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Cover Page Footnote

Robert F. Kelly; Helpful Suggestions. Chick Kasouf; Statistical Analysis. Elizabeth Salvagno, Danese Bardo, Judy Plumley and the Center of Interdisciplinary Legal Studies of the Syracuse University College of Law; Research Support.

A PIECE IN THE PUZZLE OF PROVIDING ADEQUATE HOUSING: COURT EFFECTIVENESS IN CODE ENFORCEMENT*

Sarah H. Ramsey**
and Fredrick Zolna***

Since the 1960s, the courts have been expected to play a central role in the quest to provide adequate housing for inner-city dwellers by improving the quality of a city's housing stock through the enforcement of housing codes.¹ Like programs that aim to preserve, rehabilitate or subsidize the construction of housing, code enforcement seeks to address the long-standing problem of a lack of adequate housing in our cities.²

Despite waning federal support for housing codes, a number of cities with large, aging housing stocks continue to rely upon code enforcement. The effectiveness of housing code enforcement, however, is a subject of debate among social scientists. While vigorous code enforcement should have a positive effect on housing quality, some articles suggest that vigorous enforcement leads to abandonment, demolition or substantial rent increases, resulting in a decrease in the supply of low-cost housing.³

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1. See Listoken, *A Statement of Appropriate Private and Public Responses to Urban Housing Needs*, 36 WASH. U.J. URB. & CONTEMP. L. 63, 71 (1989).

2. See, e.g., Cunningham, *The New Implied and Statutory Warranties of Habitability in Residential Leases: From Contract to Status*, 16 URB. L. ANN. 3, 13-14 (1979). For a history of housing codes, see L. FRIEDMAN, *GOVERNMENT AND SLUM HOUSING: A CENTURY OF FRUSTRATION* (1968).

3. See Hartman, Kessler and LeGates, *Municipal Housing Code Enforcement and Low-Income Tenants*, in HOUSING URBAN AMERICA 560 (J. Pynoos, R. Schafer & C. Hartman 2d ed. 1980); Klein, *The Politics of Housing Dispute Resolution: An Academic Perspective*, 17 URB. L. ANN. 353, 362 (1979); Komesar, *Return to Slumville: A Critique of the Ackerman Analysis of Housing Code Enforcement and the Poor*, 82 YALE L.J. 1175

Other articles identify a different shortcoming with regard to the effectiveness of housing code enforcement. While accepting the assumption that code enforcement is an efficient mechanism to promote housing quality, these articles cite flaws, endemic to the system, that hamper the efficacy of code enforcement.⁴ These critics of housing code enforcement maintain that current judicial procedures must be improved to process more cases and to administer harsher sanctions.⁵ Otherwise, code enforcement cannot serve as a useful mechanism for improving housing quality.

In the past, the absence of empirical studies and economic models has made it difficult to study court effectiveness in this area.⁶ An empirical study, conducted by the authors in the City of Syracuse, provided the opportunity to test some of the assumptions regarding the effectiveness of code enforcement.⁷ Recognizing the difficulties of assessing an entire code enforcement system, this study focused on the court and its arsenal of remedies.⁸ Data was collected from 100 randomly selected cases that entered the Syracuse City Court in 1988.

(1973). Whether or not improved code enforcement would lead to abandonment and rent increases is a subject of much debate. For a helpful summary of the opposing views, see Cunningham, *supra* note 2, at 138-43. See also Abbott, *Housing Policy, Housing Codes and Tenant Remedies: An Integration*, 56 B.U.L. REV. 1 (1976); Rabin, *The Revolution in Residential Landlord-Tenant Law: Causes and Consequences*, 69 CORNELL L. REV. 517, 558-77 (1984).

4. See, e.g., Rutzick and Huffman, *The New York City Housing Court: Trial and Error in Housing Code Enforcement*, 50 N.Y.U. L. REV. 738 (1975); Scott, *Housing Courts and Housing Justice: An Overview*, 17 URB. L. ANN. 3 (1979).

5. Rutzick and Huffman, for example, recommended that the civil penalty remedies be restructured, that the court's remedial powers be increased, and that the housing court be given jurisdiction over all code enforcement proceedings now brought in other courts. Rutzick and Huffman, *supra* note 4, at 795.

6. See, e.g., W. Hirsch, J. Hirsch and S. Margolis, *Regression Analysis of the Effects of Habitability Laws Upon Rent: An Empirical Observation on the Ackerman-Komesar Debate*, 63 CALIF. L. REV. 1098 (1975). There are a number of doctrinal works on remedies and on how codes should be enforced. See, e.g., F. GRAD, *LEGAL REMEDIES FOR HOUSING CODE VIOLATIONS* (1968). There are also a number of articles on various housing courts and enforcement systems, but these tend to be general descriptions of the courts' operation, rather than extensive analyses of case processing or case load characteristics. See, e.g., ABA SPECIAL COMM. ON HOUSING AND URBAN DEVELOPMENT LAW, EXECUTIVE SUMMARY: HOUSING JUSTICE IN THE UNITED STATES (1980) [hereinafter EXECUTIVE SUMMARY]; 3 URB. LAW. 525-73 (1971) (symposium issue); U. DET. J. URB. L. 349-484 (1983) (symposium issue).

7. See *infra* note 61 and accompanying text.

8. Studying the effectiveness of a code enforcement program would be a complex undertaking for several reasons. Code enforcement is only one part of a system of sanctions and incentives, and isolating the impact of code enforcement alone would be difficult. In addition, because of concerns about the possible, unintended consequences of code enforcement, identifying and measuring outcomes should include an assessment of the impact on the supply of low cost housing and the well-being of owners and tenants, as

To assess court effectiveness, the data was analyzed according to case types, case processing, and case dispositions.⁹

Based on our assessment of case processing and outcomes, we found that the Syracuse court was functioning well. Consequently, we concluded that cases in which owners did not respond to judicial coercion were not necessarily indicative of underlying flaws in the court system as some critics suggest. Rather, the more likely cause of the lack of responsiveness was that the owner lacked the economic resources necessary to effectuate repairs.

Beyond code enforcement, the findings raised issues of broad concern in assessing the judicial role in addressing complex social problems. When court action is part of a strategy of dealing with a multi-faceted social problem, the evaluation of court effectiveness should take into account the types of cases, case outcomes, and the role of the court in the overall plan. Looking only at processing or outcomes can provide an overly restrictive view of effectiveness that results in a court system being blamed for failures that are due more to the complexities of a large social scheme rather than to shortcomings in the judicial system.

Part I of this Article provides an overview of the general characteristics of the City of Syracuse and the efforts of the City to improve housing and its code enforcement system. The overview assists the reader in relating the Syracuse model to other urban areas that face similar housing problems and share many of the City's demographic attributes. Part II sets out the research methodology and findings of the empirical study of Syracuse's court system. Part III addresses the problems in measuring court effectiveness in code enforcement and explores alternate means for assessing housing code enforcement. The conclusion emphasizes the limits on a court in effecting social changes and suggests that court effectiveness should be judged by assessing case processing, case outcome, and the role of the court in the larger governmental plan.

well as an assessment of the physical impact on existing housing and neighborhood quality.

Such an assessment should be made in relation to the goals of enforcement, which might vary for different types of neighborhoods. For example, the minimum requisite housing and repair standards may be the only reasonable objectives for a neighborhood with a substantial number of deteriorated houses. In a neighborhood with homes in good repair, however, a primary goal of enforcement might be the preservation of neighborhood appearance in order to prevent deterioration. *See, e.g.,* Grigsby, *Economic Aspects of Housing Code Enforcement*, 3 URB. LAW. 533, 534 (1971).

9. The data collected for the Syracuse Study, which is the focus of this article, are on file with the author, Sarah H. Ramsey.

I. Syracuse

A. The Effort to Improve Housing Quality

Syracuse, an old northern city with a population of 164,219, has made a sincere commitment to improving its housing stock.¹⁰ Unfortunately, the City of Syracuse confronts three formidable obstacles in its quest for improved habitability: the City's old housing stock, the City's high percentage of low-income residents, and a substantial decrease in its aggregate population.

Much of the housing in Syracuse is old and in poor repair. Fifty-eight percent of the housing stock was built before 1940,¹¹ compared to a figure of 26% nationwide.¹² Thirty-four percent of the city's 70,640 housing units are substandard, as are 36% of the rental units.¹³ Sixteen percent of the substandard units are not suitable for rehabilitation.¹⁴

In addition to the poor quality housing stock, a large proportion of the City's residents have low incomes. The median household income for owner-occupied housing units in Syracuse was \$18,738, compared to \$21,011 for the metropolitan area,¹⁵ and \$22,714 nationwide.¹⁶ Furthermore, a majority of the City's housing units are occupied by tenants rather than by owners,¹⁷ and 27% of those tenant households

10. SYRACUSE AND ONONDAGA COUNTY PLANNING AGENCY, SYRACUSE AND ONONDAGA COUNTY FACT BOOK: SUMMARY OF AREA RESOURCES (Aug. 1982) [hereinafter SYRACUSE AND ONONDAGA COUNTY PLANNING AGENCY] (estimated population for 1984).

11. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, 1980 CENSUS OF HOUSING, METROPOLITAN HOUSING CHARACTERISTICS 346-41 (Table B-7) (1980) [hereinafter METROPOLITAN HOUSING].

12. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 689 (Table 1222) (1988) [hereinafter STATISTICAL ABSTRACT 1988] (data for housing stock in 1980).

13. See CITY OF SYRACUSE, HOUSING ASSISTANCE PLAN, Table 1 — Housing Stock Conditions (1985) [hereinafter CITY OF SYRACUSE] (table data is for the period 1985-1988). A structure is considered substandard if it does not meet Section 8 of the Existing Housing Quality Standards of the U.S. Department of Housing and Urban Development. 24 C.F.R. § 882.109 (1988).

14. CITY OF SYRACUSE, *supra* note 13.

15. See METROPOLITAN HOUSING, *supra* note 11, at 346-3 (Table A-3), 346-37 (Table B-3) (data for 1979).

16. BUREAU OF THE CENSUS, U.S. DEP'T. OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 430 (Table 710) (1982) [hereinafter STATISTICAL ABSTRACT 1982] (data for 1981).

17. Of the 66,961 occupied housing units, 38,686 were renter-occupied. METROPOLITAN HOUSING, *supra* note 11. Note that this total figure does not include vacant units or units constructed after 1980 and thus is not as large as the total number of units listed in the Syracuse Housing Assistance Plan. CITY OF SYRACUSE, *supra* note 13.

had an income below the poverty level.¹⁸ The median household income for renter-occupied housing units in Syracuse was \$9,206, compared to \$10,982 for the metropolitan area,¹⁹ and \$13,246 nationwide.²⁰ The population of the City includes a higher percentage of minorities (19%) than that of the surrounding county (2%),²¹ a group that is at a higher risk of living below the poverty level than the general population.²² The number of homeless persons in the City was estimated to be 425 people in 1987, and has been increasing.²³ In addition, the City's population has declined by more than 17% between 1970 and 1980.²⁴

The City is trying to overcome these obstacles by providing incentives for improvements in housing and sanctions for failure to repair, a "carrot and stick" approach. Improving the condition of the residential housing stock and neighborhoods is a high priority of the current city administration.²⁵ Rehabilitation is encouraged through tax incentives and financial assistance for new construction, improvements, and repairs. The City utilizes the full range of available programs funded by both the federal²⁶ and state governments.²⁷ Existing programs include: financial assistance for owner-occupants to correct major code violations; financial assistance in the rehabilitation of rental property with associated future rent subsidies; free labor for exterior painting of homes owned and occupied by low-income persons; financing of necessary code repairs through deferred loans

18. See METROPOLITAN HOUSING, *supra* note 11, at 346-38 (Table B-4).

19. See *id.* at 346-4 (Table A-4), 346-38 (Table B-3) (data for 1979).

20. See STATISTICAL ABSTRACT 1982, *supra* note 16, at 430, Table 710 (data for 1981).

21. SYRACUSE AND ONONDAGA COUNTY PLANNING AGENCY, *supra* note 10, at 3.08 (Figure 4).

22. See STATISTICAL ABSTRACT 1988, *supra* note 12, at 436, Table 718.

23. THE COALITION FOR HEALTH AND WELFARE OF SYRACUSE AND ONONDAGA COUNTY, HUMAN NEEDS IN ONONDAGA COUNTY 1988: A STATUS REPORT 11 (1988) [hereinafter COALITION REPORT].

24. SYRACUSE AND ONONDAGA COUNTY PLANNING AGENCY, *supra* note 10, at 3.06 (Figure 2).

25. State of the City Message by Mayor Thomas G. Young, in Syracuse (Feb. 3, 1986).

26. See, e.g., 42 U.S.C. § 9901 (1988).

27. See, e.g., N.Y. PRIV. HOUS. FIN. LAW § 1100 (McKinney Supp. 1991). The City also has developed its own programs. For example, the City administration established a limited time period within which delinquent real property taxpayers could pay arrears in full and obtain a waiver of fees and penalties. This program brought in \$7 million. A substantial portion of the City's net proceeds (\$4.2 million) from this program was dedicated to a housing development fund. SYRACUSE, N.Y., LOCAL LAWS ch. 14, art. 1, §§ 50.19-50.24 (1988). This local program was specifically authorized under state legislation that will "sun-set" in five years. *Id.*

(which may be forgiven if the owner continues to reside in the home for 5 years); and financing of necessary code repairs through loans at a below-market rate of interest set by a sliding scale based upon the applicant's income.

The City also has developed a penalty system to reprimand owners who do not voluntarily improve their properties. Housing code enforcement is the principal sanction and is an important part of the revitalization effort. Code enforcement is intended to both improve the habitability of housing and to protect the investment of owners by stopping neighborhood deterioration.

In addition to the "carrot and stick" approach for owners of deteriorated housing, the City has actively worked to transfer title of some of these properties to owners who will rehabilitate them. For example, tax seizure of property has been facilitated by reducing the arrearage necessary for foreclosure from three to two years.²⁸ Further, the City enlisted a title company that will routinely insure tax title as an incentive for investors to purchase tax title.²⁹ Although tax title is usually taken after the City has already identified a qualified buyer, the City will seize an occupied tax delinquent property without an identified buyer. The City then will contract out management and list the property for sale on the real estate market.

Once the City has title, City policy favors sale to occupants or to buyers with a favorable rehabilitation record.³⁰ Unfortunately, the system does not guarantee that the buyer will be more responsible than the previous owner. Consequently, there has been much public debate on means to assure responsible ownership.³¹

Community advocacy is an important factor in the response of the City administration to the problem of widespread housing deterioration. Neighborhood groups have vigorously raised the issue of housing conditions for at least 10 years,³² advocating change in a variety of

28. SYRACUSE, N.Y., SYRACUSE CITY CT. ACT ch. 19, art. 2, § 46 (1987).

29. Sale of tax foreclosed property is difficult because of questions relating to clear and marketable title. The City has satisfied at least one title insurance company that its foreclosure procedures protect tax deeds from subsequent challenge. This company is now willing to insure the tax deed title. This of course encourages potential purchasers of tax foreclosed property.

30. Local law requires any buyer or seller of a multiple residence to comply with the housing codes. SYRACUSE, N.Y., REV. GEN. ORDINANCES ch. 27, art. 8, § 106 (1988).

31. At times, these debates have an ironic side. For example, a corporation that hired a convicted arsonist to oversee the rehabilitation work on its rental houses ran into strong opposition when it tried to buy tax delinquent properties from the City. *Post-Standard*, Feb. 3, 1987, at B1, col. 1.

32. One such group, for instance, is Syracuse United Neighbors which has picketed and demonstrated in front of neighborhood eyesores on numerous occasions.

areas, including modifications in the court system.

In 1980, a statistical study of the Syracuse code enforcement effort was conducted under a small grant from the American Bar Association.³³ This study recommended the creation of a specialized housing court which became a goal of advocates seeking to improve neighborhood conditions.³⁴ Several of the improvements in the code enforcement system between 1980 and 1986, such as legislation granting equitable jurisdiction and the establishment of longer judicial terms, were a result of the movement towards a separate housing court.

B. The Code Enforcement System

The majority of code enforcement cases are processed administratively by the Division of Housing. Court action, however, is necessary when owners will not voluntarily repair their property to comply with the code.

1. Administrative Process

The process providing for the imposition of civil penalties starts with the City's administrative agency, the Division of Housing.³⁵ The Division of Housing is primarily responsible for the enforcement of housing and building codes. The Division's staff of field inspectors inspect properties in response to permit applications, complaints, and as part of a systematic enforcement program. The inspectors prepare reports and order the mailing of administrative notices of violations to the owner of record. Each inspector handles about 16 cases per day, and the department has about 5,000 active cases.³⁶

The first notice informs the owner of the violations, offers an administrative hearing to review the violations,³⁷ and advises the owner of the penalties which may be imposed for failure to correct the viola-

33. Hanley & Zolna, *Syracuse, New York-Blueprint for Housing Reform* (1980). For statistical findings of this study, see notes 74, 77 and 79.

34. See, e.g., CITIZEN'S ADVISORY COMMITTEE ON SYRACUSE HOUSING COURTS, ANNUAL REPORT, July 28, 1986.

35. SYRACUSE, N.Y., REV. GEN. ORDINANCES ch. 27, art. 8, §§ 111-27 (1988). Although statutes do authorize the prosecution of some code violations as misdemeanors, the City has pursued civil remedies on all but a few rare occasions. If criminal appearance tickets were issued by city police, then the office of the county district attorney would have control of the criminal proceedings, thereby potentially removing the case from any comprehensive program the City is pursuing.

36. Syracuse Herald Journal, Jan. 21, 1988, at B3, col. 6.

37. Although administrative review was available during the period of the study, it was exceedingly rare for an owner to request a formal administrative hearing to review the alleged violations. Although discussed as a possible improvement, replacement of the judicial process with an administrative process would remove the coercive power of the judicial remedies from the code enforcement system.

tions. After thirty days, a reinspection is performed, and a second notice is sent if the violations have not been eliminated.³⁸ This second notice provides a final ten day compliance period.³⁹

The administrative agency usually keeps a case well beyond this minimum 40 day period. If the owner responds to the notices and shows any willingness to comply, the agency policy is to work cooperatively with the owner.⁴⁰ If possible, the owner and the City will establish a mutually agreeable timetable for completing repairs. In addition, administrative delays and bureaucratic problems often lead to a substantial expansion of the time periods.

When administrative efforts have been unsuccessful, the Division of Housing can refer uncompleted cases to the Office of Corporation Counsel (the City's law department) for prosecution. In 1986 and 1987, only about 20% of the Division of Housing cases were referred to the Office of Corporation Counsel.⁴¹

2. *The Court*

The Office of Corporation Counsel uses the city court of Syracuse whenever possible because it is well-suited for handling the high volume of simple civil litigation that is typical of code enforcement cases.⁴² City court handles other high volume litigation such as traffic violations and small claims. It also handles matters factually related to housing code enforcement, such as landlord-tenant disputes. In an effort to facilitate the system of housing code enforcement, the city court of Syracuse created a standard weekly session to promptly hear cases involving housing. Also, in recent years the court has assigned one judge to sit in the weekly sessions for a full year, enabling that judge to develop expertise in code enforcement.

A small number of code enforcement proceedings are brought in the supreme court of New York, the state's trial level court of general jurisdiction, in situations when appropriate jurisdiction may not be obtained in city court.⁴³ The supreme court is also the forum of

38. SYRACUSE, N.Y., REV. GEN. ORDINANCES ch. 27, art. 8, § 114 (1988).

39. *Id.*

40. Because the goal of code enforcement is compliance, and because litigation is time consuming, a burden on both the city and the court and may, in fact, discourage cooperation, it is appropriate to attempt to resolve the problems without prior judicial intervention.

41. For the cases in the study, which were court cases only, an average of 172 days elapsed before referral.

42. SYRACUSE, N.Y., SYRACUSE CITY CT. ACT ch. 4, art. 2, § 32 (1988); N.Y. UNIFORM CITY CT. ACT §§ 201-13 (McKinney Supp. 1989).

43. If the respondent cannot be served in the county in which Syracuse is located or an adjoining county, personal jurisdiction cannot be obtained by the city court, but can be

choice when the city court does not have the authority to order the remedy deemed appropriate by Corporation Counsel. Thus, cases seeking an order of demolition and cases which are brought to enjoin non-dangerous conditions must be brought in the supreme court.

3. Remedies

The powers of the Syracuse City Court have been amended legislatively and expanded over time to accommodate the needs of the code enforcement effort. The court's powers now include the authority to grant a money judgment, establish a receivership, and issue an injunction.⁴⁴

The procedures chosen by Corporation Counsel to bring code enforcement cases facilitate settlements. Rather than the traditional summons and complaint used in most civil matters, the Office of Corporation Counsel uses a special proceeding.⁴⁵ On the return date of the special proceeding, a respondent must appear or be subject to a default judgment. This provides the respondent, who often is not represented by an attorney, the opportunity to answer orally and to settle the case before trial.

a. Fines

The relief routinely sought and included in the pleading in every case is the fine authorized by the Syracuse Housing Code of \$3.00 per day per violation.⁴⁶ This penalty can be transformed into a monetary judgment imposed by the court. Only as a judgment can the penalty be forcibly collected through the usual creditor techniques of bank account execution, wage garnishment, and rent collections. These coercive powers of the City as judgment creditor, which flow from the authority of the court, constitute the "pain" which can be inflicted by the "stick" of code enforcement.

Because the code is quite comprehensive and numerous violations frequently exist, the financial exposure of a property owner can be great. The City files many judgments of amounts in excess of \$10,000 and has collected sums in excess of \$25,000 from individual property owners.

obtained by the long-arm jurisdiction of the supreme court. N.Y. CIV. PRAC. L. & R. § 302 (McKinney 1972 & Supp. 1990).

44. SYRACUSE, N.Y., SYRACUSE CITY CT. ACT ch. 4, art. 2, § 32 (1988).

45. N.Y. JUD. LAW § 753 (McKinney 1975 & Supp. 1991).

46. SYRACUSE, N.Y., REV. GEN. ORDINANCES ch. 27, art. 8, § 120 (1988).

b. *Receiverships*

The court also has the power to make a property subject to a receivership.⁴⁷ A court appointed receiver has the authority to collect rents and profits, and to incur debt secured by a lien on the property.⁴⁸ The receiver is responsible for correcting dangerous code violations and for operating and maintaining the property during the receivership.⁴⁹ The receiver may make any repairs which would be deemed appropriate in the reasonable exercise of sound business judgment.

The establishment of a receivership is designed to place a skilled and responsible manager in charge of the property. The court has the power to appoint a receiver of its own choosing, delineate the tasks of the receiver, and terminate the receivership when appropriate.⁵⁰ Receivership can be used when the owner of the property either cannot or will not keep the property in compliance with the code. Unfortunately, receivership is only appropriate if the property can generate sufficient income to cover the cost of repairs in a relatively short period of time.⁵¹

c. *Injunctions*

Issuance of an injunction in a code enforcement case is the most directly coercive authority granted to the court. Since September, 1986, the Syracuse City Court judge has been authorized by specific state legislation⁵² to issue an order mandating a property owner to take action to alleviate or to terminate a dangerous or hazardous condition.⁵³ If the property owner disobeys the injunction, then he must

47. SYRACUSE, N.Y., SYRACUSE CITY CT. ACT ch. 4, art. 2, § 32 (1988). For a comprehensive description of receivership programs generally, see D. LISTOKIN, HOUSING RECEIVERSHIP AND SELF-HELP NEIGHBORHOOD REVITALIZATION (1985). The judicial authority to appoint a receiver was added to the city court jurisdiction by state legislative amendment of the Syracuse City Court Act in 1984. Prior to this grant of jurisdiction, which was specifically for code enforcement cases, the court was statutorily denied any form of equity jurisdiction. N.Y. UNIFORM CITY CT. ACT § 209 (McKinney Supp. 1989).

48. SYRACUSE, N.Y., REV. GEN. ORDINANCES, ch. 27, art. 8, § 120(A) (1988).

49. *Id.*

50. *Id.*

51. Syracuse has provided a revolving loan fund for receivers to use for initial major repair costs, but the fund is modest and cannot be used to finance repairs over a long period. Also, expecting the court to supervise the receivership for more than a year would be unusual. When recovering the cost of repairs would take a long time, a property could nonetheless be salvaged through the use of long-term loans that would allow the cost of repairs to be amortized over a number of years. This would not be a remedy that the court could order, however, but rather an option that the owner would pursue.

52. SYRACUSE, N.Y., SYRACUSE CITY CT. ACT, ch. 4, art. 2, § 32 (1988).

53. Because an injunction is an extraordinary remedy, the revised Syracuse City

face the court for failure to comply with the court's mandate.⁵⁴ The potential punishment for civil contempt includes imprisonment or periodic fines which continue until the property owner complies.⁵⁵ Because of the difficulties in obtaining and enforcing an injunction, the power of injunction serves more as a threat and deterrent than as a commonly employed judicial remedy.

d. Stipulation Agreements

The goal of the code enforcement effort is to obtain compliance by property owners with the applicable codes in order to protect life, health and property. The judicial component of the code enforcement effort shares these goals, and therefore, the imposition of fines alone on a violator is not a desirable remedy except to the extent that it acts as a deterrent. Imposition of a penalty indicates that the code violation continues to exist, and further, once the penalty has been imposed, the threat of financial sanctions has been dissipated. In other words, once the fine is imposed, the owner has no financial incentive to make repairs until such time as a new case is brought based on the same conditions. To avoid this problem, the Office of Corporation Counsel often uses stipulation agreements. Stipulations of settlement maintain the threat of the fine while providing a schedule for repairs which will allow the property owner to escape penalty.

Court Act grants the court injunction powers only when the court has made a finding that:

- (i) A money judgment has been returned unsatisfied, or that satisfaction of such money judgment would otherwise be ineffectual to maintain housing codes; and
- (ii) A serious or dangerous condition exists, which may include a finding that there exists in such dwellings or in any part thereof a lack of heat or of running water or of light or of electricity or of adequate sewage disposal facilities, or any other condition dangerous to life, health or safety, which has existed for five (5) days, or an infestation by rodents, or any combination of such conditions or course of conduct by the owner or his agents of harassment, illegal eviction, continued deprivation of services or other acts dangerous to life, health or safety; and
- (iii) the appointment of a receiver . . . is not adequate or is inappropriate to remedy the problem.

SYRACUSE, N.Y., SYRACUSE CITY CT. ACT, ch. 4, art. 2, § 32 (1988). If these findings are made, the court can issue an injunction unless the owner successfully asserts the affirmative defense that "the danger to life, health or safety will be removed promptly by vacating and boarding up the premises or by demolishing the premises . . ." *Id.* The statute authorized the use of injunctions in cases commencing after September 1, 1986. Since the study cases covered the period of May - December 1986, the court had this remedy available when hearing about one-half of our cases.

54. The injunction order which is disobeyed can only be enforced by a civil contempt proceeding which is, in effect, a new special proceeding. N.Y. JUD. LAW § 753 (McKinney 1975 & Supp. 1991). However, service of process must be personal. *Id.* at § 761.

55. *Id.* at § 773-74.

In the typical code enforcement case, Corporation Counsel offers to enter into a written stipulation of settlement.⁵⁶ The stipulation typically requires the owner to admit to violations and accept liability for a judgment. The judgment is deferred and later eliminated if the repairs are completed according to the agreed timetable.⁵⁷ If the repairs are not made, however, the City can enter the judgment.

In negotiating the stipulation, the owner usually admits that the violations exist. Although the City is virtually always able to prove their existence, the City prefers to obtain an owner's admission which is quicker and more economical than going to trial. Establishing a trial date and marshalling the evidence could delay the disposition anywhere from one to ten weeks. In fact, a property owner will occasionally ask for a trial date for the sole purpose of obtaining a delay, and will then willingly settle at a later date.

It is extremely rare for a case to actually proceed to trial when the owner is represented by an attorney because an attorney will recognize the strength of the City's proof. In some instances, an unrepresented owner will refuse to make the necessary admissions and cause a case to go to trial. In the sample of 100 cases used in the study presented herein, none was tried on questions of fact, and stipulations were used in more than one half of the cases.⁵⁸ The existence of alternative, more coercive remedies, such as injunctions and receiverships, encourages owners to negotiate settlements.

56. The stipulation incorporates the following terms and conditions:

1. an admission by the property owner of the existence of specified violations, an acknowledgement of the resulting financial penalty, and an admission of the City's entitlement to file a judgment;
2. a timetable to correct the violations;
3. an agreement on behalf of the City to defer filing the judgment contingent upon the owner complying with the timetable for repairs;
4. an agreement on behalf of the City to discontinue the proceeding if all corrections are completed under the timetable;
5. an agreement that the owner will accept the determination of the City's inspectors as to whether the repairs have been completed;
6. an agreement that judgment may be entered by the City without further notice to the owner if the city finds that the terms of the stipulation have not been met.

During the period of the study, the Office of Corporation Counsel made use of a preprinted stipulation form. This form could be completed with the names of the parties, the particulars of the case, and then signed and filed with the court. Samples of this form can be found in the 1986 case files of the Syracuse City Court, Housing Part.

57. Conditional fines and sentences have been recommended for courts that lack equity jurisdiction, which the Syracuse court did not have until August, 1987. See Penkower, *The Housing Court of Pittsburgh*, 17 URB. L. ANN. 141, 152 (1979); Reed, *Detroit Code Enforcement and the Housing Court*, 17 URB. L. ANN. 215, 220 (1979).

58. See *infra* Appendix 6.

The timetable for repairs is the key item subject to negotiation prior to reaching a stipulated settlement. The owner usually wants all the time possible to continue to defer the expenditure of money. The goal of Corporation Counsel, however, is to keep the timetable as short as possible, allowing only the time required to physically complete the work, including the time needed to employ licensed or professional contractors if necessary.

As a practical matter, the resulting timetable depends upon many factors and the stipulation is flexible enough to incorporate terms appropriate to a broad range of cases. When a stipulation is employed in a case involving exterior violations, for example, it will usually provide for a period of time that includes a portion of the year expected to have weather appropriate for exterior work and painting. A stipulation may be employed with an owner who has demonstrated cooperation in the past, even though the work required is extensive. To ensure compliance, the stipulation might set forth a schedule including interim dates when portions of the work must be checked for completion.

*e. A Case Example*⁵⁹

Stipulation agreements can be complex, flexible and comprehensive. A case involving a 40-unit low rise apartment building in a deteriorated neighborhood provides an example. The neighborhood had been targeted as a revitalization area by the City's Community Development Department.⁶⁰ The stipulation in this case extended for six months, requiring: a comprehensive smoke detector system to be installed within six weeks; electrical and heating repairs within three months; and repairs to apartment interiors within six months. Pursuant to the agreement, the owner had to admit that 43 violations existed for a period of 133 days, which subjected him to a contingent penalty in the amount of \$16,758. The owner complied with the terms of the stipulation and therefore escaped the penalty; the tenants profited from improved living conditions; and the City benefitted from a reduction in the risk of fire and personal injury. The settlement was made during the summer months so the three month delay for heating repairs was acceptable.

Although this case is a success story, a number of others could be

59. This example is from a court case that occurred during 1987. It was not part of the statistical analysis of this study. This narrative example was used because one of the authors was familiar with this case due to personal involvement.

60. CITY OF SYRACUSE, 1988-89 COMMUNITY DEV. PROGRAM 9. *See infra* note 64 and accompanying text.

cited as failures—cases in which court action appeared to make no difference. A failure case, for example, would be one in which a stipulation was not followed so that a judgment was entered, but no assets were found to satisfy the judgment. In such a case, administrative and judicial time and energy were expended, but no repairs were made or money collected. The Syracuse Study developed measures for categorizing cases as successful or not in order to assess the effectiveness of court intervention based on case outcomes, in addition to case processing.

II. The Syracuse Study

To identify code enforcement cases in residential properties for this study, a systematic, random sample of 100 cases was drawn from court cases that were initiated in the Office of Corporation Counsel between May 1, 1986 and December 31, 1986.⁶¹ The sample of 100 cases was approximately 25% of the code enforcement caseload for this time period.

A. Descriptive Measures

One purpose of the Syracuse Study was to provide an empirical description of the operation of the court system based on a sampling of cases. Most studies have given only anecdotal, subjective accounts of court performance, and very broad objective measures, such as the number of cases processed.⁶² In contrast, this study collected detailed information on characteristics, such as the case type, the number of violations, the time spent in the system, and court ordered remedies. Most of the factors measured are straightforward, such as the amount of back taxes owed. Others, however, are more subjective, such as our assessment of the seriousness of the case.

For the purposes of this study, case information can be grouped into four broad categories: (1) Characteristics of the Dwelling and the Owner; (2) Characteristics of the Housing Code Problems; (3) Time in the System; and (4) Case Outcome. Our findings in each of these categories follows.

1. *Characteristics of the Dwelling and the Owner*

The typical property involved in the sample of code enforcement cases consisted of a two-family, two-story, wood-frame house. The

61. The sample was drawn by selecting every 4th case in which a petition was filed from the Office of Corporation Counsel docket list.

62. Penkower, *supra* note 57, at 154-55.

other variables related to dwelling and owner characteristics are listed in Appendix 1 with variable means, standard deviations and medians, or proportional distributions.⁶³ As Appendix 1 shows, only 37% of the properties in the sample contained more than 2 units, with the largest containing 53 units. The mean number of units in the dwellings was 4.2. The owner of the property lived on the property in only 20% of the cases. Property taxes were owed on 48% of the properties, with a mean dollar amount owed of \$7,865.

Properties were located in each of the 17 neighborhood areas designated by the Syracuse Office of Community Development.⁶⁴ This office has classified each of these neighborhoods according to a tripartite quality rating: stable, transitional, or in need of revitalization.⁶⁵ The transitional neighborhoods are those which are beginning to deteriorate; the neighborhoods in need of revitalization suffer from substantial deterioration.⁶⁶ Twenty percent of our cases were in stable neighborhoods, 13% in transitional neighborhoods and 67% in deteriorated neighborhoods.

2. *Characteristics of the Housing Code Problem*

For this study, violations were grouped into ten different categories.⁶⁷ Appendix 2 shows the number of the sample cases with at least one violation in a category. It also shows the median number of violations for each type of violation. Violations relating to the exterior of the dwelling were the most common type of violation, perhaps because inspectors could cite exterior violations without gaining access to the interior of the house.

The other variables related to characteristics of the housing code problems are listed in Appendix 3 with appropriate statistics. As Appendix 3 indicates, cases typically had multiple violations with a mean of 23 violations per case. Over 50% of our cases had 15 or more violations. The mean amount of the penalty requested in the petitions was \$9,934.

Another important measure in this category is the seriousness of

63. An additional factor that we wished to measure was whether or not the owner was represented by counsel. Although the owner clearly was represented in a number of our cases, the records did not always indicate whether the owner was represented. In 37% of the cases, the presence or absence of representation could not be ascertained. Of the cases in which representation was known, 46% of the owners were represented. Because of the large number of cases in which this factor was unknown, it was omitted from much of the analysis.

64. CITY OF SYRACUSE, 1988-89 COMMUNITY DEV. PROGRAM 9.

65. *Id.* at 11.

66. *Id.* at 9.

67. The categories were as follows:

the violation. The seriousness of a housing code violation can vary considerably depending on the point of view of the assessor. A neighbor, for example, would be troubled by outside appearance factors such as peeling paint or a junked car. These violations could have a very negative impact on the value of the neighbor's house. However, interior problems, such as falling ceiling plaster and leaking plumbing, would be more troubling to residents. From the point of view of the code enforcer, the local government, still other problems could be of paramount importance, such as a lack of smoke detectors or fire barriers. To reflect these differences, our assessment of seriousness was divided into three dimensions: impact on the neighborhood, impact on the residents, and impact on general health and safety. Each type of impact was then rated as "low," "medium," or "high" in terms of its seriousness.

To make these ratings, the code violations listed for each case were classified using the criteria described in Appendix 4.⁶⁸ Although the severity of the impact of the violations varied, most cases fell outside of the low impact category.⁶⁹ A large number of cases (67%) were rated as having violations with a high impact on the neighborhood. This may be due in part to the large number of cases that had at least

1. Electrical—problems such as an insufficient number of outlets, missing face plates, and improper wiring.

2. Plumbing—problems such as leaking fixtures, improper connections, and no hot water.

3. Fire—problems such as improper fire walls, missing stair doors, and faulty or missing smoke detectors.

4. Interior—problems such as holes in the walls, peeling paint, falling ceilings, and unsafe stairs.

5. Exterior—problems such as peeling paint and rotted porch steps.

6. Yard—exterior problems not directly related to the house such as junk cars, debris, or dilapidated storage sheds.

7. Vermin—rodents, cockroaches, and other pests.

8. Heating—problems related to the heating system such as a broken furnace or improper furnace connections.

9. Overcrowding—too many people for the capacity of the dwelling.

10. Administrative—improper or no permits for alterations or repairs.

68. The author Frederick Zolna developed the housing code violation classifications. He has been employed as an attorney with the Legal Services Corporation of Central New York, and in that capacity has represented tenants with substandard housing problems. He was also Assistant Corporation Counsel in the Syracuse Office of Corporation Counsel, prosecuting housing code enforcement cases. Because of this experience in representing both tenants and the City in addition to his knowledge of city neighborhoods, he was familiar with the point of view of the different groups. He rated all the study cases. To test the clarity and reliability of the rating systems standard and the rating themselves, 10 additional cases were rated by both researchers. The ratings were identical in 87% of the cases.

69. See *infra* Appendix 3.

one exterior violation (74 of our 100 cases) and at least one yard violation (33 cases).⁷⁰ It is also possible that more exterior cases were generated due to complaints by neighbors or by neighborhood organizations.

Fifty-two percent of the cases were rated as having violations with a high impact on general health and safety. Surprisingly, only 46% of the cases were rated as having a high impact on the residents, although 32% were considered to have a medium impact. These results may reflect the historic code enforcement emphasis on health and safety rather than on habitability.⁷¹

3. *Characteristics of Time in the System*

As discussed earlier, code enforcement cases are first processed by an administrative enforcement agency and only a small percentage of those cases are referred to the Office of Corporation Counsel.⁷² As Appendix 5 indicates, the agency process for the cases in our sample usually took almost six months per case⁷³ before referral to the Office of Corporation Counsel.⁷⁴ In addition, the average court case had been involved in well over three prior administrative cases (mean of 3.6) before it was referred to the Corporation Counsel.⁷⁵ Overall agency time would be much longer than five months if the time spent on all proceedings were cumulative.

The Office of Corporation Counsel typically filed court petitions within one month after an administrative referral. For those cases that were closed within the time frame of our study, over six months⁷⁶ elapsed between the time the case was received by Corporation Counsel and case closure.⁷⁷ Thus, a typical case takes over twelve months from administrative opening to final judicial action.

This time measure describes cases that closed during the period of our study and does not provide an estimate of the length of time for

70. See *infra* Appendix 2.

71. See Miller, *Code Enforcement: An Overview*, 60 U. DET. J. URB. L. 349, 350 (1983).

72. See *supra* text accompanying note 41.

73. The mean number of days was 172.

74. In 1979, many cases remained at the administrative level for over one year. Hanley & Zolna, *supra* note 33, at 8.

75. One piece of property is often the subject of multiple cases because a partial inspection and a partial list of violations is the basis for one case. An inspector might only look at one apartment in a multi-unit building, for example, and the violations in the apartment would be the basis for one case.

76. The mean number of days was 203.

77. In 1979, the average case remained open in court for fifty-four weeks (378 days). Hanley & Zolna, *supra* note 33, at 6.

unclosed cases to be completed. Over a fourth of the cases in the sample will probably be pending, unclosed and inactive for a substantial period of time after the end of the study. The largest category of these, 21%, are cases in which the City took a default judgment and filed a lien against the property, but had not found any assets, such as bank accounts, to satisfy the judgment. Usually, these cases would continue as open cases until the property was sold or seized for back taxes. In six cases, the parties stipulated that the property would be kept vacant and secure until repairs were made or the building was demolished. Unlike the typical stipulation agreement requiring that repairs be made by a certain date, these "vacant and secure" cases might continue for an indeterminate period of time. The Division of Housing would, however, routinely check these vacant and secure properties to ensure that, in fact, the owners had not permitted any occupancy.

For purposes of this analysis, another measure of time in the system was developed. Since a goal of the study was to assess court effectiveness, we wanted to measure the length of time between the entry of the case into the judicial system and the imposition of a judicial remedy, i.e. the date the coercive power of the court was first used. To create this measure, we chose the end date that was the earliest of the following: the date closed; the date of the stipulation agreement, if any; or the date judgment was entered, if any. Using this measure "length," the analysis showed that a court resolution was imposed on average within four months.⁷⁸

The number of times a case is calendared indicates how much actual court time has been used in resolving a case. On average, the cases were calendared 2.7 times. Over 60% of the cases in the sample were resolved within two or fewer appearances.⁷⁹

4. *Case Outcome Characteristics*

Most of the outcome measures consisted of court ordered or approved dispositions, such as judgments or stipulation agreements. We also developed one composite outcome measure, "success." Appendix 6 contains the variables that are considered relevant to case outcome.

a. *Stipulation Agreement*

The most common remedy in the sample cases was the stipulation

78. The mean was 120 days.

79. In 1979, 62% of the cases were calendared four or more times, while ultimately 42% were calendared seven or more times. Hanley & Zolna, *supra* note 33, at 7.

agreement. In a stipulation agreement, the owners agree that specific repairs will be made by specific dates and that failure to comply will result in a judgment for a specific amount.⁸⁰ Fifty-four percent of our cases involved stipulation agreements. Owners typically were allowed slightly over four months, with a median of 133 days, to make repairs. In setting a time for repairs, the Office of Corporation Counsel would consider each case individually, taking into account the time of year and the nature and extent of the repairs needed. In Syracuse, for example, exterior painting is limited to the summer season because the winters are so severe. Thus, the City might enter into a stipulation agreement in November that would require an owner to complete exterior painting by July of the following year. A furnace repair in November, however, would require immediate attention.

Stipulation agreements resulted in repairs in about 39% of the stipulation cases. Those cases in which the agreement was followed usually resulted in repairs being completed within two weeks of the original date specified for completion. For the 61% of the stipulation cases in which the agreements were not followed, one-half had a judgment entered, and the remaining cases were still pending a year later or had been resolved in some other manner, such as the City having taken title.

b. Judgment

Twenty-four percent of the cases had a judgment entered, usually by default. The mean judgment amount was \$4,564. Judgments had actually been collected in only 17% of the cases in which judgment was entered. In the cases with no collection, the owners usually had no readily identifiable assets. Hence, the City simply filed a lien on the property and would collect when the property was sold. Although the City might be able to take title through the judgment lien,⁸¹ more typically, the City would use a tax foreclosure proceeding, which is quicker and less cumbersome, to attain title. In our sample, taxes were unpaid in 61% of the cases in which a judgment had been entered, so tax foreclosure was often an option.

c. Receiverships and Injunctions

Although receiverships were an available remedy, they were not used in any of the sample cases. Since September, 1984, the court has

80. See *supra* note 56 and accompanying text.

81. Property that is owned and occupied as a principal residence that does not exceed \$10,000 in value is exempt from application to satisfy money judgments. N.Y. CIV. PRAC. L. & R. § 5206 (McKinney 1988 & Supp. 1991).

had the authority to appoint a receiver,⁸² but a variety of problems with regard to receiverships, such as qualifications of the receiver, were still being resolved at the time the sample cases were being heard in 1986.⁸³

The court did not have jurisdiction to grant injunctions except in cases begun after September, 1986, the second half of the period studied.⁸⁴ Injunctions were not used in any of the cases in our sample.

d. Dismissal

The court rarely ruled against the City. Three of the cases reviewed were dismissed, but in one such case, the City planned to proceed against the property in another pending case, and in another the City planned to file a new case.

e. Success

The composite measure of outcome, "success," was developed to categorize cases as being either successful or unsuccessful. We considered cases to be successful if they met one of two criteria. A case was successful if:

1. The court-imposed solution had been followed. In stipulation cases, this would mean that the stipulation agreement had been complied with; in judgment cases, this would mean judgment had been collected; or
2. The violations had been corrected without the court imposing a remedy because the owner had completed repairs before the court date. Thirty-five cases met this criterion.

Using this measure, 63% of our cases were successful and 37% were unsuccessful.⁸⁵

In summary, what is the typical code enforcement case like? The typical property would be an older, frame, two-family house occupied by tenants in a deteriorated neighborhood. It would have been cited for a number of different types of code violations, some of which

82. SYRACUSE, N.Y., SYRACUSE CITY CT. ACT ch. 4, art. 2, § 32 (1)(h)(3) (1986).

83. See Memorandum from the Commissioner of the Syracuse Department of Community Development to the Syracuse Common Council (June 17, 1986).

84. 1986 N.Y. LAWS 889.

85. It would be difficult in a study of this type to measure the success of a particular remedy, such as a stipulation agreement, when there is so much discretion in the system. The prosecutor chooses cases for stipulation and sets the time limits for completion based on the likelihood of the owner's compliance with the agreement. Quite possibly these cases would have been "successful" if other remedies had been used as well. Another methodology, such as the use of a control group, might alleviate this problem. Establishing control groups in a court setting, however, would pose substantial problems.

would be fairly serious. The case would have progressed slowly through the system. Usually, a number of attempts would have been made to cure the violations prior to referral to the court system so that at least six months would have been spent at the administrative level. The case would take an additional six months to proceed through the court system. Although the case probably would be settled through a negotiated stipulation agreement with a timetable for repairs, it would not be very unusual if a successful resolution were not reached. In the unsuccessful case, either promised repairs were not made or fines were not paid.

B. Relationships Among Variables

In order to get a better understanding of the cases and the court's impact, we wanted to explore the interrelationships among variables that measured case characteristics and variables that measured the case's handling by the court. Broadly speaking, we presumed that owner occupancy would be related to certain owner and dwelling variables; to certain case problem variables; and to case outcome measures. We also hypothesized that the number and severity of the violations would be related to the composite measures of success and length. Finally, we expected that length and case outcome would be related.

1. *Relationship of Owner Occupancy to Certain Owner/Dwelling Characteristics and to Problem Characteristics*

The major independent variable in the analysis of the dwelling/owner characteristics was whether the owner occupied the property or was an absentee landlord. Increasing owner occupancy is assumed to be a mechanism for improving housing because the owner in residence would be more concerned with home maintenance and the appearance of the neighborhood. Many cities, including Syracuse, provide programs targeted toward increasing home ownership.⁸⁶

The first part of the analysis of the owner occupancy measure, as detailed in Appendix 7, consisted of an examination of its relationship to certain other dwelling/owner characteristics.⁸⁷ As we expected,

86. For example, the City participates in cooperative efforts with non-profit groups to build and renovate homes for buyers with limited incomes. Post-Standard, Aug. 7, 1987, at B1, col. 2. The City also passed an ordinance that gives ownership preference to potential occupants of the City's tax delinquent properties.

87. The selection of the appropriate statistical test for evaluating relationships between measures is largely based on the types of variables that are being used in the comparisons. Dichotomous variables, that is, variables that have only two values and no inherent scale (e.g., yes/no; owner occupied/not owner occupied) require the use of

owner-occupied dwellings tended to be duplexes or single family homes. As Appendix 7 shows, the mean number of units for occupied dwellings was 1.9, compared to 4.8 for non-owner-occupied properties, a statistically significant difference.⁸⁸ Five of the cases in our sample were owner-occupied, single family homes.

We also expected that owner-occupied homes would tend to be in better neighborhoods but were surprised to find that this was not so. Sixty-eight percent of the owner-occupied dwellings and 66% of the non-owner-occupied dwellings were in neighborhoods that were classified as deteriorated.

The fact that so many of the owner-occupied homes were in the deteriorated neighborhoods may indicate that owner occupants who have not maintained their properties pursuant to the code are persons with very limited financial resources. We also speculate that some may be new to home ownership. They may have managed to purchase their own homes, but could only afford a property in a poor neighborhood and even then did not have sufficient financial resources for maintenance. Or perhaps they purchased a duplex, expecting to cover the mortgage and other expenses from rental income. Others may be long-term residents who have watched their homes and the neighborhood deteriorate, but who are on fixed incomes without the resources necessary to maintain their homes or to relocate.

We also expected that property taxes would be in arrears more often in properties with an absentee landlord. Hence we were surprised to find that owner-occupied properties were no more likely to be current in property taxes than were non-owner-occupied properties. Indeed, although the difference was not statistically significant, only 37% of the owner-occupied dwellings were current in their prop-

nonparametric statistics such as the Chi-square. When a comparison of the means of continuous or interval (count) level variables is needed, the t test statistic is used. The Pearson product moment correlation coefficient is used to measure the degree of linear association between two interval level variables. The Chi-square statistic and the t test statistic, with the associated probability values (P) and the p-values associated with the correlation coefficients, are used to estimate the probability that the result occurred by the chance involved in using a sample of a given size rather than the entire population. If the estimate shows that the result is not likely to occur by chance, then the estimate is statistically significant. *See generally*, D. BARNES & J. CONLEY, *STATISTICAL EVIDENCE IN LITIGATION* (1986).

88. When a relationship between two variables is referred to as "statistically significant," this means that the likelihood is very small that the relationship could be the result of the chance that is involved in using a sample rather than an entire population. We used a more liberal inclusion level (in the .10 range, rather than the traditional .05 level of significance) because of the exploratory nature of our study and the small number of cases in our sample.

erty taxes, compared to 56% of the non-owner-occupied.⁸⁹ The mean amount of back taxes owed was \$5,065 for owner-occupied, and \$3,056 for non-owner-occupied. Although this difference was not statistically significant, it is a large absolute difference.⁹⁰ The overall tax arrearage rate of 48% for both owner-occupied and non-owner-occupied for these code enforcement properties is substantially higher than the City's overall rate for residential properties, which is only 2%.⁹¹

We can only speculate about why owner-occupied properties are so much less likely to have paid their taxes. If these owner occupants are persons of limited means, as we suggested earlier, they may have simply decided that taxes were a relatively low priority expenditure. Although failure to pay taxes results in the accumulation of interest and penalties, there are no immediate adverse effects. Unless and until the City decides to proceed against the owners, non-payment remains painless.

Furthermore, insofar as we were able to ascertain the presence or absence of legal representation,⁹² we found that owners who occupied their properties were significantly less likely to obtain legal counsel in these cases than were absentee landlords.⁹³ Only 17% of owners who occupied the property were represented, compared to 55% of absentee owners. Perhaps absentee landlords were more willing to spend money on the services of an attorney, a business expense, than were owner-occupiers. Ability to pay an attorney may also be a factor and would be consistent with the possibility that owner-occupants are persons of limited means.

The second part of the examination of owner occupancy was to analyze the relationship of owner occupancy to the number of violations and to the severity of the violations. We had expected that owner-occupied properties would have fewer and less severe problems than non-owner occupied. As Appendix 8 shows, the number of violations was indeed smaller in owner-occupied properties, although the difference was not statistically significant.

With regard to the severity of the housing code problems, the anal-

89. The probability level was .126. This relationship might have been statistically significant had the sample size been larger.

90. The sample size for this relationship was only 42 cases, the number of cases with tax arrearage. The relationship might have been significant had the sample size been larger.

91. Telephone interview with Sheldon Ashkin, Deputy Commissioner of Real Estate, in City of Syracuse (October 13, 1988).

92. See *supra* note 63.

93. Caution is necessary in interpreting this finding because of the large number of cases (37) in which this data was missing. See *supra* note 63.

ysis found that owner-occupied properties were significantly less likely than absentee-owner properties to have high severity ratings and were more likely to have low severity ratings on both the impact on general health and safety and the impact on residents. Only 21% of owner-occupied properties had a high severity of problem ratings on general health and safety violations, compared to 59% for non-owner-occupied; 68% of owner-occupied properties had low ratings compared to 29% for non-owner-occupied. Twenty-one percent of owner-occupied properties had a high severity of problem ratings on resident violations, compared to 52% for non-owner-occupied; 53% of owner-occupied properties had low severity ratings compared to 15% for non-owner-occupied.

In contrast, however, higher severity of problem ratings with absentee-owner properties were not found in the impact on the neighborhood variable. The severity ratings of owner-occupied properties differed significantly from those of absentee-owner properties in this category, but with regard to low ratings only, not to high severity ratings. Interestingly, owner-occupied properties had no problems that were rated "low" with regard to severity of impact on the neighborhood, compared to 19% of non-owner-occupied properties with ratings of "low."

The explanation for these differences may be that owner-occupants, typically owners of duplexes, are more concerned about interior problems, of whatever nature, than they are about exterior problems. Hence they tend not to spend scarce resources on exterior and yard maintenance. Perhaps also, inspectors are less likely to write up relatively minor exterior problems in owner-occupied properties. Also, in owner-occupied dwellings, the inspectors may not be as concerned with issues not related to health and safety.

2. *Relationship of Owner Occupancy and Certain Other Dwelling/Owner Characteristics to Outcome*

Another component of the analysis was to consider the relationship between selected dwelling/owner characteristics and outcome measures. We had expected that the dwelling/owner characteristics of owner occupancy and tax status would be related to the outcome measures of stipulation, judgment, and success. We thought that owner occupants would be more interested in quickly performing necessary repairs, whereas tax arrearage cases would be more likely to be unresponsive. Appendix 9 presents the results of this analysis.

To our surprise, owner occupancy was not significantly related to any of the outcome measures. We had thought that owner occupants

would want to cooperate and get repairs done and hence would be more likely to enter into stipulation agreements and less likely to simply let the case go to judgment. In fact, no statistically significant relationship existed between owner occupancy and these outcome measures. We also had thought that owner occupancy would be positively related to success. Here also, we were disappointed. Owner occupant cases were not more likely than non-owner occupant cases to be successful.

The explanation for these results may lie in the financial status of the owners. Perhaps owner occupants simply did not have the resources to make the repairs required in an expeditious fashion. Owner occupancy may be a proxy for very low income; in our sample, owners who ended up in the code enforcement system are persons who appear to have few financial resources.

This finding should not be used to justify a change in policy favoring owner-occupied homes. Most owners do not end up in court.⁹⁴ Only 20% of our sample cases involved owner-occupied homes, although over 40% of the occupied housing units in Syracuse are owner-occupied.⁹⁵ In contrast, 80% of the sample consisted of non-owner-occupied homes, even though under 60% of the housing units are non-owner-occupied.

The financial status of the owner also may be the underlying explanation for the relationship of payment of taxes to the outcome measures. Properties that had taxes paid were significantly more likely to be successful cases than those without taxes paid (73% compared to 53%). Cases with taxes paid were also less likely to have had a judgment entered than those with a tax arrearage (17% compared to 30%), but this relationship was not statistically significant.⁹⁶

These results may indicate that there are a number of cases in which the coercive power of the court will not be directly effective. If the owner is financially unable to make repairs, or if repairs cannot be financed by income from the property, coercion will not produce results. The court can only have an impact on the recalcitrant owner, not on the impecunious one who lacks the resources to comply.

94. Many of those owners who do end up in court simply may not be able to afford to maintain a home.

95. See METROPOLITAN HOUSING, *supra* note 11, at 346-41 (Table B-7) (1980).

96. The probability level was .142 which is outside the level of statistical significance that we are reporting, but does show some level of relationship.

3. *Relationship of Number of Violations and Severity to Success and Length*

We had hypothesized that certain problem variables would be related to the time measure "length" and to the outcome measure "success." We had thought that the court would handle cases with a greater number of violations and higher severity ratings in a more expeditious way but that these cases ultimately would be less successful.

Instead the analysis found that cases with a large number of violations were more likely to have a longer period of time on the length measure than were cases with fewer violations. Note that while statistically significant, this relationship is only moderately strong ($r = .20$). The analysis did find, however, that cases with more violations were significantly less likely to be successful ($r = .21$). The results of this analysis are reported in Appendix 10.

Surprisingly, the analysis found that the severity ratings of the impact of the violations for the three categories (general health and safety, residents, and neighborhood) were not significantly related to either "length" or "success." The results of this analysis are reported in Appendix 11. Cases with more severe ratings were not significantly different from those with less severe ratings in relation to their outcome measure scores. Even cases with high severity ratings on general health and welfare were not treated in a significantly different manner than other cases.

One possible explanation for these results is that the court system is functioning at an optimal level—that is, that all cases are processed as fast as possible and that even in the more severe cases, owners are forced to comply with the codes or are punished. Perhaps, these findings suggest that the court or prosecutor should institute a mechanism for differentiating among cases so that the high severity cases are handled more expeditiously and with greater attention. Another possible explanation is that the assessment of case severity used in the study is different from that which the court would apply.

4. *Relationship of Length to Outcome*

The final part of our analysis considered the relationship between the variable "length," and several of the outcome measures. Recall that the variable "length" measured the time between entry into the judicial system and the imposition of a judicial remedy.⁹⁷ We expected that stipulation cases would reach judicial resolution sooner

97. See *supra* p. 622.

than non-stipulation cases because the owner in a stipulation case was willing to reach an agreement with the City. As Appendix 12 shows, this expectation was met. Stipulation cases were resolved almost a month sooner than non-stipulation cases, a statistically significant difference, thereby countering the complaints that stipulation agreements are used by owners as a delaying tactic. At least when stipulation agreements were used, they were entered into in an expeditious manner, thus starting the clock running on the owner's timetable to repair.

There was no statistically significant relationship, however, between the entering of a judgment and "length." There was, though, a large absolute difference in the length measure; cases in which a judgment was entered were over three weeks shorter on the length measure than those in which no judgment was entered. This finding may be due to the cases in which a default judgment was entered early in the process.

Surprisingly, no significant relationship existed between the success measure and "length." We had thought that the successful cases would have tended to have orders entered earlier in the process than the unsuccessful cases.

Overall, our findings bore out many of our expectations and provided valuable information about how the system functions. As with other empirical studies, however, we also found that there is more information not yet known.

III. Court Effectiveness and Housing Quality

In this section, we will address two questions. First, what did the study reveal about the effectiveness of the Syracuse court in code enforcement cases? Second, what, if anything, have we learned about the utility of code enforcement as a mechanism for improving the quality of housing?

A. The Effectiveness of the Court

One of the purposes of this study was to develop descriptive statistical analyses in order to have a better sense of how the court worked and the kind of cases it handled. While accomplishing that goal, it is still not easy to make definitive statements about court effectiveness, partly because of the lack of other research on how effectiveness should be measured. We have concluded, however, that an assessment of court effectiveness should include consideration of case processing, case outcome, and the role of the court in the larger governmental plan to improve housing quality.

In assessing the Syracuse court, we first considered whether it met the criteria for effectiveness that were proposed for studies conducted under the auspices of the ABA-HUD National Housing Justice and Field Assistance Program in the late 1970s.⁹⁸ These studies were aimed at developing a typography of housing courts, identifying a number of areas that needed improvement, and formulating recommendations for improvement.⁹⁹ The criteria set forth in these studies require that a court (i) have continuity and consistency in its decision-making; (ii) take a code case seriously; (iii) attach penalties to violations; and (iv) provide speedy justice and fairness to litigants.¹⁰⁰ These criteria focus on how the cases are processed, rather than on case outcome, and are obviously very general. The assumption underlying this work was that "when the courts do not function properly, the housing stock quality suffers."¹⁰¹

In broad terms, the Syracuse court appears to meet most of the case processing criteria. In the Syracuse system, continuity and consistency are provided because judges are only rotated annually. Hence, the same judge will typically give all the rulings in a case, and the interpretation and application of the law would tend to be the same for all similar cases, at least for that year. The city court judges take code enforcement seriously: code cases are heard promptly and are accorded a special time on the calendar, and judges can develop an

98. The Program studied 13 local housing courts. The study results are published in a series of articles in a 1979 symposium issue of the *Urban Law Annual* which includes a summary article by the former director of the ABA-HUD program. Scott, *Housing Courts and Housing Justice: An Overview*, 17 URB. L. ANN. 3 (1979). See also EXECUTIVE SUMMARY, *supra* note 6, at 9-11.

99. Housing courts were broadly defined as courts that focused on housing matters and had a specialized staff. Four basic types of housing courts were identified:

(1) the housing court that handles only code enforcement matters, more appropriately named a "residential code enforcement court;"

(2) the housing court that handles only summary proceedings such as evictions, more appropriately entitled "summary proceedings court;"

(3) the comprehensive housing court that handles all housing-related matters from code enforcement to evictions and from small claims to receiverships; and

(4) the idealized fully comprehensive housing/structural/environmental court, approached only in theory in some existing housing courts.

These specialized housing courts were seen as an improvement over a non-specialized court with the implication that the most comprehensive housing court was the best model. Scott, *supra* note 98, at 8-11. Syracuse has worked within the existing judicial system to create a "housing court" that would fit under category one. Although there is not actually a separate court, all code enforcement cases are heard at special term by the same judge, at a specific time, using the same attorneys from the City as prosecutors. However, any case that is placed on the trial calendar is referred to one of the other five city court judges.

100. EXECUTIVE SUMMARY, *supra* note 6, at 7-8.

101. Scott, *supra* note 98, at 6.

expertise because of the duration of their assignment. For cases that closed within the time frame of our study, cases were processed in under seven months from the time received in Corporation Counsel's office to the time of court closure. Penalties were imposed except in those cases in which repairs were made. Although fairness to the litigants was not studied directly, some tentative analysis, not reported here, found no differences in the way cases were handled when the owner was represented and when the owner was not represented.¹⁰² We have no information, however, on whether owners or tenants felt that they were treated fairly.

One difficulty we had in assessing both case processing and outcome was the lack of a standard for comparison, other than the very general ABA-HUD criteria. One possibility for comparison would be a before-and-after study that would compare the functioning of the court before and after changes in case processing were implemented. Unfortunately, we did not have detailed information about the earlier functioning of the court, and because of the gradual and varied nature of the changes made, a before-and-after comparison would have been problematic in any case. We did have, however, some general comparison data from the Syracuse study that was prepared in 1980. Although that study was not as comprehensive as the current study, and some procedures had changed, it did identify certain problem areas and made some recommendations for change, such as the use of conditional fines and the addition of a housing court clerk. These and other changes were implemented, and it appears that at the time of our study the court was handling substantially more cases, processing them more quickly, and using more appropriate remedies for forcing owners to comply than it was in 1980.¹⁰³

Another possibility for measuring effectiveness would be to consider the effectiveness of other courts in code enforcement. Since the ABA-HUD study, several other law review articles describing local housing court systems have appeared. They have included histories of the development of the court,¹⁰⁴ descriptions of court staffing,¹⁰⁵ analyses of the remedies available to the court,¹⁰⁶ and general discussions

102. This analysis was not reported because of the large number of missing values for the variable representation.

103. See *supra* notes 74, 77 & 100. In 1979, the court heard less than 300 cases per year compared to approximately 1000 in 1987. Penalties were seldom imposed. Hanley & Zolna, *supra* note 33, at 6, 8.

104. Howe, *Housing Code Enforcement in Eleven Cities*, 60 J. URB. L. 373, 380-87 (1983).

105. Rodgers, *An Alternative to a Housing Court*, 60 J. URB. L. 441, 442-44 (1983).

106. Miller, *Code Enforcement: An Overview*, 60 J. URB. L. 349, 356-67 (1983).

of housing problems.¹⁰⁷ Typically, however, these articles did not include detailed statistical information and analyses about the court's processing of cases or the cases themselves.

One article, however, did discuss briefly a study of code enforcement in the Cleveland Housing Court.¹⁰⁸ This study is of interest because Cleveland, although considerably larger than Syracuse, is comparable to Syracuse in many ways.¹⁰⁹ Like Syracuse, Cleveland has a high percentage (20%) of substandard housing stock and also has a majority of housing units occupied by non-owners.¹¹⁰ As in Syracuse, most of the Cleveland residential code enforcement cases involved one and two family units.¹¹¹ Unlike the Syracuse court, though, the Cleveland Housing Court is a separate court.¹¹² It handles landlord-tenant matters as well as code enforcement cases.¹¹³

The Cleveland study used a random sample of 516 cases, both open and closed, from the period 1976 - 1984.¹¹⁴ The researchers found that when the court was operating efficiently (the 1984 cases), the average period between the initial inspection report and final judgment was 436 days, and the period from case filing to case closing was 255 days.¹¹⁵ In the Syracuse study, these time periods were 375 and 203 days respectively.¹¹⁶ The average number of hearings per case in Cleveland was 7.4; in Syracuse, 2.7.¹¹⁷ The Cleveland court used a system of suspended fines that pended until violations were corrected. The amount of the average initial fine was only \$110; in Syracuse, the average fine requested was \$9,934.¹¹⁸ In comparison to Cleveland then, Syracuse processed cases more quickly, with fewer hearings, and asked for larger fines. This is such a gross comparison, however, that it could not be used as a basis for concluding that the Syracuse system was processing cases effectively.

One of the articles in the ABA-HUD series took a different approach to the problem of court effectiveness and recommended that

107. See, e.g., Miller, *supra* note 71.

108. Keating, *Judicial Approaches to Urban Housing Problems: A Study of the Cleveland Housing Court*, 19 URB. LAW. 345 (1987).

109. The population of the City of Cleveland was 536,000 in 1986. BUREAU OF THE CENSUS, U.S. DEPARTMENT OF COMMERCE, STATISTICAL ABSTRACT OF THE U.S. 1988 (1987). To compare the City of Syracuse, see *supra* note 10 and accompanying text.

110. Keating, *supra* note 108, at 351.

111. *Id.* at 352.

112. *Id.* at 347.

113. *Id.* at 347-48.

114. *Id.* at 352.

115. *Id.*

116. See *infra* Appendix 5.

117. See Keating, *supra* note 108, at 352 (Cleveland); see *infra* Appendix 5 (Syracuse).

118. Keating, *supra* note 108, at 353 (Cleveland); see *infra* Appendix 3.

effectiveness be judged by case outcomes, not case processing.¹¹⁹ In his discussion of the effectiveness of the Pittsburgh Housing Court, Judge Penkower stated that the "most meaningful measure of the housing court's effectiveness is the abatement rate which is the number of properties brought into compliance with the codes as the result of court action."¹²⁰ Unfortunately, however, his article did not report any information on case outcomes.

Also, while we agree that case outcome measures are important, the measure Penkower proposed should be used with caution since it assumes that all the cases before the court are capable of this kind of resolution. The assumption is premised on a belief that the owner has the resources to repair, but considers further investment in the property to be unwise.¹²¹ If the owner is not certain, for example, whether he can increase the rent, then under-investment in maintenance is a rational, profit-maximizing response. It follows that code enforcement could have the effect of tipping the balance in favor of the investment, because of the penalties attached to not bringing the property up to code standards.

The findings of our study with regard to owner occupancy, however, cast some doubt on the assumption that owners can repair if we also assume that most owner-occupants are more willing than non-owner-occupants to bring their properties up to code. If this is correct, then the fact that the owner-occupied cases were not significantly different than non-owner-occupied on measures, such as success, may indicate that some owners were unable to bring their properties up to code.¹²² On the other hand, owners may simply be choosing to allocate their resources in some other way or be unwilling to increase the mortgage on their homes.

Whether the focus should be on the income of the owner or the value of the property or both, it does seem reasonable to suspect that there are some cases in which court orders related to code enforcement will be of limited usefulness. For these cases, the problem in

119. Penkower, *supra* note 57, at 155.

120. *Id.*

121. *See, e.g.,* Miller, *supra* note 71, at 354-56.

122. *Id.* This assumption gets some support from articles describing other systems. *See, e.g., id.* at 362-71. Some studies have noted that the landlord is frequently not the stereotypical "slumlord," raking in large profits from a number of slum properties, but rather is a small-time owner who has only one or two properties. *See* G. STERNLIEB & R. BURCHELL, RESIDENTIAL ABANDONMENT: THE TENEMENT LANDLORD REVISITED 59 (1973); G. STERNLIEB, THE TENEMENT LANDLORD 121-78 (1966); I. WELFELD, WHERE WE LIVE 143-47 (1988). Penkower notes that some of these owners may not have sufficient assets or experience to manage their properties. *See* Penkower, *supra* note 57, at 157.

court effectiveness is not the degree of coercion available or the delays in the system, but rather a more fundamental inability to affect some cases because of a lack of resources. Consequently, if there are a number of intractable cases in which compliance will not be achieved, using abatement alone, without qualification, as a measure of court effectiveness would be misleading, since the court does not control the nature of the cases brought before it.

Our assessment of the effectiveness of the court used all the cases in the sample, not just those cases in which the court might be expected to have a desirable effect. We did, however, use a number of different measures and considered effectiveness from both the perspective of case processing and case outcome. We concluded that our length measure and success measure told us the most about court effectiveness. Length is important because the problems identified with a particular dwelling should be dealt with in a time frame that is considered to be reasonable by parties affected by the proceedings. A reasonable time would allow owners to receive due process and to make repairs without allowing recalcitrant owners to unjustifiably delay repairs. According to our study, the Syracuse court met this test. The analysis of the variable "length" determined that a disposition was imposed in a mean of 120 days, and the processing time from Corporation Counsel to court closure was under seven months. It is possible, however, that the emergency cases are not handled quickly enough by the Syracuse court. Our analysis showed that the more serious cases were not handled any more quickly than the less serious cases.¹²³

Our measure of success differs from the measure Penkower proposes in that it includes cases in which no repairs were made, but in which a judgment was collected.¹²⁴ Since the court in these cases was imposing the remedy that the City requested, it seems appropriate to consider this a "successful" case, even though, in fact, no improvements to the property were made.

Using our measure of "success," we found that 63% of the cases were successful. The significance of this result with regard to court effectiveness is unclear. Presumably, a number of the cases that are brought into housing court are intractable cases, involving expensive repairs, low property values, and low income owners. These properties are unlikely to be repaired by the current owner and might not be appropriate for receivership because repairs could not be financed

123. See *supra* part II.B.3.

124. Penkower, *supra* note 57.

from income from the property.¹²⁵ Other remedies, such as the entry of a judgment or approval of a stipulation agreement, might have little impact.¹²⁶ An injunction is meant to be an extraordinary measure and can only be used in very serious cases.¹²⁷

Unfortunately, one question this study cannot answer is whether having 37% of the sample cases in the "unsuccessful" category is too many. Data on the financial resources of the property owner and the value of the property would be necessary in order to determine if the owner was truly unable to comply with the housing codes or was unwilling to do so.

Surely some percentage of unsuccessful cases, however, is to be expected. In those cases where the coercive power of court code enforcement fails, the more Draconian measures of forced transfer of ownership should come into play. The outstanding judgments attending an unsuccessful code enforcement case might make these measures more politically palatable and highlight the need for another proceeding, such as tax foreclosure. If this were the case, then the court would be effective in the larger scheme of code enforcement, even though it was ineffective with regard to the case outcome measure.

If further action was not forthcoming in these unsuccessful cases, however, allowing these cases to proceed through the court system might be a waste of court and administrative resources. If the City did not plan to follow up on these cases, then perhaps it should admit defeat at the administrative level, rather than proceeding to court.

Hence, effectiveness can be judged at several points and at several levels. The ABA-HUD approach judged effectiveness by looking at case processing.¹²⁸ Effectiveness could also include looking at case outcomes from several viewpoints: whether the governmental agency prosecuting the case achieved its goals; and whether the remedy imposed satisfied the private complainant, such as a tenant or neighbor. Finally, effectiveness could also be assessed by looking at the role of the court in the larger context of the whole code enforcement system or the overall effort to improve housing quality.

Our study assessed effectiveness by looking only at certain aspects of case processing and outcome, rather than analyzing the court's role in the whole housing improvement system. Based on this analysis, the Syracuse court would appear to be functioning well. It does appear,

125. See *supra* note 51 and accompanying text.

126. See *supra* text accompanying notes 80 & 81.

127. See *supra* note 53 and accompanying text.

128. See *supra* text accompanying notes 100 & 101.

however, that the court and prosecutors should consider giving priority to the more severe cases. Our findings showed that the severity rating was not significantly related to either success or length.¹²⁹ This indicates that concentration on more serious cases would not be self-defeating because the likelihood of success is just as high as in easier cases. In fact, the findings support the devotion of resources to tougher cases because they make a bigger difference when successful.

From working with the case records, it appeared that two additional changes might help improve court processing and case outcomes. One change is the development of litigation histories on properties. At the present time, the code enforcement case records of particular properties and particular owners are not kept cumulatively. Because of the nature of the housing market, however, the same property is often involved in a number of separate cases over the course of a year or two. If the court had information on prior cases of code enforcement and of landlord-tenant problems involving a particular address, the court might have a better idea of what remedy would be appropriate. The litigation history would be similar to a rap sheet on a criminal defendant. Cumulative records on owners of multiple properties would also be useful so that the court would know how a particular owner responded in the past to particular remedies involving problems with other properties.

An additional innovation that the court should consider is the development of a computerized system for monitoring and evaluating case processing and outcome.¹³⁰ Such a system should be designed so that the court would have easy access to information on case types, duration and outcome. This information would not only be useful to the court, but also would inform policy makers about areas that need further action.¹³¹

B. The Impact of Code Enforcement on the Quality of Housing

Although this study was not designed to measure the impact of

129. See *supra* part II.B.3.

130. See generally Scott, *supra* note 98. The ABA-HUD studies found that most of the courts studied could not "account for the types of dispositions in various cases, the average numbers of hearings on continuances per contested case, or the fines imposed and the collection thereof." *Id.* at 5.

131. New York City has taken some steps in this direction. Data on code enforcement violations, tax arrearage, and other information from the Housing Preservation and Development Agency is available by address on computers in the house of courts and is prima facie evidence of the information given under N.Y. MULT. DWELL. LAW § 328(3) (McKinney Supp. 1991). See Cohen, *New York City Housing Court Act — An Evaluation*, 17 URB. L. ANN. 27, 35 n.35 (1979).

code enforcement on the quality of housing, it is useful to reflect on what this study of case processing and outcomes might reveal about this issue.

On average, the cases in our sample were not dealing with small problems. The mean number of violations was 23 and the mean amount sued for was \$9,934, a serious problem for the persons involved. Vigorous code enforcement related to one problem might simply result in delayed repairs in another area. The owner who is forced to do extensive electrical work, for example, might forgo needed exterior maintenance. Policy changes that might be needed would be the development of more assistance programs to help owners make repairs, or an increase in actions to take title against owners who do not maintain their properties. It is interesting to note that cases of owner-occupied homes were found in all three neighborhood types which indicates that residents of any quality neighborhood can have financial problems that can impair their ability to maintain their homes.

Not only do intractable cases pose a problem, but the enforcement of successful cases might have unintended negative consequences. Improved enforcement might result in increased rents.¹³² The low income tenant's dilemma was succinctly defined by the Housing Coordinator for the Syracuse Department of Social Services: "If the apartments are affordable, they're usually not livable. If they're livable, they're usually not affordable . . ."¹³³ A substantial number of tenants are already paying more rent than they can afford. An estimated 38% (14,851) of the low-income rental households in the City are paying more than 30% of their income for rent.¹³⁴ The number of housing-vulnerable households is estimated to be 10,000. "Housing vulnerable" persons are defined as those who are at "significant risk of becoming homeless due to economic factors, who live in substandard

132. *Contra Ackerman, Regulating Slum Housing Markets on Behalf of the Poor: Of Housing Codes, Housing Subsidies and Income Redistribution Policy*, 80 YALE L.J. 1093 (1971); Kennedy, *The Effect of the Warranty of Habitability on Low Income Housing: "Milking" and Class Violence*, 15 FLA. ST. U.L. REV. 485 (1987). These articles offer theoretical models that suggest that code enforcement or other forms of quality regulations, such as private enforcement of warranties of habitability, would not always result in rent increase. Ackerman's model, however, depends on a comprehensive enforcement program and Kennedy's depends on a carefully planned selective enforcement program.

When, or even whether, code enforcement results in increased rents has not been empirically determined. Since Syracuse's enforcement is both piecemeal and haphazard, these theoretical constructs would indicate that code enforcement does result in rent increases. *See generally supra* note 3.

133. Post-Standard, Oct. 6, 1987, at A7, col. 4 (quoting Greg Procopio of the Department of Social Services).

134. COALITION REPORT, *supra* note 23, at 14.

housing, and/or spend more than 30% of their income on housing."¹³⁵ If code enforcement, in fact, resulted in rent increases, subsidy programs for low income tenants would need to be increased.

An additional concern is that code enforcement might result in eviction, condemnation, and even demolition.¹³⁶ For example, in Syracuse in January, 1987, one 18-unit building was condemned after water pipes froze and burst, flooding the basement.¹³⁷ When the owners failed to make repairs after 24 hours, tenants were evacuated. Some moved in with friends or family. Others were placed in a motel that accepts emergency housing cases from the Department of Social Services.¹³⁸ In 1985 and 1986, a total of 52 structures were demolished in one of Syracuse's poorest neighborhoods.¹³⁹ The "vacant and secure" code enforcement cases can be a precursor to demolition. These potential impacts of enforcement should be taken into account in the local housing plan.

C. Deregulation Is Not The Solution

In spite of the potential negative aspects of code enforcement on the supply of housing, the solution to a lack of affordable housing does not lie in deregulation. Proposals that deregulation would be beneficial because it would result in substandard, but affordable housing are misguided. Some advocates of deregulation base their arguments on a false dichotomy, namely that a person is better off with some home, even if it is substandard, than "homeless."¹⁴⁰ What this dichotomy ignores, however, is that many of the persons who are classified as "homeless," in fact, have shelter, but neither they, nor society generally, consider the shelter appropriate or adequate.¹⁴¹ Does it make sense to classify a woman with children who is living in a shelter for the homeless as "homeless," but not classify her as "homeless" if she moves to a fleabag hotel? She would have simply moved from one form of inadequate housing to another. Implicit in the word "home"

135. *Id.*

136. *See, e.g.,* Cunningham, *supra* note 2 at 138-43.

137. Post-Standard, Jan. 31, 1987, at B3, col. 3-6.

138. *Id.*

139. Dep't. of Community Development, City of Syracuse (statistics collected for Performance Report for Community Development Block Grant Program) (1986)

140. *See* Tucker, *How Housing Regulations Cause Homelessness*, 102 THE PUBLIC INTEREST 78 (1991). "Yet distasteful as it may seem, skid rows play a crucial role in providing the poor and near-poor with cheap housing. Not everyone can live in suburban subdivisions or high-rise condominiums. To provide for everyone, we also need rooms for rent, fleabag hotels, tenements, trailer parks . . ." *Id.* at 88.

141. *See* Sara Rimer, *Doors Closing as Mood on the Homeless Sours*, N.Y. Times, Nov. 18, 1989, at 1.

is some standard of adequacy and the "some home" versus "homeless" dichotomy conceals this. The real issue is whether people have shelter that is appropriate for their needs. Therefore, even if deregulation resulted in a large increase in substandard housing, this would not provide the homeless with "homes."

Other advocates of deregulation base their argument on the assumptions that the codes are outdated and unreasonably demanding and that code violations are usually not serious.¹⁴² Hence the regulations cause unnecessary expense and inconvenience to owners.¹⁴³ Certainly, frivolous and unnecessary regulations would not serve a useful purpose in improving or maintaining housing quality. In our study, however, the governmental interest in forcing needed repairs appeared to be substantial. The cases in our study involved problems that needed to be addressed.

Hence, regulation appears to be necessary. For those owners who cannot afford maintenance, however, a court remedy is useful only if it has the indirect effect of forcing the owners into relinquishing the property, into applying for aid programs that will finance needed repairs, or as a political justification for taking the property through foreclosure.

IV. Conclusion

Our analysis of the Syracuse court housing code enforcement cases led us to conclude that court effectiveness should be judged by assessing case processing, case outcome, and the role of the court in the larger governmental plan for improving housing quality. Based on these first two considerations, we concluded that the court was functioning well. Unfortunately, we did not have the data necessary to assess the role of the court in the overall housing improvement scheme. The court did have a number of cases that we classified as unsuccessful. We concluded, albeit tentatively, that these unsuccessful cases were not due to court failure, but rather were cases the court could not affect for economic reasons. If the City did not follow up on these cases in another forum, then apparently the court action would not have been useful.

142. See Welfeld, *Poor Tenants, Poor Landlords, Poor Policy*, 92 THE PUBLIC INTEREST 110 (1988) (criticizing federal housing quality standards and suggestions that low-income persons are harmed by the standards). "We are confused about our housing obligation to the poor, and the poor are suffering for it. Our obligation is to provide decent housing, not average housing. And in America today, below-average housing is for the most part quite decent." *Id.* at 118.

143. *Id.*

The results of this study provide a basis for reflecting on the limits of the legal system as a mechanism for social change. Even a well-functioning court with a broad range of remedies may encounter a group of intractable cases. Blaming the court system for its inability to affect these cases will not lead to improved housing and, more importantly, deflects attention from formulating policies and programs to eliminate the economic causes of substandard housing.

Appendix 2

Number of Cases with Any Violations by Type of Violation; and Median Number of Violations by Type for Cases with Any Violation of this Type.

<u>Type of Violation</u>	<u>Number of Cases</u>	<u>Median Number of Violations</u>
Electrical	31	9
Plumbing	41	3
Fire	31	3
Interior	53	8
Exterior	74	7
Yard	33	2
Vermin	17	1
Heating	11	2
Overcrowding	2	2
Administrative	18	1.5

Appendix 1

Dwelling and Owner Characteristics: List of Variables with Mean, Standard Deviation, and Median or Proportional Distribution and Number of Cases

<u>Variables</u>	<u>Mean, Median or Percent</u>	<u># of Cases*</u>
Unit Size:		93
2 or Less	63%	
more than 2	37%	
Number of Units	4.2 (mean) (S.D. = 7.4) 2 (median)	93
Owner Occupied		97
Yes	20%	
No	80%	
Taxes Paid		99
Yes	52%	
No	48%	
Amount of Unpaid Taxes	\$7865 (mean) (S.D. = 5193.7) \$6490 (median)	42
Neighborhood Type:		99
Stable	20%	
Transitional	13%	
Deteriorated	67%	
Owner Represented		63
Yes	46%	
No	54%	

* Cases are missing either because of missing values or because the particular measure is not relevant to all cases.

Appendix 3

Housing Code Problem Characteristics: List of Variables with Mean or Proportional Distribution and Number of Cases

<u>Variables</u>	<u>Mean, Median or Percent</u>	<u># of Cases*</u>
Number of Violations	23 (mean) (S.D. = 26.2) 15 (median)	99
Penalty Requested	\$9934 (mean) (S.D. = 17,041) \$4380 (median)	100
Severity of Impact on Health	low 36% medium 12% high 52%	100
Severity of Impact on Residents	low 22% medium 32% high 46%	100
Severity of Impact on Neighborhood	low 15% medium 18% high 67%	95

* Cases are missing because of missing values for some variables.

Appendix 4

Severity Rating Criteria for Housing Code Violations

A. Impact on the neighborhood.

- High: Included here are violations that would constitute a strong negative visual impact on the neighborhood thereby creating the impression of deterioration and the presumably accompanying effect of reduced property values, such as several citations of deteriorated paint or siding, abandoned vehicles or unsound exterior structural elements such as porches.
- Medium: Fewer of these violations were present such that the visual impact would not be major.
- Low: Very few violations and these would almost not be visible.

B. Impact on the residents.

- High: Violations were present that would have a very strong negative impact on the living conditions of the occupants of the residence such as numerous citations for deteriorated interior paint, leaking or non-functioning plumbing, vermin or cockroach infestation, or inadequate heat. Violations, interior and exterior, which have a negative impact because of the psychological effect of living in a deteriorated environment were included, as well as violations that have an impact because they threaten tenants' health and safety. In effect, a high impact rating meant slum-like conditions.
- Medium: Fewer of these types of violations were present such that the residence was not in the worst category of living conditions, but nonetheless a tenant with sufficient financial resources probably would choose to reside elsewhere.
- Low: None, or only one or two violations of this type were present in dwelling unit (not including common area), and these could be corrected with relative ease.

C. Impact on general health and safety.

- High: Violations were present that created a significant threat to the public welfare, usually because of fire danger. A structure that lacks proper fire safety may have no negative impact on the day-to-day living conditions of the tenants, but it does pose a health and safety problem. Violations which led to a high rating included numerous electrical violations, vermin, sewage problems, failure to provide smoke detectors or adequate means of egress, and unsound structural components such as stairs, floors or roof.
- Medium: Fewer and easily correctible violations of this type.
- Low: None of these violations.

Appendix 5

Time in the System: List of Variables with Mean, Standard Deviation, and Median or Proportional Distribution and Number of Cases

<u>Variables</u>	<u>Mean, Median or Percent</u>	<u># of Cases*</u>
Number of Days from Agency Opening to Corporation Counsel	172 (mean) (S.D. = 160.7) 130 (median)	100
Prior # of Agency Cases	3.6 (mean) (S.D. = 2.2) 3 (median)	100
Number of Days from Corporation Counsel to Case Closure	203 (mean) (S.D. = 125.8) 174 (median)	100
Length Measure	120 (mean) (S.D. = 91.0) 87 (median)	96
Number of times Calendared	2.7 (mean)(S.D. = 2.1) 2 (median)	100
Times Calendared:		100
Two or Less	62%	
More than 2	38%	

* Cases are missing because of missing values for some variables.

Appendix 6

Outcome Characteristics: List of Variables with Mean, Standard Deviation, and Median or Proportional Distribution and Number of Cases

<u>Variables</u>	<u>Mean, Median or Percent</u>		<u># of Cases*</u>
Stipulation agreement entered	yes 54%	no 46%	100
Stipulation agreement entered and followed	yes 39%	no 61%	54
Judgment entered	yes 24%	no 76%	100
Judgment entered and collected	yes 17%	no 83%	24
Judgment Amount	\$4564 (mean) (S.D. = \$5436) \$2484 (median)		
Success Measure	yes 63%	no 37%	100

* Cases are missing either because of missing values or because the particular measure is not relevant to all cases.

Appendix 7

Relationship of Owner Occupancy to Certain Dwelling/Owner Characteristics

	Owner Occupied		Signif.
	Yes	No	
(A) <u>Number of Units</u>	1.9 (Mean) (S.D. = 1.1)	4.8 (Mean) (S.D. = 8.2)	p = .006 (t = 2.8)
Total Cases #	17	73	
(B) <u>Neighborhood</u>			
Stable	16%	22%	NS
Transitional	16%	12%	
Deteriorated	68%	66%	
Total Cases %/#	100%/19	100%/77	
(C) <u>Taxes Paid</u>			
Yes	37%	56%	NS
No	63%	44%	
Total Cases %/#	100%/19	100%/78	
(D) <u>Amount of Tax Owed</u>	\$9117 (Mean) (S.D. = \$4317)	\$7477 (Mean) (S.D. = \$5531)	NS
Total Arrearage Cases	42		
(F) <u>Owner Represented</u>			
Yes	17%	55%	p = .017 (x2 = 5.7)
No	83%	45%	
Total Cases %/#	100%/12	100%/49	

Appendix 8

Relationship of Owner Occupancy to Number of Violations and Severity

	Owner Occupied		Significance
	<u>Yes</u>	<u>No</u>	
(A) <u>Number of Violations</u>	15.5 (Mean) (S.D. = 23.6)	24.0 (Mean) (S.D. = 26.7)	N/S
Total Cases	19	77	
(B) <u>Severity</u>			
<u>Health & Safety</u>			
Low	68%	29%	
Medium	11%	12%	
High	21%	59%	
Total	100%/19	100%/78	p = .005 (x ² = 10.5)
<u>Residents</u>			
Low	53%	15%	
Medium	26%	33%	
High	21%	52%	
Total	100%/19	100%/78	p = .002 (x ² = 12.6)
<u>Neighborhood</u>			
Low	0%	19%	
Medium	26%	16%	
High	74%	65%	
Total	100%/19	100%/73	p = .098 (x ² = 4.6)

Appendix 9

Relationship of Dwelling/Owner Characteristics to Outcome

	<u>Owner Occupied</u>		<u>Taxes Paid</u>	
	Yes	No	Yes	No
<u>Stipulations</u>				
Yes	58%	51%	52%	55%
No	42%	49%	48%	45%
Total	100%/19	100%/78	100%/52	100%/47
Significance	NS		NS	
<u>Judgment</u>				
Yes	32%	21%	17%	30%
No	68%	79%	83%	70%
Total	100%/19	100%/78	100%/52	100%/47
Significance	NS		NS	
<u>Success</u>				
Yes	53%	65%	73%	53%
No	47%	35%	27%	47%
Total	100%/19	100%/78	100%/52	100%/47
Significance	NS		p = .040 (x2 = 4.2)	

Appendix 10

Correlation Between Number of Violations and Length and Success.

	<u>Number of Violations</u>	<u># of Cases</u>	<u>Significance</u>
<u>Length</u>	r = .20	96	p = .05
<u>Success</u>	r = .21	99	p = .03

(1 = yes; 2 = no)

APPENDIX 11

Relationship of Severity of Impact of Violations on Health and Safety, Residents, and Neighborhood to Length and Success

	<u>Health & Safety</u>			<u>Residents</u>			<u>Neighborhood</u>		
	Low	Med.	High	Low	Med.	High	Low	Med.	High
<u>Length (mean)</u>	120	111	122	108	131	117	134	124	116
<u># Cases</u>		96			96			96	
<u>Significance</u>		NS			NS			NS	
<u>Success</u>									
<u>Yes</u>	56%	58%	69%	73%	56%	63%	71%	82%	61%
<u>No</u>	44%	42%	31%	27%	44%	37%	29%	18%	39%
<u>Total</u>	100%	100%	100%	100%	100%	100%	100%	100%	100%
<u># Cases</u>	36	12	52	22	32	46	14	17	64
<u>Significance</u>		NS			NS			NS	

APPENDIX 12

Relationship of Outcome to Length

	<u>Stipulation</u>		<u>Judgment</u>		<u>Success</u>	
	Yes	No	Yes	No	Yes	No
<u>Length</u>	105	138	102	126	121	117
<u>(S.D.)</u>	(87.1)	(93.4)	(76.5)	(95.0)	(93.5)	(87.4)
<u>Significance</u>	.077		NS		NS	
	(T = 1.78)					
<u>Total Cases</u>	54	42	24	72	62	34