

THE HOUSING COURT ACT (1972) AND COMPUTER TECHNOLOGY (2005): HOW THE AMBITIOUS MISSION OF THE HOUSING COURT TO PROTECT THE HOUSING STOCK OF NEW YORK CITY MAY FINALLY BE ACHIEVED

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INTRODUCTION

The Housing Part of the Civil Court was established by statute in 1972¹ to concentrate housing-related cases in a single court and to involve judges in the process of seeing that the housing stock was repaired.² When I agreed to contribute an essay on how the Housing Court is fulfilling its obligation to preserve the housing stock, for the October 29, 2004 conference held by The Justice Center of the New

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¹ N.Y. CITY CIV. CT. ACT § 110 (McKinney's 2005) (originally enacted as Chapter 982, Laws of 1972). The Housing Part is not a separate court, but a special "part" of the Civil Court of the City of New York. I will adopt the conventional name, Housing Court, for this paper. The "part," separately, is greater than the whole, in terms of numbers of cases handled. See THE TWENTY-FIFTH ANNUAL REPORT OF THE CHIEF ADMINISTRATOR OF THE COURTS, FOR CALENDAR YEAR 2002, available at <http://www.nycourts.gov/reports/annual/pdfs/2002annual-report.pdf>. According to that report, the New York City Housing Part had 385,593 filings and 304,546 dispositions. The New York City Civil Court, *without* the Housing Part, had 339,564 civil actions filed, and 150,114 dispositions. The "part" had about 46,000 more filings and 154,400 more dispositions in a single year than did the entire Civil Court.

² The hopes for the court are well expressed in its legislative history. Governor Nelson A. Rockefeller, in his approval message of June 8, 1972, stated:

The serious decline in the older housing stock in the City of New York has demonstrated the futility of enforcing housing code standards through prosecution in the criminal courts. Under the present antiquated system, the criminal courts have become burdened with an inappropriate jurisdiction, and corrective action is hindered by the brief involvement of the courts with problem buildings and the unfortunate tendency of a minority of irresponsible owners to treat fines as a cost of doing business.

This bill will shift focus of housing enforcement in New York City from the Criminal Court to a special part of the Civil Court. Judges and judicially-supervised hearing officers of the new housing part will have expanded authority to consolidate proceedings arising from the same building, exercise continuing jurisdiction and employ provisional remedies, injunctive relief and appropriately gauged civil penalties to bring about compliance with housing standards.

York County Lawyers' Association, I imagined I would review annual court-produced statistics. I expected this to include 30 years worth of information about repairs claimed to be needed, orders to repair issued, number of repairs actually made, the range of enforcement tools used to combat failures to repair, and other records of how the court put to use its special jurisdictional and remedial powers.

What I quickly found was that the court does not issue (and, indeed, has no practical way to produce) such statistics. Consequently, it has no way to measure its success in the singularly important and unique mission of preserving the housing stock of the City of New York. Since I could not assess the court's success, I turned to consider whether adoption by the court of database technology focused on repair related information would produce the needed statistics and, at the same time, allow the judges of the court to have instant access to repair related facts about individual apartments, buildings, and landlords, across all the cases filed (after the system goes into effect) in the court. As I considered this, I concluded that such access within the court to repair related information would necessarily make the court itself more effective in preserving the housing stock: the very fact of being able to measure its work will heighten the rigor with which the court approaches its mission. Or so I predict. Thus, in this essay I first sketch the basic powers of the court. I then sketch the contours of a database computer system that could further the court's ability to carry forward its mission.³

Governor's Approval Memorandum: N.Y.C. Civil Court – Housing Violations (Jun. 8, 1972), *reprinted in* MCKINNEY'S 1972 SESSION LAWS OF NY 195TH SESSION REGULAR SESSION VOLUME 2 *at* 3410.

³ The Housing Court is a complicated court, and in trying to focus on its efforts to preserve the housing stock, one can easily become intrigued with what might happen if the various litigants before the court acted differently. For example, what if the Department of Housing Preservation and Development (HPD), the city's primary enforcement agency, devoted more resources to Housing Court litigation, or changed its enforcement strategies? Or what if tenants' attorneys, if there were a right to counsel in Housing Court, were able to change the culture of the court so that landlords would not even initiate cases unless they had first made all repairs? However, instead of following out such tempting possibilities, I have looked only at what the court itself can do, and I have concluded that by using technology differently and systematically, the court can readily make each judge's work on repair issues immediately accessible to all judges on the court, and all material supplied by litigants and enforcement agencies concerning repairs available not only to the court, but to other interested parties. This should improve the effectiveness of the court in preserving the housing stock, as it also makes the court's (and each judge's) work in this regard visible and measurable.

I. PROTECTING THE HOUSING STOCK OF THE CITY OF NEW YORK: THE HOUSING COURT AND ITS OPPORTUNITIES

A trial court generally resolves cases between the parties before it, but legislative history⁴ and contemporary views⁵ set higher expectations for the judges of the New York City Housing Court. The provisions of section 110(c) of the Civil Court Act grant these judges special powers, in pursuit of preserving the housing stock, to go beyond the traditional role of a neutral magistrate presiding over a conventional adversarial proceeding:

Regardless of the relief originally sought by a party the court may recommend or employ any remedy, program, procedure or sanction authorized by law for the enforcement of housing standards, if it believes they will be more effective to accomplish compliance or to protect and promote the public interest. . . .⁶

Furthermore, the section authorizes these judges to “retain continuing jurisdiction of any action or proceeding relating to a building until

⁴ The following memorandum states the aspirations for the court at the time it was created, and points out the disappointment with the system then in effect:

The present condition of N.Y.C. housing mandates that steps be taken immediately to end deterioration and abandonment, improve standards of maintenance and compel their performance, and *encourage rehabilitation and repair of existing structures.*

In 1970, the NYC Housing & Development Administration (HDA) estimated that 62% of all multiple dwellings in NYC had at least one violation. Actions to compel correction of the conditions underlying such violations have been brought in the NYC Criminal Court, terminating in an average fine of \$11.47, without abatement of decay, blight and deterioration.

Criminal Court judges are currently assigned to the court handling such violation proceedings on a rotating basis, and must concern themselves, because of the criminal nature of the proceeding, with the culpability of the defendant rather than with the improvement of the condition of the building. These judges are needed elsewhere in the court system to handle the huge volume of pending criminal cases.

This Bill would remove these essentially non-criminal cases from the criminal courts, and transfer them into a separate, specialized part of the Civil Court, wherein the emphasis would be on saving and restoring the building and utilizing all approaches to accomplish this end.

Memorandum of Assemblywoman Rosemary Gunning: N.Y. CITY CIV. CT. ACT § 110 (1972), reprinted in NEW YORK STATE LEGISLATIVE ANNUAL 1972, at 217 (emphasis added).

⁵ The Honorable Fern Fisher summarizes the role of the Housing Court judges stating: “These judges have vested in them the enormous responsibility of maintaining the housing stock in the City of New York.” ANDREW SCHERER, WEST GROUP PRACTICE GUIDE: RESIDENTIAL LANDLORD-TENANT LAW, *View from the Bench*, 7:57 (2002).

⁶ N.Y. CITY CIV. CT. ACT § 110(c) (McKinney’s 2005).

all violations of law have been removed.”⁷ Pursuant to section 110(d) of the Civil Court Act, the court, “on its own motion, may join any other person or city department as a party in order to effectuate proper housing maintenance standards and to promote the public interest.”⁸

The court’s role in the protection of the housing stock was considered so crucial that it was given broad injunctive powers, which its parent court, the New York City Civil Court, had not previously enjoyed.⁹ The authority to impose relief not originally sought by any party, to join parties as the court sees fit,¹⁰ and to have continuing jurisdiction over a

⁷ *Id.* See also, Joseph P. Fried, *Court to Oversee 2 Bronx Buildings*, N.Y. TIMES, Mar. 28, 1974 at 67.

[A] Housing Court judge has placed two Bronx apartment buildings under court supervision—one permanently and one for a year—to assure that future violations are speedily corrected.

. . .

The Bronx decision means that if the owner of the buildings involved does not quickly correct any violations recorded in the future—he has already heeded orders to correct many of the existing violations—lawyers for the city may go before the judge and ask for fines or other sanctions, the Department of Rent and Housing Maintenance said.

Without the decision, the department added, it would have to start new legal actions each time future violations were found in the buildings, and two months or more would expire before the issue reached the court.

A spokesman . . . said the decision . . . means that the buildings’ owner was “under order to constantly correct future violations. In the past, you would get orders from the court only to correct violations pending at the time.”

Id.

⁸ N.Y. CITY CIV. CT. ACT § 110(d) (McKinney’s 2005).

⁹ The 1846 New York State Constitution merged law and equity, placing equity jurisdiction in the Supreme Court. See *In re Steinway*, 159 N.Y. 250, 255-58 (1899) (explaining how the New York Supreme Court is regarded as the successor to both the King’s Bench and Chancery). The Civil Court obtained jurisdiction over summary proceedings in a court restructuring reflected in the NY State Constitution of 1961. See N.Y. CONST. art. VI, § 15(b), (adopted on Nov. 7, 1961). It obtained direct injunctive powers only in connection with housing proceedings, in 1972. See the injunction jurisdiction acquired by the Housing Court in N.Y. CITY CIV. CT. ACT § 110 (a)(4), and N.Y. CITY CIV. CT. ACT § 110 (David D. Siegel, *Practice Commentaries*) (McKinney’s 2004).

A 1972 amendment added § 110 to the New York City Civil Court Act, establishing a housing part of the court to implement the extensive transfer to the Civil Court of enforcement proceedings connected with housing. Accompanying amendments were made in NYCCCA § 203 (jurisdiction) and § 209 (provisional remedies). . . . The section substantially expands the equitable powers of the court in housing matters.

Id.

¹⁰ N.Y. CITY CIV. CT. ACT § 110(c)-(d) (McKinney’s 2005).

building until violations have been corrected¹¹ elevates the role of the Housing Court beyond that of a conventional court.

In addition to the broad powers it gave to judges, the Civil Court Act established new causes of action specifically for the Housing Court.¹² One of the new types of proceedings, the Housing Part (HP)

¹¹ N.Y. CITY CIV. CT. ACT § 110(c) (McKinney's 2005). The legislative findings and statement of policy describe the court's unusual power even more broadly than the statute:

(b) . . . with jurisdiction of sufficient scope to . . . (ii) to recommend or employ any and all of the remedies, programs, procedures and sanctions authorized by federal, state or local laws for the enforcement of housing standards, regardless of the relief originally sought by the plaintiff, if it believes that such other or additional remedies, programs, procedures or sanctions will be more effective to accomplish and protect and promote the public interest and compliance; and (iii) to retain continuing jurisdiction of any action or proceeding relating to a *building until all violations of state or local laws for the establishment and maintenance of proper housing standards have been removed and until it is satisfied that their immediate recurrence is not likely.*

Ch. 982 Section 1(a) (1972) *reprinted in* MCKINNEY'S 1972 SESSION LAWS OF NY 195TH SESSION REGULAR SESSION VOLUME 2 at 3099 (emphasis added).

¹² Section 110(a) lists all the types of cases the new court can entertain. The most significant new proceeding was the Housing Part (HP) proceeding, initiated either by a city agency (now HPD) or by tenants themselves, to seek injunctive relief for violations of the Housing Maintenance Code. It is based on § 110(a)(1) (collection of civil penalties), § 110(a)(4) (injunctions and restraining orders), and § 110(a)(7) (imposition of violations). The full list of types of proceedings that the new court could entertain is quite extensive. The only one of the eight that was traditionally part of the Civil Court is summary proceedings by landlords to recover possession, in § 110(a)(5).

§ 110. Housing part

(a) A part of the court shall be devoted to actions and proceedings involving the enforcement of state and local laws for the establishment and maintenance of housing standards, including, but not limited to, the multiple dwelling law and the housing maintenance code, building code and health code of the administrative code of the city of New York, as follows:

(1) Actions for the imposition and collection of civil penalties for the violation of such laws.

(2) Actions for the collection of costs, expenses and disbursements incurred by the city of New York in the elimination or correction of a nuisance or other violation of such laws, or in the removal or demolition of any dwelling pursuant to such laws.

(3) Actions and proceedings for the establishment, enforcement or foreclosure of liens upon real property and upon the rents therefrom for civil penalties, or for costs, expenses and disbursements incurred by the city of New York in the elimination or correction of a nuisance or other violation of such laws.

(4) Proceedings for the issuance of injunctions and restraining orders or other orders for the enforcement of housing standards under such laws.

(5) Actions and proceedings under article seven-A of the real property actions and proceedings law, and all summary proceedings to recover possession of residential premises to remove tenants therefrom, and to render judgment for rent due, including without limitation those cases in which a tenant alleges a defense under section seven hundred fifty-five of the real property actions and proceedings law, relating to stay or

proceeding, replaced the former system of criminal prosecutions against owners with code violations conducted by the City of New York. The HP proceeding, created by a provision in the Housing Maintenance Code,¹³ allows not only the City Department of Housing Preservation and Development (HPD) to bring code enforcement actions in the Housing Court, but it also gives tenants standing to pursue the correction of conditions that violate the Housing Maintenance Code, which includes the right to seek injunctive relief.¹⁴

Meanwhile, the new Housing Court, in addition to its docket of HP actions, had an immense caseload of traditional landlord-tenant matters—predominantly cases in which landlords sought to evict tenants for non-payment of rent. The number of non-payment cases filed by landlords each year against tenants consistently outnumbers the HP cases filed by both HPD and tenants, nearly thirty to one.¹⁵ Thus, because of the overwhelming number of non-payment cases on its docket,

proceedings or action for rent upon failure to make repairs, section three hundred two-a of the multiple dwelling law, relating to the abatement of rent in case of certain violations of section D26-41.21 of such housing maintenance code.

(6) Proceedings for the appointment of a receiver of rents, issues and profits of buildings in order to remove or remedy a nuisance or to make repairs required to be made under such laws.

(7) Actions and proceedings for the removal of housing violations recorded pursuant to such laws, or for the imposition of such violation or for the stay of any penalty thereunder.

(8) Special proceedings to vest title in the city of New York to abandoned multiple dwellings.

. . . .

N.Y. CITY CIV. CT. ACT § 110(a) (McKinney's 2005).

¹³ N.Y. HOUSING MAINTENANCE CODE §27-2115 (McKinney's 2005).

¹⁴ The Court's website provides a few forms and instructions for starting an HP proceeding, at <http://www.courts.state.ny.us/courts/nyc/housing/forms/civ-lt-66.pdf> (last visited Mar. 3, 2005). See N.Y. HOUSING MAINTENANCE CODE §27-2115 (McKinney's 2005). The Housing Maintenance Code provisions that apply to buildings with more than five units, detailing the way the penalty system is to work, how tenants are authorized to commence Housing Part proceedings, and how judges can order repairs and assess penalties.

¹⁵ Telephone Interview with Ernesto Belzaguy, Deputy Chief Clerk, New York City Housing Court (July 2004). During this interview, I was provided with the number of cases in two

the court was criticized for appearing to be more attentive to processing eviction cases than to preserving the housing stock.¹⁶

Close to the time the Housing Court was established, another repair-related legal development was gaining momentum: the implied warranty of habitability. This new concept provided that a landlord's right to recover rent should depend on fulfillment of a duty to maintain residential premises in habitable condition. The new doctrine proved to be a radical reversal of the common law rule.¹⁷ In New York, a statutory

case types, HPs and non-payments, filed for years 2001 through 2003, and, by telefax from him on March 16, 2005, the numbers for 2004 (copy on file with the author).

HP Cases

2004:	filed by HPD 4,112	filed by Tenant 7,236
2003:	filed by HPD 3,741	filed by Tenant 8,480
2002:	filed by HPD 2,897	filed by Tenant 8,376
2001:	filed by HPD 2,366	filed by Tenant 8,617

Non-payment Cases.

2004:	273,499 filed by landlord
2003:	318,077 filed by landlord
2002:	331,309 filed by landlord
2001:	277,896 filed by landlord

¹⁶ In 1975, for example, the court was criticized because, despite the lofty hopes that it would preserve the housing stock, it seemed just like the former Landlord-Tenant part of the Civil Court, churning out eviction cases as its primary business. Mark C. Rutzick & Richard L. Huffman, *The New York City Housing Court: Trial and Error in Housing Code Enforcement*, 50 N.Y.U. L. REV. 738, 759 (1975):

The primary function of the new court has become rent collection and the eviction of nonpaying tenants, and the original purpose for the forum—code enforcement—is now little more than a secondary consideration. As a result, to the dozens of clamorous landlords and tenants whose presence each morning in housing court creates an air of permanent chaos, the new court must seem like nothing more than a slightly updated version of the defunct Landlord-Tenant Part of the New York City Civil Court. The new court's daily calendar is invariably dominated by summary non-payment and holdover proceedings—numbering over 100 in the major boroughs—most of which are private financial matters having little to do with code enforcement issues.

Id. (internal citations omitted).

¹⁷ *Park West Mgmt. Corp. v. Mitchell*, 47 N.Y.2d 316 (1979) (discussing common law doctrine before applying the statutory warranty of habitability). “As long as the undisturbed right to possession of the premises remained in the tenant, regardless of the condition of the premises, the duty to pay rent remained unaffected.” *Id.* at 322-23; *see also id.* at 325 (“In short, until development of the warranty of habitability in residential leases, the contemporary tenant possessed few private remedies and little real power, under either the common law or modern housing codes, to compel his landlord to make necessary repairs or provide essential services.”) (citations omitted).

warranty of habitability took effect on August 1, 1975,¹⁸ giving residential tenants the legal right to insist on repairs. Moreover, the warranty of habitability ensured that the non-payment cases might actually afford judges real opportunities to preserve the housing stock. Although this transformation to preserve the housing stock commenced, it cannot be fully measured, and therein lies a conundrum.¹⁹

A non-payment case could theoretically further the mission to preserve the housing stock, rather than detract from it. Tenants could use the non-payment proceedings as opportunities to seek judicial orders compelling landlords to make repairs. For example, a tenant with serious repair issues could withhold rent. This would cause the landlord to sue for non-payment. The tenant could then raise the breach of the warranty of habitability, not merely as a defense to paying full rent, but as a factual predicate for affirmative, injunctive relief compelling the landlord to make repairs.²⁰

Section 110(a)(4) of the Civil Court Act makes such a broad remedy possible by imbuing the court with the power to adjudicate proceedings for the issuance of injunctions and restraining orders, or other orders, for the enforcement of housing standards. Since, under section 110(c) of the Civil Court Act, judges can *sua sponte* use any appropriate remedy,²¹ they can order that repairs be performed in the context of a non-payment proceeding, even if the tenant did not explicitly seek injunctive relief.

Tenants could, if they wished, initiate HP enforcement proceedings to have repairs addressed, and many did. However, from August 1975 onwards, tenants could, theoretically, also have the court order repairs in a non-payment proceeding. If this new opportunity truly transformed the work of the court, there should be measurable consequences.

¹⁸ See N.Y. REAL PROP. L. § 235-b (McKinney's 2005) (creating an implied warranty of habitability in every residential rental, with any waiver of the warranty void as against public policy).

¹⁹ See *infra* Section II.

²⁰ ANDREW SCHERER, WEST GROUP PRACTICE GUIDE: RESIDENTIAL LANDLORD-TENANT LAW, 12:76 (2002) ("The tenant can, of course, assert a claim of breach of warranty of habitability as a defense against a claim for rent . . . Pursuant to the warranty of habitability, the obligation to pay rent is dependent upon the condition of the premises."). This is the tenant's right, whether the non-payment was a strategic withholding of rent, or simply the result of not having enough money to pay the rent.

²¹ N.Y. CITY CIV. CT. ACT § 110(c) (McKinney's 2005).

II. DATABASE TECHNOLOGY AND NEW JUDICIAL APPROACHES TO ENFORCEMENT

The Housing Court has a continuing mission to preserve the housing stock of the city, with oversight for the repairs in apartments and buildings. Has the court taken significant action to preserve the housing stock in the hundreds of thousands of non-payment cases that it handles each year? How can the court's effectiveness be measured?

In an earlier decade, reports were issued detailing the number of violations corrected.²² The Housing Court no longer releases such information, and in fact, the court does not have the data to produce such reports.²³ The court, itself, does not provide any data which might show how much the court as a whole or any particular judge has furthered or ignored the housing-protective mission.

This lack of data prompts consideration of how the court's operational processes might be redesigned to measure and evaluate its success in preserving the housing stock. I propose a solution to this problem based on the use of currently available computer technology—database technology—which will provide for the collection, retention, and display of repair-related data. The information collected in such a database will then be available for litigants, judges, court administration, and the public.

A. *Outline Of Proposed Data-Processing Solution*

The data processing problem for the court is circular. Since, at present, the court does not use a database system which handles repair-related data, there is no possibility that repair data can be entered into it. The HPD data on violations, available on HPD's database, cannot flow into the Housing Court's database because there is no such system. The court's records, all currently maintained on paper, cannot be a useful source of repair-related information for use in later or related cases. Repair-related data from litigants, whether oral (which is true of much

²² Joseph P. Fried, *Year-Old Housing Court Wins Some Approval and Disapproval*, N.Y. TIMES, Oct. 4, 1974, at 43 ("Edward Thompson, Administrative Judge of the Civil Court, in which the Housing Court is included, said that violations in 15,000 apartments had been corrected as a result of proceedings in the court, and that other cities were looking at the court as a possible model for similar bodies.").

²³ Telephone Interview with Ernesto Belseguy, Deputy Chief Clerk, NYC Housing Court, (Mar. 16, 2005) (discussing Mr. Belseguy's recollection of the early days of the court when he made entries by hand of approximately 500,000 repair claims per year in the Bronx Housing Court).

tenant information), hand-written, or typed, cannot today be combined into a single searchable system.

To solve the Housing Court's problem of a lack of centralized information available to everyone, a database system must be designed and implemented. Such a system must be capable of recording all repair-related information relevant to a case and providing that information to the court, the litigants, and the public. Data-entry systems must be created that litigants and the court can use to enter the repair related portions of all court papers (pleadings, motions, affidavits, stipulations, orders) in a manner compatible with the court's database system.

Furthermore, software to allow litigants, the court, and the public to see all available data—retrieved, for example, on the basis of apartment, building, or landlord—must be provided. The court's records, as these come to be integrated in the database, as well as HPD's violation records, can automatically be made part of court filings—straight from the court's database system. At all stages of litigation, the parties and the court will be able to see the relevant repair information in detail or in summary. Additionally, the information the court needs to preserve housing will be immediately accessible, unlike the current system of paper records in innumerable file cabinets and file storage boxes. Consequently, it will become possible to assess the effectiveness of the court and each of its judges in preserving the housing stock by seeing if required repairs are completed.

B. *The Lack Of A Database System Impedes The Court*

The court has a profoundly difficult task in ensuring that buildings are properly maintained, but it is only called into action when a specific case appears on the docket. The preservation of the housing stock remains an ever-present obligation for the court, even after individual cases are resolved. However, because there are so many cases, a vast amount of information flows into and out of the court. That information cannot be captured and used without a significant change in operations.

The court requires a powerful information system, capable of tracking repair-related information over time—over the life of a case, across distinct cases, and across entire buildings and even groups of buildings.²⁴ The design and implementation of such a database system

²⁴ Most courts use database systems for docket control, and the Housing Court would continue to do so. An on-line calendar for looking up docket information is found at www.court

will require significant time and other resources, as well as a willingness from all sides to embrace the goal of gathering and using information effectively. The failure, thus far, of the Housing Court to develop its own database system to record repair-related data, prevents the court's effectiveness from being measured. More importantly, such a lack of collective data impedes that effectiveness.²⁵

The proposed information system should have three components: (1) a database system that records the repair-related data; (2) a data-reporting system that provides for the production of reports based on the information within the database system on a per-case, per-apartment, per-building, or per-landlord basis; and (3) software data-entry systems, accessible on the court's public and bench computer terminals,²⁶ and perhaps on the Internet.

C. *Data-Recording Was Once Required*

The court was intended to have, and did have for about a decade, a cross-indexing system for every building, apartment, and complaint. The law requiring this system, section 110(j) of the Civil Court Act, was repealed in 1982, shortly before computerization could have simplified such cross-referencing.²⁷ The court's present computer system, while

[guide.com/pro/nycs6.html](http://www.nyc.gov/html/nycs6/html) (last visited Apr. 5, 2005). The Housing Court's computer needs are special because its subject matter is narrow and uniform, concentrating on repair issues, which both require and are amenable to computerized treatment. Also, the cases are numerous, occur over a vast time span, and relate to a relatively fixed, albeit large, number of buildings.

²⁵ I am well aware that a shift to this technology is a huge undertaking, fraught with problems. Many of the so-called problem-solving courts in New York City use sophisticated database technology, albeit on a much smaller scale than the Housing Court. It is one thing to start a new small court that is designed to implement contemporary technology, but quite another to convert an immense ongoing court to a new system. I am convinced that the effort would be well repaid, and that the court administration, budget permitting, could make the changes with suitable care. See, for example, New York State Unified Court System, Integrated Domestic Violence Courts, at <http://www.courts.state.ny.us/ip/domesticviolence/index.shtml> (last visited Mar. 14, 2005), and its key principles, in which it briefly mentions the technology systems, Key Principles, New York State Unified Court System, Integrated Domestic Violence Courts, at <http://www.courts.state.ny.us/ip/domesticviolence/keyprinciples.shtml> (last visited Mar. 14, 2005). This shows a contemporary effort at bringing together in one court phases of litigation that were formerly spread over a number of different courts, with technology planning incorporated at the outset.

²⁶ Publicly available computer terminals where parties could type information and then submit it to the clerk of the court for approval before it entered the Court's own system could facilitate the gathering of this information.

²⁷ Telephone Interview with Ernesto Belseguy, Deputy Chief Clerk, NYC Housing Court, (Mar. 16, 2005) (recounting that clerks of the court actually handwrote such material, and then

presumably serving well as a docket management system, does not serve as a system for collecting and disseminating data on housing conditions. Consequently, today's judge cannot learn from the court's computer system what yesterday's judges have learned and decreed concerning an apartment or a building.

D. *The HPD Violations Database Has Been Available,
But Only For Reading*

A major innovation in 1973, when the court was still new, was the placement of a computer terminal at each judge's bench. The computer provided each judge access to HPD's database of existing Housing Maintenance Code violations.²⁸ At that time, the use of computers in law practice was at a very primitive stage, and the idea of tapping into a database from the bench was truly revolutionary. New York's HPD was a recognized pioneer in using technology, far ahead of other municipalities. Its use of computerized violation records could have contributed to transparency and effectiveness.²⁹

This was an unusual use of court technology in its day, and it invited active judicial fact gathering, thereby altering to some extent the

made hand tallies to provide the information). Not surprisingly, there was a reaction against trying to create a detailed cross-referencing system by hand, using index cards. Thus, an original provision of the Housing Court Act, formerly Civil Court Act section 110(j), was repealed in a 1982 Amendment. N.Y. CITY CIV. CT. ACT § 110, Historical and Statutory Notes (McKinney's 2005) ("The clerk shall maintain a cross-index number system indicating by building address all actions and proceedings which have been brought in connection with each building."). Today's database technology could make such cross-referencing virtually automatic.

²⁸ See N.Y. MULT. DWELL. § 328(3) (2005) (requiring the Housing Part to consider computerized data in any action or proceeding).

²⁹ For an interesting survey of housing protection efforts in the 1960s, which highlights the advanced use of computer technology by HPD in New York City, see Note, *Enforcement of Municipal Housing Codes*, 78 HARV. L. REV. 801, 817 (1965) (citations omitted)

New York City uses electronic data processing in almost every phase of the enforcement process after receipt of the complaint, including recordkeeping of all actions taken. Data processing appears to offer efficient and rapid handling of agency business. It has a collateral effect of promoting even and honest enforcement: inspectors appear to believe that the machine can detect errors in a way not possible when recordkeeping was manual. Although available data would permit the Department of Buildings to analyze the performance of each inspector, the present lack of trained personnel and insufficient machine time prevent such a security check. Data processing also makes it difficult to "bury" cases being processed or to remove records from department files. By making available a vast range of information not readily obtainable by manual tabulation, data processing should ultimately help improve agency procedures and enforcement programs.

traditional adversarial system that relies exclusively on the parties to present information to the court. When used, the database information acted almost like a truth serum during conferences at the bench:

Tenant: The plumbing is broken. There are rats and roaches.
 Landlord's lawyer: Not so. My client maintains the building very well.
 Judge: I see 98 violations for this apartment alone. What about that?
 Landlord's lawyer: Let me speak to my client for a moment.³⁰

Although HPD, the primary agency with responsibility for enforcement of housing standards, makes its database of housing maintenance code violations available to the court, this information is treated as *eyes-only* and does not enter any court information system. The judge may see the violations on a computer screen, but nothing from HPD's data is entered into any court database.

E. *No Repair-Related Information From Litigants Is Recorded In A Court Database System*

In 2005, just as in 1973, almost all information relating to repairs from litigants is oral,³¹ hand-written, or typed; and none of the information, even if initially typed on computer, is entered into a court database. No repair related information supplied by the litigants is ever converted into a digital format.

For example, non-payment cases are usually resolved by settlement—the stipulations of which are almost invariably handwritten—using phrasing and terms constructed by the parties. If the presiding judge requires changes, they are handwritten onto the stipulation. Then the judge adds the handwritten words “So Ordered,” and the handwritten document becomes an order of the court. The order typically is not reduced to typed form, and its terms requiring repair are not entered into any electronic database. If the court implemented a database system to record and maintain the repair information in such stipulations,

³⁰ This vignette is drawn from my experience practicing housing law starting in 1970, before there was a Housing Court. The database is now publicly available, at <http://www.nyc.gov/html/hpd/html/online-tools/hpd-online-portal.html#proceed> (last visited, Mar. 3, 2005), so the surprise factor may have receded.

³¹ N.Y. REAL PROP. ACTS. § 743 (McKinney's 2005) (“any person . . . may answer, orally or in writing. If the answer is oral the substance thereof shall be recorded by the clerk, or if a particular court has no clerk, by the presiding judge or justice of such court, and maintained in the record.”).

it could also have that information available for future use in other cases from the court's permanent computer-retrievable records.

F. *The Future: Litigant Use Of Court Data—Reverse E-Filing*

No present-day database records the landlord's actions to make repairs ordered by the court, and no provision is currently made to enter data from HPD's database into the court's database.

If judges had full information about repairs, as they would with a proper database, their output (judgments and orders) should be required to reveal the data on which they have based their rulings. These rulings, in turn, will become part of the court-wide database and contribute to the common information pool upon which others can draw for information in successive or parallel cases. To further this acquisition of information, tenant pleadings should actually import and include both the violations shown in the HPD database and also any information found in court records pertaining to repairs. With simple document assembly tools, the court could provide litigants a form pleading that lists all of the extant violations—with rankings of severity and due dates for correction. In a sense, this is *reverse e-filing*: the court would supply basic factual information that already resides in its database, and the litigant would then add new information and submit the completed document. Each pleading, produced through the document assembly tools, should also contain a chart, supplied and calculated by the court's computer, showing the accrued total civil penalties at the date of filing.

G. *Judges Can Do More To Preserve Housing,
With The Help Of Computers*

If a tenant had zealous and experienced representation, that counsel would ensure that the case was resolved with a clear order, whether its terms were stipulated by the parties or imposed by the court. The order would require the landlord to correct defective conditions and to maintain essential services, such as heat and hot water, include a deadline for completion and consequences for failure. However, when a tenant appears without counsel, the judge, *sua sponte*, should take the same approach to the content of the order and the clarity of its terms. It is in this aspect of the court's work that computers can make a real differ-

ence, and it is in connection with this work that I propose a modification of the hands off, let the adversarial system take its course, model.³²

To set the process in motion, the parties drafting a stipulation would use a computer in the courtroom dedicated to that purpose. It would supply a menu of typical (and judicially acceptable) terms for a stipulation. The parties could both select, and construct their own terms for an agreement. When the court determined that the significantly computer-drafted terms of a stipulation are satisfactory, comprehended, and agreed upon, it would enter it as an order. The order would include—because the computer would have inserted it—a list of the repair items claimed by the tenant, along with all outstanding violations, prior court orders, and other pertinent information from the electronic file for the case, as well as from the full database of the court. It would also include the accrued civil penalties from existing recorded violations.

Any court order to repair—whether by stipulation or otherwise—would contain a list of the violations and the due date for the repair of each, as ordered by the court. If the court found conditions that constitute violations but are not already in the HPD database, they could be officially entered by the court as violations. All of the repair obligations reflected in the order would be entered into the court's database. When accepting a stipulation, the judge would explicitly enter into the electronic file the reasons why an enforceable order to repair is (or is not) being entered.

An order resolving an HP case (as contrasted to one resolving a non-payment), should show what the civil penalties would be, if they were imposed. If civil penalties are not imposed, the order should recite the findings that impelled the court's decision to forebear. Obviously, this reasoned determination not to impose penalties, or to reduce the statutory amount, would be important data for the court administration or for researchers studying the court's effectiveness.³³

³² One other task that the Court should take on is to ensure proper service of certified copies of all mandates of the court, whether stipulations in non-payment cases or injunctive orders after trial. *See*, N.Y. C.P.L.R. § 5104 (McKinney's 2005) (stating that contempt is a proper method to enforce this type of final or interlocutory judgment or order, and explaining that a certified copy of the judgment or order itself must be served on the person required to obey the order).

³³ *See* N.Y. C.P.L.R. § 2219(a) (explaining that orders resolving motions must "recite the papers used on the motion"). In the case of the electronic files and use of database information in the Housing Court, the order form for the judge's use would appear on the screen with much of the "recited" information already filled in. Such items as the number of various categories of

If judges accepted responsibility for producing orders that have all the proper terms and are entered into the court's database, two positive consequences would follow. First, the terms of the order would contain an itemized list of repairs, with due dates for each, so that the order would be clear and enforceable; not built from evasive or confusing language. Second, the order would be structured in fields compatible with the database, and the terms would thus become part of the database for future use by litigants and judges, and for those evaluating the court's success in securing repairs.

The advantages of this system go well beyond the simple advantage of having a legible document. The document will be retrievable, will be in searchable form, and will display information relevant to the mission of preserving the housing stock. The court's own repair related output currently is un-captured, making the court's continuing responsibility to protect the housing stock effectively a *mission impossible*.

H. *What The Data Can Show*

The proposed computerization will lead to many positive results. For example, the database can supply reports that trace the record of violations in an apartment including those already recorded in the HPD database, those asserted by the tenant, those added by the court's findings, and those repaired because of a court order. Similarly, the pace of repair in a building with a building-wide order applied to it could be compared to similar buildings in which no such order was obtained. Many possible lines of inquiry could be pursued once the court system maintained its data in a readily retrievable form.

Once access to the court's database became publicly available, through the Internet, for example, other tenants and counsel could obtain useful information that might result in motions to intervene or consolidate, or otherwise foster better coordination and less duplication of effort. When the court's own database contains all relevant repair information, every judge in each part of the Housing Court could access the full history of efforts to achieve repairs. Currently, repair-related information is not captured because the court does not have the requisite information system. Without it, tenant's complaints, the court's

violations, the size of the civil penalty that could be assessed, the history of prior orders to repair, and so forth, would automatically be "recited." See NEW YORK, N.Y. ADMIN. CODE 27-2115 (LEXIS through 2004).

orders to repair, and landlord's compliance with repair orders leave no traceable history.

III. JUDGES MUST TAKE A PARTISAN ROLE WITH RESPECT TO PRESERVING THE HOUSING STOCK

Although under the proposals outlined above,³⁴ orders and judgments would be clear and comprehensive, they still would not be self-executing. The landlord still must perform the repair work, and the court's role will not end until the work is completed. In non-payment proceedings and in HP proceedings, the actual enforcement of repair orders is a challenge. With a database containing the court's entire repair-related activity, basic information will be available. Answers to the following questions will finally be at hand: How many repair issues came before the court in the various proceedings? How were they ruled upon? Most importantly, was there compliance with the court's orders in such cases?

As we have seen, section 110(c) of the Civil Court Act authorizes the court to recommend or employ *any* remedy or sanction authorized by law for the enforcement of housing standards in order to protect or promote the public interest, and to retain continuing jurisdiction over any action or proceeding relating to a building until all violations of the law had been removed; thus creating the framework for a proactive court.³⁵

Furthermore, Housing Judges bring to the bench—if the statutory aspirations for their qualifications have been met—specific expertise in dealing with housing issues.³⁶ Like all judges, those in the Housing

³⁴ See *supra* text accompanying notes 32-33.

³⁵ N.Y. CITY CIV. CT. ACT § 110(c) (McKinney's 2005).

³⁶ N.Y. CITY CIV. CT. ACT § 110(f) (McKinney's 2005) ("The housing judges shall be appointed by the administrative judge from a list of persons selected annually as *qualified by training, interest, experience, judicial temperament and knowledge of federal, state and local housing laws and programs . . .*") (emphasis added). The legislative history also suggests an active judiciary:

The legislature finds that it would be beneficial to the operation of the new housing part of the civil court if the actions and proceedings were tried therein before *judges or hearing officers* whose background, interests and training *demonstrate a broad knowledge of housing problems, current remedial programs, and a determination to secure the expeditious enforcement of state and local laws concerning the maintenance of proper housing standards; assignments of such judges or hearing officers should be for a sufficiently extensive period of time to assure expertise, continuity and the meaningful continuing jurisdiction deemed desirable and necessary to effect the state [sic] purposes herein.*

1972 N.Y. Laws, ch. 982 § 1(c) (emphasis added).

Court must be neutral vis-à-vis the parties. In their special role of preserving the housing stock, however, I suggest that these judges should be blatantly partisan—partisan, that is, with respect to the premises, but still neutral and impartial with respect to the parties. This shift could have important consequences for enforcement of orders to repair.

The judges have explicit power to punish for contempt.³⁷ With their broad power to impose whatever remedy is necessary to preserve the housing stock, surely they should not refrain from exercising their power to enforce the remedies they have imposed. Since contempt is an affront to the court, it seems wholly appropriate for the court to initiate contempt proceedings when its mandates are ignored.³⁸ Given adequate electronic case records, the court's information system could produce the requisite papers to initiate a contempt motion, automatically inserting the specific provisions and dates based on the prior order in the electronic case file.

The court's enforcement of repair orders should be *sua sponte*, swift, and certain. The court is charged with an explicit monitoring and enforcement role, and it must directly ascertain whether there has been compliance with its own orders. The court must promptly employ the powerful tools of civil and criminal contempt when the facts require that approach.³⁹ Otherwise, contumacious litigants simply ignoring its mandates will disgrace the court system.

In fact, the court system should be vigilant and proactive when it comes to repairs. The court could assemble the required papers to bring on a motion for contempt and notify the tenant that the papers are available to be picked up at the courthouse or downloaded from the Internet at the court's website after the due date has passed and the

³⁷ N.Y. CITY CIV. CT. ACT § 110(e) (McKinney's 2005) ("Such housing judges shall have the power of judges of the court to punish for contempts.").

³⁸ N.Y. C.P.L.R. § 5104 (McKinney's 2005) (stating that contempt is a proper method to enforce this type of final or interlocutory judgment or order, and explaining that a certified copy of the judgment or order must be served on the person required to obey it.). See also N.Y. JUDICIARY LAW §§ 750-81 (McKinney's 2005) for the specific provisions on a motion for contempt. Specifically stating that "a court of record has power to punish, by fine and imprisonment, or either, a neglect or violation of duty, or other misconduct, by which a right or remedy of a party to a civil action or special proceeding, pending in the court may be defeated, impaired, impeded, or prejudiced . . ." N.Y. JUDICIARY LAW § 753 (McKinney's 2005).

³⁹ For an example of the use of the contempt power, showing, in great detail, the intricacies of punishing a landlord for both civil and criminal contempt see *Allen v. Rosenblatt*, No. 920/2003, 2004 WL 2963907 (N.Y. Civ. Ct. Dec. 22, 2004).

landlord has not filed certification that repairs are complete, in the court's data system.⁴⁰

Currently, a judge can pursue summary contempt *sua sponte* when an action has taken place in the presence of the court and the judge is in a position to find the facts of summary contempt directly. A modification or extension of this rule might appropriately permit housing judges to initiate contempt in the same manner.⁴¹ The court has its own (albeit limited) staff of official inspectors, who can be dispatched to investigate repair conditions in apartments that are on the court's docket. The report of the inspector comes directly to the court. Since violations submitted by an inspector—once the notice requirement is met—are *prima facie* evidence of the condition,⁴² this information, which the court has obtained directly, would also seem to be a sufficient basis for at least issuing the notice of motion for a finding of contempt.

If the court is to maximize its success in preserving the housing stock, the model of an active judge is essential. The mission of the court

⁴⁰ The court already takes actions to enforce its mandates by producing requisite documents. For instance, in a non-payment case, when a tenant has defaulted in answering, after request for a default judgment by the landlord's counsel the court reviews the documents and court records, the clerk prepares the judgment, and the clerk issues the warrant of eviction. The warrant authorizes a city marshal to evict the tenant, a very powerful enforcement tool indeed. In the parallel situation where a tenant is seeking compliance with a repair order, the tenant should be able to inform the court that a landlord had not complied with an order and have the court, after checking to see whether a certification alleging compliance had come in, just as it checks to see if the tenant did answer, issue a proper mandate to compel compliance with the order. N.Y. CITY CIV. CT. ACT § 204 Summary Proceedings (McKinney's 2005) ("[A]fter the court has determined that a warrant of eviction be issued, it shall not be necessary for the court to sign the warrant, but it may be signed by the clerk of said court."); § 1401 ("In a summary proceeding to recover possession of real property, the judgment shall be prepared by the clerk.").

⁴¹ N.Y. JUDICIARY LAW § 755 (McKinney's 2005)

Where the offense is committed in the immediate view and presence of the court, or of the judge or referee, upon a trial or hearing, it may be punished summarily. For that purpose, an order must be made by the court, judge, or referee, stating the facts which constitute the offense and which bring the case within the provisions of this section, and plainly and specifically prescribing the punishment to be inflicted therefor."

⁴² See N.Y. MULT. DWELL. § 328(3) (McKinney's 2005)

In any action or proceeding before the housing part of the New York City civil court either (a) the visually displayed or (b) the printed computerized violation files of the department responsible for maintaining such files and all other computerized data as shall be relevant to the enforcement of state and local laws for the establishment and maintenance of housing standards . . . shall be *prima facie* evidence of any matter stated therein and the courts shall take judicial notice thereof as if same were certified as true under the seal and signature of the commissioner of that department.

transcends the disputes that the parties present for resolution, and the court should not meekly wait to see if the parties will manage to resolve the enforcement problems.

For the housing judges, reappointment, at the discretion of an administrative judge, is to be “on the basis of the *performance, competency and results achieved during the preceding term.*”⁴³ One would hope that the performance review would measure results based on success in preserving the housing stock, since that is the preeminent mission of the court. Without measurable data, the results are unknowable and remain a matter of speculation. A database system will make the crucial measurements of the court’s actual work possible.

⁴³ N.Y. CITY CIV. CT. ACT § 110(i) (McKinney’s 2005) (emphasis added).