. Notice of the filing thereof is then given to all parties to the appeal, so that exceptions to the proposed findings may be filed if desired. Such exceptions, if filed, must be supported by briefs which are then considered by the Division before arriving at its final decision. In certain cases, oral arguments on the exceptions are called for. Where exceptions are allowed, supplemental findings of fact and conclusions of law are prepared and approved by the Division.

The fact that panel reports should contain the findings of fact and conclusions of law of the Division was probably not in the minds of the legislators when R.S. 54:2-18 was enacted.

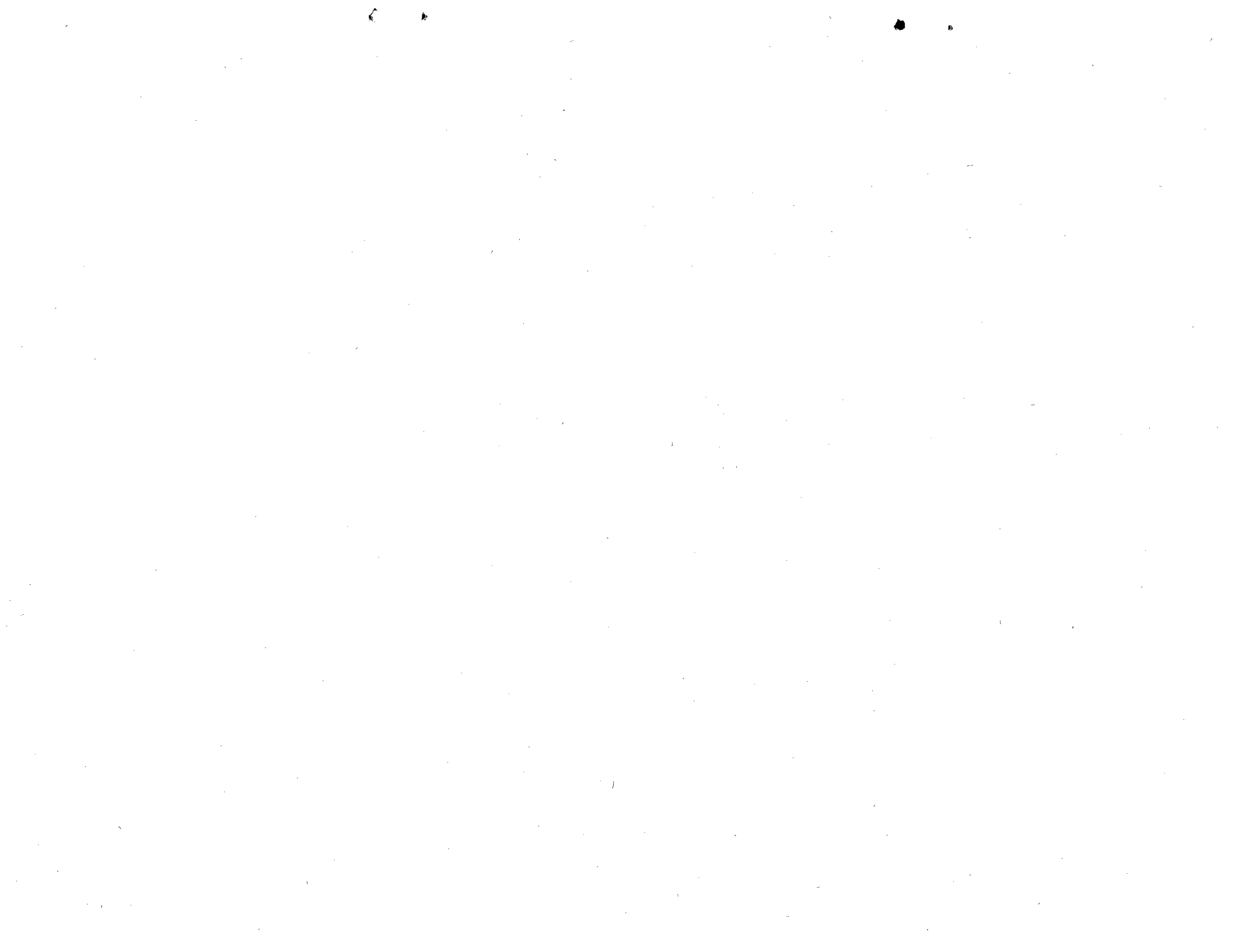


I think that if you will look at In Re Erie Railroad System 19 N.J. 110 (1955), you will see how far the reports have gone along this line and how necessary that is under the present practice. Likewise, the requirement that panel reports be distributed to the parties to the appeal in advance of the decisions so that they might have leave to file and be heard upon exceptions is of recent origin. That stemmed from the decision of the Supreme Court in Fifth Street Pier Corporation against Hoboken 22 N.J. 326 (1956).

The effect of this latter decision has been to lengthen by at least a month the time interval between the date a case is heard by the panel and the date it is actually decided by the Division. As will appear hereafter, the slowing down of the administrative process, thus made necessary by Fifth Street Pier Corporation against Hoboken, came at a time when the Division was seeking ways and means of speeding up its work. This was because of the consistent increase in the number of local appeals filed with the Division and the increased time which was being taken up by the County Equalization appeals under R.S. 54:2-37, School Aid appeals under R.S. 54:1-35.4, and Discrimination appeals which were permitted under the decision of the Supreme Court in Gibraltar Corrugated Box Company vs. North Bergen 20 N.J. 213 (1955).

An example of this is as follows: During the five-year period ending in 1956, there were filed with the Division some 6,540 appeals from the judgments of County Boards throughout the counties of the State. These appeals were distributed as follows, by year:

1952	-	996 appeals
1953		968 appeals

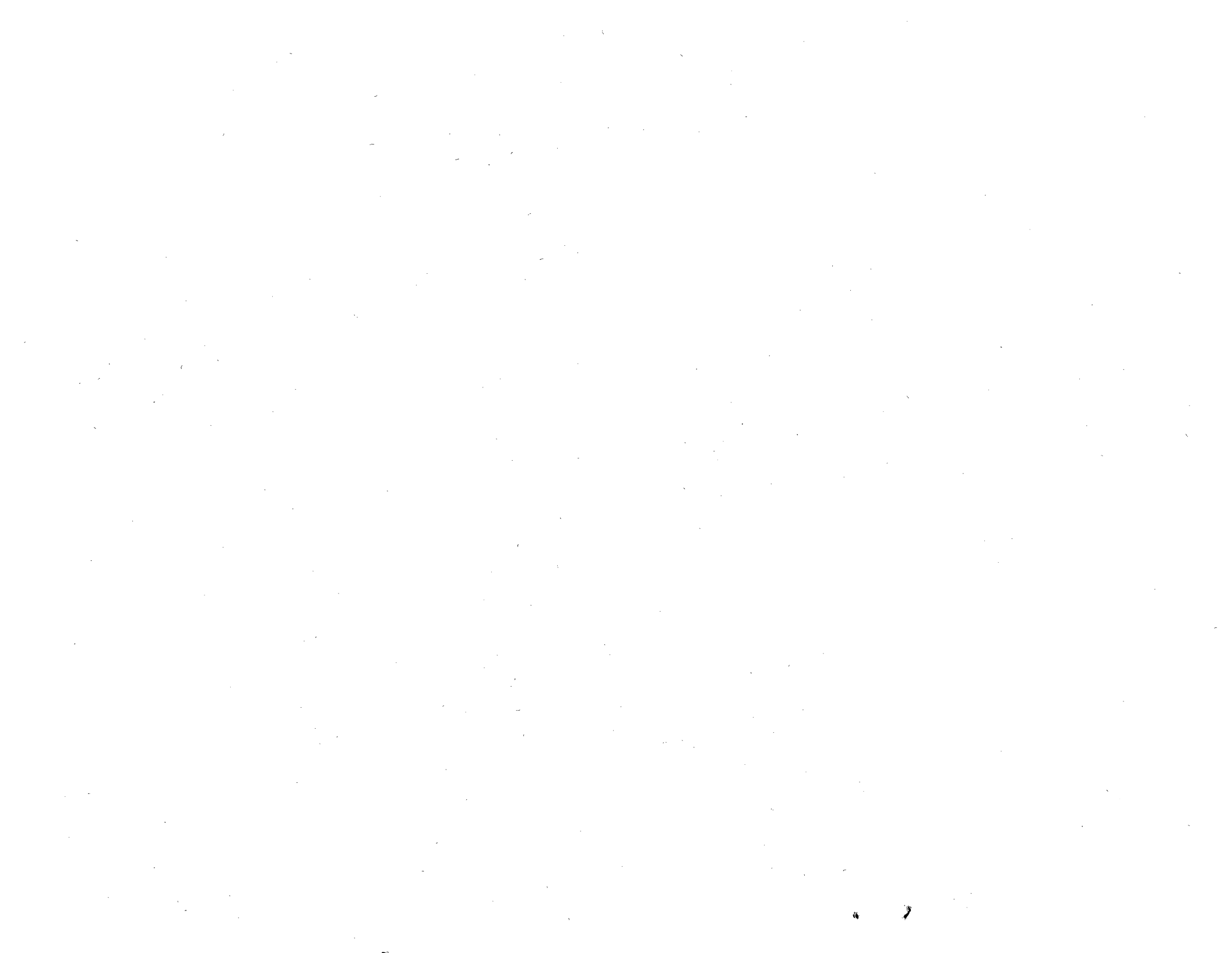


1954	-	1281 appeals
1955	-	1438 appeals
1956	-	1857 appeals.

Now, in addition to that, in 1957, we had 1693. That seems like a little lowering than the prior years and it may be that it is a little less, although we have reason to believe that in a number of 1957 appeals more than one property was involved. So probably there are more properties involved than 1693.

An additional factor which has tended to lengthen the time required for the trial of these local appeals is the fact that since the decision in Gibraltar Corrugated Paper Company, an ever increasing number of appeals have charged "discrimination" by the assessor, thus creating an additional issue and requiring additional testimony as to the common level in each municipality.

Coupled with this has been the fact that up to 1957 the number of County Equalization appeals actually heard each year has been on the increase and tended to take up more and more of the available time of the Division. These appeals come in the spring, are generally heard by the Division beginning in May and there have been times when we have gone right through until July hearing them. In 1953, the number of County Equalization Tables reviewed by the Division was only one; but in 1954, there were two; in 1955, there were five counties involved; in 1956, there were seven; and in 1957, there were six, representing thirteen municipalities who had appealed. Now hearings have usually started, as I say, in May and they have frequently gone into July. The subsequent preparation of the panel reports and their approval has taken up most of the summer during those three years. However, in 1958, we were fortunate - I don't know



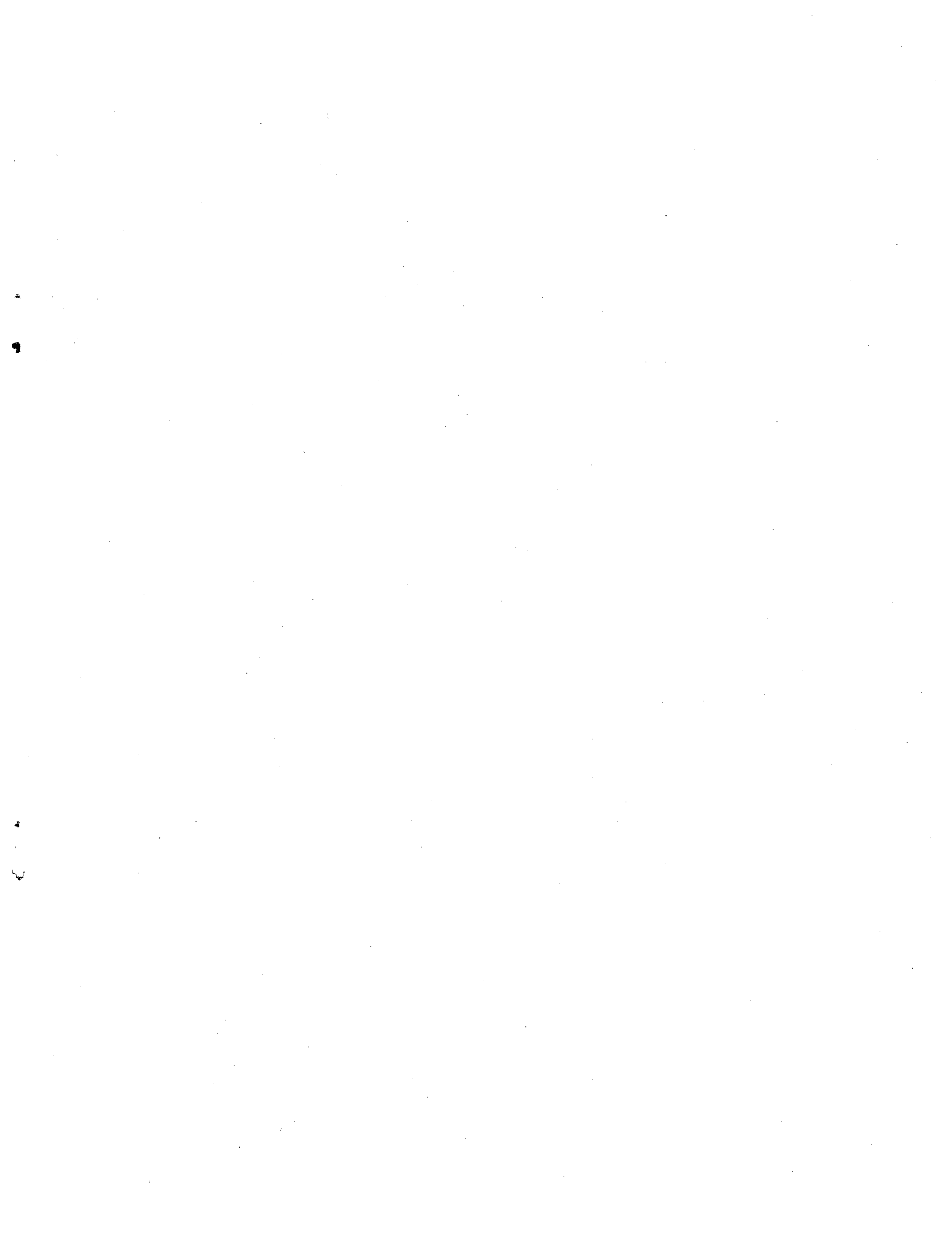
whether you would call it fortunate or not - but in any event only three county tables were under appeal during the current year, 1958.

Another form of appeal which has required an increased portion of the time of the Division is the appeal from the Table of Equalized Valuations promulgated by the Director of Taxation under R.S. 54:1-35.1. This type of appeal, as you know, follows the promulgation of the Table of Equalized Valuations by the Director on October 1st of each year and the appeals must be decided within a statutory time of January 10th, just as the equalization appeals must be decided by September 10th of each year. We are in the process at the present time of hearing those appeals and we expect to have the hearings completed today so that the reports will be filed by December 10th and will be ready for final disposition by January 10th, the statutory date.

An idea of these appeals is revealed by the following table: In 1954, there were only nine. In 1955, there were thirty-five. In 1956, there were seventy-six. In 1957, there were seventy and in 1958 there were eighty. I had seventy-nine here, but I understand there were eighty so I correct that figure.

Now, those appeals could be very lengthy and this year we were quite fortunate in that a large number of them after our pre-trial hearing and after we had gone over it rather thoroughly and entertained a motion which lasted the better part of the day of our last meeting, have been settled, so that we hope to have the entire task completed by today.

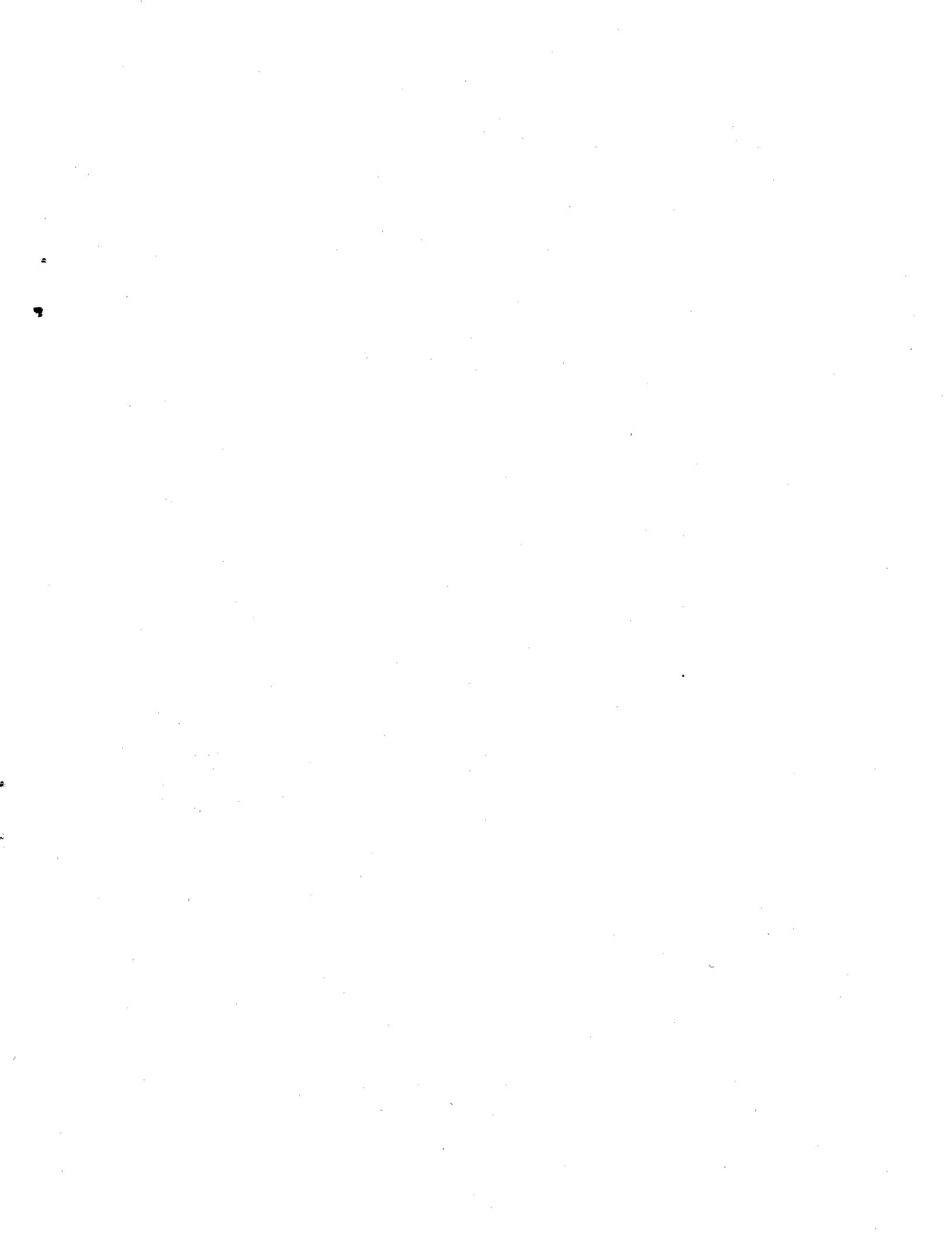
Now, an idea of what our current backlog is is revealed by the following figures: As to appeals pending, that is, local appeals which are the bulk of the number of our cases, there are



2499 pending as of November 20th. Now there are also some local appeals of properties belonging to railroads which we generally classify as third-class railroad appeals. They involve property locally assessed and we have 747 of them in our backlog. As to railroad tax appeals we have 139 of these. In addition to this, we have some miscellaneous appeals, some 19 of them, of which 17 are what you might characterize in common ordinary language as corporation tax appeals. All of our equalization appeals were decided and are up to date and all of our school aid appeals have been decided and are up to date and we will have these decided within the statutory period.

Now, the breakdown of our appeals pending - these figures are substantially correct; they may not be exact - one or two cases one way or the other - but for 1953 or prior -- you understand, gentlemen, that we do not have the 1958 appeals yet; we will not get them until the 15th of December -- but for 1953 or prior we have some ten appeals remaining on our calendar. In 1954, we have thirty-nine, of which at least one is partly heard. In 1955, we have ninety-four, of which at least nine are partly heard or are in the process of being heard. In 1956, we have ten hundred and thirteen remaining and in 1957, we have fourteen hundred and sixty-nine. I beg your pardon in 1956, we have nine hundred and seventy-seven remaining and of 1957 appeals, we have thirteen hundred and sixty-nine. Those make up the total that I have given you.

Now those appeals that go back, let us say, to 1954 or prior, most of those appeals, I think you will find, have been on the calendar at least once, perhaps more times and have been adjourned for various reasons.

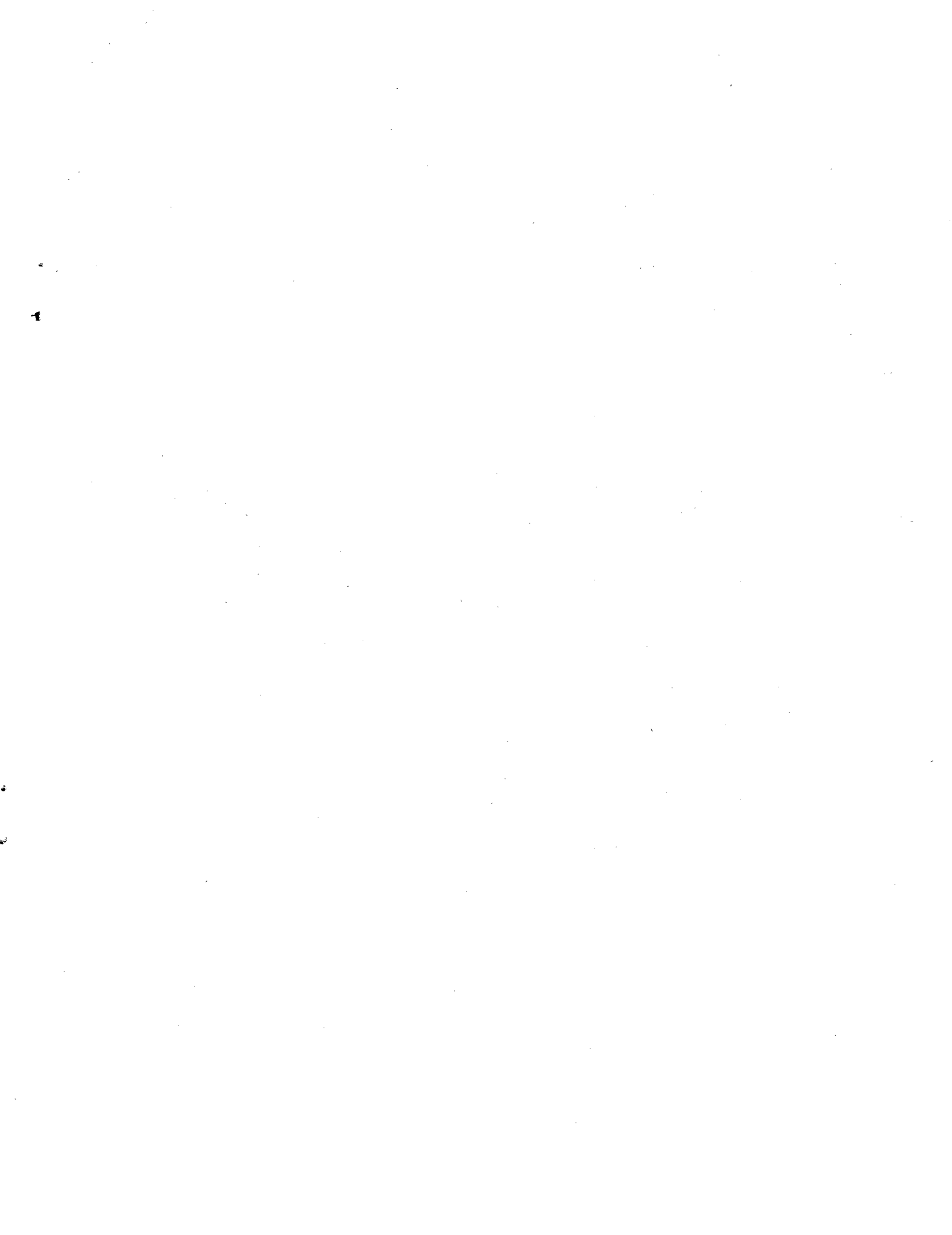


Now, in many cases we find that, for instance, there may be a case in 1954 or 1955 and there may be a repetition of it in 1956 or 1957 and in a case like that we would try to schedule them all at once, although perhaps there would be different facts applicable to each, but it would be more convenient to the parties if we scheduled them together and that is the general practice in referring these cases to panel reports.

It can be seen from this that any method of coping with the problem presented should provide (one) an early trial date, (two) a fair and full hearing and (three) adequate findings of fact and conclusions of law and a prompt and efficient method of appeal.

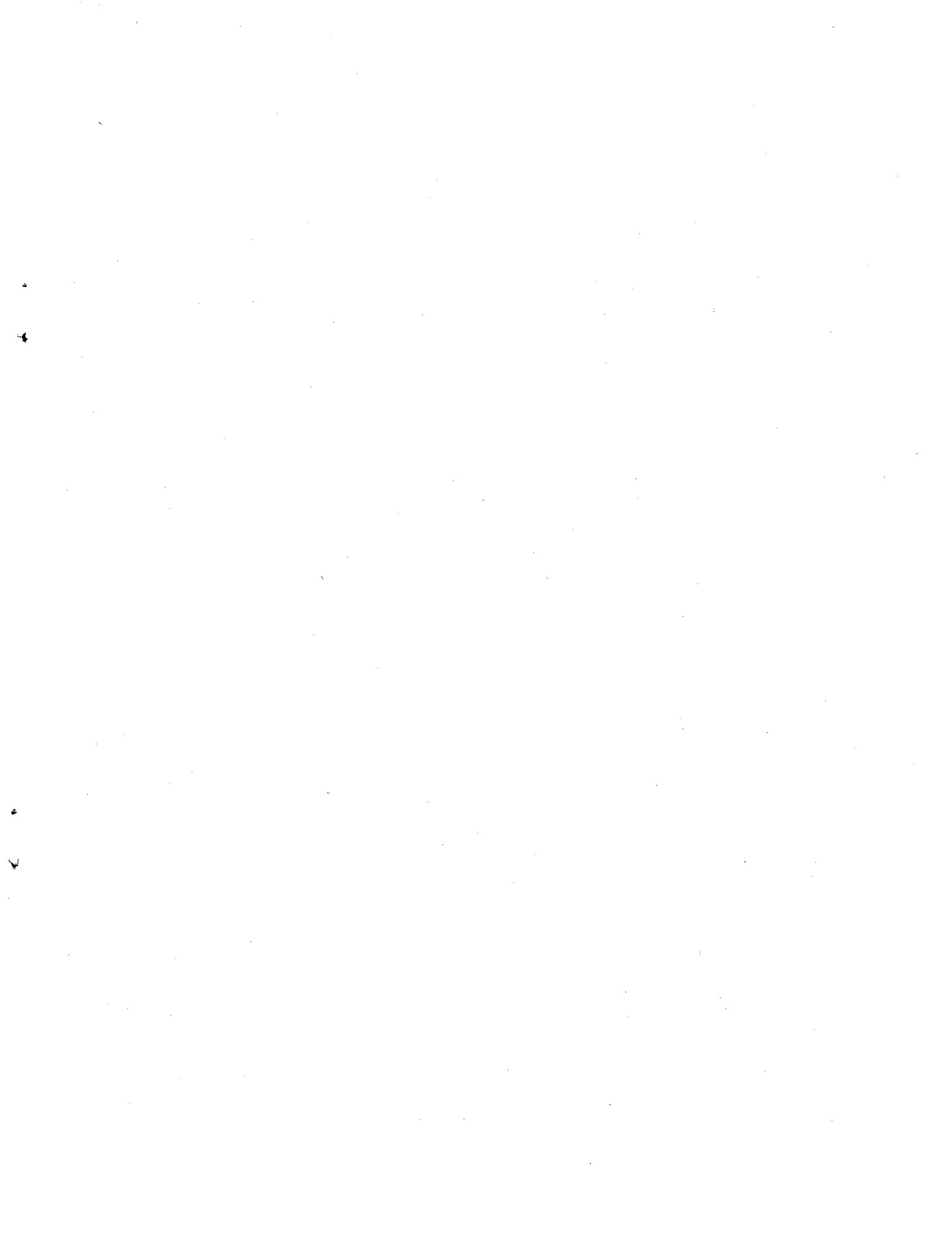
As matters now stand, operating under the present statutes, the members of the Division are working to the utmost of their ability. Their work consists of two phases, the hearing of appeals and their disposition. Experience has shown that for each day of ordinary hearings, at least one and one-half days and sometimes two days must be spent in the analysis of testimony, legal research and the preparation of reports and findings. In more complicated hearings, a much greater time is necessary. Of necessity, these reports must be prepared by the individual members of the Division in their own offices and by their own stenographic help. These reports are then brought up for discussion, revision and adoption at the regular meetings of the Division, at which meetings the Division also hears motions, conducts pre-trial hearings and hears and considers exceptions to panel reports.

The members of the Division have endeavored to keep themselves informed as to all suggestions for expediting the work of the



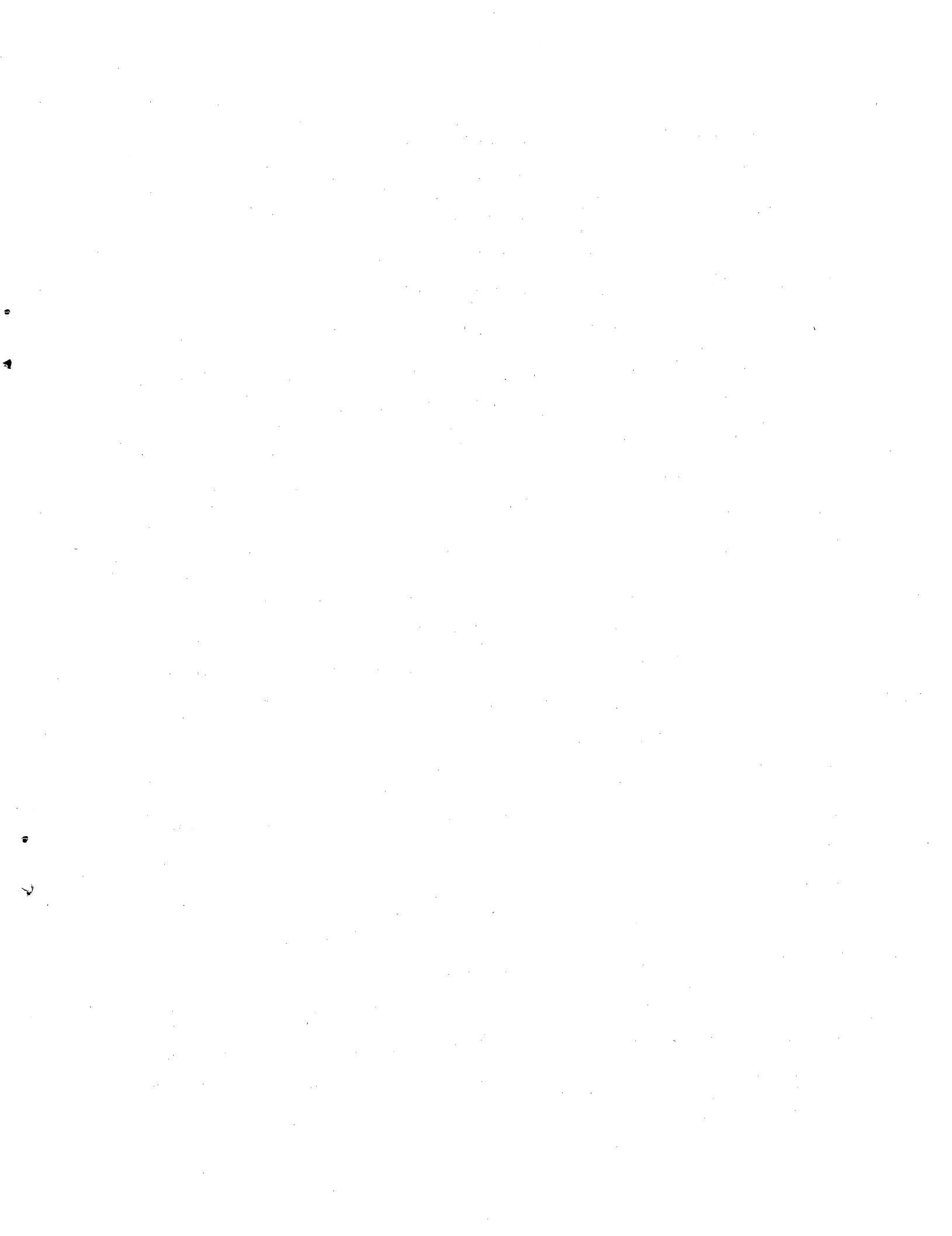
Division during the past few years. With this thought in mind the Division revised its rules on November 1st, 1956. It has studied suggestions made by litigants and tax attorneys as well as by the New Jersey State Bar Association. In going over these various suggestions, it appears that the objects generally sought to be accomplished were four: first, the hearing of appeals by individual members of the Division who would have the power to rule on evidence, decide motions, etc.; secondly, decisions by the members of the Division actually charged with the hearing of cases, so that whether the case be assigned to a panel of one, two or three, the panel itself would decide the case; third, insurance of continuity of action on the part of the Division by provision for holding over after expiration of term by individual members. Such a provision is in effect so far as County Boards are concerned and failure to include it in the present law has caused grave inconvenience at times. And, fourth, adequate salaries, tenure during good behavior and pension provisions which would attract qualified members of the Bar who would be willing to forego their practices to enter this branch of the public service on a full-time basis.

During the current year, three bills were introduced seeking to achieve one or more of these objectives. One of these was A-97 introduced in February, 1958, to permit the Division in certain cases to have decisions made by panels of two or more. It is felt that the provisions of this bill, while helpful, would be inadequate to meet the present situation. The other bills introduced were A-315 providing for the establishment of a Tax Court in the Judiciary Department and A-323 which is before the Senate in its amended form. It is the feeling of the Division



that if the bill is passed, I mean A-323, and becomes law, it will go a long way towards clearing up the current backlog and preventing a recurrence in the future. The principal argument advanced in support of the bill when it passed the Assembly was that without departing from the concept of the Division as an administrative agency, its working capacity was being increased at no extra cost to the State. While this may be an oversimplification, it is generally correct. It is somewhat similar to increasing the width of a highway by adding more traffic lanes. Under the proposed bill seven hearing panels are possible and if one panel of three is utilized at all times, there would still be four additional panels available for hearings. The assignment of four individual Commissioners to the hearing of routine cases would be able to make in our opinion a substantial reduction in the backlog within the first six months. If this result materializes, it would then be possible to set up a second panel of three to continue to hear cases in conjunction with the first three-man panel, until the number of cases to which three-man panels were assigned was brought under control.

In determining whether cases shall be heard by panels of three, it has been suggested that various steps be taken. One suggestion has been that perhaps a break-off point be fixed and that all assessments over a certain amount might be the criterion. Another suggestion which has been made is that our rules be amended to provide that any litigant be permitted to demand a hearing by a panel of three within ten days after the filing of his appeal. The notice of appeal itself could contain the demand, of course. In determining whether a trial by a panel of three should be accorded to a party, the following, while not



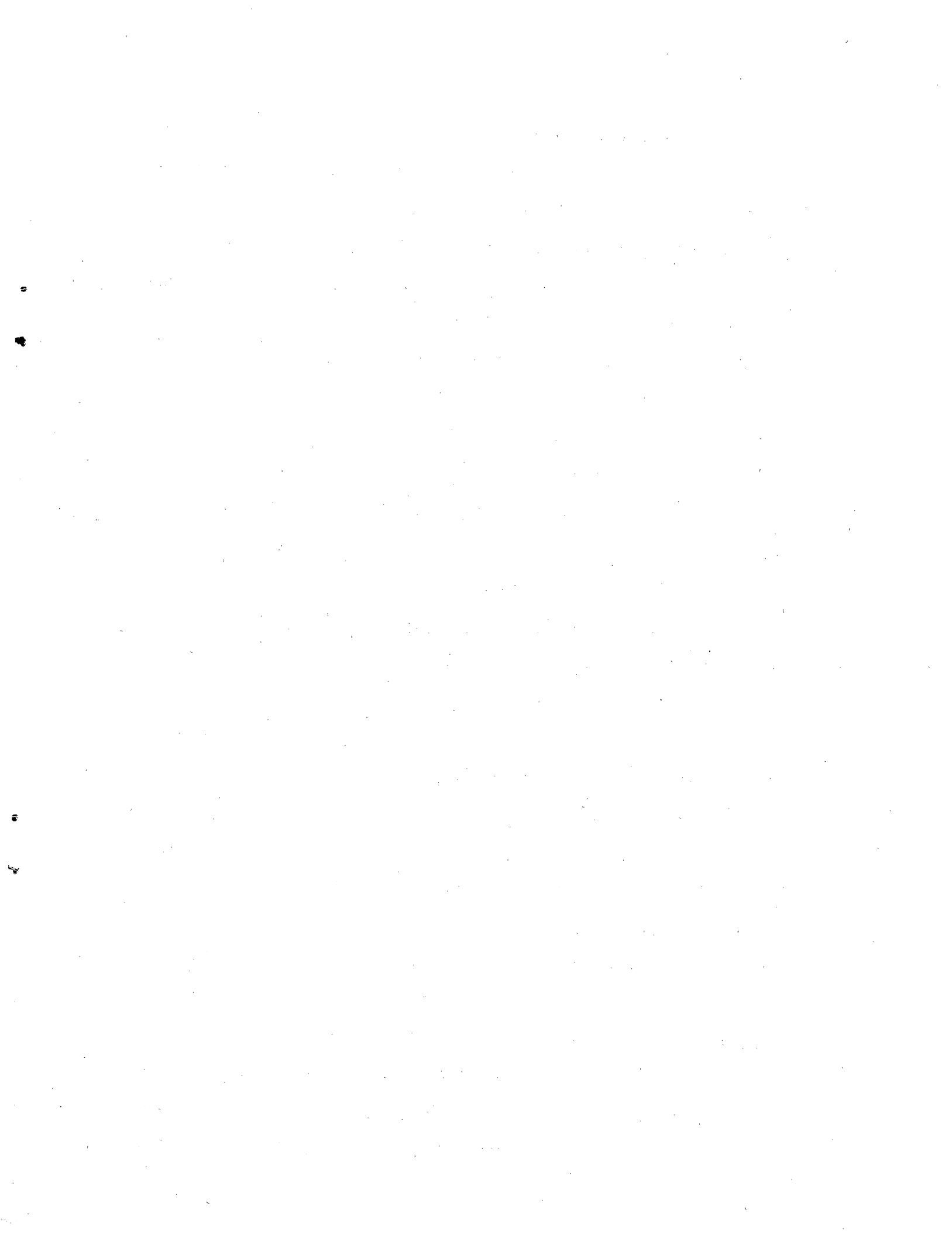
controlling or fully measuring the Division's discretion indicates the kind of reasons which the Division would consider:

- (a) The size of the assessment in dispute.
- (b) The amount of increase or decrease in the assessment in dispute.
- (c) The complexity of the matter in dispute.
- (d) The existence of a conflict between the determination below and some other decision of the Division or of a court of this State.
- (e) The existence of an important question of law which has not been previously settled by decision of the Division or of any court in this State.

You gentlemen will notice that some of those bear a strange resemblance to the reasons considered by the Supreme Court in determining the matter of certification. We feel that they could be very, very good and potent reasons.

Now, in addition, it has been suggested that an additional rule might be enacted providing that whenever any matter for which a panel of three has been requested and denied, has been heard and determined by a single member, any party aggrieved thereby may apply to the Division for rehearing by filing a petition therefor within ten days after receiving notice of the decision. Such petition would be assigned to and heard by a panel of three members and, if granted, would be considered and determined by the said panel de novo on the basis of the record adduced at the hearing and before the single member.

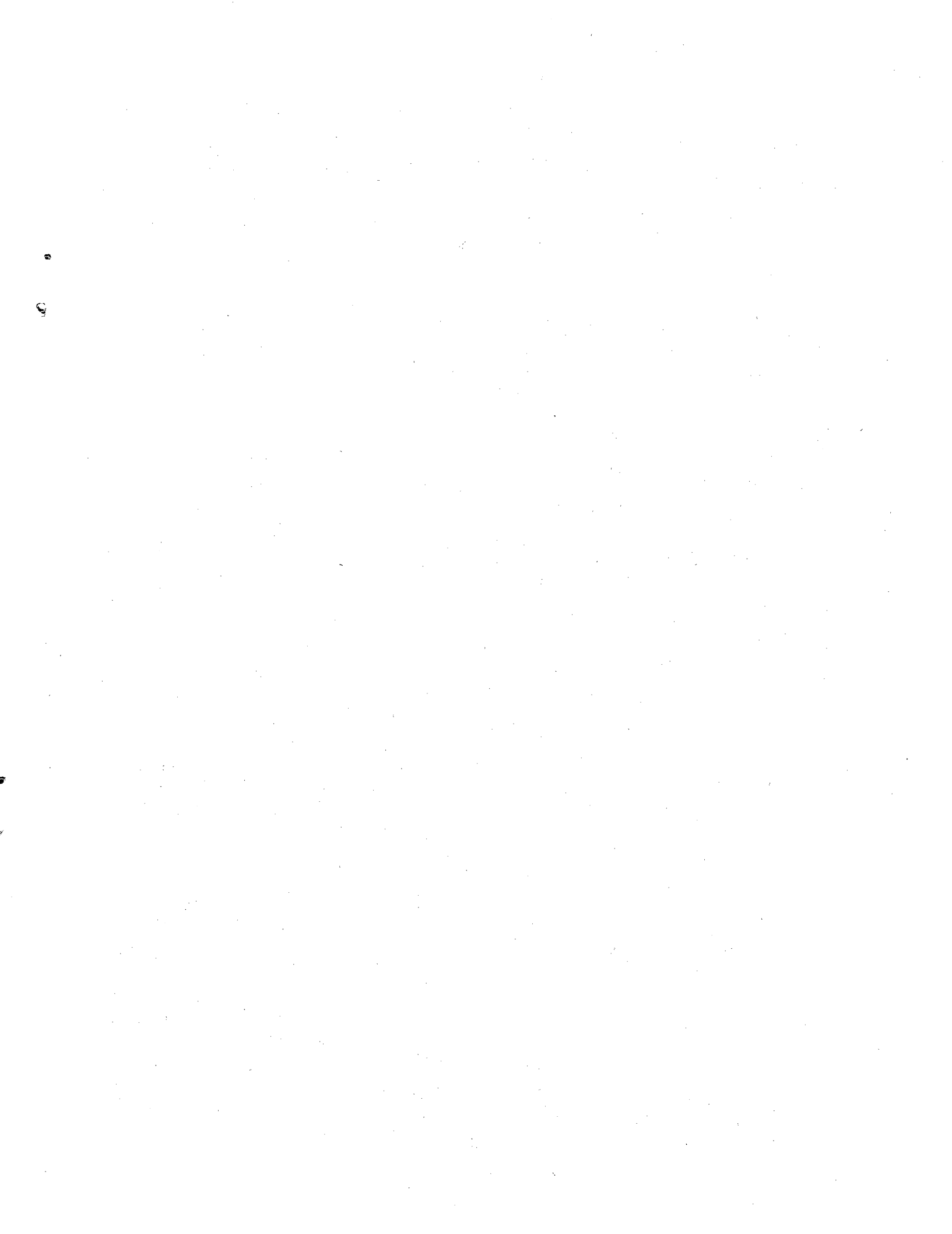
These, gentlemen, are of course suggestions. They are subject to refinement, but basically they represent the kind of procedure



which could be made available.

It goes without saying that whether the hearings be held before a panel of one or a panel of three, there will be at the conclusion of the hearings an opinion or decision containing adequate findings of fact and conclusions of law on which a judgment will be based and from which an appeal may be taken direct to the Appellate Division as at present. It is felt that in many cases involving local appeals, these opinions or conclusions can be made from the bench in the presence of the parties and transcribed by the official stenographer so that the parties will know at once how their appeal has been decided and the reasons therefor. In the case of appeals involving the larger properties or involving novel or complicated questions, it will generally, of course, be necessary that a written opinion be filed. But even in such cases there would be a great saving of time and expense both to the Division and to the litigants.

It is possible, of course, that Assembly Bill No. 323 will not turn out to be a complete solution to our problem. But the bill, as amended, seems to present a means whereby the business of the Division can be more efficiently and promptly dispatched with great benefit to litigants and without any significant increase in the cost of operation. Gentlemen, the problem is acute at the present time. It may be aggravated by tax legislation enacted during the current session of the Legislature and it may be aggravated by the large number of revaluation programs which are pending in many of our municipalities, and which may have their repercussions in county board appeals and subsequent appeals to us. We feel that the enactment of this or similar



legislation will enable us to solve our present problem and to meet these new problems as they arise.

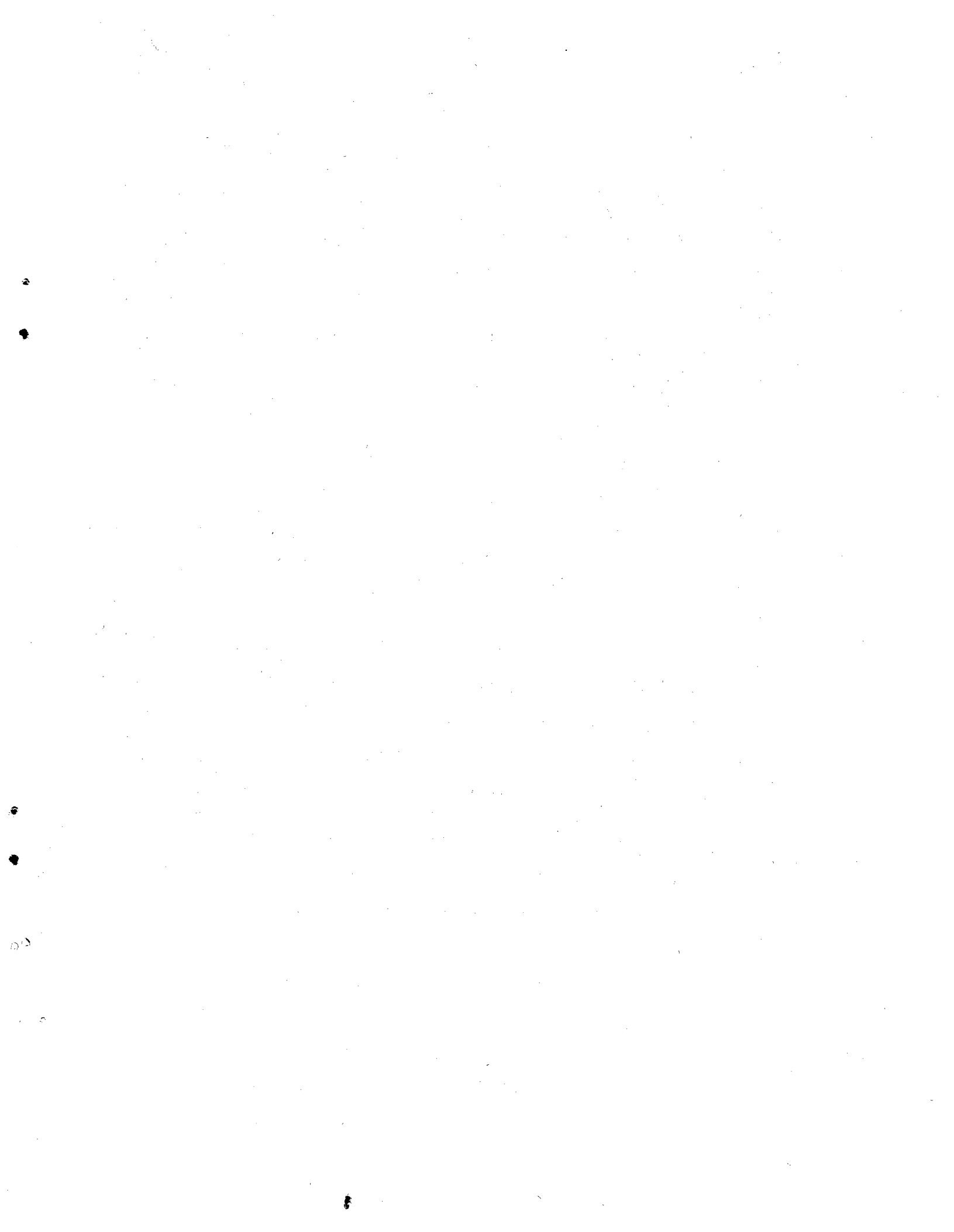
I might state, gentlemen, that I attended the recent convention of the National Tax Association in Philadelphia in company with our secretary, Mr. Carlin, and we were happy to hear one of the speakers pay tribute to New Jersey as one of only four states in the Union having adequate tax review procedures on the State level. It is my hope and the hope of my colleagues that we may continue to maintain this position.

SENATOR HILLERY: Mr. Labreque, I notice in this change in the bill that the former membership was made up of four attorneys and could be a complement of three lay people and now the bill provides completely for attorneys. What is the reason for that change?

MR. LABREQUE: The reason for making them all attorneys under the present bill?

SENATOR HILLERY: Yes.

MR. LABREQUE: Well, I think that the general feeling was that eventually all of the members of the Division should be attorneys. The State Bar Association has been stressing that for a number of years and it was felt, I believe, that especially if panels of one were to be permitted, the rulings on evidence, the rulings on motions, all would require legal training. With panel reports, of course, and with panel sitting, it is always possible a layman can sit with a lawyer and a lawyer presides and that solution is always available. But if you are going to have sitting individually, it is certainly a desirable feature that it be all attorneys.



SENATOR HILLERY: Well, we do have some lay people in the State who have expert knowledge on assessments and things of that nature. This would shut them out of the field, right?

MR. LABREQUE: It would. If that provision is inserted, it would definitely shut them out of the field, at least in this phase of it, in the field of State appeals. Yes, sir.

SENATOR HILLERY: Thank you.

SENATOR LANCE: Mr. Labreque, you have been a member of this Division for how many years?

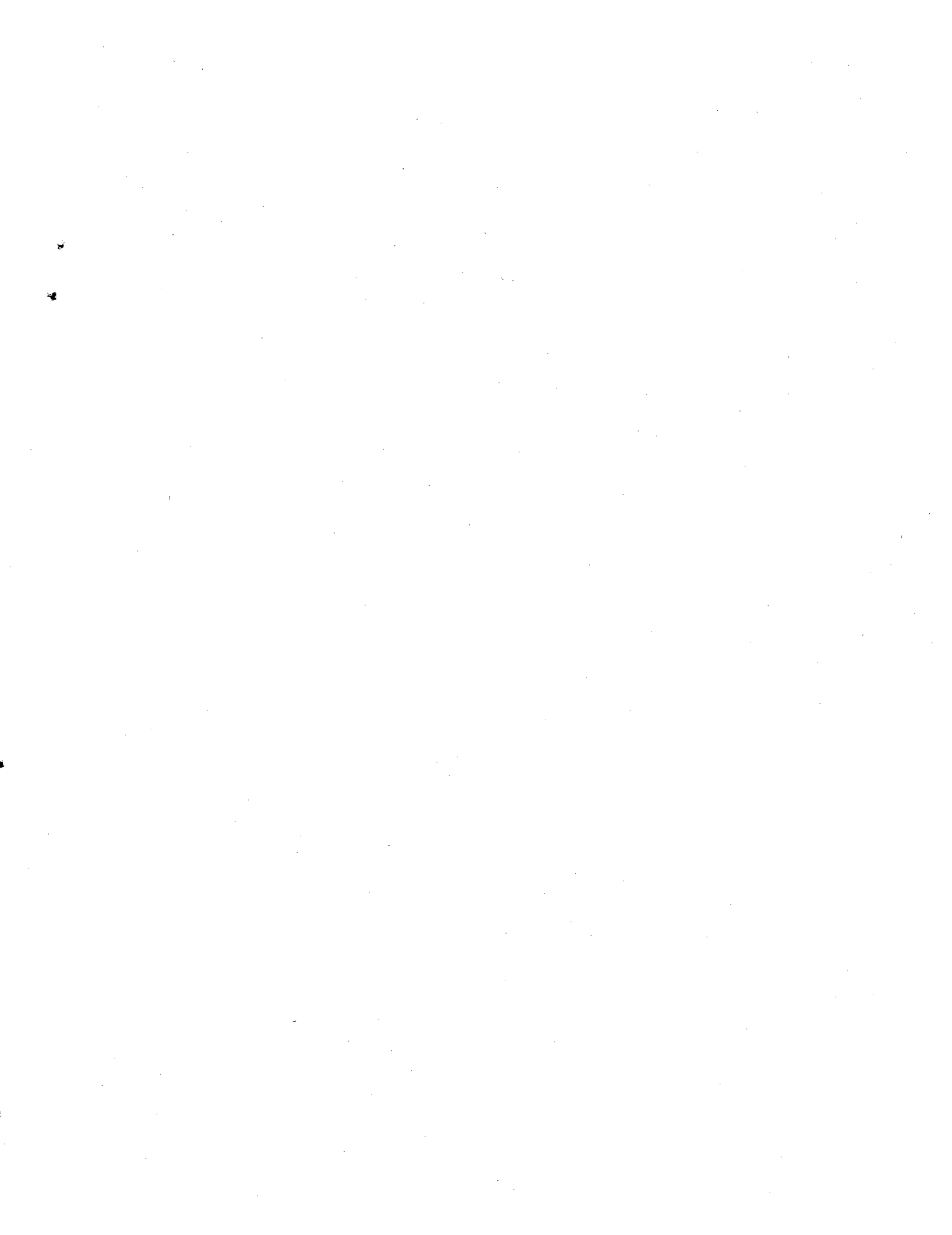
MR. LABREQUE: I was first appointed by Governor Edge in 1946.

SENATOR LANCE: I would like to ask a few questions which go to the backlog, which I understand is accentuated by the fact that you are burdened with work in recent years which you didn't have before. For example, the bill that we passed in this house in 1954 concerning state aid for schools now makes each municipality very anxious that its assessment ratio appear as high as possible and you get that type of appeal which you never had before?

MR. LABREQUE: Yes, sir, we do.

SENATOR LANCE: And second, in the old days I believe the only thing you considered is whether the taxpayer was assessed for more than true value or he wasn't. But today you are confronted with whether he is being assessed higher than the common level.

MR. LABREQUE: That's correct and that situation is aggravated because of the fact that many of these appellants - as a matter of fact, I should say a large fraction of them have great



difficulty in establishing a common level and it takes a great deal of testimony to try to do it. The assessors generally will not testify as to any common level and as a matter of fact the statistics compiled by the Director of the Division of Taxation indicate that there are different levels even for different types of property so it could well be that the assessors are proper in saying that there is no common one in many cases.

SENATOR LANCE: Would it be possible to translate into member days all of the appeals that were filed as a result of the December 1, 1957 deadline? In other words, as I understand it, the County Board of Taxation cannot accept appeals after August 15th. The County Board of Taxation must make its decision by November 15th and appeals from the County Board of Taxation must be with you by December 1.

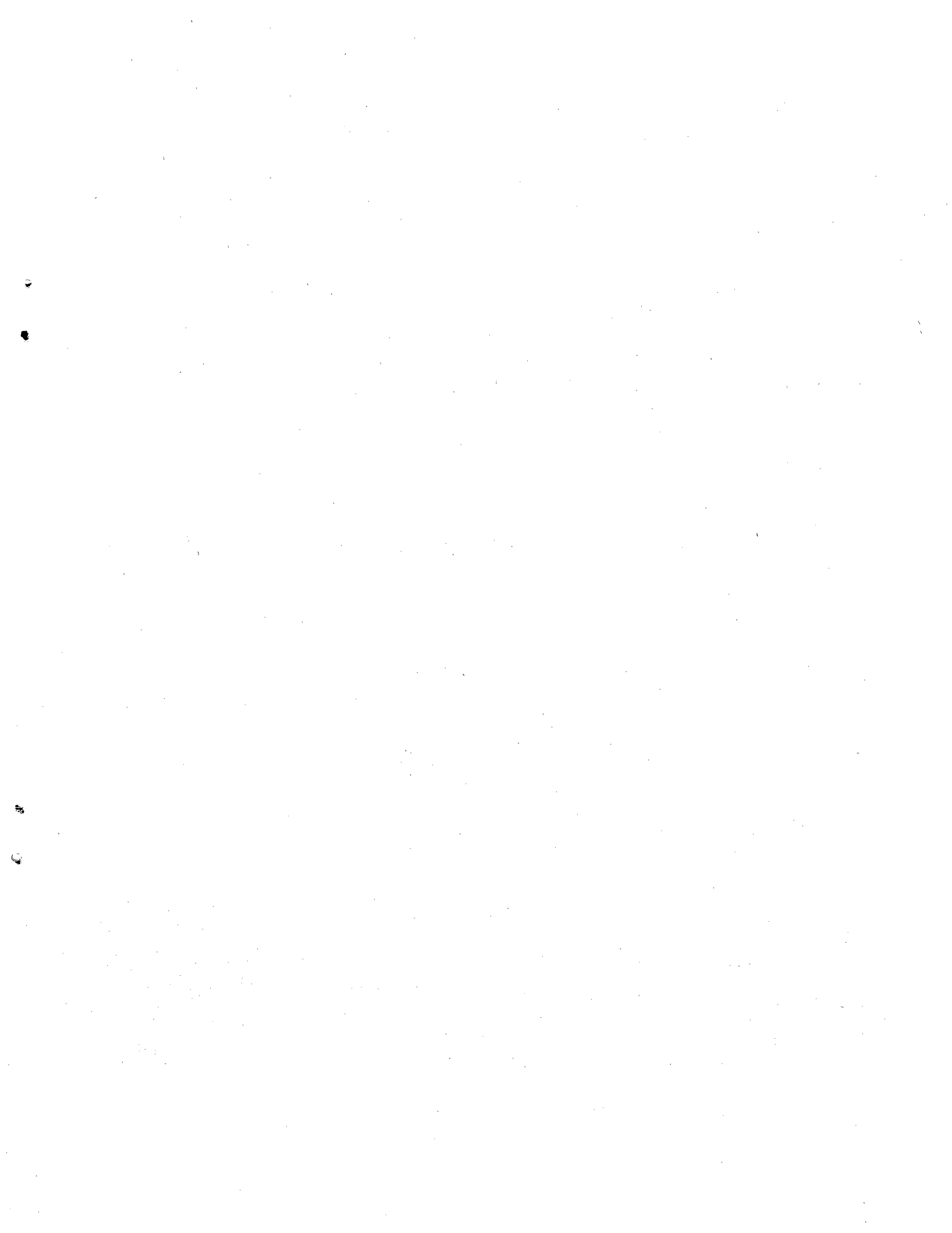
MR. LABREQUE: December 15.

SENATOR LANCE: -- or December 15th.

MR. LABREQUE: Yes, sir.

SENATOR LANCE: Now, would it be possible to translate into member days, assuming that you had only one member sitting on these cases - how many member days would there be for all of the appeals filed as a result of any particular year?

MR. LABREQUE: Well, that is rather difficult because we frequently run into a feast or a famine in them and it is hard to calculate how many will be settled. And, of course, we are in somewhat the same position as the courts are. If we didn't have settlements, we would be hopelessly involved as the courts would be. You find out that a large percentage of the cases in



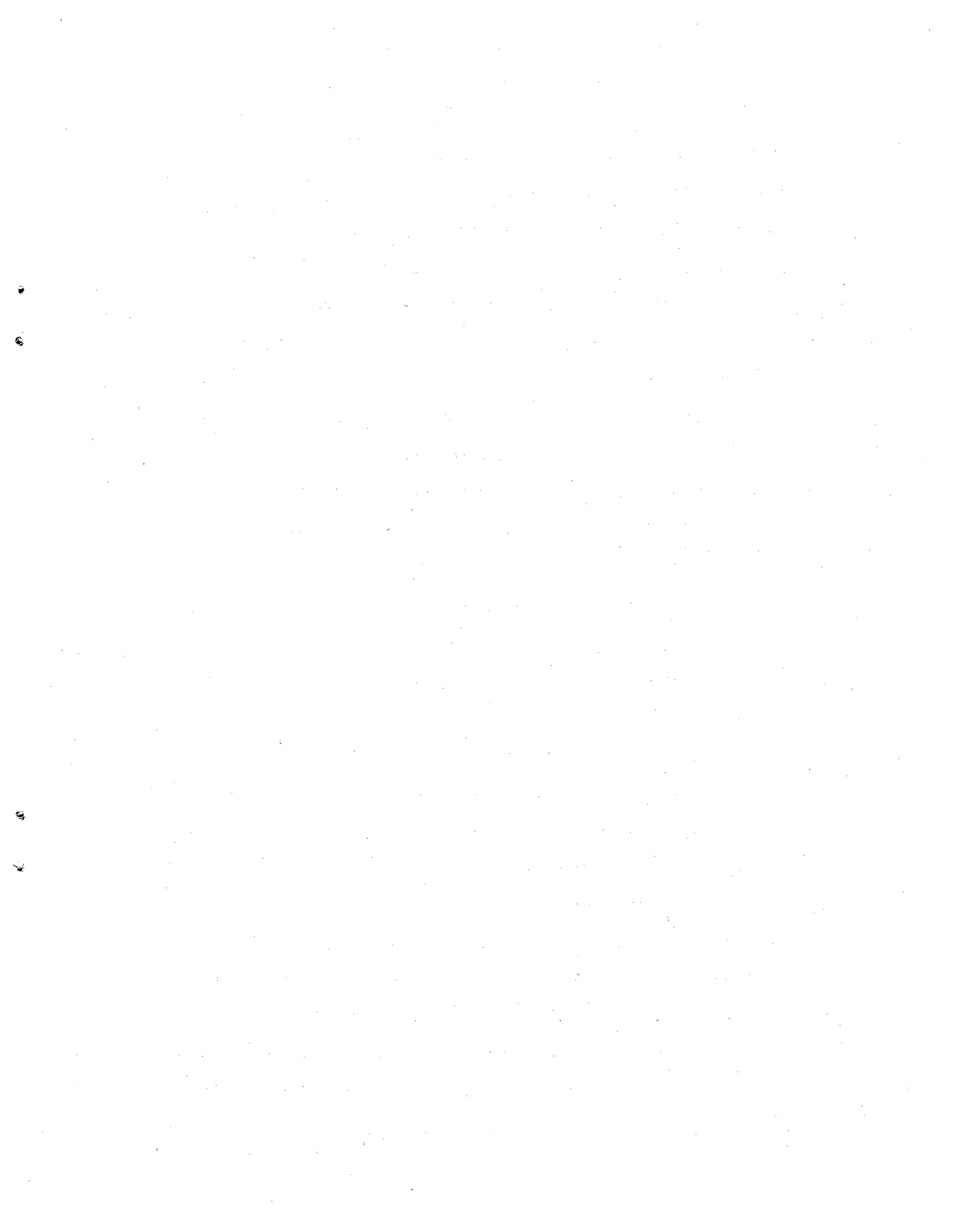
court are settled on the day of trial and were that not so, the problem would be much more acute than it is. We run into the same problem. We assign a certain number to a panel and the panel works from there on. Now, generally, we assign a second date for the panel in order to carry over in case they don't finish the first date. It is difficult to figure even the same kind of assignment in different counties because in some counties they can take a big calendar and they will dispose of them very well in one day and in other counties there will be only a small number and they will have to come back the second day for it. It is very hard to make a definite commitment on that.

SENATOR LANCE: In recent years, what is your classic case which took the longest time to hear?

MR. LABREQUE: Well, I think that the ones that take the longest time to appeal generally -- I can't think of one specifically -- well, yes, I could think of one. I think that the Pennsylvania Railroad Case which involved all of the Pennsylvania Railroad structures and real estate in Jersey City and also involved a claim of discrimination as to the valuation in these structures is about the longest one and has taken up the most testimony of any case we have had.

SENATOR LANCE: And how long was that?

MR. LABREQUE: Well, we started it, Mr. Danskin tells me, in 1956 and we finished it just last month. Now, that doesn't mean we sat all the time because there are certain things which have to be done. For instance, when we come to equalizations, we generally hold up our activities until we get rid of all



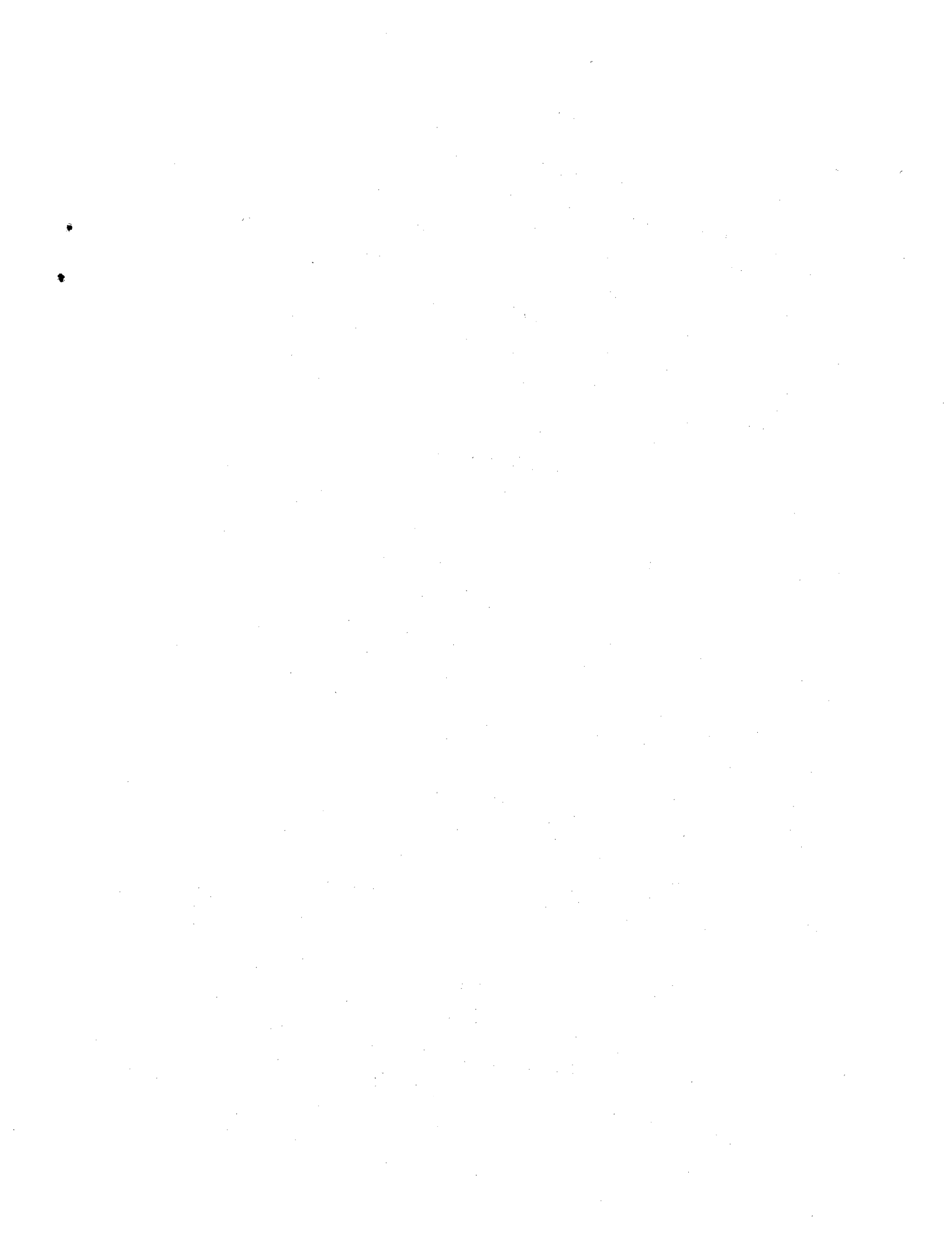
the equalizations and in the fall when school aids come up, because of the deadline fixed by the Legislature, we set them aside and go to work on school aid. Now in this Pennsylvania Railroad Case discrimination was a very important feature of it. So as soon as we had finished - we tried the structure part first and while we were awaiting briefs we tried the discrimination feature of it. And as soon as we had finished on the discrimination feature, we stopped and we went to work on our report and opinion and we filed our report and opinion and it was approved by the Division. We thought that they might want to take an appeal from that before proceeding further, but the application to file an appeal was denied. So we then proceeded to hear the true value appeals as to all the structures.

SENATOR HILLERY: Mr. Labreque, when you were offering your recommendations, you mentioned something about pensions - did I hear that - for members of this Commission?

MR. LABREQUE: Yes, you did, sir.

SENATOR HILLERY: On what basis were they to be set up according to your recommendations?

MR. LABREQUE: I have not given any thought to it at all, except with reference -- The thing that prompted it was the bill as originally suggested by the State Bar Association which I think was the genesis of Assembly 315 and in that the feeling was that if men were to be brought into this field, some sort of pension other than the pension which we have now, which is a retirement provision in company with all other state and county employees, should be provided so that men could leave their practice and settle down to this and take it on as a life's work



because it is a life's work.

SENATOR HILLERY: Thank you.

SENATOR LANCE: Mr. Labreque, this transcript will be read by other members of the Senate and also the Assembly, so I would like to get into the record the procedure for the assignment of the hearing of an appeal even though you have covered it here. Now, first, you as President assign a case to a panel?

MR. LABREQUE: That's correct. It is a calendar usually; it is more than one case. We make up a calendar and we assign it to one of the panels that is available.

SENATOR LANCE: And under the existing statute that panel must have a minimum of how many members?

MR. LABREQUE: That panel must have a minimum of two, of whom one must be an attorney.

SENATOR LANCE: It could have three, four, five, six, or conceivably all seven?

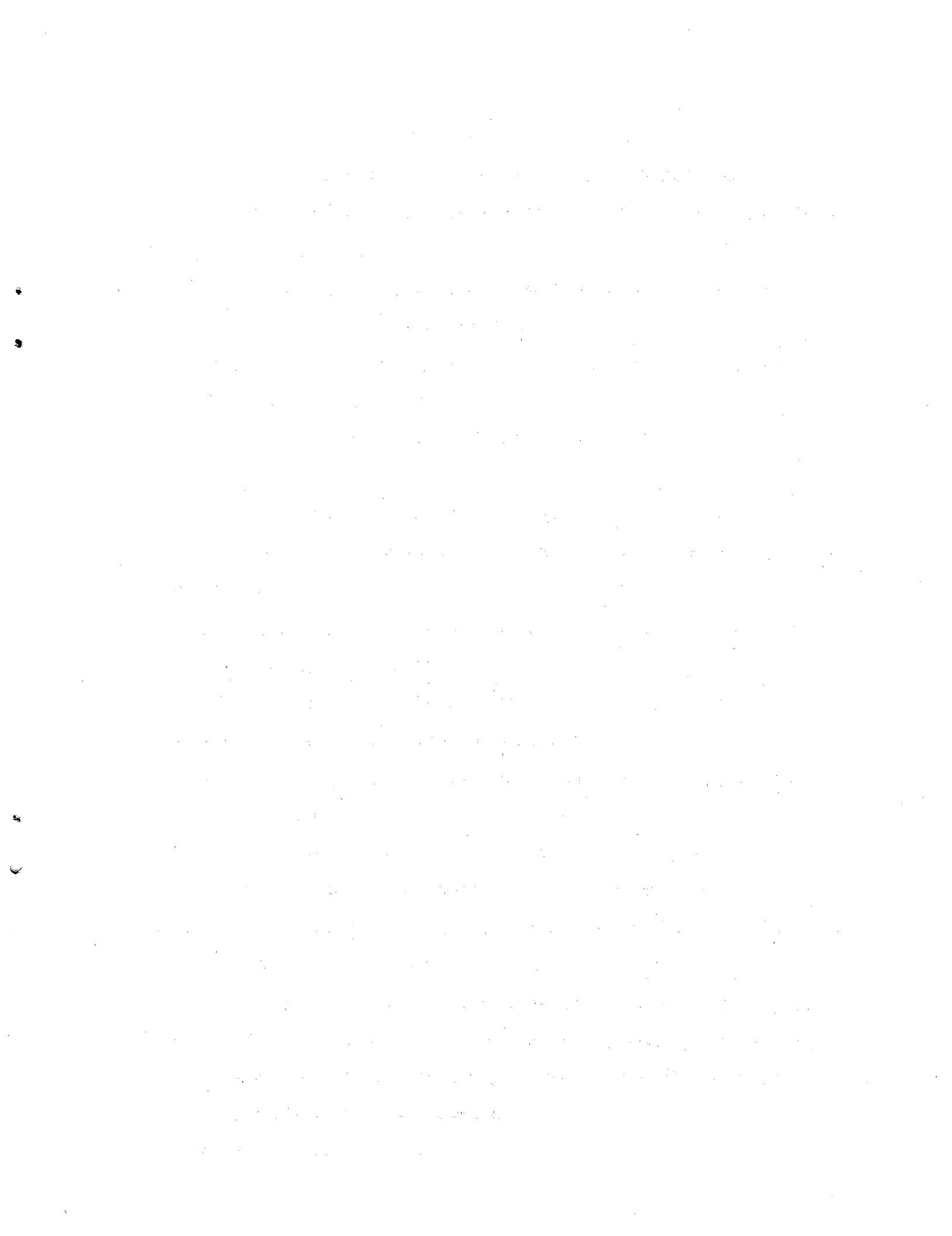
MR. LABREQUE: That's right, and sometimes we all sit together to hear an important matter. We have done that on a number of occasions.

SENATOR LANCE: Second, the panel of a minimum of two or more will hold a hearing?

MR. LABREQUE: That's right. They would hold a hearing wherever they are sent throughout the State.

SENATOR LANCE: Third, that panel must file a report as to its findings of fact?

MR. LABREQUE: That's right. And generally before that is done the members of the panel confer; if necessary they get a



transcript of the testimony and if briefs are necessary, they get the briefs. And then when they have agreed on what the report should have, they collaborate in getting it together and file it with the secretary and it is brought up for consideration.

SENATOR LANCE: Fourth, the Supreme Court has said that the litigants must have an opportunity to object to the findings of fact, is that correct?

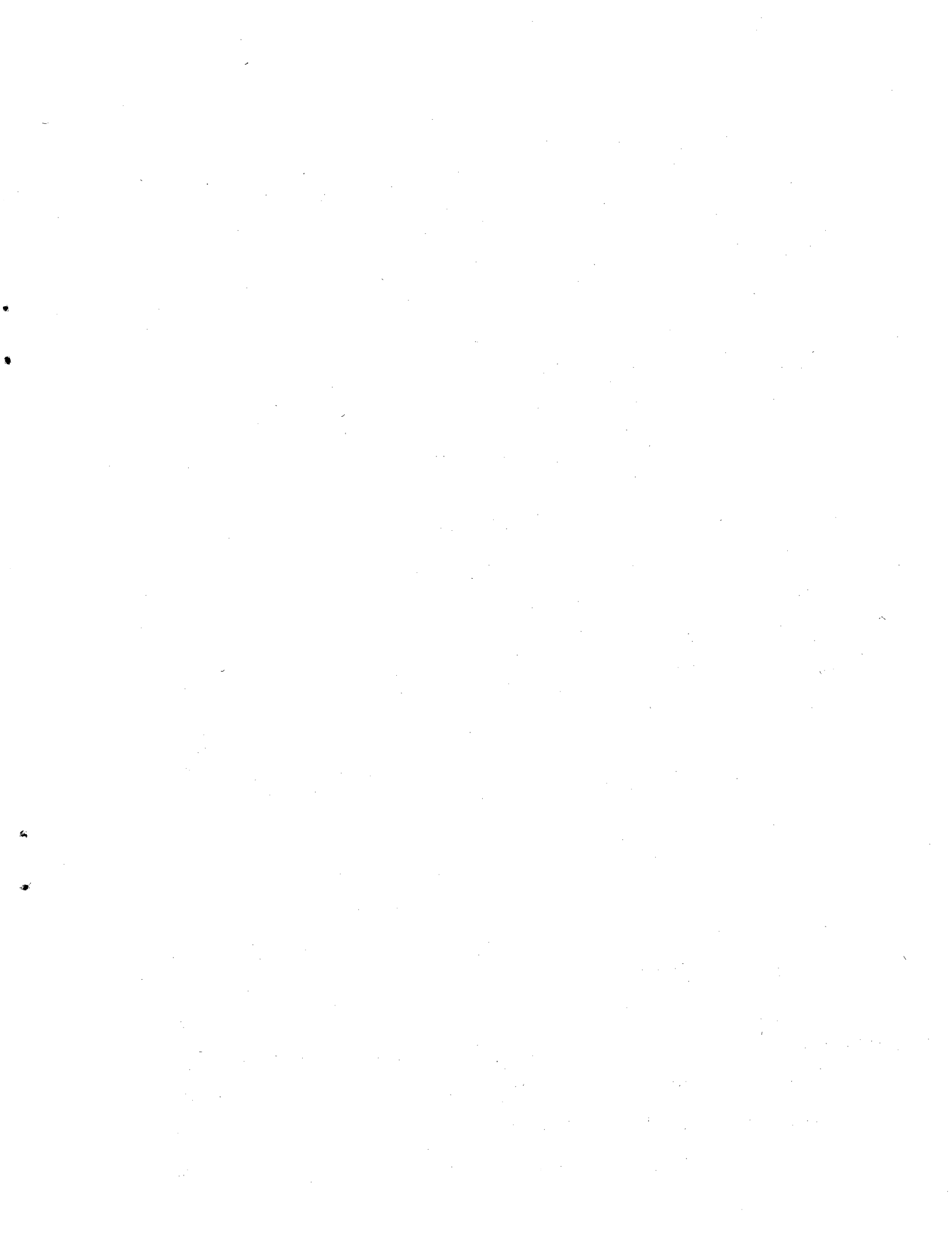
MR. LABREQUE: That is correct. That is since the Fifth Street Pier Case.

SENATOR LANCE: What is the procedure which carries that out?

MR. LABREQUE: Well, after the Supreme Court decided that case, we amended our rules and what we provide is that when the report has finally been filed and it is ready for submission, a copy of it is sent out to each of the parties to the appeal and we allow them ten days within which to file so-called exceptions to the report. And then each party has the right to file a brief in support of or against the exceptions. That must be filed within ten days too. And then, if the Division feels that the matter is of sufficient importance or novelty, we will invite them to argue their exceptions orally. If it is not of such importance, we consider it on the briefs when they are finally filed and we usually have them - well, - within a month of the time the report is filed, we usually have the exceptions, although there have been delays.

SENATOR LANCE: Then the fifth and last ---

MR. LABREQUE: Incidentally, I may add to that, frequently



they request an oral hearing and then we don't always do it on our own motion; sometimes they ask for it and we grant it.

SENATOR LANCE: The fifth and last step would be a determination of the full membership.

MR. LABREQUE: That's correct and in that case we consider the exceptions. If we consider they have no merit, we disallow them; if they do have merit, it is necessary to prepare supplemental or amended findings of fact and conclusions which make the final decision.

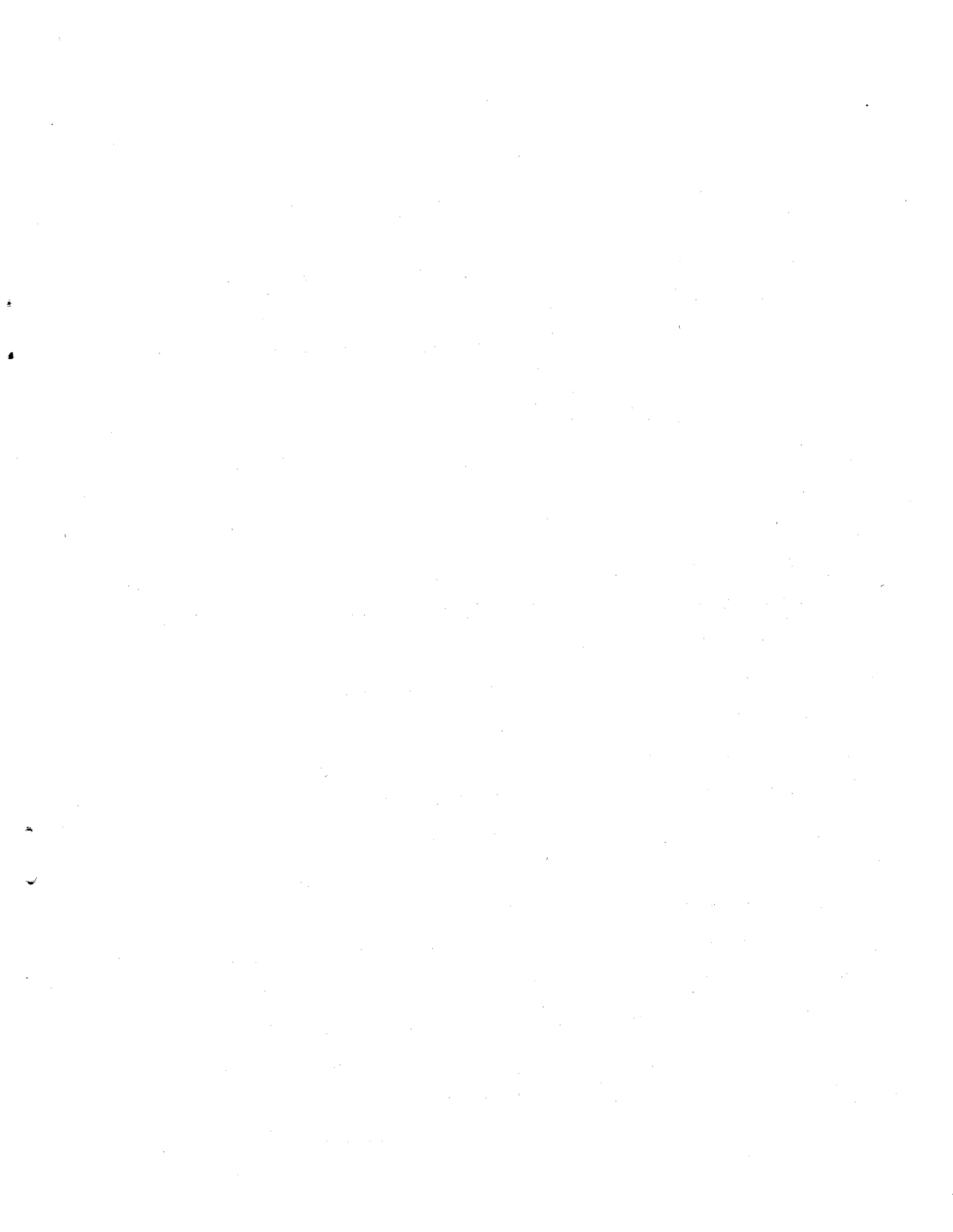
SENATOR LANCE: So the five steps in your procedure from the standpoint of a layman would be, first, the President assigns any case to a panel which must have two members as a minimum and might have more. Second, there is a hearing by this panel of two or maybe more members. Three, this panel of two or whatever it is makes a report of factual findings. Four, there is an opportunity of the litigants to object to that finding of fact. And, fifth, it is followed by a decision of the full Board.

MR. LABREQUE: That's correct, sir.

SENATOR LANCE: Senator Mathis of Ocean County is now with us as a member of the Judiciary Committee that is holding this hearing.

You mentioned something about a breakoff point. Will you give us an example of what you mean by that? In other words "X" owning a piece of real estate files an appeal - now give us an example of how a breakoff point might work?

MR. LABREQUE: Well, that was one of the suggestions that has been made to us from time to time, as an example, provide



that all appeals involving property, the assessment of which is a million dollars, should be heard by a panel of three. That is what I have reference to. You see, we are going into a new procedure here and some of the suggestions that have been made have taken that into consideration - have thought that this is a new procedure and while New Jersey stands pretty high in this field, yet this would guarantee that the large properties like that would have three men applying themselves to it instead of one.

SENATOR LANCE: Of all the panels assigned in any recent, typical calendar year, what percentage of them would be two-member panels?

MR. LABREQUE: As far as we are concerned now under our present practice?

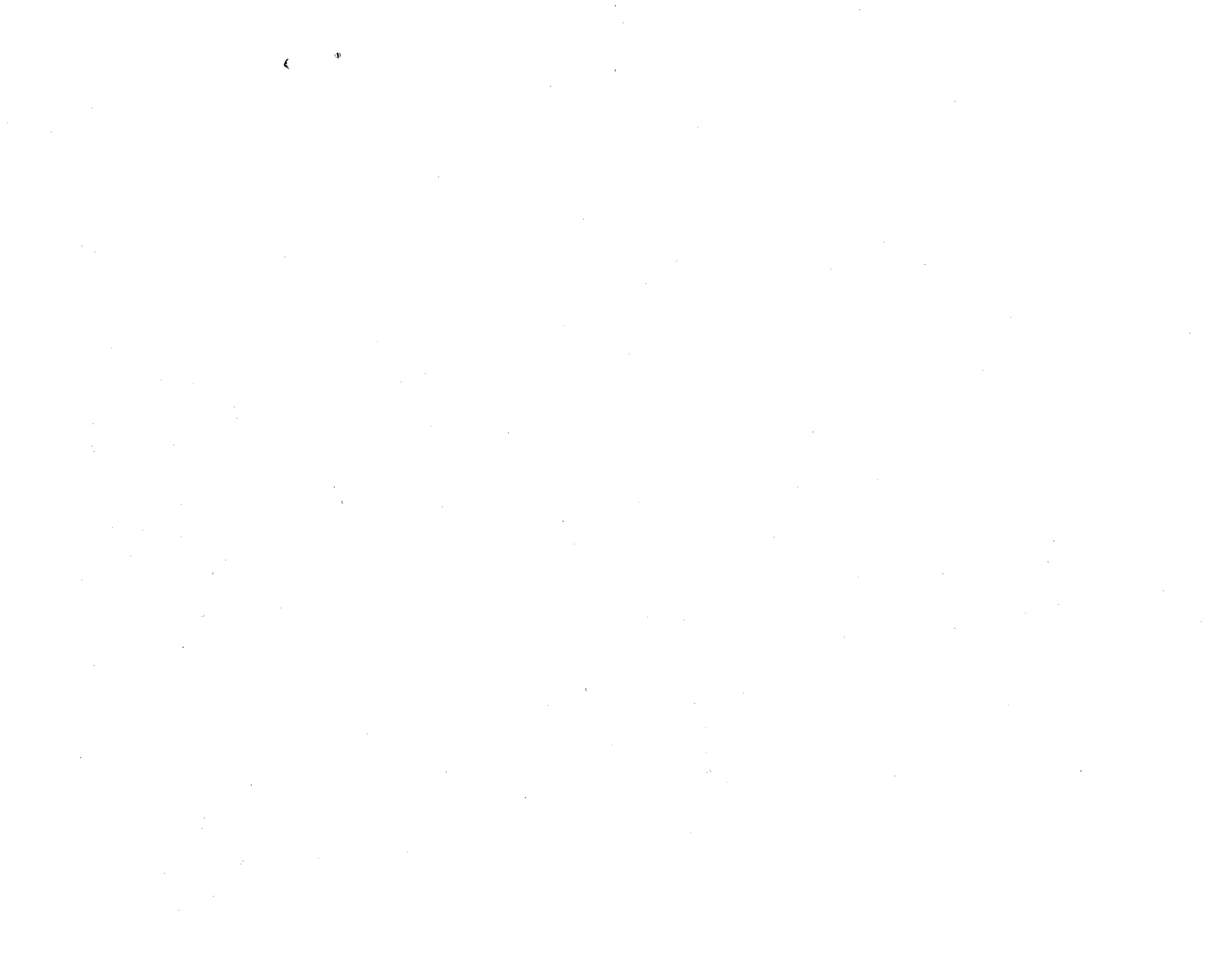
SENATOR LANCE: Yes.

MR. LABREQUE: Practically all are two-member panels or more. There have been times, but not very frequent, when we have had three-member panels and there have been some infrequent occasions when the entire Division sat or a quorum of the Division.

SENATOR LANCE: So at least 95 per cent of the panels sitting in any recent calendar year would be panels where there were two members on each panel?

MR. LABREQUE: That's right, sir.

SENATOR LANCE: Let's sum up briefly how Assembly Bill 323 differs from the existing statute. Will you run down the four or five points of difference between Assembly Bill 323 in its present amended form and in the form which it passed the House? How does that differ from the existing statute?



MR. LABREQUE: Well, Assembly Bill 323 still provides for seven members, but it provides that they all shall be attorneys of law. It deletes the provision permitting laymen to sit on the Division. It was possible for three laymen to be members of the Division before and we have had laymen on the Division and they have been fine men and they have earned our respect. It eliminates the necessity of at least ten years' standing by the attorney.

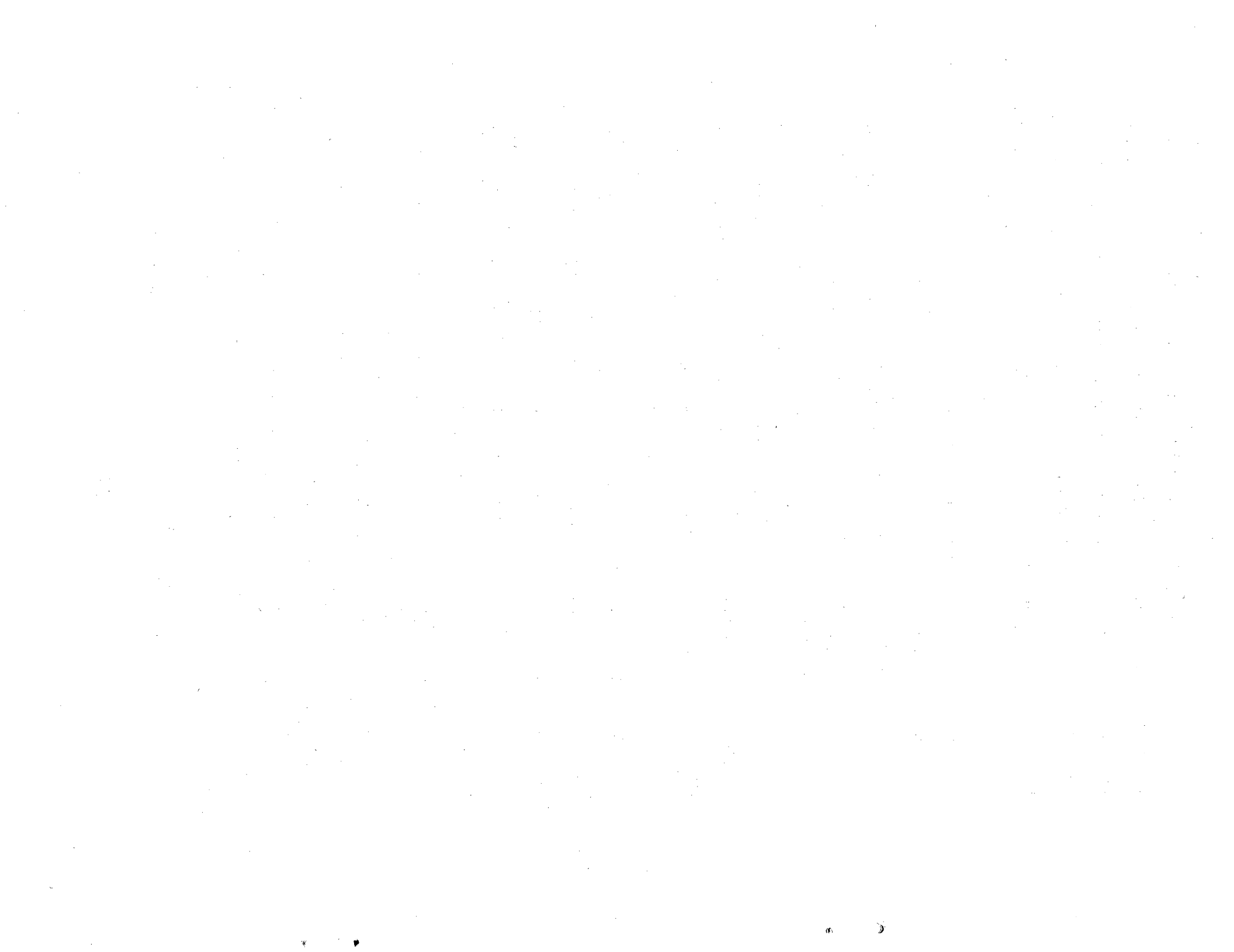
The second change that I would like to call the Committee's attention to is the fact that while the terms are the same, namely, five years, there is a proviso which permits holding over in the event that a member is not immediately reappointed in time to continue with his work. That is a provision which is presently in effect in County Boards, but it is not in effect in State Boards and it is provided for in the bill.

The next significant change is in 54:2-14 providing for the method of procedure and that you will note provides that we may make new rules, of course, but it provides that a determination by a member to whom an appeal has been assigned or a majority of the members, if assigned to three, will constitute the determination of the Division. That is the heart and soul, you might say, the most important part of the bill.

And, lastly, 54:2-18 is eliminated because it will no longer be necessary. The report system will no longer be needed.

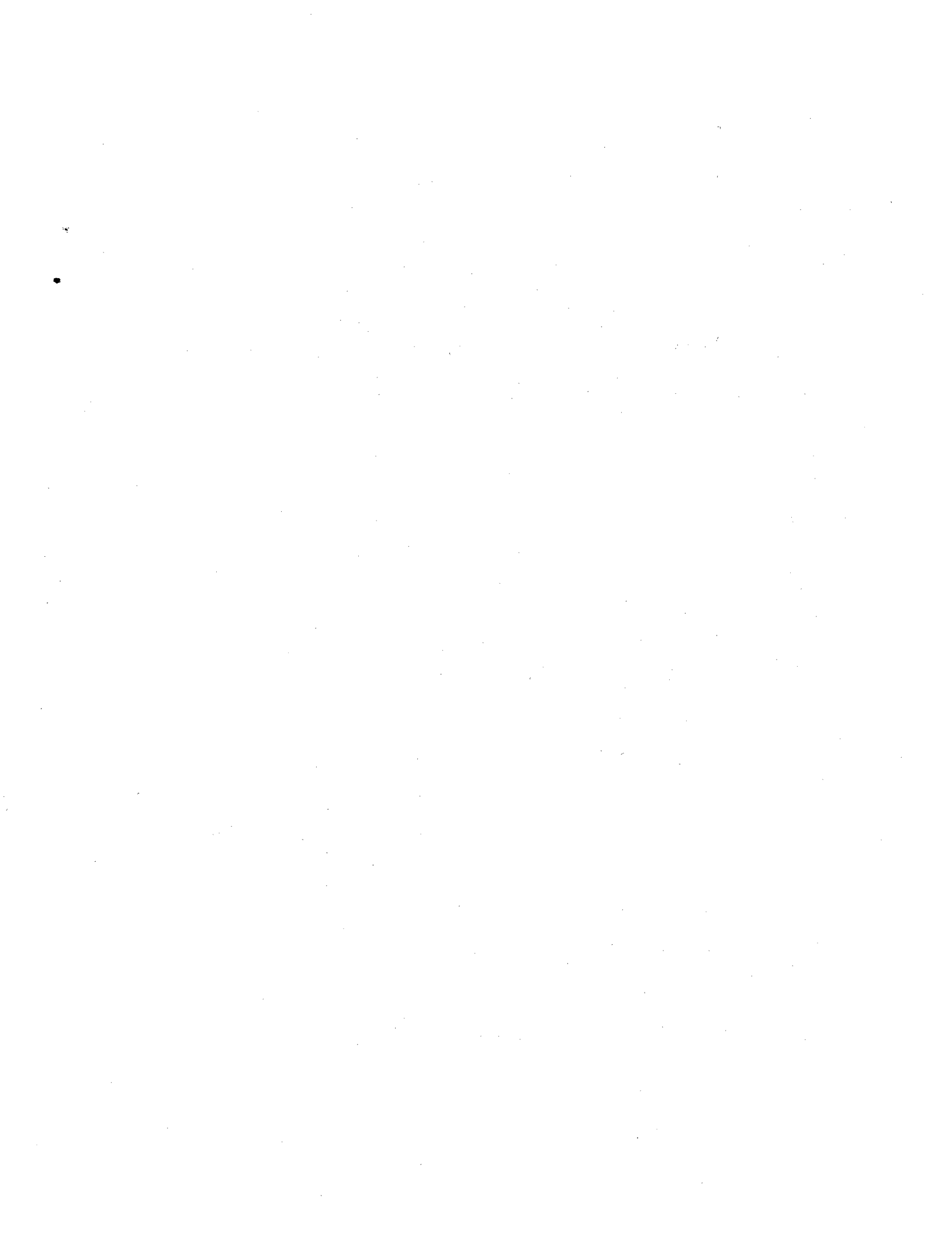
And then the President is given general administrative supervision of the Division which has not been quite clearly defined in previous legislation.

SENATOR LANCE: Coming back to your third point under



Assembly 323, assuming that a case was up for hearing, the President of the Division would have what alternatives open to him in so far as the number of persons on the panel are concerned?

MR. LABREQUE: Of course, it would depend on the kind of appeals before us. It would be my thought on the basis of what we have presently pending before us, that a panel of three would be set up at once and that panel of three would go to work hearing the larger and more important - and I say "more important" - every appeal is important - but I mean more important in terms of amount involved, let us say, or more important in terms of questions of law involved. And there would still be four men available for the hearing of the routine cases, which while they do not consume the largest amount of time - as a matter of fact they consume less time probably - but they are most in numbers and they make a very big figure when you look at the statistics, although they are not always that way. And four men assigned to various calendars by the President could make, I believe, quite a dent in them in six months. Then, if the other set of appeals before the three-man panels are going slowly or they need help, we would then be able to set up a second three-man panel to work on them and you will see that we would still have three panels even at the end of the year if this plan would work out - two three-man panels plus an additional panel. Now that would be as many panels as are working today and it will in addition permit the panels to make their own decisions so that the delay occasioned by the Fifth Street Pier Case will be eliminated and people will be able to get prompt decisions. Does that answer your question?



SENATOR LANCE: Well, in looking at the bill, what is the earliest section in the bill which ---

MR. LABREQUE: The earliest what?

SENATOR LANCE: What is the earliest section in the bill which vests in the President the power to assign a matter to a three-man panel or a one-man panel?

MR. LABREQUE: Well, that is Section 6 of the bill. (Reading) "He shall have power to assign each appeal for hearing and determination to a member or, in such cases as he may deem proper, to a panel of 3 members of the division," and that became 5 in the amended bill. I beg your pardon. It was excised here; I missed it.

SENATOR LANCE: I have no more questions of Mr. Labreque. I want to thank you for your testimony based on your years of service in this particular Division.

MR. LABREQUE: Thank you for your patience and if there is anything else, our men are here, and I especially asked Judge Kopp to be here. He has been a former member of the Judiciary and he may have some words to add to what I have said.

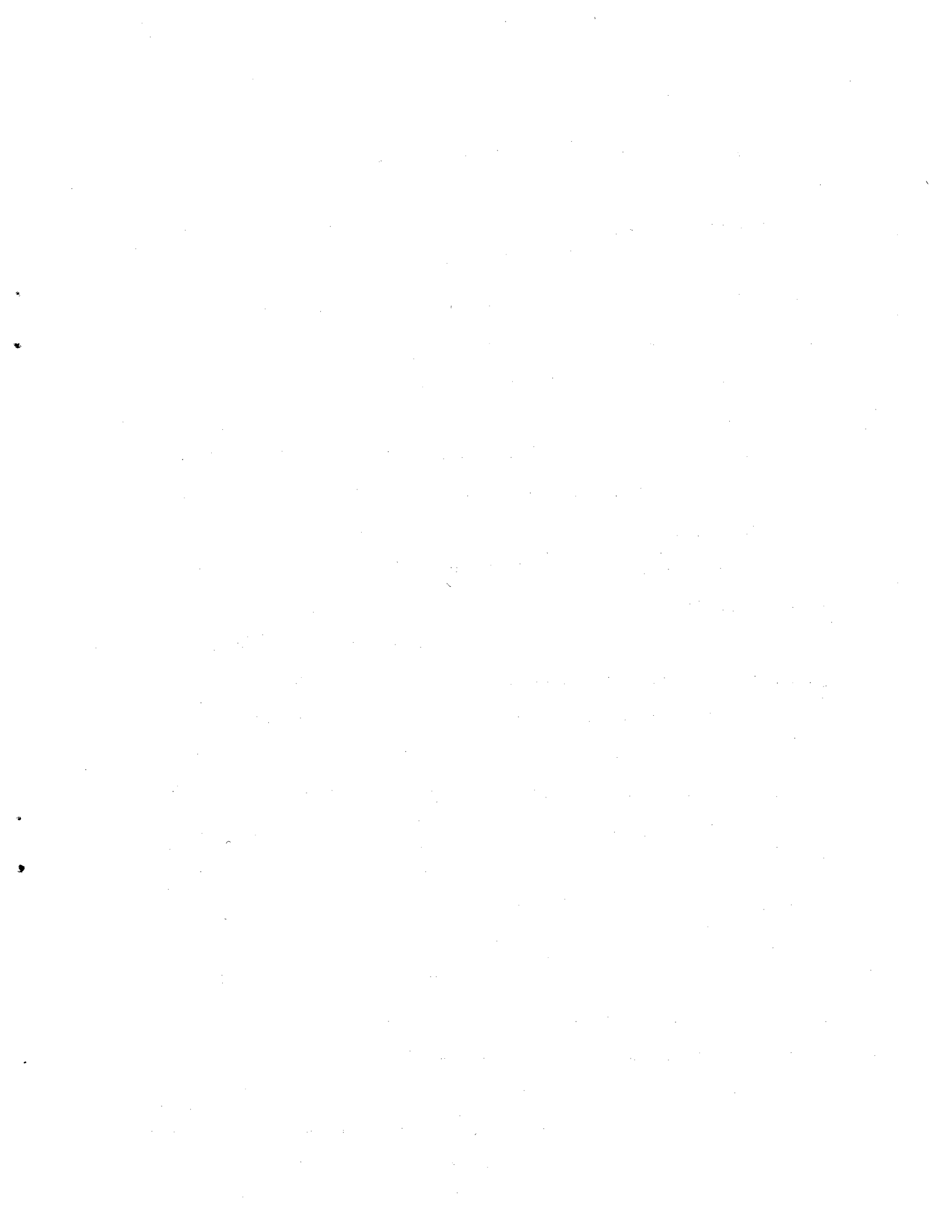
SENATOR LANCE: Is either the present secretary or the former secretary here?

MR. LABREQUE: The former secretary is Mr. Danskin. The present secretary is Mr. Carlin and Judge Kopp is former District Court Judge of Bergen County and he has been a member of our Division now for quite some time.

SENATOR LANCE: Mr. Danskin, are you prepared to testify?

MR. DANSKIN: Yes, sir.

SENATOR LANCE: Mr. Labreque, could we ask you one question



before you leave. Originally the bill as introduced in the House provided for full-time service by these members.

MR. LABREQUE: Yes, sir.

SENATOR LANCE: What are the pros and cons of full time versus part time?

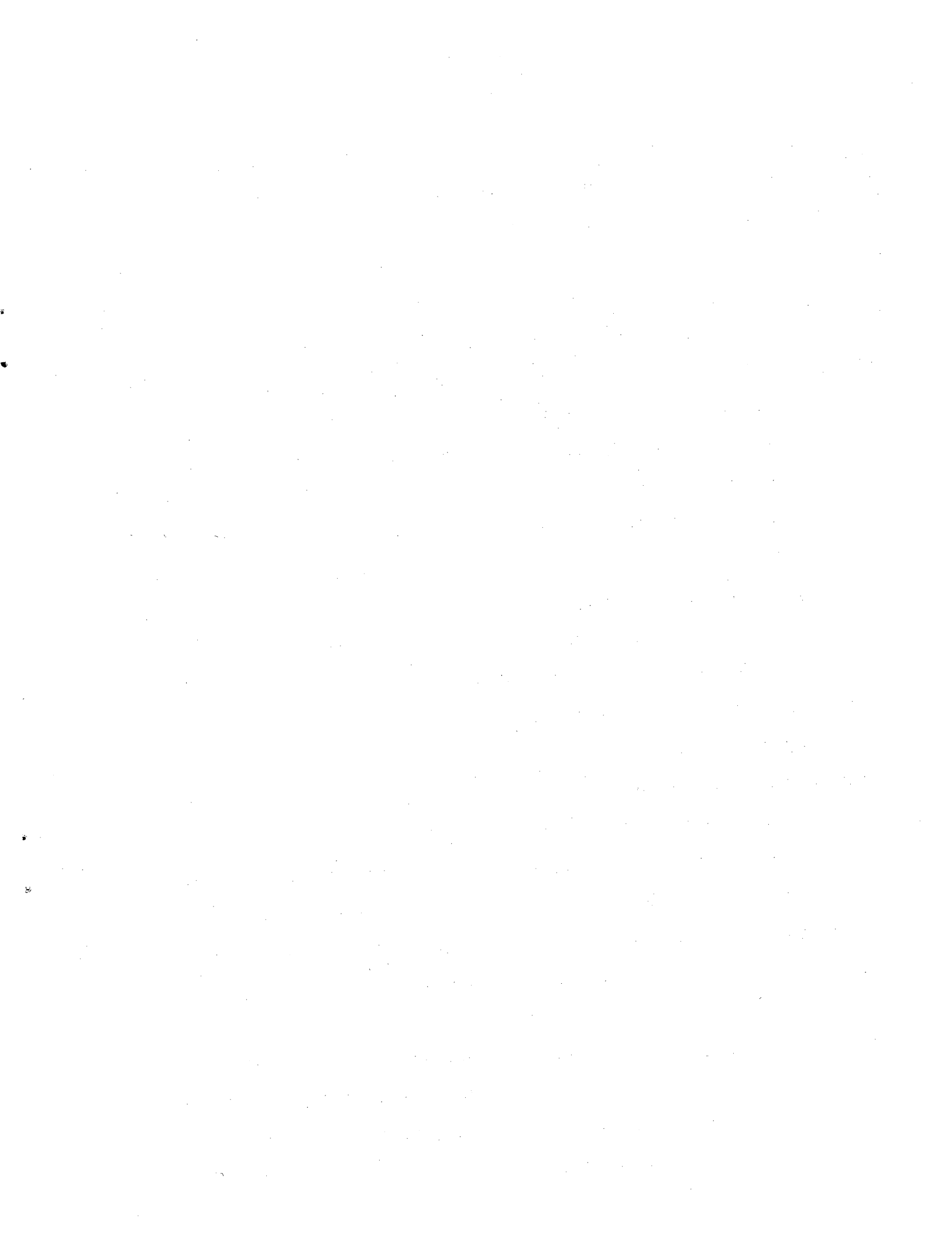
MR. LABREQUE: Well, there is no question but that there are arguments on both sides of the fence. From a practical standpoint, the time that is now being taken up by the work of the Division on an average by our members indicates that they are working pretty much to the utmost of their ability. There is an argument in favor of full time that there are no complicating factors and that a man can just live this business. On the part of the members of our Division now - they are all attorneys - they all have some practice, some more extensive than others - and they have found that their practice is very much affected and reduced by the work that they are doing and generally it would completely destroy their practice if it were made full time without some consequential advantage such as the State Bar bill with a salary and some sort of pension rights which in fairness to their families would justify them in giving up their practice and taking this work on as a career, so to speak.

SENATOR HILLERY: Mr. Labreque, when you say that the present setup is injurious on a part-time basis to the practice of these lawyers, how do you mean that?

MR. LABREQUE: I didn't hear it, Senator.

SENATOR HILLERY: I believe I heard you say that a part-time basis as is presently set up is injurious to a practice.

MR. LABREQUE: Definitely, sir.



SENATOR HILLERY: In what sense?

MR. LABREQUE: In the sense that you are not in your office, you are not able to schedule the trial of cases and it is quite a task to try to keep a practice going now the way appeals have been running the last three years. If you don't have partners and very good ones, it is pretty tough.

SENATOR HILLERY: How many days a week does the average member sit now in these cases?

MR. LABREQUE: We set up a goal of two days a week sitting and we feel that it takes a day and a half of paper work and sometimes two days for each day you sit.

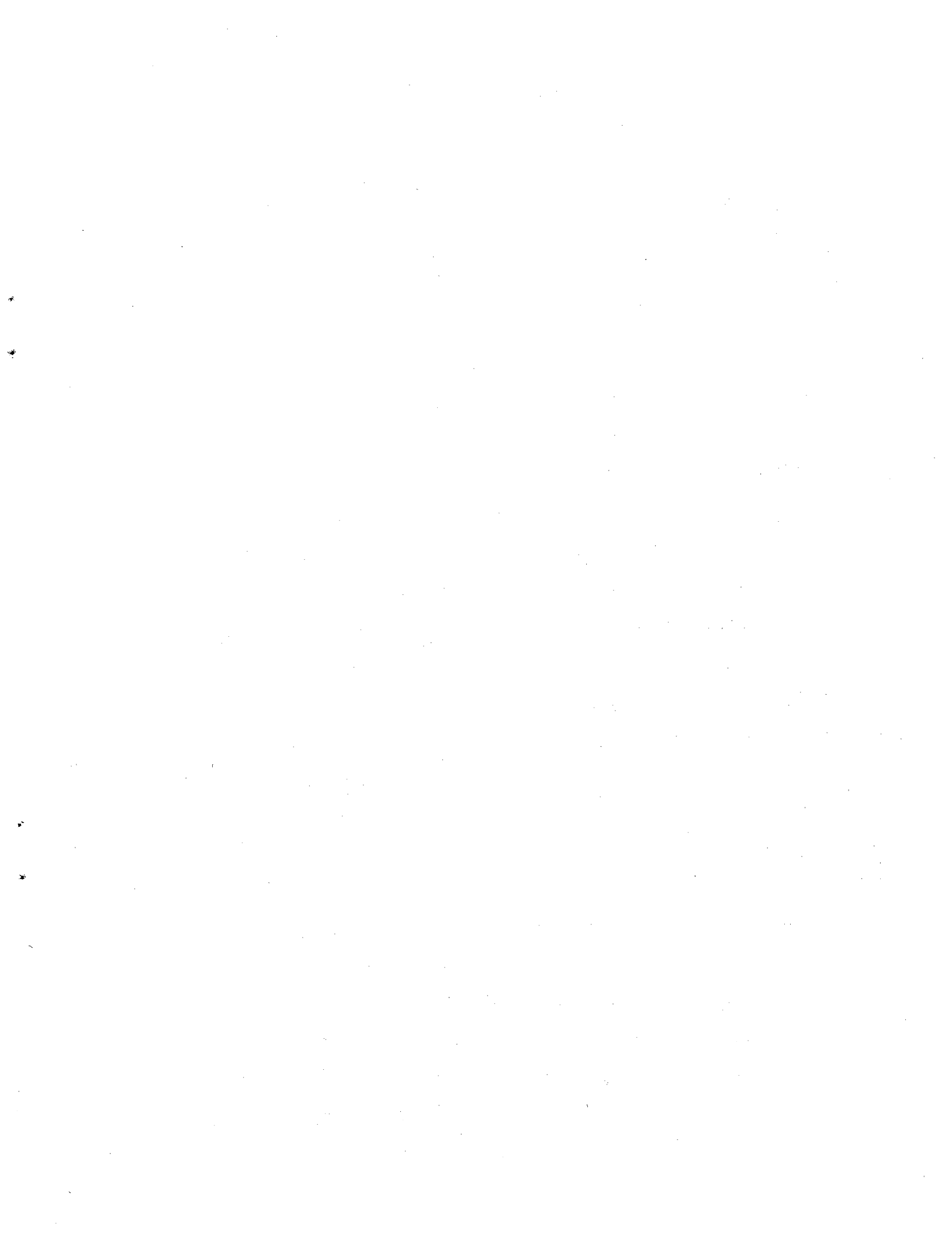
SENATOR LANCE: Having been a judge for five years, I appreciate that you may sit on the bench for twenty minutes in hearing a workmen's compensation case coming to you and then the two lawyers will throw on your bench a brief of twenty pages, each, and a transcript of the hearing which may run 500 pages with doctors testifying. The bench time might be twenty minutes, but the actual time consumed in ultimately making a determination might have a ratio of ten to one or twenty to one or what have you. It's rather difficult to translate into manhours the relationship between bench time and ultimate over all time consumed.

MR. LABREQUE: Well, our problem on a smaller scale is somewhat similar.

SENATOR HILLERY: It is almost similar to a legislator, isn't it?

MR. LABREQUE: Yes, I agree. As a matter of fact I have found out since I have been down here that a legislator's work is never done.

SENATOR LANCE: Well, thank you again, Mr. Labreque.



Mr. Danskin, will you start out by identifying yourself and tell us how many years of experience you have had with the Division of Tax Appeals or its predecessor body in one capacity or another.

MR. BENJAMIN S. DANSKIN: I began in the local field of taxation in the Borough of Spring Lake before I became a member of the Monmouth Board of Taxation, which was in 1942. I served as a member and president of that Board until 1951 when I became secretary of the Division of Tax Appeals. I retired from that position on the first of October.

SENATOR LANCE: So how many years were you the secretary of the State Division or its predecessor?

MR. DANSKIN: Seven years.

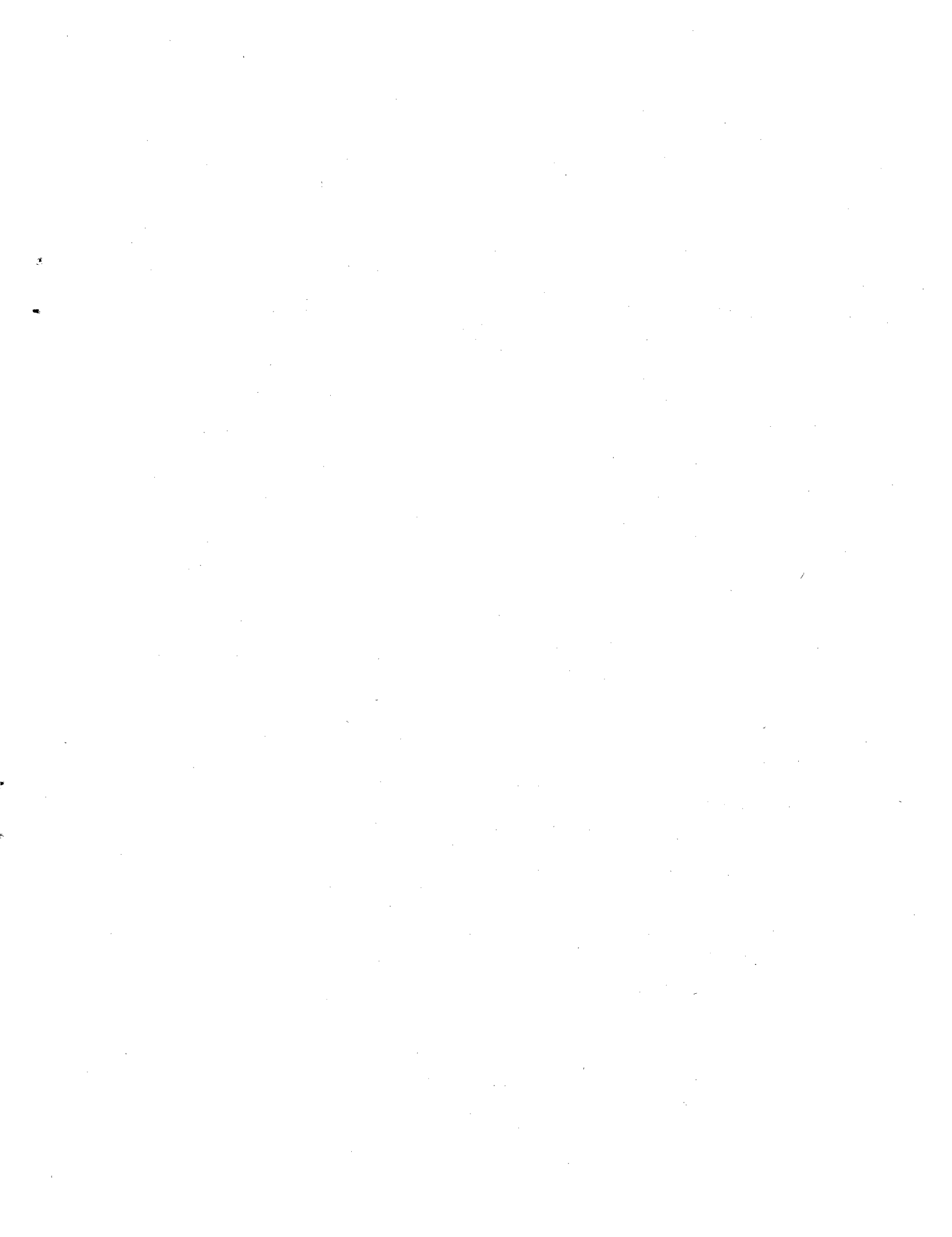
SENATOR LANCE: Go right ahead.

MR. DANSKIN: Do you want me to go into what I have to say now, Senator?

SENATOR LANCE: Yes.

MR. DANSKIN: I haven't any prepared statement. I listened with a great deal of interest to the presentation made by President Labreque and I think that he has covered the matter very thoroughly. However, there are certain little things which myself as administrator of the Division over the years noticed that there were some - you might say omissions.

Number one, an appeal filed in 1958 doesn't have to be filed until the 15th of December 1958. So that in 1959, the 1958 appeals are current. They can't possibly be heard before 1959. Now in the appeals mentioned by President Labreque, he did not include the appeals which might come to the Division from any action of

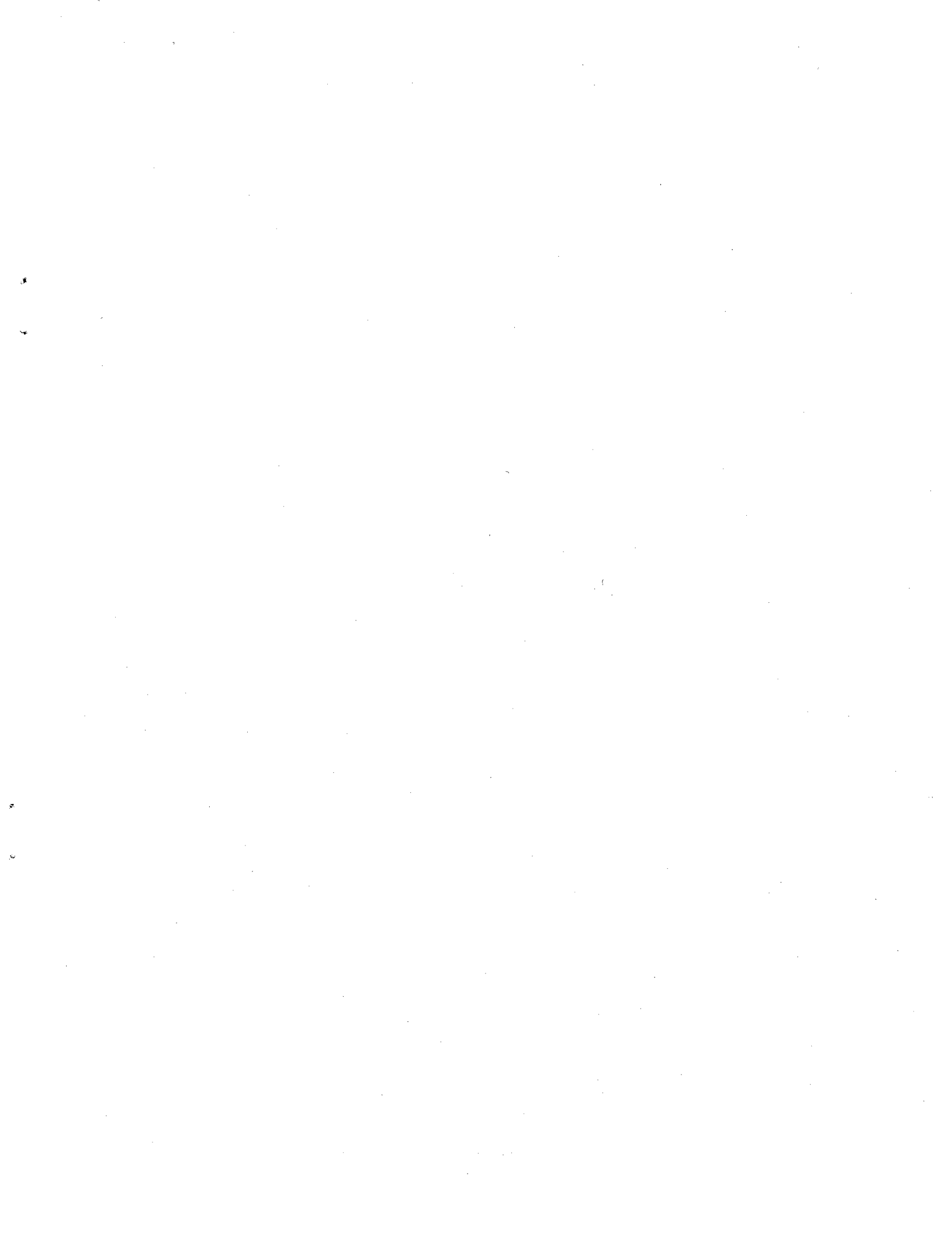


the County Board. The County Board, as you know, prepares an abstract of rateables which contains many things so far as the distribution of the cost of county government is concerned and other matters. That matter is also appealable to the Division of Tax Appeals. Then, too, there is the matter of exemptions for hospitals, schools, churches and veterans' exemptions. Take, for instance, here in the City of Trenton the Rider College appeal took days and days of testimony - reams of testimony before the matter could be decided and it subsequently reached the Supreme Court.

The Division, of course, of necessity and properly is subordinate to the courts and where a case is pending in court for final decision in any matter, the Division of Tax Appeals must of necessity put off hearing that appeal until the final decision comes down.

In the matter of the panel reports, up until the Fifth Street Pier Case, the panel reports were not submitted to the interested parties until after their adoption. That put a tremendous burden on the Commissioners as to the form and content of the panel report and also increased the administrative work of the Division in having to send out the panel reports to the interested parties. That is in addition to the delay in the final decision which was mentioned by President Labreque.

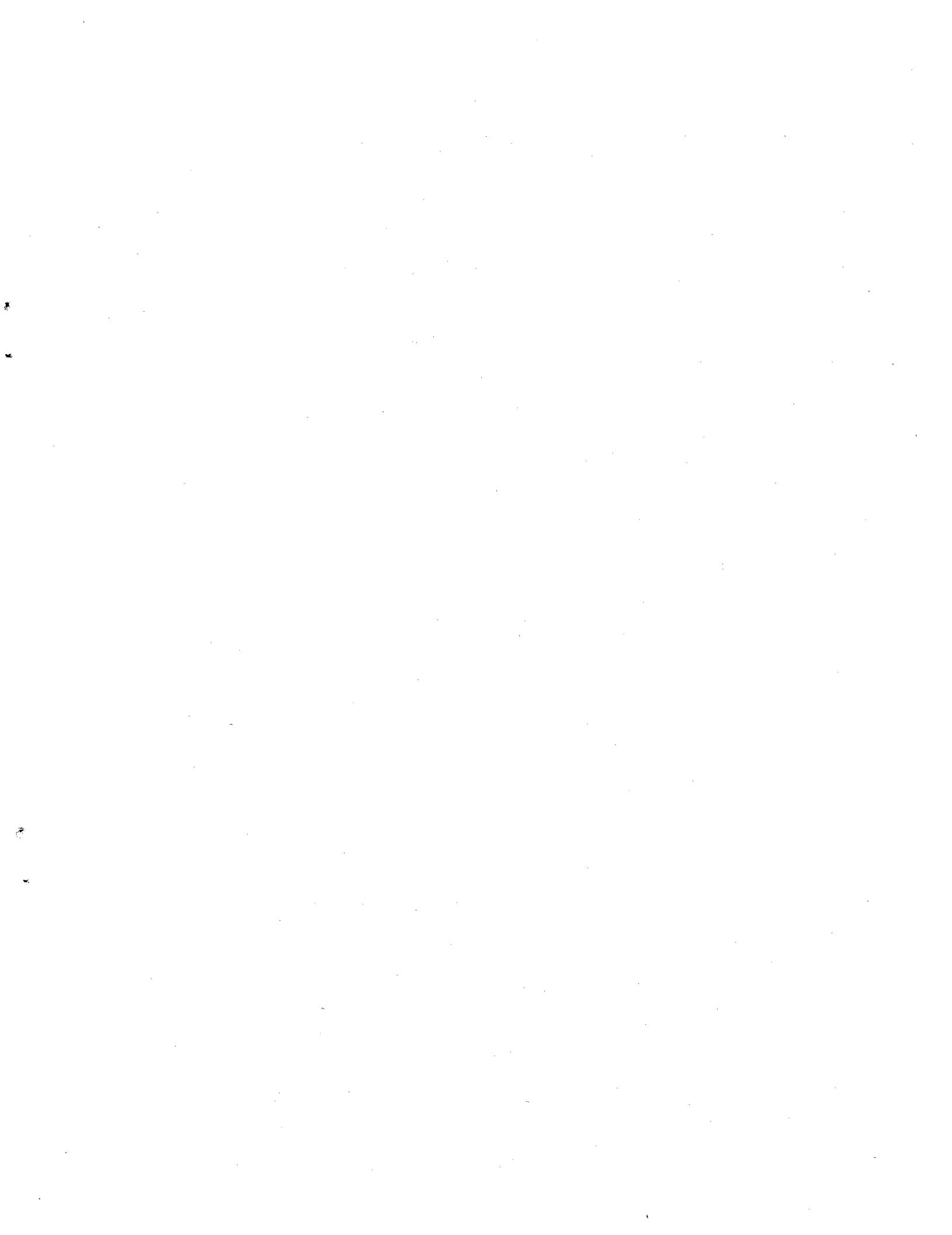
Now, most of the talk of remodeling the Division, both pro and con, comes from, well, you might say the taxpayers who have a great deal at stake. But, as I said before, other things must be considered. The little taxpayer, as was mentioned by President Labreque, is just as much interested in the amount of



taxes that he pays as is the Pennsylvania Railroad Company and in some cases, you might say, that they are entitled to relief more than the very large taxpayer. That is the type of appeal which over the years, both at the County Board level and at the Division level, has been given a great deal of consideration by the Division and the County Boards and justly so.

You know today that people are more tax conscious than they have ever been. The difference of \$500 in your assessment when the tax rate was \$3.50 is a long ways from \$500 when your tax rate is \$22 a thousand. So that the little fellow takes up more time now than he used to and he is given every opportunity to present his case, with or without the advice of counsel or expert witnesses.

Now we have had appeals, lengthy appeals, from the abstract of rateables as to the inclusion of personal property in the matter of the distribution of county taxes without equalization and such related subjects. So as I told the presiding Senator in a conversation with him, a lot of the pros and cons of this problem comes from the uninitiated who have no more idea what the Division of Tax Appeals does than the man who doesn't even pay any taxes. I just made those few notes. Now, Mr. Labreque mentioned the Pennsylvania Railroad Case which was a very lengthy case. It seems perhaps at a first glance that that case might have been concluded sooner. But we also have to subordinate our time to the County Boards at certain times of the year. For instance, the majority of our appeals of necessity come from Essex, Hudson and Bergen, which are the bigger counties and the County Boards have to hear their appeals between the 15th of August and the

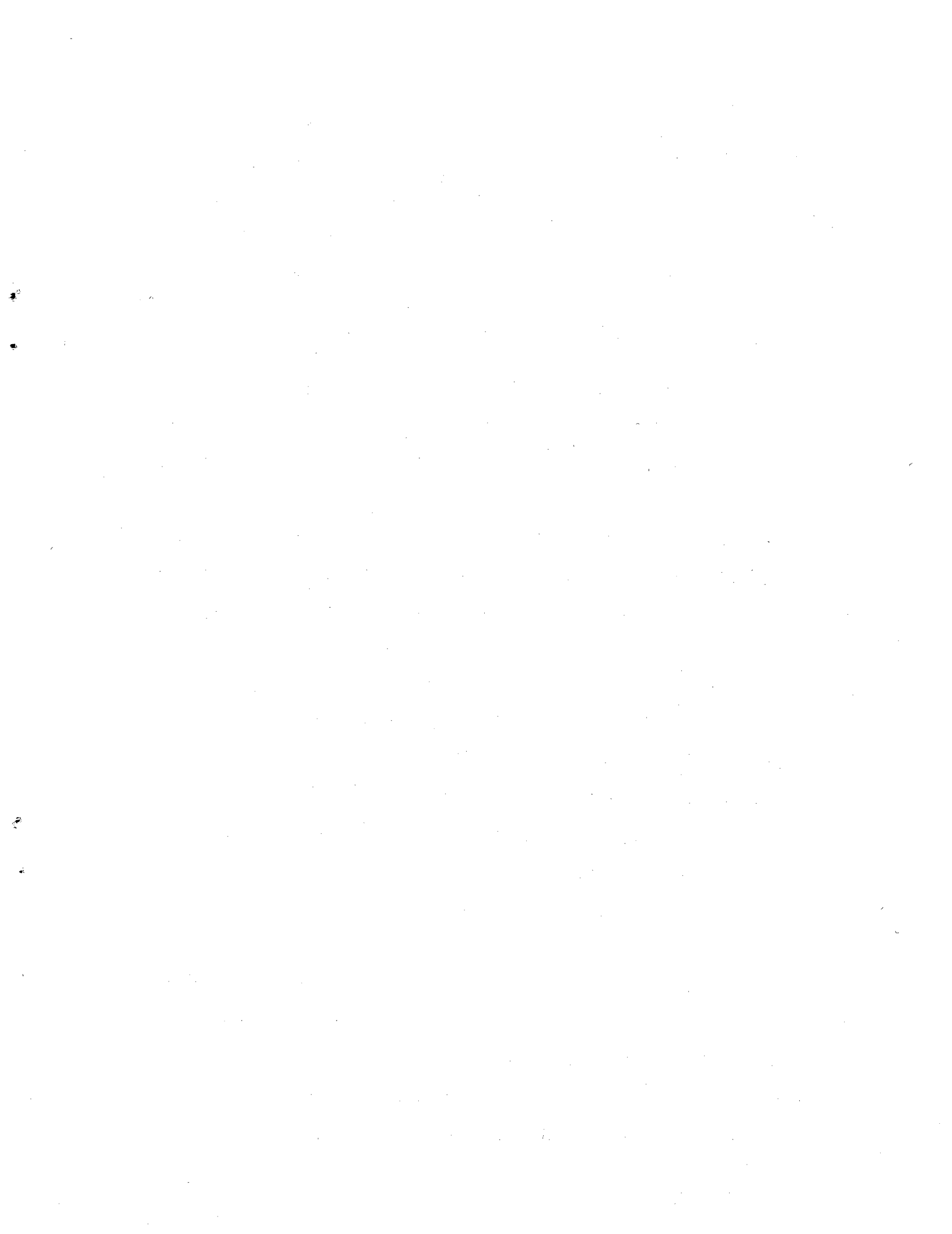


15th of November and you can readily see that they use the same attorneys, the same municipal attorneys, the same attorneys for the litigants in a great many cases, and the same expert witnesses. And, therefore, we can't fix appeals during the time which the County Boards sit because of the statutory date which they have for completion.

Now, I think that this bill is a step forward. There is no question about it. I feel that something has to be done to keep the appeals more current. The presiding Senator who is probably very familiar with this whole thing. We had some conversations about the matter and he showed a great deal of knowledge of the actions of the Division of Tax Appeals, but I just wanted to add these few remarks to what the President has said.

There wasn't quite enough stress, I don't think, put on the Gibraltar Case, which for the first time in this State, the Division appeals had the right to reduce the assessment below true value if discrimination can be shown. Now, you gentlemen all know that there aren't any properties -- well, I say that just in passing -- but there are very few properties in New Jersey assessed at 100 per cent. Now, if they can't prove discrimination, they can't get relief and the matter of proving discrimination is something else again. So there again is the time-consuming practice which the Division is now faced with which they weren't faced with before.

I think that probably concludes my statement, gentlemen, on the subject. I would be very happy to answer, if I can, any questions which you might have to ask.



SENATOR HILLERY: Mr. Danskin, are you an attorney?

MR. DANSKIN: No, sir.

SENATOR HILLERY: Well, what training did you have for your work on the board? Are you a realtor?

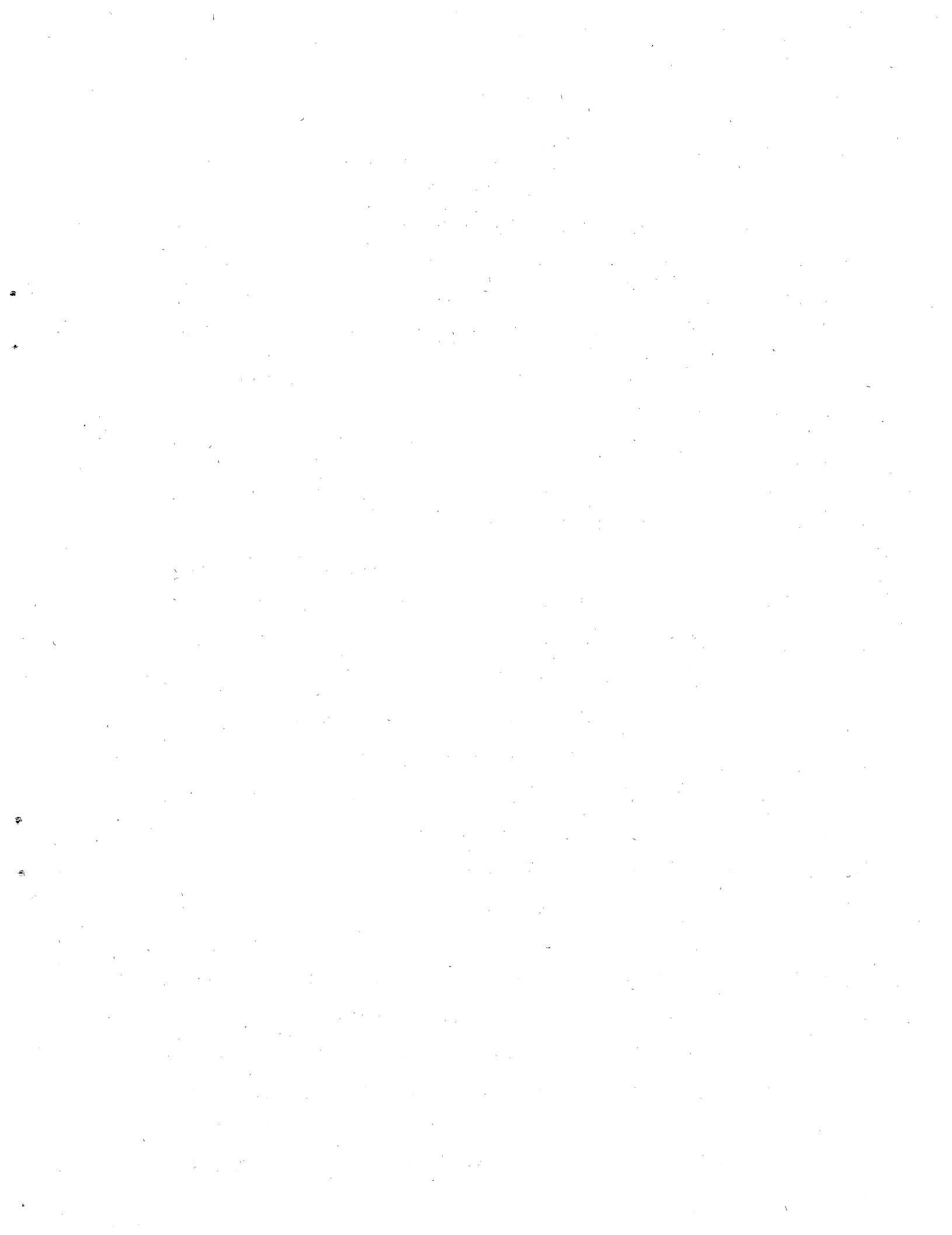
MR. DANSKIN: Just simply a study of the law and the discussion of the opinions, both with the members of the Division and the Judiciary.

SENATOR HILLERY: You are in agreement with the statement in the law that in the future it should be turned over completely to attorneys-at-law, the membership?

MR. DANSKIN: If they sit singly, definitely. If they sit singly, they definitely should be attorneys.

SENATOR LANCE: Would it be impractical to move back the August 15th deadline for a County Board of Tax Appeal filings to some date earlier in the year, such as April or May?

MR. DANSKIN: Senator, that I don't think is practical. That was changed you know many years ago. The reason for that is the fact too, you understand, that the County Boards are also part time. Well, let's take the procedure, if you would like me to, right from the start. The local assessor begins his work of preparing the tax rolls for the subsequent year on the first of October. He must file his tax list in duplicate with the County Board on or before the 10th of January and from the 10th of January until the first of April, the County Board in effect are assessors. It is their job to check the assessment rolls for mathematical errors or any other kind of errors and also determine whether or not the assessments are proper which have been filed by the assessor. Then they have to, after they



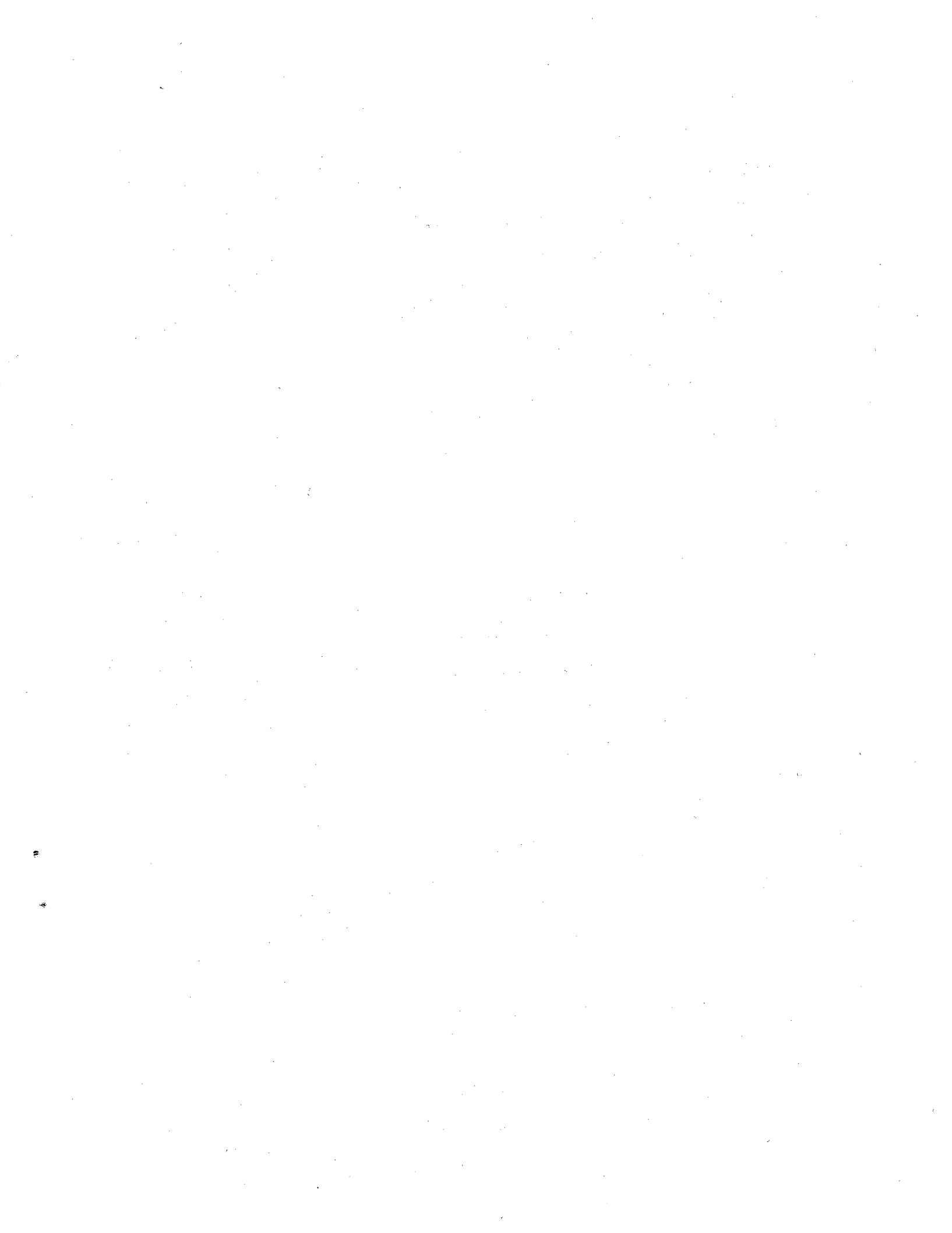
receive the municipal budget and after they receive the county budget, strike a rate and they prepare their abstract of rateables. The tax bills usually go out around the first of May and that is about the earliest date that the tax bills can get out. So to push the initial filing date for the County Boards up ahead of August 15th, I can't see very well how it can be done to give the taxpayer an opportunity to get his bill and determine whether or not the assessment on his property is proper.

SENATOR LANCE: So it is your conclusion, considering all the details and all the people that are in this picture, the earliest an owner could possibly have a hearing would be the year following?

MR. DANSKIN: -- from the Division of Tax Appeals. There is no question about that because December 15th, even if there were no backlog, the administrative process in getting a tax appeal in and docketing it and acknowledging it and going through the work of preparing calendars, it wouldn't be possible in the same fiscal year to hear the appeal which was filed on December 15th.

SENATOR HILLERY: You are in agreement with the statement in the law that it should be full-time work?

MR. DANSKIN: Yes, to a degree. I agree with the President. Knowing this work as I do, Senator, and the importance of it, nothing but the best should be attracted to this job. Someone, as Mr. Labreque has said, would make it a life job. It is quite a study. You know that very few lawyers handle tax appeals. It is you might say almost a separate field. Now you have separate fields for workmen's compensation, negligence and chancery matters,



men who specialize in that and that is the way it is in taxation. The ramifications of it, as I enlarged on the President's report, of the type of appeals which we hear would show you that a man must have the background and the training and the study and the ability to make the research which is necessary to make these decisions. So I think if it is going to be a full-time job, the pay and the other fringe benefits should be sufficient to attract the proper men to the job so that they could devote their time to it rather than expect some day that they will be out in the cold without either a practice or a job and you will find, if you get into this tax field, that it is rather complicated.

SENATOR HILLERY: Senator Lance informs me that the bill does not make it a full-time job.

MR. DANSKIN: This does not make it a full-time job. In the bill as originally drawn it was a full-time job. It was amended to remove that section.

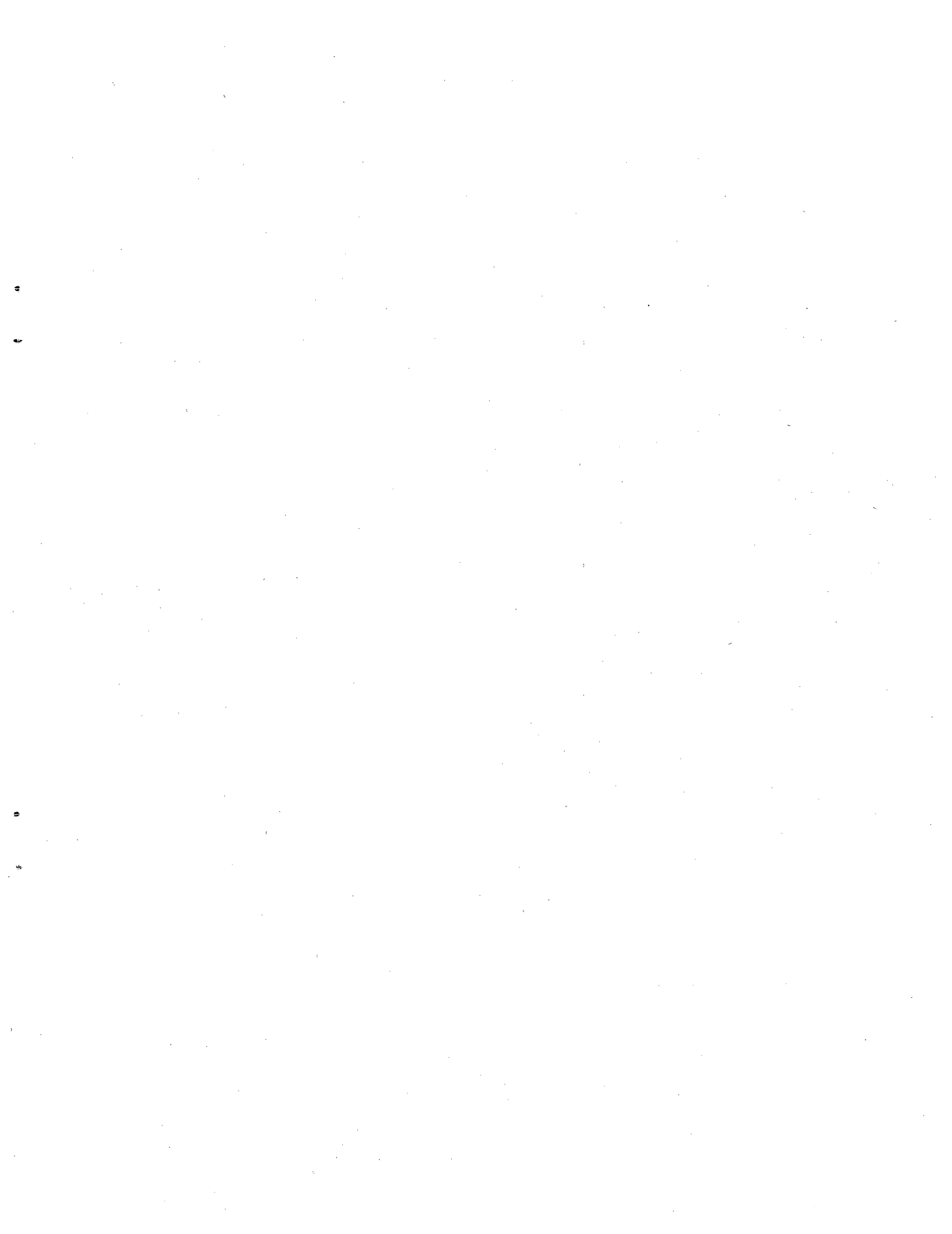
SENATOR HILLERY: What is your recommendation then, that it should be full time?

MR. DANSKIN: I don't have any recommendation on that today, Senator. The reason for it is this: There has been legislation introduced over the past number of years, corrective measures, to try to cope with this situation, and were I the arbiter in this matter, I would say pass 323 rather than to complicate the matter further by interjecting whether or not it should be full time or what the salary should be and so forth and so on.

SENATOR HILLERY: Thank you.

SENATOR LANCE: If it were made full time, you would advocate certain changes?

MR. DANSKIN: Oh, definitely.



SENATOR LANCE: Of what nature?

MR. DANSKIN: I would reduce the number of the Commissioners and increase the salary very substantially.

SENATOR LANCE: How many Commissioners and what salary?

MR. DANSKIN: I would suggest five Commissioners - a minimum of \$18,000 for the Commissioners and \$19,000 for the President.

SENATOR LANCE: And would you go further and copy the court system in any way?

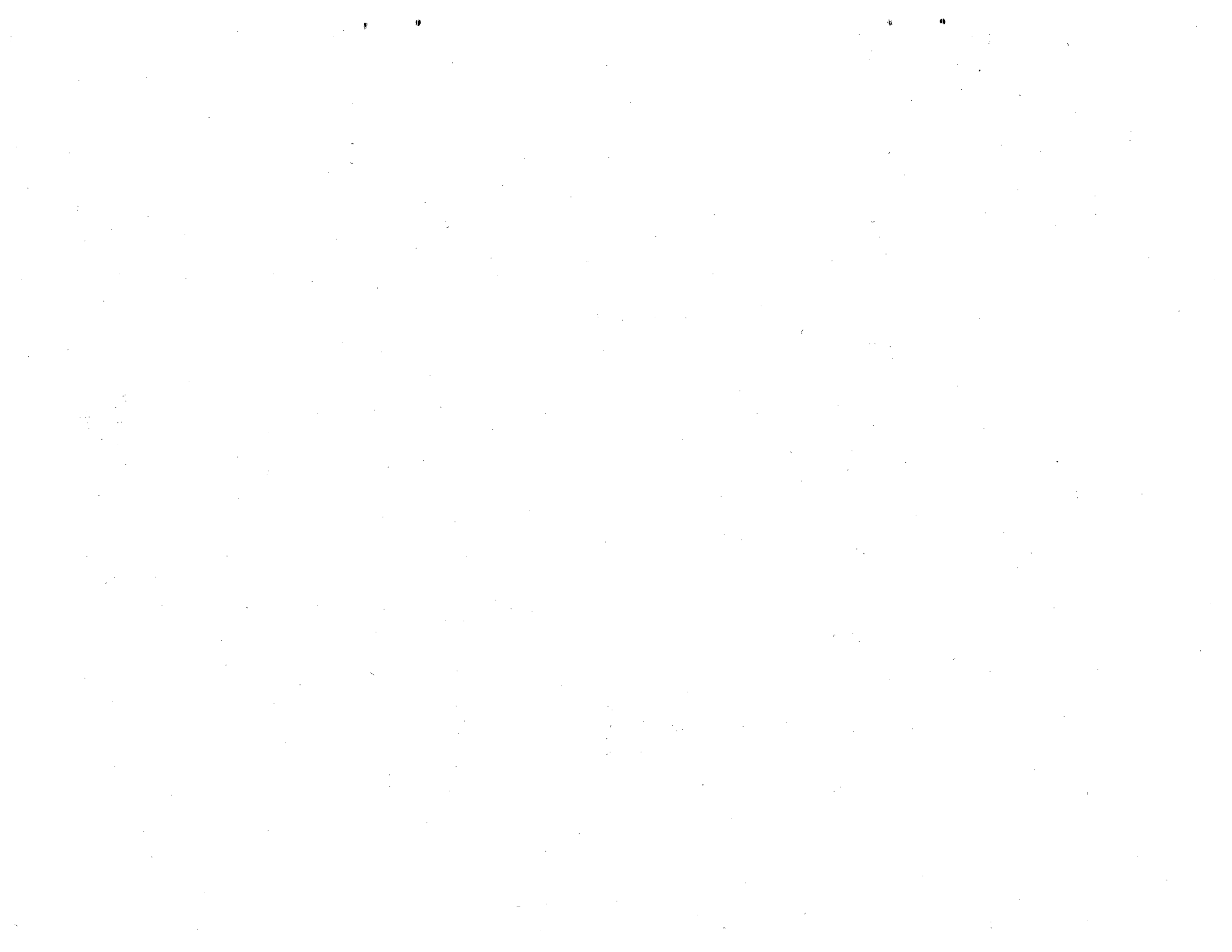
MR. DANSKIN: There is a division of opinion on that.

As you know the United States Tax Court is not in the Judiciary; it is in the Administrative Branch of the government. And over the years there have been many arguments pro and con on that, whether to establish a tax court in New Jersey in the Executive Branch of the government or whether to make it a part of the Judiciary. There has been a suggestion made that a Tax Division be established in the Superior Court, such as the Matrimonial Division, the Law Division, the Appellate Division, etc. In that event, of course, the judges would be interchangeable, if necessary, to take care of any calendar load.

But, as I said before, there have been so many suggestions made and so many bills introduced and so much talk about this that I think, to put it very frankly to you gentlemen, it is time that the talk stopped and something was done and I think this is the bill which would best serve as the first step anyway. That is the way I feel about it.

SENATOR MATHIS: Might I ask why it has been decided that a layman couldn't fill this position?

MR. DANSKIN: I don't agree with that, Senator, that laymen



can't fill the position. I simply say this - from my experience, if a Commissioner is going to sit in a judicial matter singly, I think that the training and the background of an attorney who has practiced in the courts of this State ~~he~~ would be better equipped to decide on the rules of evidence and the motions and the matters which come before him.

SENATOR HILLERY: Mr. Danskin, with your years of experience on this Board, don't you think that you would be capable as an individual to hear some cases and make decisions?

MR. DANSKIN: Well, I think that is rather an embarrassing question.

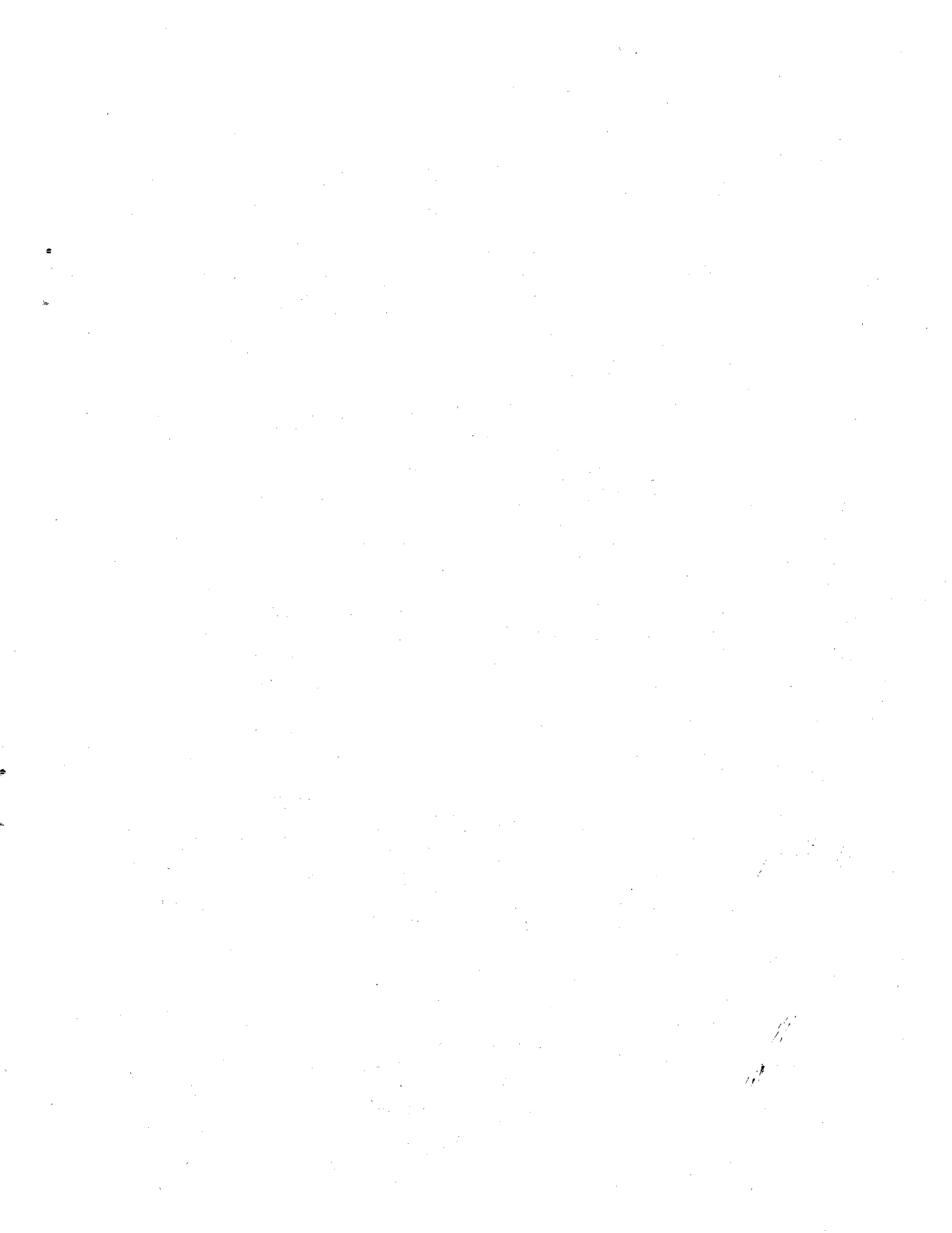
SENATOR HILLERY: I don't think it is at all. This is an important question.

MR. DANSKIN: As you know, I have sat in that capacity for pretty nearly ten years as a member of the County Board, hearing exactly the same type of appeals that the State Board now hears, except the assessments levied by the Director, the state assessments themselves. As a matter of fact, I could say this, that I have heard more appeals than any present member of the Division of Tax Appeals. But, of course, I might say, sir, that this has been almost a life study with me.

SENATOR HILLERY: Well, I think it has been a life study with a lot of laymen, such as realtors.

MR. DANSKIN: There is no question about it. You have some county tax board commissioners and county tax board secretaries that are perfectly capable.

SENATOR HILLERY: This bill would shut them out of the field.



MR. DANSKIN: No question of that.

SENATOR HILLERY: And you are in agreement with that?

MR. DANSKIN: Yes, sir.

SENATOR LANCE: Do you favor the holdover provision?

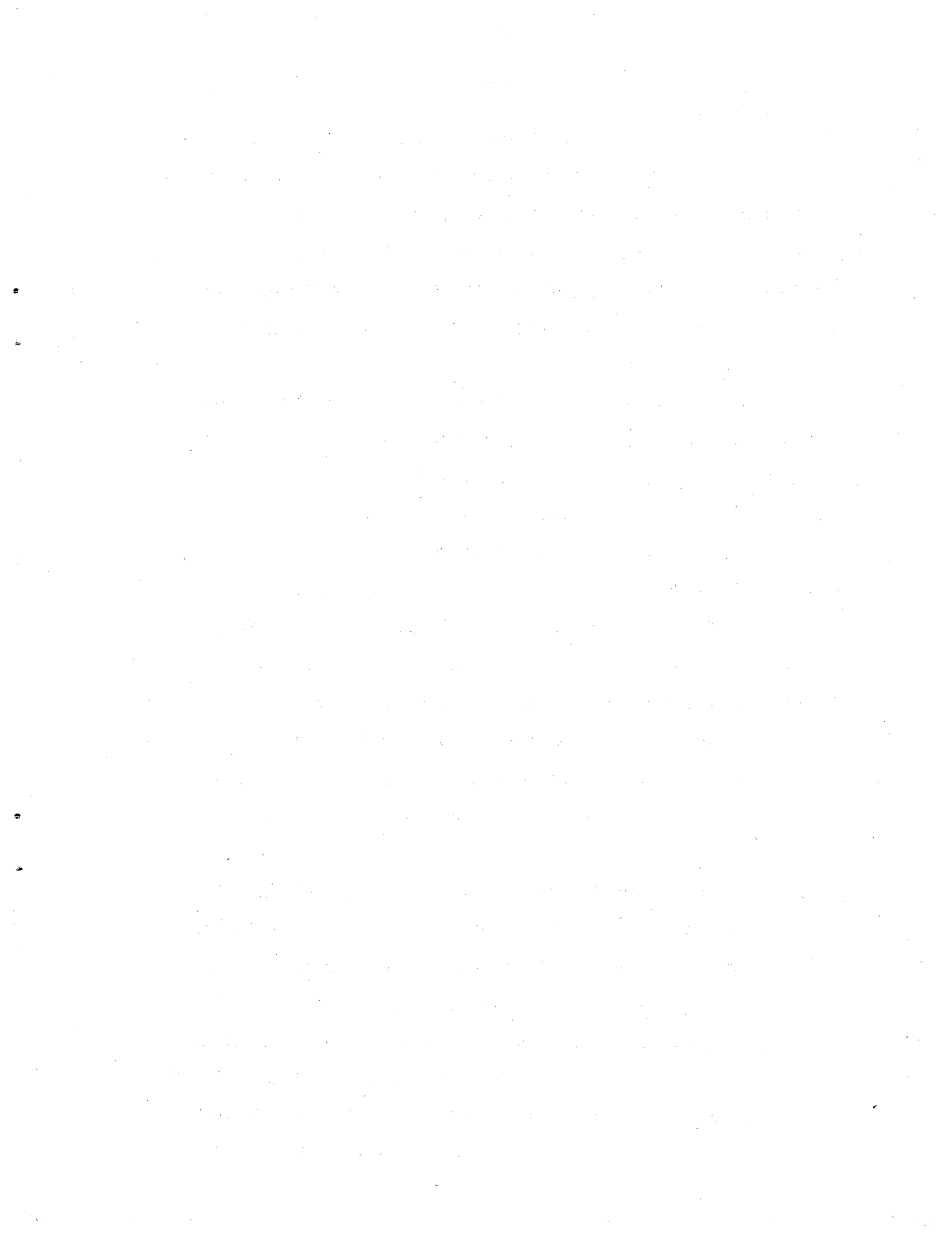
MR. DANSKIN: Oh, definitely.

SENATOR LANCE: And you favor the vesting with the President of the discretion to have a single member make a decision?

MR. DANSKIN: Yes, that is, if they pass 323. That would be the provision.

SENATOR LANCE: There are three ways, at least, changes could be made in the composition. One would be the Tax Court originally advocated by the State Bar Association, in which event the members would be Superior Court judges with tenure upon a second appointment, a non-contributory pension, etc. The second would be the retention of the body as an administrative body on a part-time basis. The third would be the retention of the body as an administrative body on a part-time basis or on a full-time basis, with an increased salary. Now the question I originally meant to ask was: If this body were to be retained as an administrative body with full-time service, would you go further and copy from the Courts any of their provisions as to additional emoluments or benefits?

MR. DANSKIN: Yes. I think that the additional emoluments and benefits should be provided because as Justice Brennan set forth in the Passaic decision, there are times when we, the Division of Tax Appeals - I say "we"; I am no longer "we" - but the Division of Tax Appeals has three functions at present. One is an administrative agency. The other is a quasi-judicial body



and the other, as set forth by Justice Brennan, sitting in school aid appeals or county equalization appeals, they then become a quasi-legislative body to follow out and carry out the wishes of the Legislature in the apportionment of these funds.

SENATOR LANCE: If the other members of the Committee have no further questions, we want to thank you, Mr. Danskin, for testifying.

MR. DANSKIN: Thank you very much for the opportunity, gentlemen.

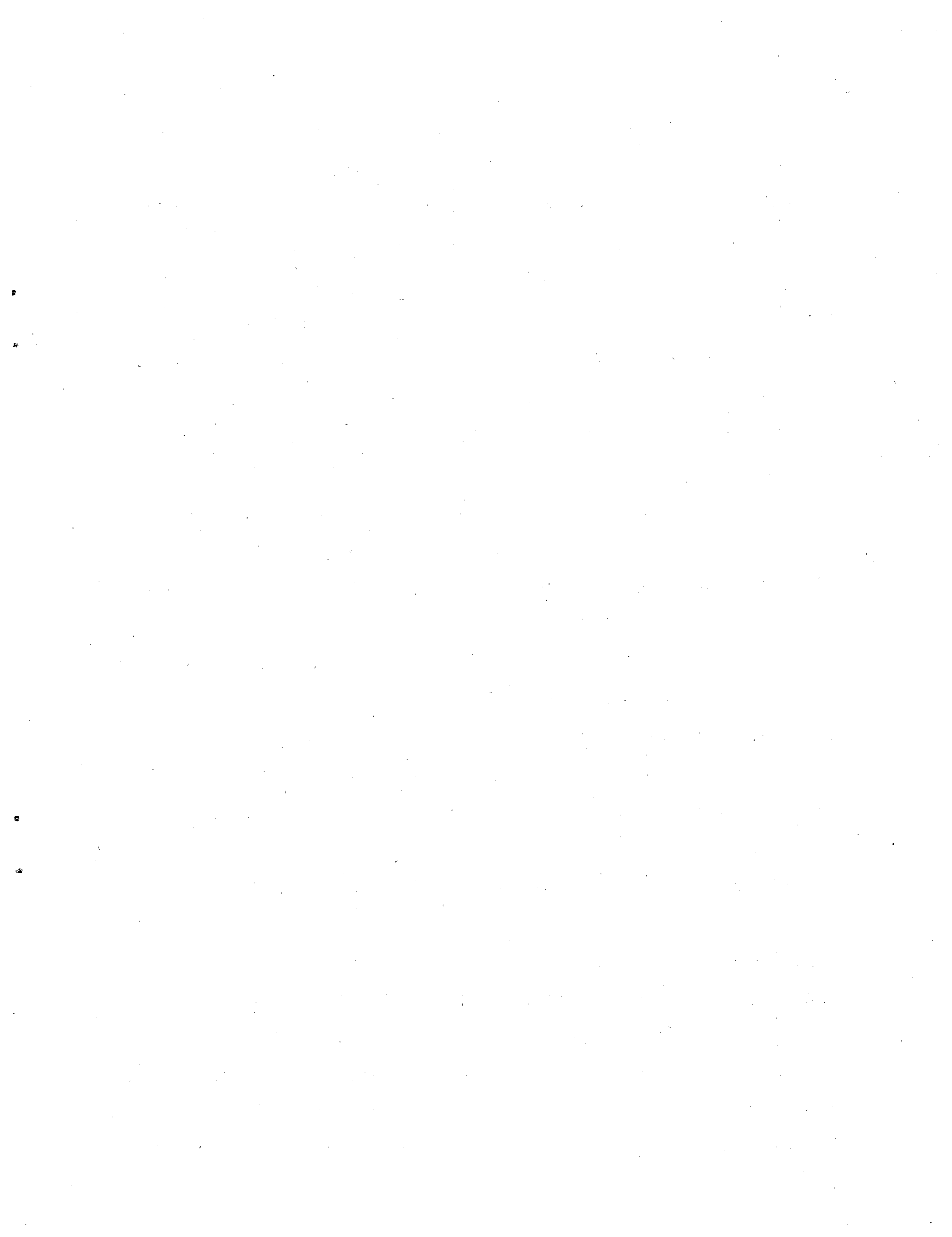
SENATOR LANCE: Are there other members of the State Board, Mr. Labreque, who desire to testify?

MR. LABREQUE: They feel that the matter has been adequately covered unless something is brought up which needs further clarification.

SENATOR LANCE: I will now call on Mr. Taub representing the State Bar Association. Do you want to take the stand where we have the microphone attached?

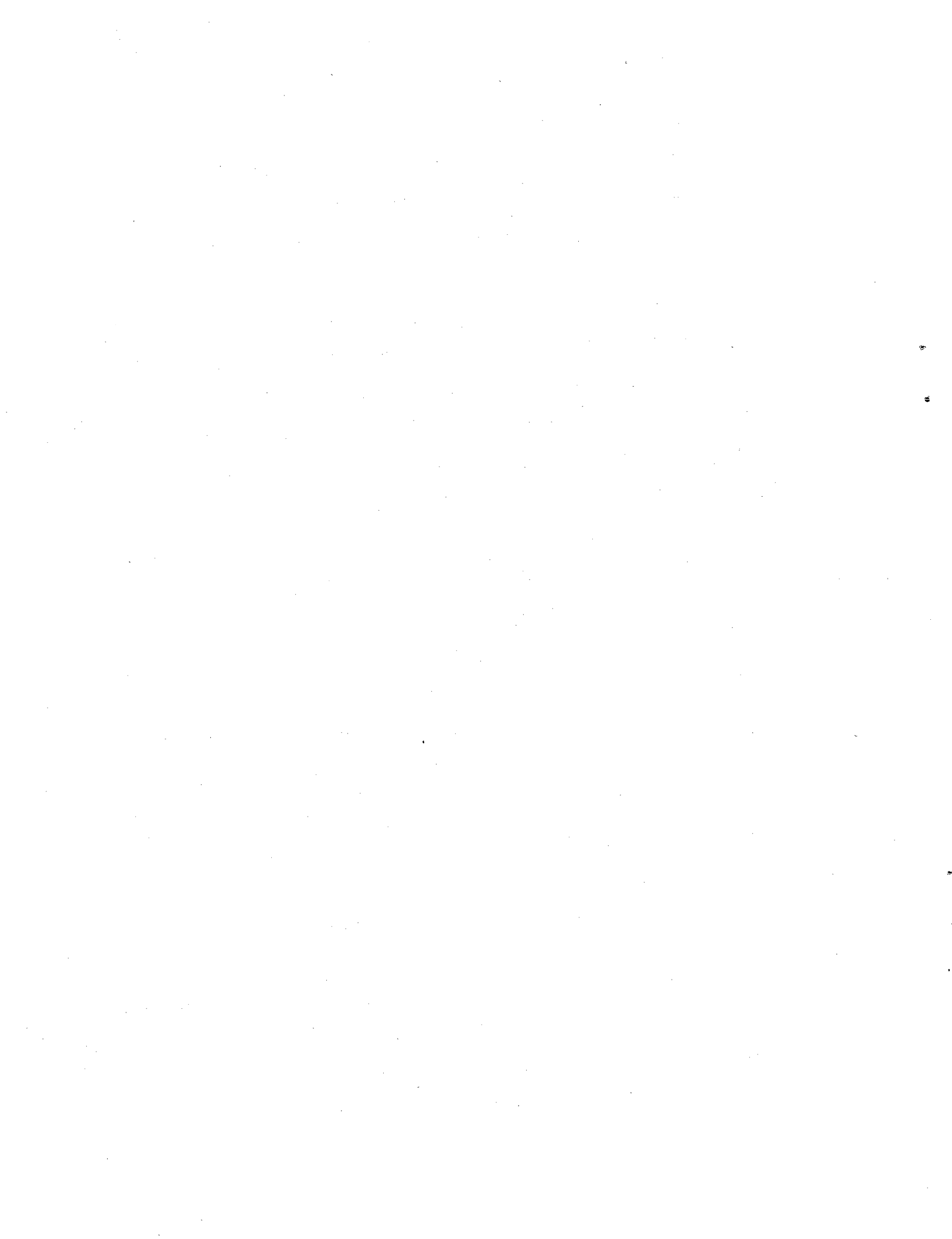
MR. BENJAMIN M. TAUB: Senator Lance and Senators Hillery and Mathis: I received the letter Saturday morning which asked me as Chairman of the State Bar Association to present a brief for the benefit of the Judiciary Committee. But getting it Saturday morning and presenting a brief today, it was almost an impossibility.

However, I would like to bring the Committee up to date on what transpired in so far as we lawyers are concerned as a State Bar Association and as a Committee on State Taxation appointed by the President of the State Bar. Now the Committee on State Taxation very definitely took a stand on both 315



and 323. We are still the proponents and the sponsors and in favor of 315. At a meeting of the Committee, by a divided vote, the Committee voted to oppose 323 and I as Chairman of the Committee in my report to the State Bar Association, which I read last Saturday at the mid-winter meeting of the State Bar, suggested that inasmuch as there was a divided opinion among the lawyers as to the value of 323 if it were passed and what effect it would have upon the administration of justice involving tax-litigated matters, I left it to the State Bar Association - that is, when I say "I", I am talking for the Committee now on State Taxation - to decide as to whether or not we should oppose 323 as we did oppose 384 in 1956 and '97, which was reintroduced by Assemblyman Deamer in 1958 and which in the opinion of the Committee is practically 323 with the exception that it has a holdover provision for the members of the Board, with which we fully agree.

Now we feel as a Committee that if we can't get 315 - and I doubt or I can't see anything on the horizon that we can get it, although that would be the solution to the whole problem - for the present time we see no objection to 323 being passed. As a matter of fact there are two provisions in 323 that we feel, as a State Bar Association and as a Committee and as lawyers, would help tax matters considerably and would also help the "complex" of the Board considerably and one is a holdover provision. In other words, when a man's term expires, if anything goes wrong, why he is off the Board. The President of the Board had that very problem happen to him on two occasions, I think, and then was reappointed. We think that ought to be taken



out of the present law and the holdover provision should be retained. We further feel that if the decisions are going to be made by the Board, they should be made by one man in the form of a judgment, sitting after hearing the case. If you could possibly amend it right now, I would like to see that panel provision taken out and leave it to a one-man decision throughout; instead of having it one or two or three at the discretion of the President of the Board, I would much prefer to see it decided by one man.

We happen to be very fortunate in having a President of the Tax Division of Appeals who is sincere and interested in his work. But what if we get a President, say, four years from now who likes a little golf more than he does tax matters or he likes the practice of law a little more than he does his own tax matters as a member of the Commission? We are going to run into trouble again.

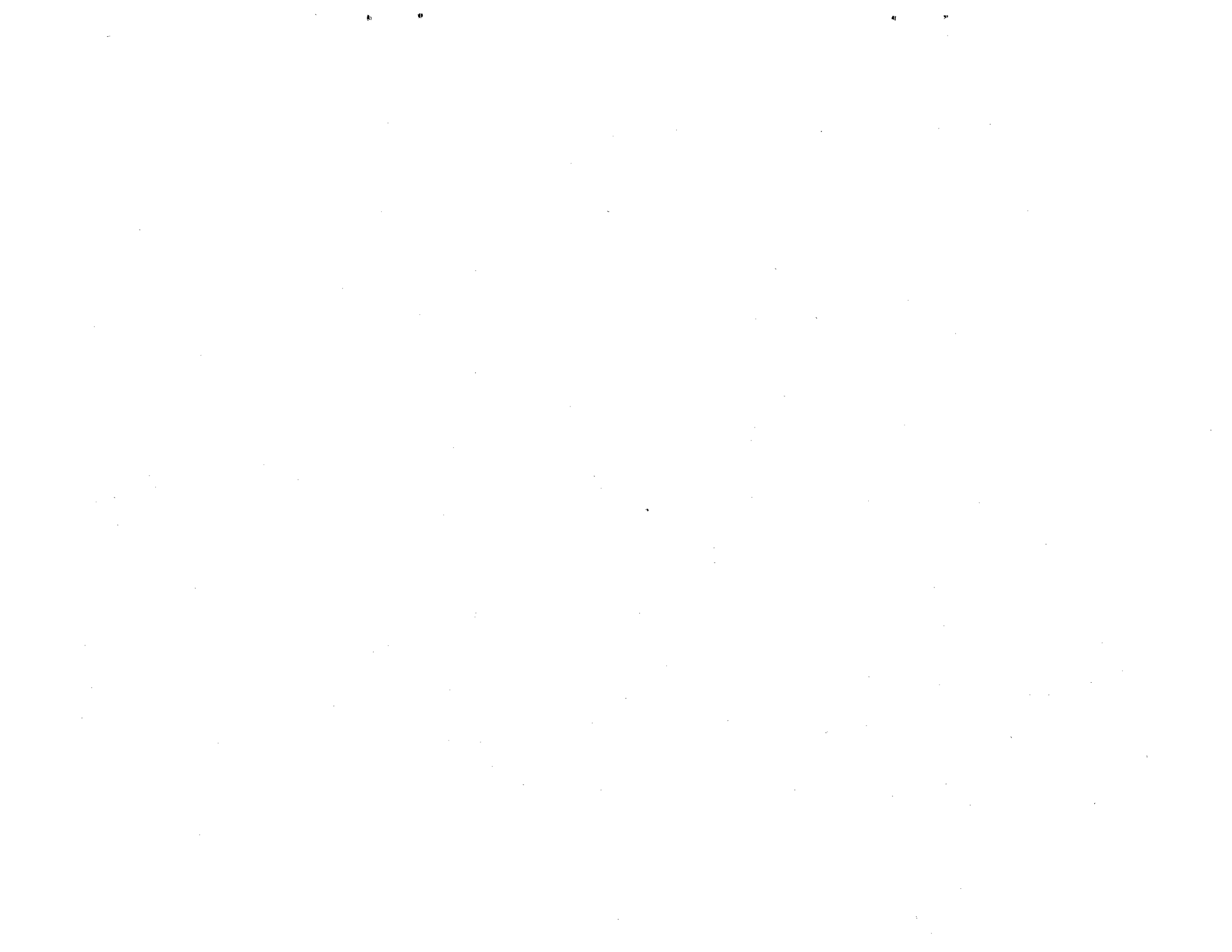
I want to call your attention to this one fact. The President of the Board, himself, stated that there were 3,404 cases pending right now as of November 20th. I think my addition and my arithmetic are correct. Add to that approximately 1500 cases that might come in as of December 1st for 1958, which would bring it pretty close to 5,000 cases again. And that is a Herculean task to try to get around. You have to do some tall sitting, in the vernacular, to try to dispose of a calendar that is behind to the extent of 5,000 cases. If one man is going to sit, I think that you might be able to dispose on the local level, the local property appeals where no reports are necessary or no written judgments are necessary, of probably 70 per cent of those cases.



They could be decided right off the bench by the commissioner sitting, which would reduce the number of appeals.

But I say, gentlemen, and now I am talking not for the Committee, but for Ben Taub as a lawyer practicing in this state, that eventually we have to come to a court - that we will never be able to meet the tax situation in this state as an administrative body. We have tried it on several occasions. I had the privilege of amending that bill myself on two different occasions when I was a member of the Attorney General's Office. I had the privilege of trying many cases before the Tax Division. On one case alone, it took six months to try continuously by a panel. Judge Waesche who is now in the Superior Court was then President of the Division and he sat as the presiding member of the panel that tried that case. In another case I was interested in in Atlantic City, I think it took about six weeks with the whole board sitting, seven members - the Atlantic City Transportation Company Case - and then, of course, some would drop out and others would come back and it took almost two years before that case was determined by the Board. So that administratively I think that the method of disposing of appeals in this state has been a failure in my opinion, my own personal opinion.

However, coming back to what I said, the State Bar Association has gone on record unanimously to favor the passage of 323 if we can't get 315, but we are still in favor of 315. And that about sums it up. I don't want to go over statistics again that the President has already given you. But if you want a brief on this thing, I would be very happy to submit it. When is your next session, December 8th?



SENATOR LANCE: That's correct.

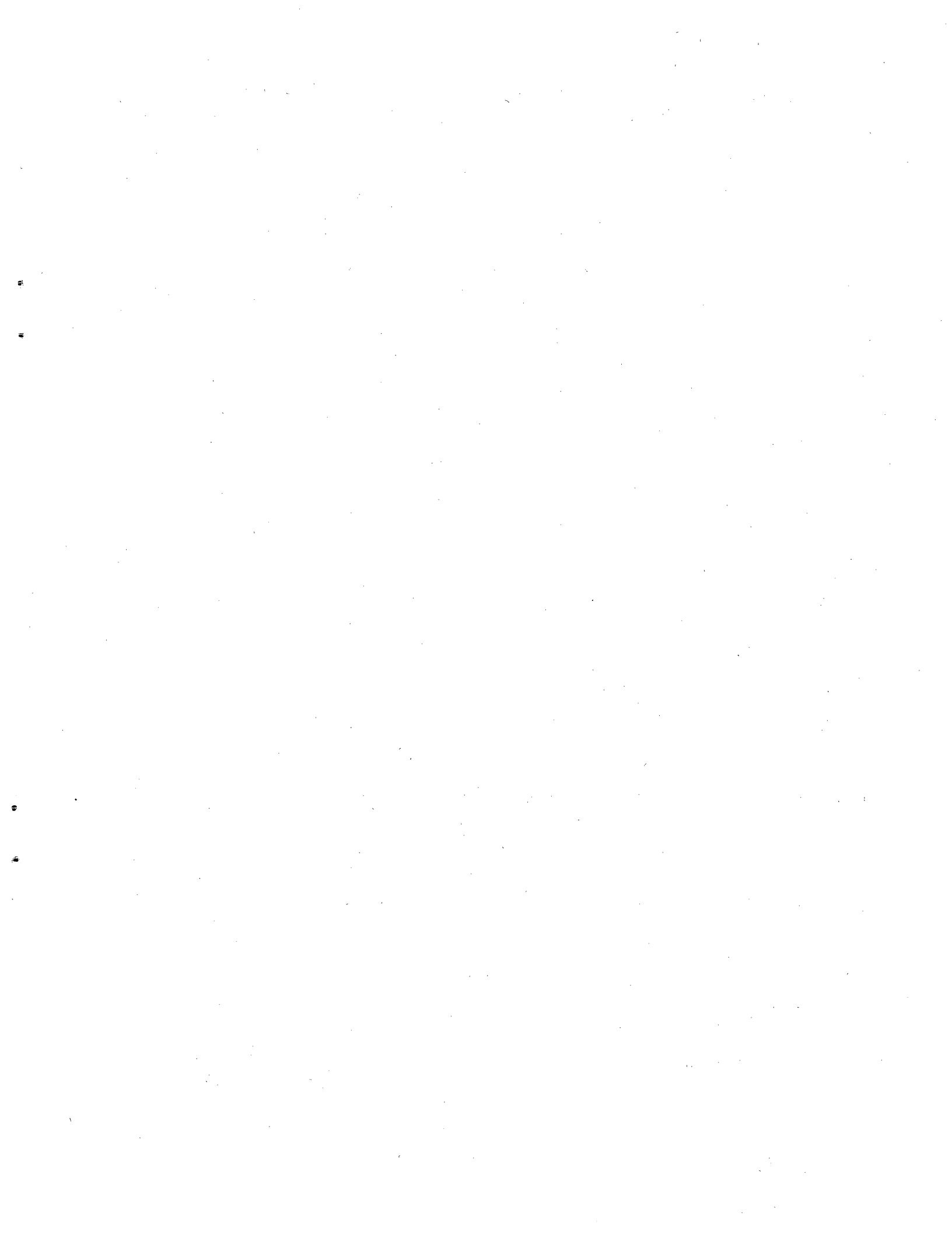
MR. TAUB: I think I could get it in before then and give you what our Committee in our study over the past three years has determined and found and concluded, and I might say that we have some good tax lawyers on our Committee, men of the type of Ed O'Mara, Aaron Lasser and Leo Rosenblum of Jersey City, all good lawyers, and Gus Nasmith representing the D.L. & W. by the way, and we have given this a lot of thought and a lot of study.

SENATOR HILLERY: What qualifies an attorney to sit on this Board? I mean, where would he get his prior experience as a tax expert?

MR. TAUB: You mean now as opposed to a lay member? Is that what you mean?

SENATOR HILLERY: Well, no, not necessarily, but just as an attorney. What qualifies him to be selected to an appointment to sit on this Board?

MR. TAUB: The mere fact that he is a lawyer first of all qualifies him because he has gone through a certain training and certain experiences that he has had. And most of the work before the Board in my opinion - and I have had eleven years of experience continuously, without doing anything else - is of a judicial nature. They do very little administrative work. I would say 97 per cent of their work is judicial and about 3 per cent probably when they meet once every month, is it, on a Tuesday, or twice, would be administrative. Secondly, there isn't a lawyer in this state - and I don't believe in this saying that you must be a specialist; you can become a specialist -- there isn't a lawyer in this state who would become a judge after



three or four years who wouldn't be a specialist in the field of taxation if he sat on these cases.

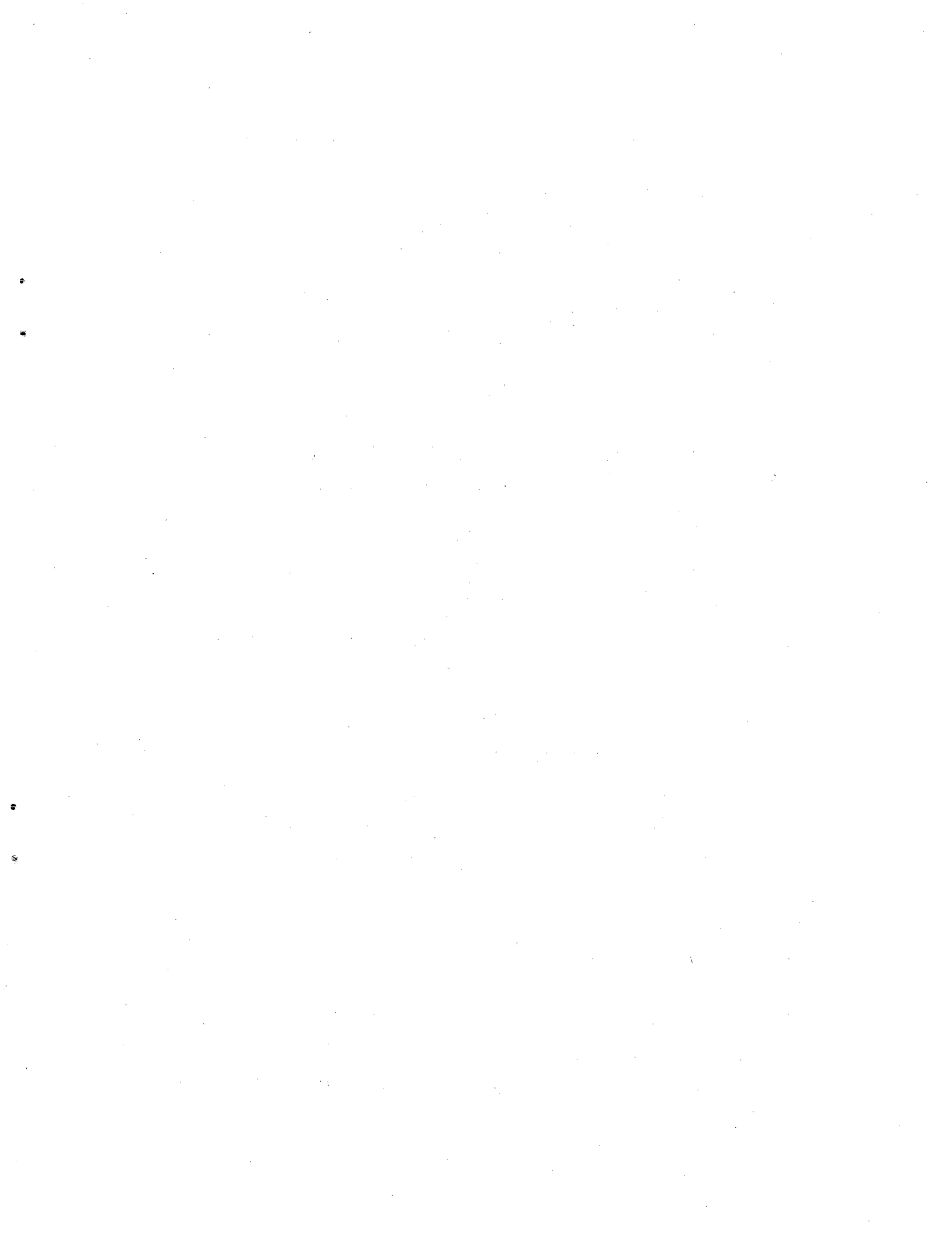
Now, Senator Hillery, the point that bothers me, and I will give you an example if you want me to, in answer to your question why a layman can't sit, and I am not opposed to laymen either ---

SENATOR HILLERY: I am not opposed either, sir.

MR. TAUB: A lot of these people are pretty good friends of mine and I don't want you to think I am opposed to them, and you are one of them. I have tried cases where we had a layman on the Board. We had two lawyers and a layman. This layman is no longer a member of the Board. He was from Union County. It resolved itself to this point where the two lawyers took opposite stands on a motion, so it was left to the layman to decide that motion. Now, he knew nothing about our rules of evidence, with all due respect to the layman. It takes a lawyer years of not only practice, but of study, and we have a code to go by. We have a code of evidence which guides the lawyer. And when you introduce expert testimony and where hundreds of thousands of dollars are involved, you have to be very careful what you let into the record and what you keep out of the record so as to see that the case is properly presented at least to the Appellate Court before it gets there.

SENATOR HILLERY: Well, what I am driving at is with a panel, a new man on a point of this kind could learn by sitting in with a panel and hearing cases. But under this law, a man, newly appointed, would then be one man deciding cases, isn't that right?

MR. TAUB: That's correct, Senator.



SENATOR LANCE: I want to be clear as to what official attitude the State Bar Association took at its meeting which it held last week, I believe.

MR. TAUB: That's right, Saturday. There were two motions that were adopted. One motion was that we favor the passage of 323. There was another motion made that we still continue our efforts and that we are still in favor of and we hope and trust that some day in the near future that we will have a tax court which will be integrated with our judicial system in the State of New Jersey and I feel that they should be Superior Court Judges with the same emolument and the same pension rights and the same term of appointment.

SENATOR LANCE: Both of those resolutions passed?

MR. TAUB: -- were adopted, yes. I just want to make one thing clear to Senator Hillery. I am not opposed to a layman.

SENATOR MATHIS: I don't imagine any practicing lawyer is, do you? I don't suppose any practicing lawyer is opposed to laymen?

MR. TAUB: No, I don't think so.

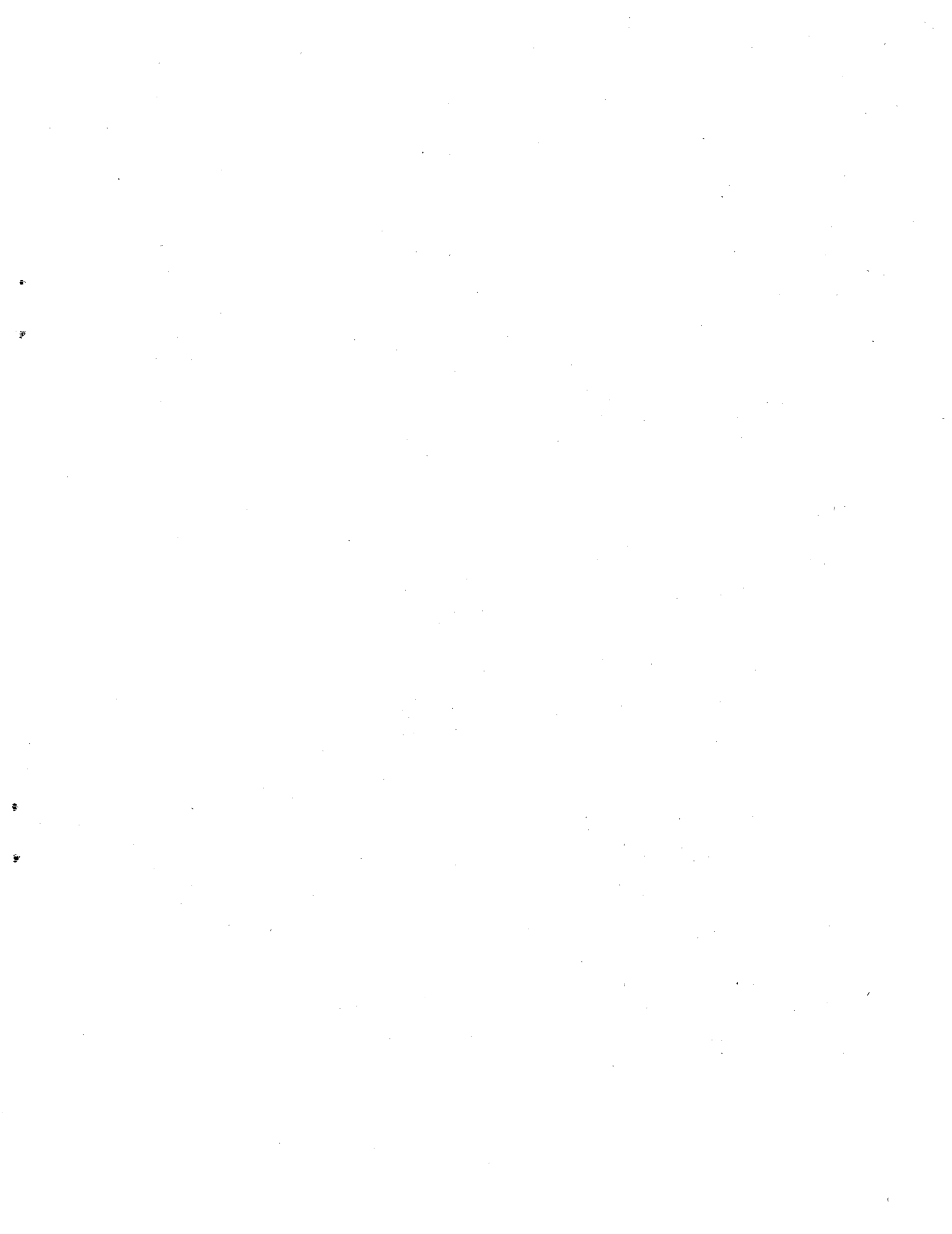
SENATOR LANCE: Mr. Taub, I want you to know that Senator Hillery in addition to being a manufacturer and a legislator is also a painter of some note and that from November 17th on he has an exhibition in the Madison Public Library where he has an exhibit of twenty water colors and twenty canvases.

MR. TAUB: I have heard about the talents of Senator Hillery.

SENATOR LANCE: Are there any others who desire to testify?

(No response)

I have a statement which was mailed to me by the State Chamber of Commerce, asking that it be filed and incorporated in full as part of the record. It is a five-page statement. Suppose we read that so everyone knows what it is.



Statement
of the
New Jersey State Chamber of Commerce
filed with the
Judiciary Committee
of the
New Jersey State Senate

Hearing on Assembly Bill 323
Monday, November 24, 1958

* * *

The Problem

Operation of the Division of Tax Appeals

Under the present law the Division of Tax Appeals is organized as a Division in the Department of the Treasury. It consists of seven members, at least four of whom must be attorneys-at-law "of at least ten years' standing". At present all the members are attorneys.

The present law also provides that members must be "chosen because of their special qualifications, knowledge and experience in matters concerning the valuation and taxation of property, particularly of real property".

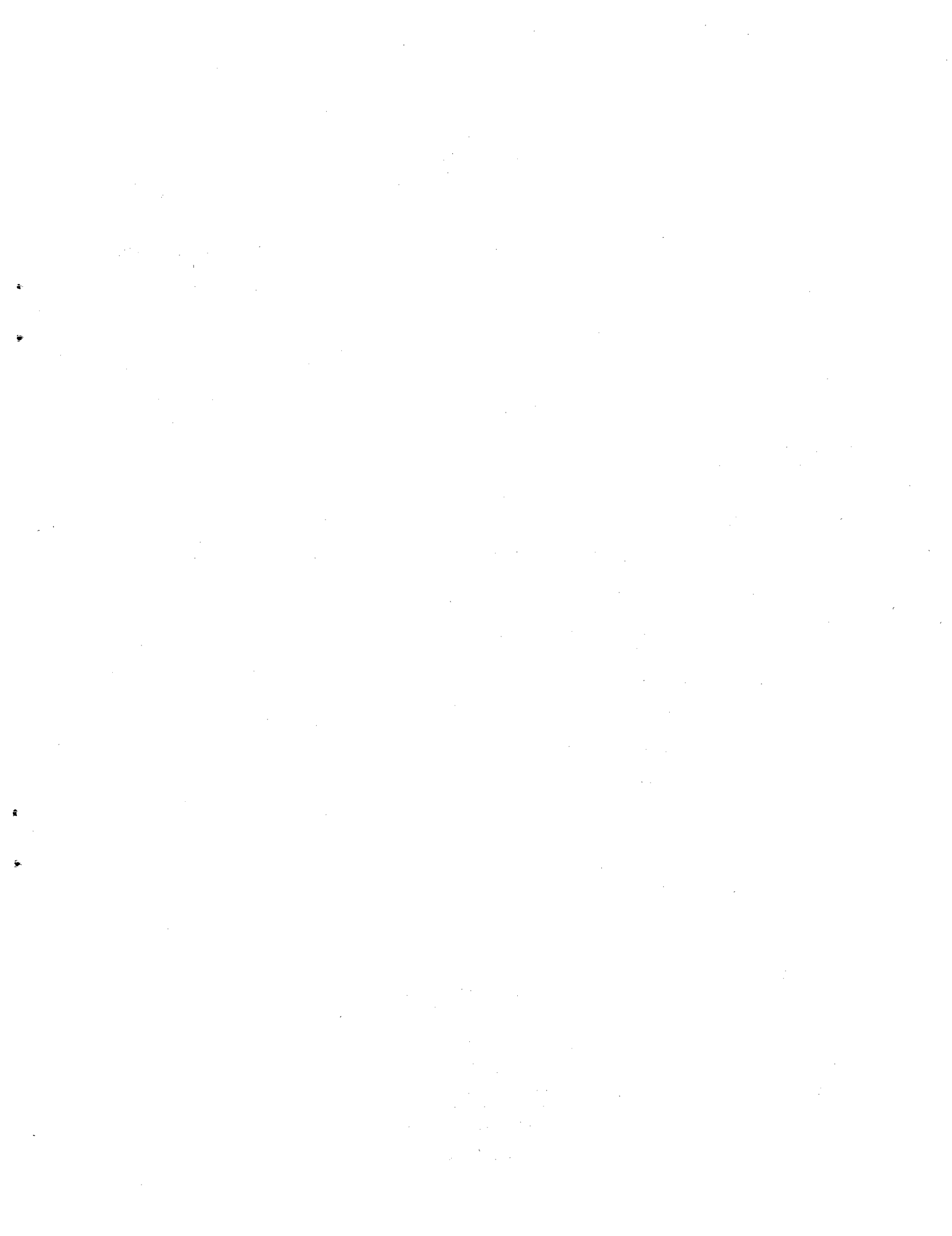
The salary of the president is \$11,500 and that of the other members is \$10,500.

It is also provided the members must devote such time as is required for the efficient performance of the duties of the office. At present the members are serving on a part-time basis.

The Division may refer to two or more of its members the taking of testimony and the making of a report on the testimony and the matter involved but the determination must be made by the full membership of the Division.

Consequences of the Mode of Operation

As of October 1, 1958, the situation with respect to cases pending before the Division of Tax Appeals was as follows:



2,505 local appeals pending over the years from 1953 to 1957 inclusive;

64 railroad property appeals not in railroad use over the years 1954 to 1957 inclusive;

139 railroad tax appeals from State assessments over the years from 1952 to 1958 inclusive;

24 corporation tax appeals;

2 miscellaneous appeals;

79 appeals pending from the Director's Table of School Aid; and

5 appeals from County Equalization Tables.

This backlog has been variously ascribed to the part-time service of the members and to the procedure which, while permitting two or more members to hear the cases, requires determination of the cases by the full division, with the judgment being signed by at least four members.

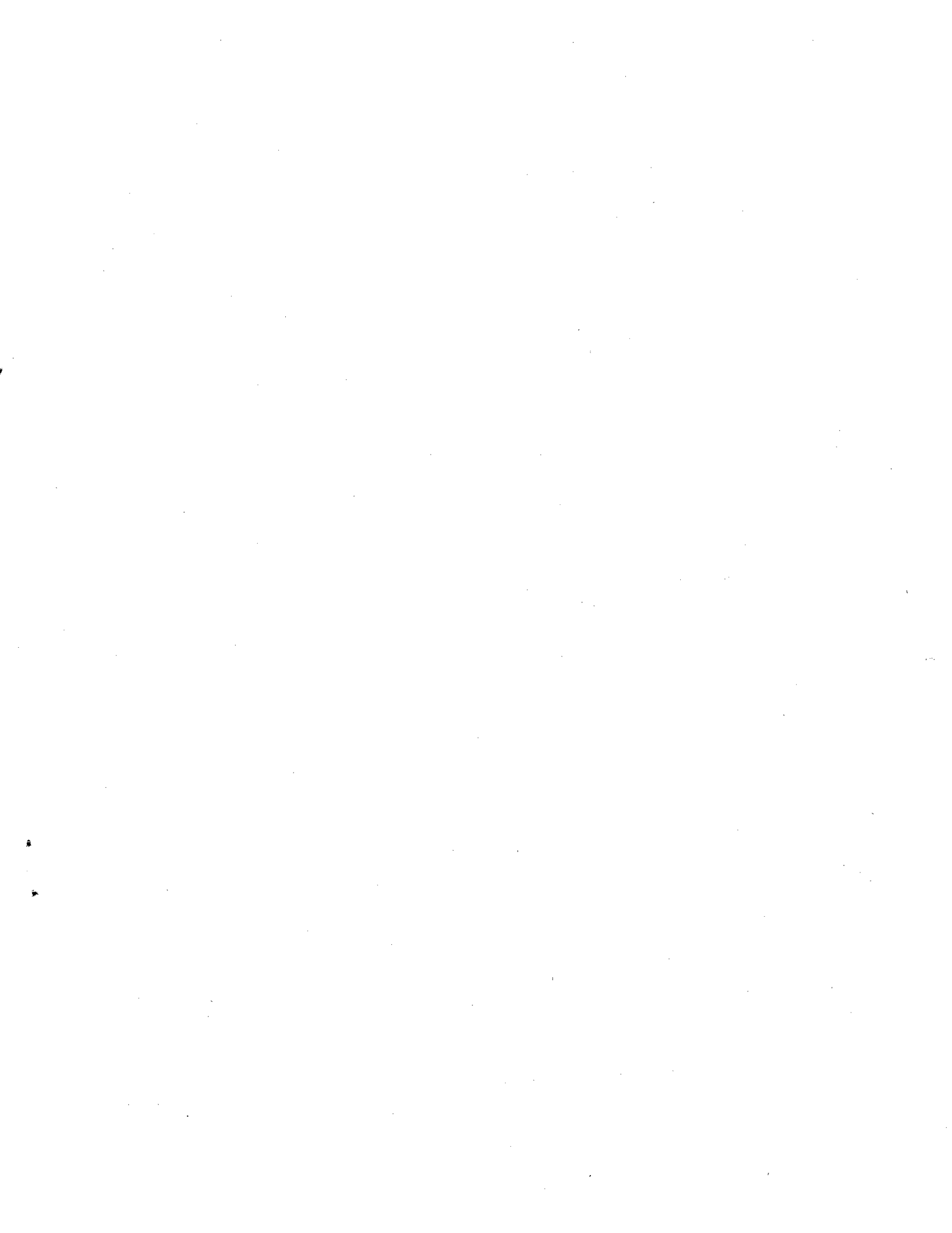
In addition to the accumulation of a backlog of appeals, there is another complaint with the method of handling tax appeals. This criticism was well put in a Newark News editorial on January 30 of this year:

The work of the division of tax appeals is almost exclusively judicial, but it is not under judicial supervision. An agency ruling on pleas for tax reductions is itself part of a department primarily concerned with collecting as much revenue as possible. The division's status thus presents an incongruity; a sort of conflict of interest in reverse."

Proposed Remedies

Assembly Bill No. 323

Assembly Bill No. 323, as originally introduced in the Assembly on March 10, 1958, stipulated that the Division of Tax Appeals should consist of six attorneys-at-law and specifically required that the members devote "full time to the per-



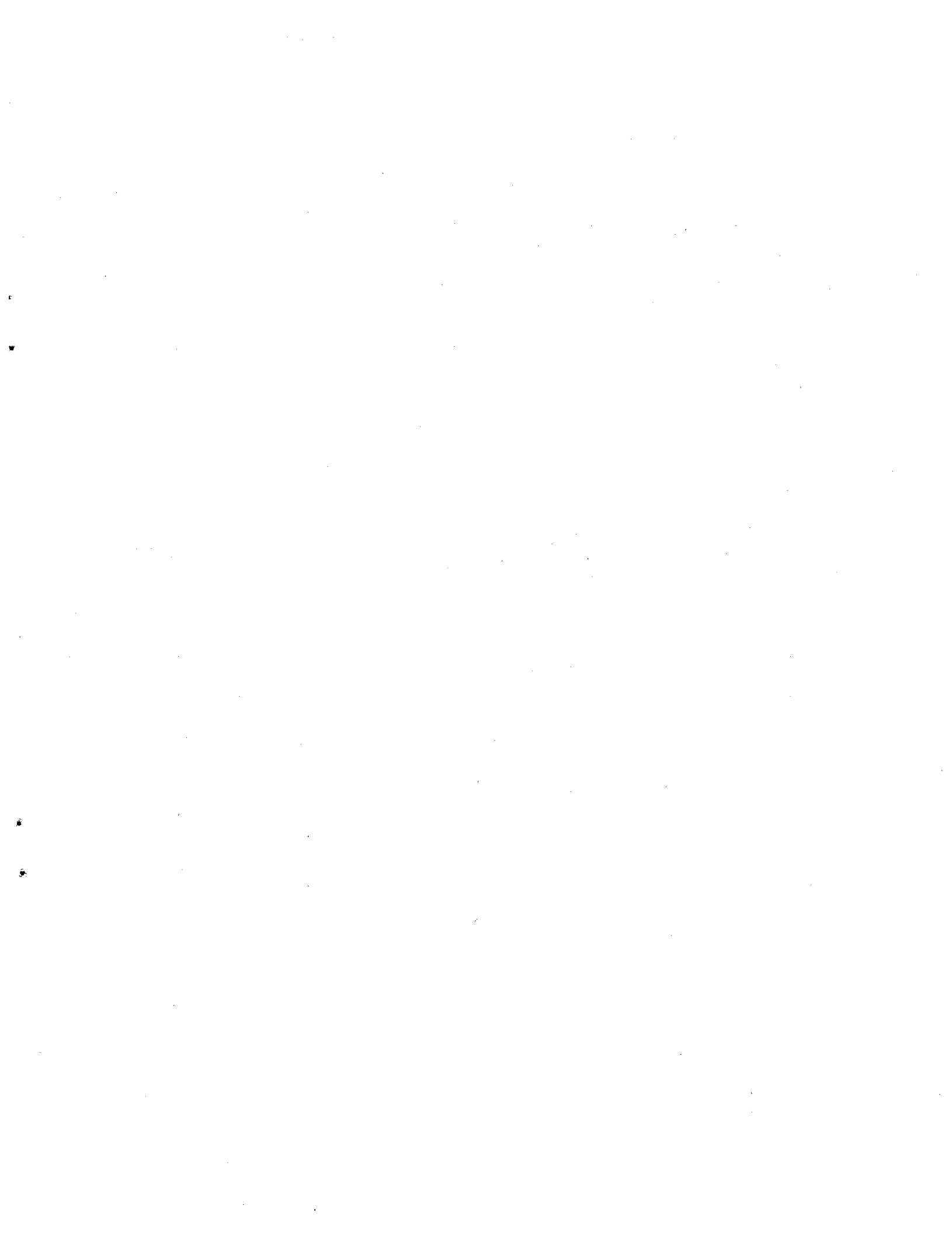
formance of their duties" at salaries of \$16,500 for the president and \$16,000 for the other members. It eliminated the requirements that the attorneys be attorneys "of at least 10 years' standing" and that the members be "chosen because of their special qualifications, knowledge and experience in matters concerning the valuation and taxation of property, particularly of real property". Assembly Bill No. 323 also provided for assignment of appeals to one, or to three members, for both hearing and determination.

However, before passage of this bill by the Assembly on April 24, it was amended:

- to restore the number of members to seven;
- to remove the specific reference to "full time" service; and
- to restore the salaries to the present levels.

Assembly Bill No. 315

This bill, introduced in the Assembly on March 3, 1958, would establish a tax court and transfer the jurisdiction, officers, and employees of the Division of Tax Appeals to that court. The tax court, consisting of six judges appointed for seven-year terms at a salary of \$18,000 per year, would be established as an inferior court of limited jurisdiction. It would continue members of the present Division of Tax Appeals as judges of the tax court. Admission to practice of law in the State for at least 10 years would be required of each judge. Under the bill the Chief Justice of the Supreme Court may from time to time assign judges of the Superior Court to the tax court, as need appears, and may from time to time assign judges of the tax court to the Superior Court or to any other court as the need appears.



State Chamber Proposal

Attached to this statement are drafts of three bills which would:

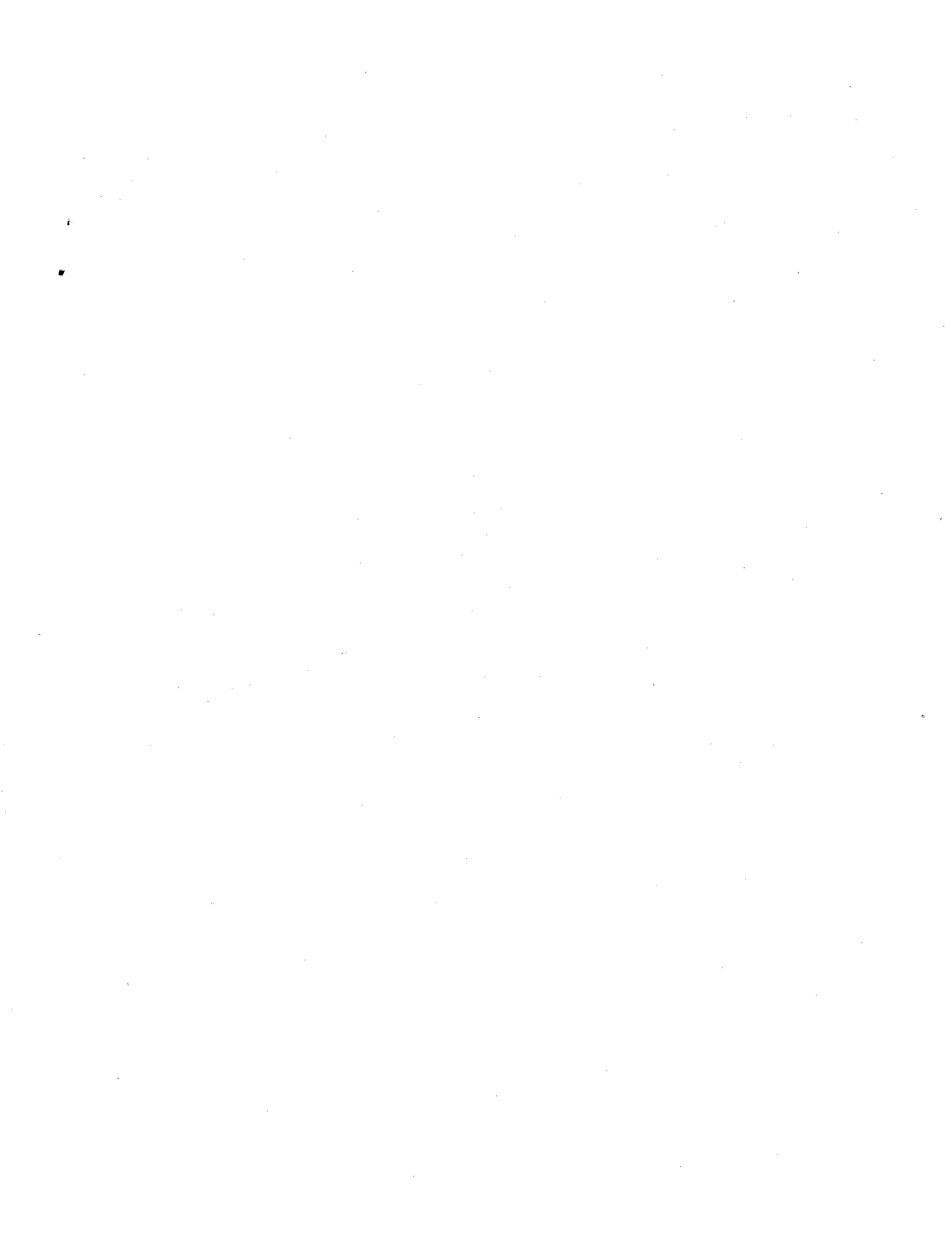
- abolish the Division of Tax Appeals and transfer its employees;
- provide that appeals from the county boards or from the Director, Division of Taxation, be taken directly to the Superior Court, Law Division, it being contemplated that the Supreme Court would by rule establish a separate Tax Part of the Law Division, consisting of three judges, to specialize in tax cases; and
- enlarge the Superior Court accordingly.

Position of the
State Chamber of Commerce

On November 6, 1958, the New Jersey State Chamber of Commerce in a letter to the members of the New Jersey State Senate expressed its opposition to Assembly Bill No. 323, just as in prior years it had expressed its opposition to similar bills. Today we reiterate that opposition.

The State Chamber objects to the proposal in Assembly Bill No. 323 that the president have the power to assign each appeal for hearing and determination to one or at his discretion to a panel of three members of the Division, for the following reasons:

1. It would permit the final factual determination on all tax appeals, both on the problem of valuation of property and on the question of discrimination, to be made by one member of an administrative tribunal (or, at the discretion of the president, by three members). This would be the only full trial on the merits available to a taxpayer. On appeal to the Appellate Division, there is no trial de novo. For all practical purposes, unless the Division member was arbitrary or unless evidence to support his findings was entirely lacking his determination as to matters of fact would not be disturbed.
2. The proposal would eliminate the additional consideration available at present from the full Division and the greater objectivity which the full Division would tend to provide.



Nor would the State Chamber's objections be overcome by the issuance of rules by the Division which would indicate the circumstances under which, at the Division's discretion, a panel of three members would be used rather than a single member.

Also objectionable are the elimination of the requirement that the attorneys be attorneys "of at least ten years' standing" and the requirement that "members shall be chosen because of their special qualifications, knowledge and experience in matters concerning the valuation and taxation of property, particularly of real property".

However, we do feel that steps must be taken to infuse the tax appeals procedure at the State level in New Jersey with more expeditious and impartial treatment for all litigants.

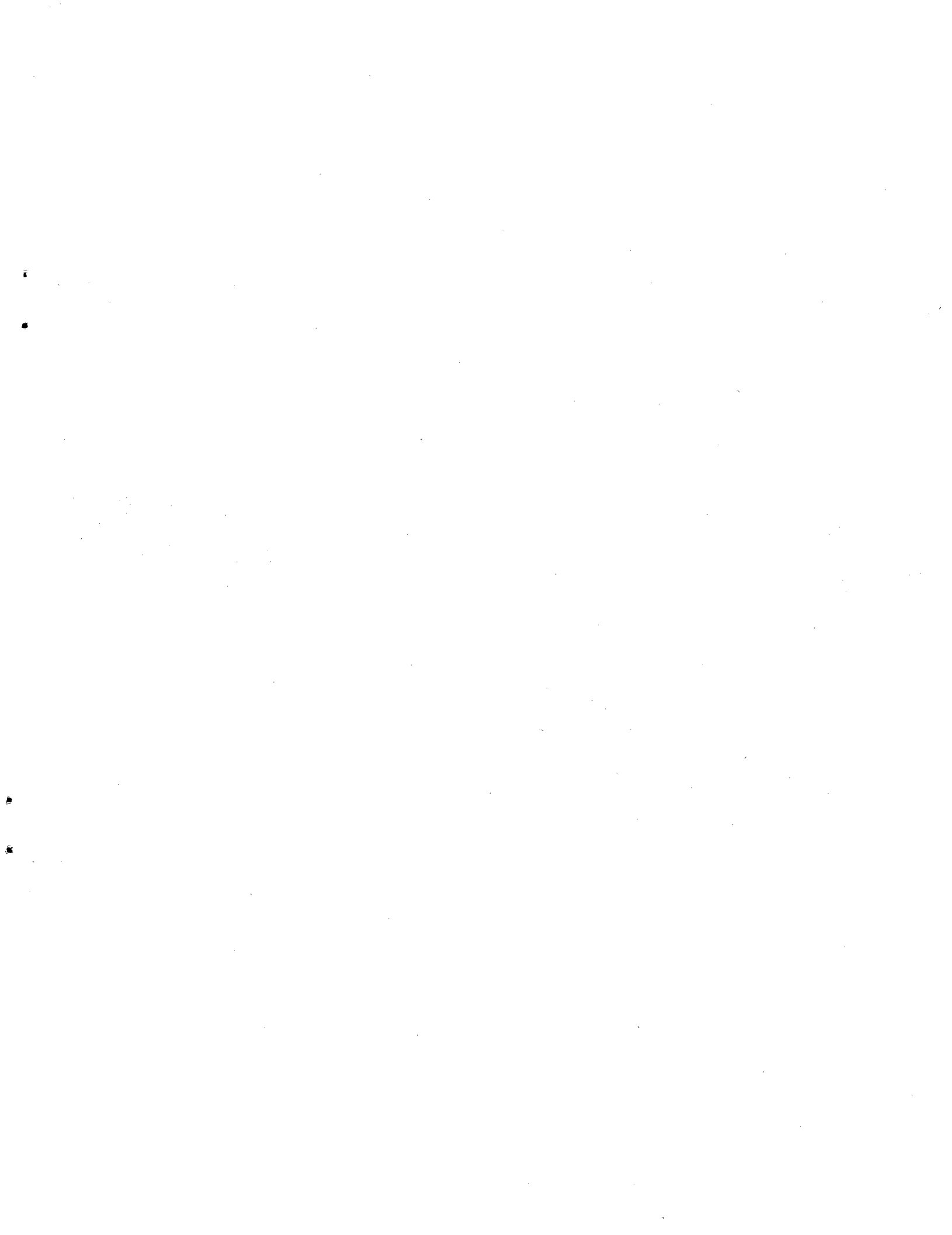
Strict compliance with the present statute would seem to provide the avenue for somewhat more expeditious handling of the cases. It provides that "the members, including the president, shall devote such time as shall be required for the efficient performance of the duties of the office".

To expedite matters still further and to achieve impartiality we are convinced that we must look elsewhere. For this reason the State Chamber favors either the attached legislation which would abolish the Division of Tax Appeals and provide in lieu thereof that appeals be taken directly to the Superior Court, Law Division, or the proposal of the Bar Association in Assembly Bill No. 315.

To quote again the Newark News editorial of January 30, 1958:

The Legislature could create a separate statutory court or the Supreme Court could create a new division of Superior Court. In either case, the judges would be under the supervision of the chief justice, whose power of assignment would permit him to adjust the court's personnel to the volume of its work.

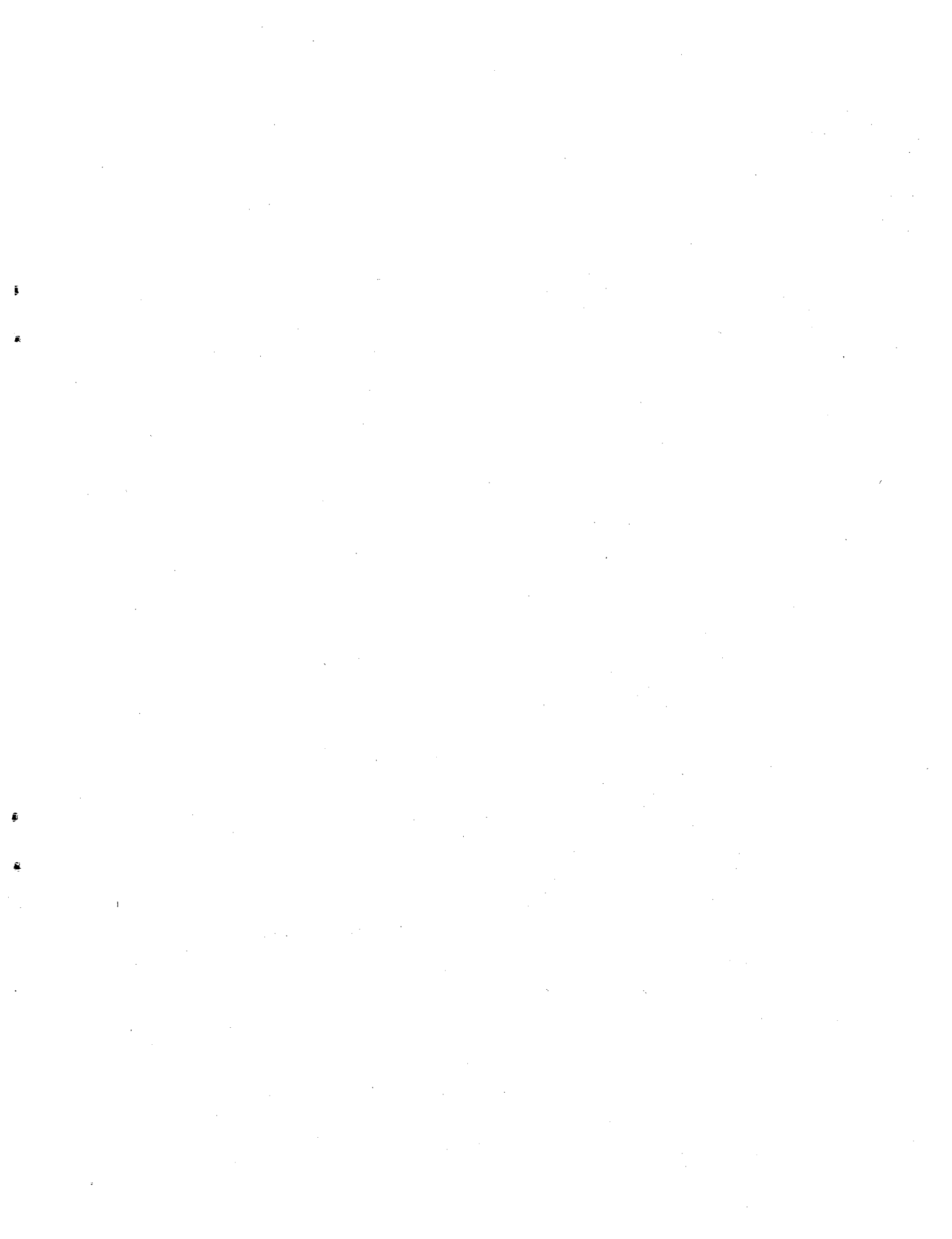
The bar association's remedy, now being discussed with representatives of the three branches of government, is logical and adheres to the doctrine of separation of powers. It should be fully explored before any attempt is made to salvage the existing system which, even if it worked more efficiently, would remain basically unsound.



SENATOR LANCE: Does anyone else desire to speak? Mr. Labreque.

MR. LABREQUE: As I said, gentlemen, this bill that is presently before the House may not be the ultimate solution, but it is the feeling of the Division that it is a practical solution and one which has been, shall we say, half born already and which it is possible to pass to give us relief at the present time. We don't want to be in the unfortunate position of the patient who dies on the operating table while a discussion is being had concerning which tools to use. We have to live and we are presently faced with the filing, we feel at least, of as many appeals as we had last year or more. We have been working on this thing very hard for the last two years. That is why last year we favored the Deamer Bill, although we weren't sure that that was the ultimate solution, but at least that emerged and it was part way down the alley and we thought it might make a strike so we were willing to go out and support it. And we thought it would help. But the situation is such now that we think it is going to take much more than that.

While we favor 323 and we think that it should be given a try and it will probably work to the satisfaction of all concerned, we don't want to be in the position of saying that we are particularly against any remedy. As a matter of fact, quite the opposite is true and any remedy which you gentlemen can propose and give it to us promptly, we would like to have. I read with interest what the State Chamber of Commerce had to say concerning the bill of the State Bar Association or, as has been more recently suggested, to set up a Tax Division in the Superior Court.



Both of them have merit and both of them have many, many advantages. But the idea is that our problem is now; and we are talking about living today. You will see how this works out and it may be that that will be the ultimate solution you will want to sustain. Certainly, as far as we are concerned, the debate has not been that we favor or have thought up any particular bill. The debate is that we feel that we need help for the benefit of the people of the state whom we are all trying to serve and that is why we feel that now this is the way that will give the quickest and best relief. If we are going to have a court, the State Bar bill presents that situation, or, as many people say, why set up a new court when you already have a Superior Court and just add some members to it and let them handle the situation. It is a matter for you gentlemen, but we are trying to urge on you the urgency of it.

SENATOR LANCE: The State League of Municipalities had their annual convention last week. Now they are not represented here today. I don't know whether the State League of Municipalities took a position or they did not.

MR. LABREQUE: Thank you, sir.

SENATOR LANCE: The hearing stands adjourned and we thank everybody for attending.

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