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CRITICAL DEVELOPMENTS IN HOUSING POLICY

CARDOZO JOURNAL OF EQUAL RIGHTS AND SOCIAL JUSTICE
SYMPOSIUM

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Keynote Speaker: Kat Meyers – Law Reform Unity, Legal Aid Society

Panelists:

Hon. Cheryl Gonzales – Supervising Judge, Kings County Housing Court
Edward Josephson – Director of Litigation and Housing, Legal Services
NYC

Andrew Scherer – Policy Director, Impact Center for Public Interest Law –
New York Law School

Moderated by: Professor Michael Pollack, Benjamin N. Cardozo School
of Law

“This event brought experts in New York City housing law to Cardozo to discuss the context and implications of the New York Housing Stability and Tenant Protection Act of 2019. Dozens of Cardozo students and alumni joined to learn how New York City tenants and their attorneys are impacted by the ongoing housing crisis and these new tenants’ rights laws.”¹

CRITICAL DEVELOPMENTS IN HOUSING POLICY

CLAIRE MOONEY: Good evening everyone. Thank you so much for joining us today at the Cardozo Journal of Equal Rights and Social Justice Symposium. First, we will be hearing a keynote speech from Kat Meyers.

¹ Claire Mooney, Symposium Editor, CARDOZO J. EQUAL RTS. & SOC. JUST.; J.D. Candidate, Benjamin N. Cardozo School of Law, 2020.

Kat Meyers is a staff attorney for the Civil Law Reform Unit of the Legal Aid Society, where she advocates with legislators to shape legal reforms in housing policy. Prior to this she advocated for tenant associations in affirmative litigation for the Bronx Neighborhood office of the Tenants' Rights Coalition and supported hundreds of tenants in Housing Court. Kat received her B.A. in Contemporary Race Relations and Human Rights from NYU and her J.D. from City University of New York School of Law. I understand that many of you have questions and comments about what we'll be discussing today. We have some green cards over there in case any questions come up, please feel welcome to write them down and pass them to me and we will add them to the list of things to be discussed during the panel. Thank you. Without further ado, Kat Meyers.

KAT MEYERS: Good evening everyone. Thank you so much for having us to come and talk about some of the work we've been doing around the recent changes in the rent laws. I am here in particular to give a little bit of context so we can understand a lot more about what the panel is going to discuss in terms of the details of the recent changes – to give the broad strokes of really what's going on in the city and as it relates to housing – but also the history of the tenant movement that leads us to where we are today. So I want to start with just a general understanding of the fact that New York City has been experiencing a housing crisis for decades. A housing crisis is defined as having a very low vacancy rate and we really exceed that in the ways that New York always likes to be exceptional. We have a vacancy rate that's below four percent across all types of different kinds of housing across the city. And specifically when it comes to rent regulated housing, our vacancy rates hover somewhere between one and three percent for rent regulated apartments. So that's an incredibly low rate for people who are seeking to try and find apartments, particularly affordable apartments on limited income. And when I say limited income, I think a really important part of this is really getting an understanding of who it is who lives in New York City who is struggling to keep up with what's happening in the rental market. Approximately 25 percent of households across the city are living below the federal poverty line and that is an abstract idea until you really put numbers onto it. So, for example, for a household of two, the federal poverty line is just under 17,000 dollars per year. And so we have one-in-five families who are living at, or below, those federal property lines, not necessarily in a household of two obviously. For example, in a household of four, that number is just shy of 26,000 dollars a year. So really people who are struggling to get by on a day-to-day basis. And so I think to really put color onto that, to really be able to understand fully how that applies more broadly, in Brooklyn for example, there is currently 22 percent of the population living below that federal poverty line, regardless of what their household size is.

Then you take that and you double it, so 200 percent of the federal poverty line. So for example we're talking about a household of four, living on just under about 56,000 dollars a year. That number jumps to 42 percent of households in Brooklyn currently. So it's a huge number of people across the city who are living on extremely limited means who are trying to either remain in their apartments that are currently affordable or secure an affordable apartment going forward. And what do we mean by affordable? Well, affordability is defined as being 30 percent of your gross income which in some cases can end up being approximately 50 percent of your net take-home income. And for a household that's living at the federal poverty level for example - we're going to go back to that example of the household of two, who is making just shy of 17,000 dollars a year - an affordable rent for that household would be approximately 426 dollars a month. That is a number that is really impossible to imagine when you're out there looking for an apartment. I assume most of us, if not all of us live here in New York and have experienced really the pressure that comes with even just hunting for something that is affordable. And so when you think about it in those contexts you realize that there are really not any affordable apartments that are available for most people. I'll go on the further end of that spectrum. A household of four that's making 200 percent of the federal poverty line, about approximately 56,000 dollars a year. Their affordable rent is 1,288 dollars, still an incredibly low number in our current rental market. And the median asked for rent right now on the rental market currently for the most recent numbers that we have is 1,875 dollars. So there's a huge gap between what is actually affordable to New Yorkers and what is being asked for in rent. Rent stabilization is one of the few ways in which New Yorkers are able to find affordable apartments. It is one of the very limited programs, or rather regulations that we have on the books that allow people to be able to have some level of security in their ability to remain in their homes. So when we talk about the benefits of being rent stabilized, we're not just talking about the limitations on having your rent increased. We're also talking about the fact that you will know that as of right, you will receive a renewal lease. You don't have to worry about what's going to come next year, not only in terms of your rent increase, but whether or not your landlord even wants you in your apartment. And so in that context we also acknowledge the fact that we are losing rent regulated apartments at an alarming rate. Since 2002 we've lost 490,000 apartments that are considered affordable to New Yorkers based on those federal poverty lines. And as a result we have more and more families across the city who are becoming what we call rent burdened. People are paying in excess of 30 percent of their gross income towards their rent. And when that happens you end up with households who are foregoing other expenses, whether that be medical bills, school supplies, toiletries, and

sometimes even food. And so I say all that to sort of give a general context of why that rent regulation is so important. But then I think we want to turn to a little bit of what is the current state of law and what's really going on in our housing courts so that we can understand how it is that these rent laws are actually going to change things going forward. Potentially going to change things, right? It's up to us to make that happen. Nationally, New York City is considered a leader in tenant protections. We're always listed in a group that can include San Francisco, and more recently the progress that we've seen being made in places like Los Angeles, Seattle and other cities across the country. We are always considered to be at the forefront. And so we think of ourselves as maybe having better protections than others do. So really what are we fighting for? But the reality is that we're still in the context of this housing crisis. And we're still in the context of people who are living in poverty. And so we have to be thinking globally about what our solutions are to these problems and when we step into housing court we would hope that we would see a space in which we are at least seeing a struggle for justice to happen, but what we oftentimes see are tenants and advocates, and attorneys included in that, who are not really having that experience. Housing court was created in 1973 with the purpose of being a mechanism for providing safe, decent, and habitable housing. But it has become a place where landlords come to collect debts and evict people. And that is really the day-to-day experience of a lot of people who have been who have engaged in advocacy in housing court. For example, Community Action for Safe Apartments, CASA, is a tenant organizing group in the South Bronx, and they did a really great report a few years back that really followed what it's like to be a tenant in Housing Court and they made some key findings that I think are really helpful for us to be thinking about. Particularly as people who've never been in Housing Court before. And the first is that Housing Court is particularly confusing and difficult to navigate for tenants. And one of the reasons that it's extremely difficult for them to navigate is that the majority of them until recently were unrepresented. And so most tenants, in fact 83 percent of tenants, were arriving in Housing Court without an attorney. And when they confronted court personnel to ask questions, they were sort of shooed away. Asked to keep moving, not given the resources that they needed in order to be able to feel like they could navigate even the physical space, let alone the legal issues that were related to them being able to remain in their homes. Further compounding that problem is the fact that 99 percent of landlords are represented in Housing Court. And so there was this extreme disparity between the experiences of the tenants and the landlords. In fact, many landlords never step foot in Housing Court unless there is a trial and they need to present witnesses. Their attorneys can go for them. And tenants didn't have this experience. And so we'll talk a little bit

more about how that's changed more recently, hopefully through the panel and also I'll make a few comments on that. But not surprisingly, a tenant having an attorney creates better outcomes for tenants and you wouldn't think that you needed a report to tell you that but it is in fact true. We've studied it and it really does make a difference. Tenants who have attorneys get longer times to pay any money that's owed, they are more likely to get repairs done in their apartments, and they're more likely to be able to remain in their homes rather than agreeing to move out. So that's Housing Court. Now we've got a little bit of a context of everything that's going on. So I want to turn a little bit to the broader context of how we got to where we are today in terms of changing the rent laws. The campaign that really pushed us over one of the many finish lines ahead of us more recently. And all of this dates back to the first example we have of tenant organizing in the New York City area, which was actually tenant farmers in the Hudson Valley who organized when they were evicted from their property. They were renting land on which they were creating their livelihood by growing and selling produce. And those tenants, when they were evicted, organized and not only did they demand that they have land rights, ownership rights to that land, but they also sued their landlords, and really fought back against this idea that they were in servitude to someone else who was solely providing the land on which they were farming. And I bring that up to say that I think it's a really good example of a lot of the things that we've seen happen more recently in terms of the frustrations that people are experiencing and then the solidarity that people build to try and do something about the injustice that they are faced with. That was back in the 1830's. So we've got about 200 years of history between then and now, and I'm not going to try and touch on every piece of it here. It is incredibly interesting, I encourage you to learn more about the history of the tenant movement. But I want to give a couple of highlights of things that had happened during this time period that I think really give us a better understanding of how it is that the tenant movement and tenant leaders and tenant organizers are incredibly important to the work that we're all doing. For example, in the 1870's we first got the tenement housing laws. Wouldn't think that that would be particularly relevant today, but that's the place where we see things like the regulation of a room size, the fact that there must be ventilation provided in the building, the regulation that there have to be windows in rooms. And my favorite example, fire escapes. Fire escapes came from that legislation and so we wouldn't have that if it weren't for the push that was made back in the late 1800's. We're really looking at the areas around Lower Manhattan, to try and make those housing accommodations safe for the people living there. And that was really done through the organizing and lobbying by the labor movement. And so we have to think about also the ways in which the different groups came together because they

have united interests. Similarly in the 1920s we got the emergency rent laws. That mainly was because there was an incredibly low vacancy rate. It was a time period where landlords were seizing an opportunity to raise rents 25 percent each time they wanted to get a lease renewal, for example. And this was a law that eliminated the landlord's ability to be able to do those things. And that really had to do again with the organizing movement of the people who were most affected by those changes, people who are going to lose their homes because of these rent increases. Next we had in the state, the state rent laws, which is really in the 1960's and 1970's, this includes what we all are referring to today, the rent stabilization laws as well as many others that were passed during this time period. And I bring this one up because I think it's sort of the beginning of the contemporary history that we all know in terms of housing law, but it also was brought about on the backs of all of the work that the different groups across the city were putting in to try and make housing a part of the tenant of each of those organizations principles. So for example, we had the work of the Young Lords, the Black Panthers, as well as a lot of the different organizing groups and a lot of the labor groups across the city who came together and culminated, and worked—the work that they did collaboratively culminated in these major successes that were able to regulate housing availability and the rent increases in particular and create security for tenants across the city. Now we have to turn to the other side. In the 1990's we lost a lot. And part of that is because of a lot of different things that were going on in the city at the time but also nationally. Politics had changed, things had shifted a little bit and the way that people were looking at things really affected the kinds of rent law changes that we saw during that time period. And that's when we saw the implementation of some of the most aggressive tools that allowed landlords to start to think strategically about how to deregulate apartments. We'll hear more a little bit more about these I'm sure as we go through the program. This is where we got the idea of vacancy deregulation, which is being able to deregulate an apartment upon vacancy under certain circumstances. This is also when we got the vacancy bonus, which is that when an apartment becomes vacant, a landlord can get upwards of a 20 percent increase simply because the apartment went vacant. It is also where we got the limitation to succession rights. So originally people were allowed to essentially inherit their rent stabilized apartment from someone under various circumstances and it really limited that down to real immediate family members: parent, sibling, things like that. And so, then we turn to what has happened more recently. And yes, we have the victory over this past summer that we are going to dive into, but it also is happening in the context of a lot of different things that are changing across the city and the state. So for example we've recently got additional measures to protect tenants against landlord harassment, which is a major tool that landlords use

to influence tenants to vacate apartments to give up rights and also to really just create a campaign of destabilization not just of the person's household, but of a community. And I think that that's one of the things that we don't really talk about often or that is not talked about often in these broader conversations is that really what we're talking about is not somebody just being able to keep a roof over their head, but we're also talking about them trying to protect their household, their family members. Then trying to protect their communities that they're a part of, the broader community that they may be a part of, but also their children's access to a school that they may have been attending for a long time where maybe they have a deep connection, a religious organization that maybe in the community. There are multitudes of ways in which displacement deeply affects people, more than just becoming homeless as challenging of an experience that may be. It comes with all of these other really stressful concerns. And that's really what a tenant is going in to in Housing Court with all of those stresses on them and not just the one of whether or not they're going to be able to keep their apartment. So how did we win some of these things? I think that when we look back over all of the different successes and even some of the losses that I referenced just now, there are a lot of similarities. One of them is that there was a lot of solidarity being built across different actors in the same communities. So for example, organizers and tenant leaders working closely with attorneys is one way, but also if we go back further in history we also see the major role that labor unions for example played in making a lot of these changes happen and lending support. Similarly we see collective action as being a huge part of how we've made some of these things happen. One of the ways in which collective action can manifest is through rent strikes. That is where an entire building may go on rent strike together where they withhold their rent, the idea being that it really forces a landlord to come to the table, have a conversation, and start a negotiation around what some of the concerns are. Another tool that we've seen used often is political action. And so this is definitely one of the ways in which lawyers can get involved, which is lobbying, meeting with elected officials on the state, federal and city level to have conversations about the kinds of changes that we think we need to see and making sure that they get to hear directly from the communities that are affected by that. And finally I will mention that one of the other major tools that we've had at our disposal is civil disobedience. And I think we're all talking a little bit more broadly and more creatively about what those things look like, but we've seen in the past that there have been huge successes after there have been things like resisting evictions or for example moving families back in. And so these are tools that have been used, admittedly not in a while, but there are tools that have been used in the past that have really led us to being able to come to a negotiating table around

some of these rent laws and be in a position of power to have a conversation about that. Where it isn't centering the accomplishment of collecting money over the needs of a family who is looking for a place to rest their head. So now that I've given a lot of background, some of the major changes that are contained in the Housing Stability and Tenant Protection Act of 2019. I'll just give a couple of highlights here. So for one, rent regulation used to expire every three years. It no longer expires; it's permanent. So we now no longer have to go and start with the fight of "this should be renewed, what do we need to give up in order to successfully get a renewal?" It is now much more of a conversation about what would be equitable in the circumstance. It also eliminates the 20 percent vacancy bonus that I referred to earlier, so it removes an incentive for a landlord to get someone out of an apartment so that they can get that automatic rent increase. It eliminates vacancy deregulation. It protects preferential rent tenants. And I'll describe a little bit about what that means. Preferential rents are generally where a landlord is charging less than what they could under the law. This is a rampant practice across the city as rent regulated rents rose above what people were willing to pay in certain communities. So for example, this was primarily something that we saw happening in gentrifying communities where landlords would seek to get high turnovers, take those vacancy increases, and then when a tenant would move in, offer them a rent that was lower than what they could have charged. For example, if they can't really charge 2000 dollars for a one bedroom apartment in Bed-Stuy just yet, but they're hoping to in a couple of years. And what this law, what the law did was that it essentially made it so that the preferential rent is the legal rent for that tenant for the duration of their tenancy so the rent increases will be based on those preferential rents. When that tenant leaves the rent may be able to be increased, but that tenant has the protection of understanding that they're going to be able to stay in that apartment for the time being. And the last one that I'll mention is that it also limits the amount of money that the landlord can pass on to a tenant for the cost of building or apartment improvements. So I think a lot of people may have heard of these kinds of tactics in the past in a sort of abstract way where a landlord gets someone out, gut renovates the apartment, and increases the rent and that was really a function of law. It was permitted for a landlord to do that to pass on some of those costs, and those costs could end up really increasing rents by hundreds of dollars in certain circumstances. And so the law now caps that amount so that those increases based on those improvements to the building or to the apartment are limited so that people can have some level of stability. So, I will close with the fact that I want people to get engaged to the degree that you are interested in being engaged. We are in the middle of something, not at the end of it. And while we celebrate the accomplishments that we've made over the last year, all of us

collectively, we also know that this is not the end of that fight. Aside from the fact that we always have internships and employment opportunities at many of our organizations, including those that are going to be speaking on the panel, there are also ways to get involved in some of the organizations and coalitions who are really doing this work and formulating these ideas on the ground level. And so I want to just highlight two of those, the Upstate Downstate Housing Alliance, which is a part of the Housing Justice for All Coalition. They are the ones who really pushed this rent law package in the last year and they are, they are already turning to 2020 and are making a plan for what they want to do next. So I encourage you to reach out on their website, “housingjusticeforall.org” and get connected to them, hear more about what they’re working on, join the campaign if you can. I will also reference the Right to Counsel NYC Coalition. As you can imagine those are the folks who recently passed the right to counsel in Housing Court legislation, which has made a huge impact on that disparity that we saw that 83 percent of tenants were unrepresented and 99 percent of landlords were. We’re starting to bring that into balance slowly year by year, as that program is implemented. But again, that coalition is not done. They’ve turned to what the next phase is and so that is the “Right to Counsel, Power to Organize. We have two pieces of legislation that are in front of City Council and we’re hoping to get those passed this coming session. And so I encourage you to get involved in that group and reach out to them. That website is “righttocounselNYC.org”. And you can sign up for email updates. You don’t have to come to every one of our meetings. But at least have an understanding of where we are and what’s going on in the world around. Thank you so much.

CLAIRE MOONEY: Thank you everyone again for joining us at the Cardozo Journal of Equal Rights and Social Justice Symposium. If you have any questions during the panel, please feel welcome to write down questions on one of those green cards over there and pass them to me. I’d like to introduce our speakers for this panel. Judge Cheryl Gonzales was appointed to the housing Court of the Civil Court, City of New York in June 2005, and was assigned to Brooklyn Housing Court from the time of her appointment until March 2011 when she began sitting in New York County Housing Court. In 2015, she was appointed as the Supervising Judge of New York County Housing Court. And since February 2016 she has served as the Supervising Judge in Kings County. From 1991 to 2005, Judge Gonzales served as a court attorney in Civil Court, Criminal Court, and Supreme Court and has now served in the court system for more than 25 years. Prior to joining the court system, she practiced in Family Court. Judge Gonzales is the former chairperson of the board of the Bedford Stuyvesant Community Legal Services, and a former chairperson of the board of the Metropolitan

Black Bar Association. Currently, Judge Gonzales serves as the co-chair of the Women in Prison Committee of the National Association of Women Judges, and as chair of the New York Chapter of the National Association of Women Judges, Women in Prison committee. She also serves on the Board of Directors of the Judicial Friends. Judge Gonzales is a graduate of Hunter College of the City of New York and CUNY School of Law at Queens College. Professor Andrew Scherer is the Policy Director of the Impact Center for Public Interest Law and a Visiting Associate Professor at New York Law School where he teaches the Housing Rights Clinic and other courses. He has also lectured at Columbia University Graduate School of Architecture Planning and Preservation, CUNY Law School, NYU law school, Yangon University in Myanmar, and Bennington College. Professor Scherer is also a consultant to nonprofit governmental and private clients around matters of access to justice, including property rights, land rights, and housing policy. In addition to having written multiple law review articles, Professor Scherer wrote the book on this area of law. He is the author of the treatise Residential Landlord-Tenant Law in New York. He received his B.A. from the University of Pennsylvania and his J.D. from NYU law school. Ed Josephson is the Director of Litigation and Housing for Legal Services NYC. Prior to this, he was the Director of Litigation at South Brooklyn Legal Services. He has defended tenants in eviction proceedings since 1988 and has won several major affirmative litigation cases protecting the rights of tenants. Mr. Josephson earned his J.D. from the New York University School of Law. And we have our moderator, Professor Michael Pollack who is an Assistant Professor of Law at Cardozo Law School, where he teaches and conducts research in local government, administrative law, property law, and land use regulation. Before joining Cardozo, Professor Pollack served as a Bigelow fellow at the University of Chicago Law School. He also worked as a trial attorney in the Federal Programs Branch of the U.S. Department of Justice, defending major legislative and regulatory initiatives from constitutional and statutory challenges. Professor Pollack clerked for Justice Sonia Sotomayor of the US Supreme Court and Judge Janice Rogers Brown of the U.S. Court of Appeals in the D.C. Circuit. Professor Pollack received his J.D. from the New York University School of Law, and his B.A. from Swarthmore College. Let's welcome our panelists.

PROFESSOR MICHAEL POLLACK: Good evening everybody. I'm going to ask each of the panelists to give a couple of minutes of opening introduction and remarks about their perspectives and whatever their reactions are to the most recent legal developments in this arena. Then, after that, I've got some questions of my own. As we're talking, please use those green index cards. Claire will collect the questions, pass them up to me, and

I'll ask those as well or structure some conversation around them. So I guess we could just begin by going down the table.

ED JOSEPHSON: Sure. I'm going to pick up where Kat left off. The interesting thing about the law that was passed this June is that, I don't know how many of you are familiar with the way laws are passed in Albany, but basically, all the laws are passed in just a two-week period before the close of the session. It is a completely chaotic thing with legislators from everywhere from Buffalo to Plattsburgh, and they're all kind of throwing things into a big salad bowl that gets tossed around. Then there are meetings in a back room and something comes out literally the day before it is voted on. This is what actually happens. There was some debate, but the debate was like minutes before the thing was going to pass. And so the amazing thing about the HSTPA is that despite the chaotic process, what came out of it was a very well-considered and well-structured piece of legislation. It is kind of astounding when you look back at what came out of there. And the idea was that over the previous 20 years, what had grown up was this incredibly irrational system where rents were held relatively stable for tenants while they were in apartments. But then they were allowed to dramatically increase, often double or triple, when the apartment turned over. And so what did that do? Well if you think about it for two seconds, it put an enormous bullseye target on the back of every rent regulated tenant because the landlords could make enormous amounts of money by pushing them out. So that fueled an enormous movement towards displacement and eviction. And that is exactly what we saw. You know, hundreds of thousands of cases a year in housing court with the aim to push out people. And the longer the tenants had been in their apartments, of course the cheaper their rents were and the more the landlords wanted them out and they were the most vulnerable. So what did the legislature do? So they did three things. The first thing is, they took away the financial incentive to displace tenants. Because they took away, as Kat said, the 20 percent free vacancy increase. They took away the prospect of deregulating the apartments. And they took away the increases landlords got for renovating apartments. They were the largest increases because what landlords would do is, every time an apartment turned over, they would do say 40,000 dollars' worth of work, you know, renovating the bathroom and the kitchen, which may or may not really have needed renovation. And with 40,000 dollars' worth of work you add 1,000 dollars to the rent. So if you do the math with me, say there is a rent that was 1,000 dollars and is more or less affordable. So it goes to 1,200 dollars just from the 20 percent bump. And then you add another 1,000 dollars for the renovations and now it's at 2,200 dollars. And so when the threshold was 2,000 dollars then you were deregulated, you could charge whatever you want. Under the new law, the rent for a new tenant who comes in is basically exactly what the old tenant

was, give or take a couple of percentage points. So all the fun of evicting people just evaporated. That's number one. Number two is, that is how it works if the landlords obey the law. But what happens if they don't? What if they just decided to charge more just because they can get away with it? And so the second part of the HSTPA was to increase the liability for landlords who don't obey the law. So before it was, the tenants could get four years worth of overcharge penalties and two years were trebled. Under the new law, it's six years worth of damages and all six are trebled. And when you do that math, it is a whole lot more. It's a scary prospect for landlords. Six years of treble damages. And to make it better, they greatly weakened the statute of limitations. Under the old law, if landlords could get away with an overcharge for four years they were home free. And it was very, very difficult for tenants to go back before that four-year statute of limitations. And I will tell you that 90 percent of the tenants who came into my office, we would get the rent history of all the tenants who had lived there. And every single one of them, the big jump in the rent happened in year five. Landlords knew that tenants were would often not file an overcharge claim for five years. That's now gone. Landlords face the specter of overcharge damages hanging over them pretty much forever now. So that's a big disincentive to have them violate the law. And then the third thing was that it doesn't do tenants any good to have rights if they can't assert them in housing court. And so the third leg of the tripod was, it tried to make housing court more tenant friendly, or at least less landlord friendly so that tenants would have enough time to get lawyers and actually assert the rights that they have. And there is actually a fourth leg to this tripod, which is the right to counsel. Because even if tenants have more time to try to get lawyers it doesn't do them any good if there aren't any lawyers. So now increasingly every year, a larger percentage of tenants will ultimately get lawyers who will then have time to raise the new rights and defenses that tenants have under the new law, and try to make sure that tenants are not displaced and that rents do not inflate.

JUDGE CHERYL GONZALES: Okay. I'll piggyback on Ed's point about having universal access in the courts and what that has meant for tenants in Housing Court. These number are old as of June 30th, 2018. The numbers of represented tenants in the universal access zip codes are now about 56 percent. But there is a significant variation by borough. In the Bronx there is 49 percent representation of tenants in the zip codes, and 23% overall. In Brooklyn it is 37 percent overall, and 69% in the UA zip codes. In New York County, represented tenants increased to 59 percent in the UA zip codes, and 33% overall. Queens is now at 36 percent for represented tenants in the UA zip codes and 26 percent overall. And Staten Island is now 73 percent in the UA zip codes, and 46% overall. And as I said, these numbers are old. So I think that they have increased, but it is extremely helpful to have

attorneys representing tenants because trying to maintain a level playing field as it had been in the past was quite difficult. Tenants often talk to landlord's attorneys in the hallway and they come into the court room, and state, "I talked to my lawyer". Well who is your lawyer? He is not your lawyer, he's the landlord's lawyer. This is something that we had to deal with a lot. In terms of the new laws, what we've been seeing, well I don't know if this was an intended consequence, but there was a significant drop in the number of cases filed. Filings in Brooklyn were down almost 50 percent. They are starting to increase now, and move back to where they were. But what we have seen recently is a surge in holdovers before the new law. It takes effect on October 12th. The notice requirements are much more lengthy than they were in the past, depending on the length of the tenancy. So people are bringing holdovers before the notice requests become effective. One judge told me today he had 14 holdover cases on his calendar. Because it changes on Saturday. The other changes that we have seen, well a great bone of contention is the earliest execution date, which is something that we did not have before. And the judges are now required to have that on the judgment and then it goes on the warrant. But what that has brought to light is that the marshals have been doing their own thing or the landlords and the marshals have their own system and the marshals have not quite caught up to the new law yet. I think the New York City Department of Investigation has to change the Marshal's Rules and Regulations. We're continuing to see Marshal's Notices that do not reflect the earliest execution dates that we have put on the judgments. We've also seen owners use cases that have disappeared. Some cases were filed prior to the law and once they realized the limitations of the new law, they have withdrawn these cases. And I'm sure that Ed will talk about the great deal of overcharge cases that have been generated as a result of the new law, but it is an exciting time in housing court. And I'm glad I'm there.

PROFESSOR ANDREW SCHERER: So I'm going to talk a little bit about context. HSTPA is really phenomenal. It's real sea change. With the one-two punch of the right to counsel, it's changing the whole atmosphere. The whole ecology of housing court and the dynamics between landlords and tenants are really changing. I am glad that Kat Meyers talked about the history a bit. I think this is a historic moment. It's a real shift. And what I'm really hoping is that this is not the end, but this is the beginning of a movement that can take what has happened so far and really shift things even further.

And when you think about the context of landlord tenant law in the United States, in New York, I think first, "why do we have those words?" right? Landlord and tenant, because it's straight out of feudalism. It's the lord of the land and the tenants who had to pay the tithing to be able to stay on the

land. And we have had some shifts over the years but there is still that fundamental rooted-in-feudalism relationship that has carried over very much to the present day. The first summary proceedings in New York were established by legislation passed in the 1820's. The whole idea was to give landlords a really quick remedy other than regular plenary type proceedings to be able to get people out. And the current RPAPL, the proceedings law that governs landlord-tenant eviction proceedings is based on that root. Now HSTPA has attenuated timeframes and changed the dynamic a bit, but still you have a fundamentally different kind of a proceeding, a special proceeding that was handed over to the owners, to the landlords, to be able to take eviction proceedings at a much faster pace than other kinds of legal proceedings. And that's the root.

But what is this landlord tenant relationship about fundamentally? On the one side it is a business. It's seeking profit. Nothing wrong with that. That's the economic structure under which we live. But on the other side is people's quest, and I think Kat talked about this a bit too, a quest for a decent home, community, a stable community to live in. And that tension has then formed the legal environment in which landlord tenant law has evolved over these many years. So you have both sides trying to get as much as they can out of the relationship, but they are very different things that they are working towards. And HSTPA, I think, signified a shift, and so did the right to counsel. The passage of the right to counsel signified a shift but that dynamic still is what very much governs the landlord tenant relationship. I don't know how many of you in the room are going to go on and become advocates in the housing arena, but I would say that there's still a lot of work to be done. Housing is a fundamental human need. It is where a lot of the things that we all care about in life emanate from. It's the place to raise your family. It's the place from which you can access employment. It's community. It's friendship. It's really such an essential of life and maybe we need to begin to rethink where we are with that. There's a lot of countries in the world, particularly the northern European countries, which take a very different look at housing and the International Covenant on Social and Economic Rights encourages countries to work toward a right to housing. We have a wealthy country with a lot of resources and if those resources were redirected we could have a right to housing. I actually think that what we're doing in this last moment in time is chipping away at some of the assumptions about the way these relationships should be and we're moving away from that sort of feudal origin where we were. But I think we should take what's happened recently as a cue to get more bold. Kat was talking about, the earliest instance of tenant organizing. I read a lot about that era, and the anti-rent wars in New York State, which actually were from the 1830's to about the 1880's when the state legislature finally essentially expropriated a lot of the large land

holdings. And the reason that they got to their victory is because people actually weren't evicted, they resisted eviction. They armed themselves and they would gather when the marshals were coming to try to evict up in rural New York State to stop the evictions. And this went on for years and the landowners couldn't get back their property. And even though they were claiming that the rent that was owed wasn't being paid, the legislature finally responded to this and essentially expropriated the land and gave it to the tenant farmers who had a good part of New York State. But we still very much have that tension that needs to be addressed.

Ed and I have the same three ways of looking at what HSTPA did. It took that crisis point in the relationship, the moment of court, and it really kind of attenuated what goes on. It stretched things out. The notice periods are longer, the new notice periods have strengthened, your ability to actually get an adjournment in court, which was part of the era in which things really slid very backwards in terms of tenant's rights, tenants have been relieved of that limitation. It made rent regulations more protective, it took away the incentives to get people out of their apartments. And it also strengthened the protections of tenants who want to organize. And there is an implicit assumption that sometimes you need to organize and take action to try to advance your rights and the retaliatory eviction provisions for urban tenants as well as rural tenants were really, really strengthened.

The history of landlord tenant law in New York as elsewhere has been incredibly political. So every time the winds change the law changes along with the political winds. And I think frankly we can give a lot of credit in this last era at the state level to the fact that the independent democratic caucus that was voting in with Republicans was finally defeated and the State Senate which had been controlled by Republicans shifted over to the Democrats. The assembly was always fairly progressive on tenant's rights legislation. And that just set in motion a cascading set of changes and that all also had to do with political organizing. So we are in an unbelievably exciting era. Ed and I overlapped in law school and that was 40 some odd years ago that we were at law school. At no time in my career have I seen this number of changes. I mean, the downside for me is, I have this treatise on landlord tenant law. I had to revise it with many, many more sections than I've ever had before, but it was with pleasure that I did that because of how really helpful these changes are. But we shouldn't sit on our laurels for having gotten where we are. We're in a very good position, but there's more to be done. The movement is a movement that I would like to believe inevitably will get there, toward an actual right to housing so that people don't have to worry about being able to have a roof over their head. But let's think about what other kind of bold moves need to be made. I would suggest that we need to repeal the summary proceedings statute. There is no reason why eviction

proceedings should go at this breakneck pace. Let them be litigated like other kinds of civil litigation. I've talked to people in other countries, I make a practice of that when I travel or encounter people. Most parts of the world, the expectation is you're going to live with each other, landlords and tenants, and you've got to find a way to live together. And I'm not suggesting that people shouldn't pay their rent or that they get to live there forever, but sometimes there is no place for people to go. So if landlords and tenants were stuck with each other they would have to find a way to work it out. And so that's one thing to think about.

I also think the unfinished business of this moment is that HSTPA did not really deal with affordability, except to the extent that it put some really important caps on how high the rent can get. I can't remember the exact statistic but probably 75 percent of low-income people in rent regulated housing are paying well over 50 percent of their household income for rent. So people can't afford rent stabilized rent and knowing that your 2,000 dollar a month rent is going to stay rent stabilized doesn't do you any good if that's 24,000 dollars a year and you household income is 20,000 a year. So we have to find ways to make housing more affordable and that I think is also the next frontier and hopefully what the coalition that's beginning to discuss what the next steps are is really focused on. What is a reasonable way to make housing more affordable for the people who can't afford it?

PROFESSOR POLLACK: So I definitely want to make sure that we talk about next steps, next ideas, and affordability as well. But before we do that, we've been talking a lot about what's great about the HSTPA. I want to ask a little bit, not just whether there unfinished business. We'll do that next, but is there anything about it that you don't like on its own terms that you think was not a good idea, or could lead to potential problems? I've got some questions from the audience already about some subcomponents of that, but I just want to first see if anyone on the panel has anything to volunteer about what they wouldn't have liked to see in the law. Or is it just perfect?

PROFESSOR SCHERER: Well I would say that it just didn't go far enough. It could have gone further, 14 days is better than three days but maybe it should be a month. It could have done more but I I don't have any particular section that I'd say "that's too bad", I think for the most part it's pretty good.

JUDGE GONZALES: There is pending litigation.

ED JOSEPHSON: Yeah, I would agree with Andy, I don't think there was anything not to like from a tenant's point of view. It was a contrast to 1997 where every single thing that they did to the law was pro-landlord and the landlords did not think there was anything one-sided about that. But then this year then they're bitterly angry because it was unbalanced and only for

tenants, but the truth is that the law was bent so far in one direction in 1997 that I don't think we've even really gotten all the way back to where we were.

PROFESSOR POLLACK: So a few of the questions I've gotten from folks in the audience come at this question from the landlord's perspective, including how that trickles down to the market for housing and to the tenant's perspective. So I guess one question I'll just start with is, "Insofar as the law is so tenant friendly, does it make being a landlord so unattractive that it could contract the supply of housing and thus make affordability problems that are much more problematic?" If it raises the cost of being a landlord, will landlords pass that cost onto tenants through higher rents or just not go into the business of being a landlord, and so there'll be fewer rental units available?

ED JOSEPHSON: Well I think the reality is that last couple of decades, New York City landlords have made profits that would have embarrassed the Pharaohs. You see landlords all over the city who are leveraging their property to buy more and more and more buildings and assemble these enterprises which you can't do unless you're making huge profits. You're seeing hedge funds come into the New York City market and invest, because they see the potential to make mega profits by evicting tenants and pushing up the rents. So to the extent that the new law sort of burst that speculative bubble, I think that is a very good thing. And it may be that real estate prices will settle out a bit and I think that's a good thing because we saw what happens with bubbles in 2008. And there is no reason why we want to see that repeated. But I think even when it settles out, it's going to settle out at a level of profit that everyone in this room would be very happy to have. Just to give you one example, the increases that people got for improvement increases when they rehab the apartments was one 40th of the cost of improvements per month. You get back one 40th of what you spent per month. And what people didn't realize is when you, when you do the arithmetic, that comes out to a 30 percent return on investment? So which of you gets a 30 percent rate of return on your bank account? The only people who get 30 percent in this universe are New York City landlords. So they are upset they can't get 30 percent because now instead of one 40th, it's 1 over 168. And so they're crying, this is outrageous. One over 168, but do the arithmetic, you know what that comes out to? It comes out to a seven percent return on investment. How many of you are getting 7 percent on your bank accounts? None of you.

PROFESSOR SCHERER: I can add a couple of additional thoughts. I think that the argument that it's just going to ruin real estate comes in two forms. One is, nobody is going to build anything, and the other is, well, people are just not going to stay in business. And just a couple of things about that. First, no new housing has been subject to rent regulation since 1974.

Any housing built after 1974 has not been rent regulated except to the extent that landlords actually agree to rent regulation in order to get tax benefits. So, as you know, the existence of rent regulation has certainly not put a damper on all the new construction, unfortunately too much of it is really, really high-end luxury, but no new housing has been regulated for the last 45 years. And as far as operating housing, it's very interesting what has happened over the last 20 to 30 years. Because if you look at where this kind of mega investment, the MCIs, the individual apartment improvements are, you are looking at what neighborhoods in New York are being gentrified. Those are the only places that that's going on, right? And in fact, if you go take a ride or a walk through outer Brooklyn, you'll see lots of nice, multiple dwellings, rent stabilized, stable communities where they haven't gotten the snazzy redone lobby or the marble counters in the kitchens, but the people have been living there for years, with rent stabilization. So the tools that Ed was talking about that really shifted, although I think really the imbalance has been there in the law forever, but where it got much more pronounced was really in service of particular targeted communities that owners wanted to get people out of. And it was a really useful tool for them. The fact that that's changed is going to be a dynamic that is going to protect those communities and it's not going to change all that much in some of the outer borough communities with middle-class housing that's rent stabilized. It has been kind of like it is for generations.

PROFESSOR POLLACK: So there are a couple of questions I've received that focus on small landlords, not the hedge fund landlords, not the empire landlords. If the cost of maintaining a building is increasing, you know, taxes, insurance, utilities, etc., is there a concern that it will probably either price out the small landlords or leave the small landlords to perhaps cede the territory to the bigger ones who have the empires and can absorb the cost? Maybe that's a bad thing?

ED JOSEPHSON: It's good to give people a voice. I think the first thing is that really, small landlords are not regulated. You have to have six units in your building. If you have five units you can charge whatever you want, you can kick your tenants out whenever you want, which I don't think is a good thing. But when you have six units, you're not all that small, and a lot of six-unit buildings are owned by landlords who own a lot of six-unit buildings so they're not small at all. And then the other thing is that under the current rent regulations every year the rent guidelines board does a study of what the increases are in landlord costs and they promulgate rent increases for the renewal leases. So that's already taken care of. And all of the vacancy increases were on top of that. So those had nothing to do with cost, that was just a pure gift with a bow to the landlord because they weren't making big

enough profits. But the operating costs were covered already and will continue to be covered.

JUDGE GONZALES: In Brooklyn, we have a lot of two- and three-family homes. And what we see is an owner who has had a tenant for 25, 30, 40 years and maintained the building, and as soon as the owner changes, then there is this push to get the people who have been there forever out and raise the rent. So those buildings were operating and not operating at a loss, and sometimes the rents had not changed in many, many, many years. So I think for small landlords they do operate their buildings, and they do operate their buildings not at a loss. However the story that we get is different when the commercial landlords come in.

PROFESSOR SCHERER: And one more little factoid. I don't know how many of you have yet taken Professor Pollack's property law class. But if you do you will learn about the takings clause. And in order to keep rent regulation from being held unconstitutional, there is actually a hardship provision in the rent regulation laws so that if you're really not making a profit, you can go to the state agency and you can open your books and show that you're not making a profit and then you can get a rent increase based on hardship. Now nobody does that.

ED JOSEPHSON: Do you ever see that?

PROFESSOR SCHERER: Never.

ED JOSEPHSON: I never saw it either.

PROFESSOR SCHERER: It never happens because number one they probably can't show that they're not making a profit. And number two, owners don't want to open their books to the tenants for them to be examined.

PROFESSOR POLLACK: So last question I've gotten on this topic is, "Will this bankrupt the city?" So I think the theory behind this one is that the HSTPA will result in fewer transfers that will be taxable under the transfer tax. So can you speak a little bit to whether this dampens the transfer of real estate from landlord to landlord or owner to owner?

PROFESSOR SCHERER: Well, all I can say is if the city's future depends on speculative investment that's based on displacing people and raising their rates so high that they can't live in the city anymore, we have to find some other way to deal with the physical problems. To do it on the backs of low-income people, sorry, that's just not an acceptable way to deal with it. And I don't think factually it is going to happen. I think it is hysteresis, it's a scare tactic. It's not where things are going to go. I mean people are going to still continue to flock to New York City from all over the country like they have for generations.

PROFESSOR POLLACK: Alright, so let's talk about ways in-

STUDENT (IN AUDIENCE): Sorry. I have a question on that. Half the city has seen a decrease though in like the mortgage reporting tax and the transfer taxes. Does the law make that change?

ED JOSEPHSON: Well, I think it's probably too soon. It's only been a couple of months, so I think even the tax bills don't come in yet. I certainly haven't seen any statistics on that. I will say that I was on a panel with a landlord representative and this was his tactic, the city was going to go broke because real estate taxes are going to go down. And the irony was that it was really only less than a year ago there was this big debate over the 421A tax exemption program where basically landlords were getting hundreds of billions of dollars off their taxes for building luxury apartments that no one could afford and none of them were saying, "Oh my God, the city, how is the city going to keep going without all of these real estate taxes?" But now, if we lose some money on real estate taxes for the purpose of keeping people out of homeless shelters suddenly oh my God, the whole city is going to go bankrupt. I don't think so.

PROFESSOR POLLACK: Let's talk about ways in which the law hasn't gone far enough. We've heard a little bit from Andrew about things that could be done differently and what some next steps are. I wonder if you might talk about things you'd like to see sort of in the next wave of reform.

ED JOSEPHSON: Well I think one of the big things that did not get passed was what they call the good cause eviction law. And the idea was that people who are not in rent regulated property in New York City, they're in small buildings, or outside of New York City, Westchester and Long Island. There is no protection to the tenants whatsoever and the most bizarre and illogical thing is that landlords can just kick out their tenants for no reason at all. And I think we can all agree if the tenant is doing something wrong, if they're not paying the rent, if they're a nuisance, if they've got 75 cats, of course the landlord should be able to bring a proceeding. But the question is, should any landlord have the right to kick out their tenant literally for no reason at all? That's what the law allows. And so the radical concept that was proposed as part of the original bill package was, the landlords just have to say some reason. It could even be, I think I can get a lot more for this apartment than the tenant can pay. Because this is a for-profit system, but there has to be some reason, right?

PROFESSOR SCHERER: Well I think the proposal actually was interesting in that way because it would be a pretty meaningless proposal if all they can do is jack up the rents to whatever they wanted. So there was built in some notion of, if it looked like it was a retaliatory rent increase because it was so out of balance compared to other rents in the area, you could make that argument. So I don't know that it would have left them free to just get somebody out by raising the rent.

ED JOSEPHSON: Right, but they could raise it to market. They just couldn't raise it above market. That did not pass. And so as a result, most communities in New York State, tenants are just totally at the mercy of their landlords. The exception being mobile home parks. There's only one in New York City, but there are thousands in the rest of the state and those were literally like little feudal fiefdoms, where the tenants in theory own the house but they don't own the land. So it's even worse because when the landlord kicks you out you have to take your house with you and they're heavy, so they're really hard to move and it's really terrible so now that is being regulated.

PROFESSOR SCHERER: Actually, that's why they changed nomenclature from mobile homes to manufactured homes. Because in fact they are not really all that mobile.

PROFESSOR POLLACK: Yeah, I encourage my students to read Matthew Desmond's book "Evicted", which is largely taking place in a manufactured home park.

PROFESSOR SCHERER: Actually, can I ask my colleagues in the panel this question; what do you think would happen if we just repealed the summary proceeding statute, and eviction proceedings proceeded like other kinds of civil proceedings?

JUDGE GONZALES: Well I think that in some instances the proceedings are not summary now.

PROFESSOR SCHERER: That's true. But would you formalize that?

JUDGE GONZALES: I still have cases that are 2015, 2016. Some cases last a long time with the motion practice, discovery, and then the trials take a long time in housing court. Because a lot of times we can't go day to day for whatever reason, some trials take place over the course of two or three years.

ED JOSEPHSON: I would say, not to contradict you, but I think the really key thing is right to counsel. If tenants have lawyers, then I think a slightly slower version of a summary proceeding is not too terrible. And without lawyers, having it be like Supreme Court would not help at all. So the first thing is lawyers. Once you're used to Housing Court, Supreme Court seems really slow and sometimes unnecessarily so. And there are some landlord tenant proceedings that really do take a lot of time and require discovery and so on and some that really don't. And so I don't know, there might be some hybrid between the current system in plenary cases and in summary proceedings that might serve to balance.

JUDGE GONZALES: On Judge DiFiore's Commission on the Future of Housing Court, one of the proposals that was discussed was having a two-track system with cases that are more complicated on a different track as opposed to your simple no defense holding, which really doesn't take any time.

PROFESSOR POLLACK: So speaking of practice in the courts, one of the questions I received is specifically for Judge Gonzales and I think it's a really good one. You talked about some of the statistics about representation rates. What do you think accounts for the disparity for example from Staten Island, you said it was almost 70 percent represented?

JUDGE GONZALES: In the UA zip codes. Maybe I didn't make that clear. In the UA zip codes that are presently in place.

PROFESSOR POLLACK: But all the same, there were disparities from borough to borough. What do you think accounts for those borough-to-borough disparities?

JUDGE GONZALES: It's hard to say. When I sit in the UA parts, a lot of tenants, especially tenants who have familiarity with housing court, they think "I can do this because I've done this before". And they refuse the offer of assistance. There are a lot of declinations of assistance and some people just don't want to spend the time to go get screened. And when the program was first instituted I was in New York County and we had the screening office on the same floor as the UA part because we found that sending them up from the second floor to another office, tenants just didn't want to do that. They have to go to work, they have things to do and if it involves too much time or going different places it just doesn't work. We don't have the luxury of doing that in Brooklyn. In one of the UA parts, we have a small office in the courtroom where the UA provider is right in that same space. And in the other part they have the conferences in the hallway, but I think still, the facilities would make a difference. And that's one of the things that we're struggling with now is finding space so that the providers will be right in the area of the courtroom and people won't have to travel far because once we tell them go to another floor we lose them.

PROFESSOR POLLACK: And you mentioned earlier that they're sort of waiving, right? What's the, for lack of a better analogy, sort of *Miranda*-style warning that they're receiving about, this is your right to counsel? How informed is that waiver?

JUDGE GONZALES: Well the judges in the UA parts make an announcement and let people know that if you reside in these particular zip codes, then you may be eligible for a free attorney and there is someone in the courtroom who will interview you and then you will see an attorney. I don't know what the providers say to them when they speak to them, but the judges in the parts do inform everyone. But we now have staggered calendars. So once the judge gets busy, the statement won't be repeated. So the people who come in at 9:30 will probably have the benefit of hearing the announcement whereas the people who have an 11:30 call time don't.

PROFESSOR POLLACK: Interesting. So, while we're talking about courts and the role of attorneys, we were talking earlier about and Kat was

talking during her keynote about the opportunities for students, young new lawyers to get involved to do more work. It's a little bit of a pitch for your organization or your clinic, but can you just talk a little bit about what students who are interested in these issues can do to not just get involved in the advocacy on the organizing front, but to do the legal work?

JUDGE GONZALES: Well we have a volunteer lawyer for the day program, which is a program that provides limited representation and representation for the day. And that is run out of CUNY Law School. We also have a navigator program where students are helping tenants navigate the courthouse and helping those people to locate the legal services offices.

PROFESSOR POLLACK: To find the other floors.

JUDGE GONZALES: Yeah. And I think just having internships in the court is being able to help. We still have so many pro se litigants that any help that we can get would be greatly appreciated.

ED JOSEPHSON: So, you know, it is important to realize that for those of you who are law students, there are a lot of jobs and there will be more and more jobs. And it is very different from when Andy and I were in law school. It's so amazing. And now, I think we have the whole CUNY graduating class just kind of pre-signed up. But the thing to think about a little bit is, there are these jobs. You know I think it's a wonderful job, I've been doing it for 30 years. And it's still challenging and interesting and exciting. It's also, some people would say, extremely stressful and difficult and sometimes overwhelming because you know the stakes are so high when your client loses their apartment and their whole life can fall apart. And it's a high volume and very fast paced kind of a practice. So it's not for everybody.

PROFESSOR SCHERER: Until we get rid of summary proceedings.

ED JOSEPHSON: Until we get rid of summary proceedings. But even then, it's a lot. There's a lot of pressure and you're up against adversaries who are not always the nicest people in the world. And you're also representing clients who have many challenges in all areas of their life. And so there are people who are great lawyers, but this kind of a practice is not for them. But that all said, it's really something to think about because there are few areas of law where you make such an enormous impact on your client's life. Also, if you can learn this job, when you walk out of this job, you can do anything. Because you're doing trials, you're doing motions, you're doing negotiations, and you're doing it all, it's like speed chess. If you can do that, you can really do it. And so it's something really to consider. We have internships during the year, we have summer internships. There are clinics where you can kind of test it out. You can go down to Housing Court on your own and just check it out and see what it's like. And there are a lot

of alumni from every law school who I'm sure are available to talk to. And it really is a great opportunity.

JUDGE GONZALES: We also have Help, or Resource, Centers in every borough and people can volunteer in the Help Centers. The Help Centers are open late on Thursday nights.

PROFESSOR SCHERER: So let me say a couple of things about this. One is, there's something interesting going on right now, which is that a tenant movement won a really important right that has the potential not just to do all the things that Ed said, but I think also to be transformative around communities, around stabilizing communities, around the law itself. In revising my book this year with the advent of the right to counsel, there's so many more written decisions by judges to go through, to make my work harder. Keep making my work harder. It's really because they are pushing the envelope. That's what lawyers do, they look at the statute, they look at the precedent, and they try to push the envelope on behalf of their clients. When you didn't have lawyers there, yeah, it was going on like this, but it's actually started to move the body of law.

It's also a moment where there is an enormous amount of community-based organizing around tenant's rights. It gives you an opportunity as an attorney to be engaged in community lawyering; in a way, there weren't that many opportunities in the past. Those opportunities are really opening up. But there is a bit of a disconnect, right? Because everybody in law school who wants to do public interest work thinks they want to go work for the ACLU and they are going to bring the big sexy case that's going to change everything. And that is not what this is about. Yeah, there may be that big sexy case, but it is also the daily work of actually working with people in their communities and we need to change the culture a bit. I mean I started a clinic at New York Law School, I've been trying to talk to my colleagues around the state to encourage them to create more clinical and experiential learning opportunities. Kat is very involved in a roadshow that we're putting together to have people speak at the different law schools; we want to take that nationally, not just locally. Because we do need people who are going to really care about this work, who are going to care about being engaged with low income communities. I know we're going to think of it, not as some Band-Aid, I'm going to hold somebody's hand in court, but think of it in all of its transformative potential. I know I'm biased but I think it's as exciting a moment in this field as you ever have in law practice. And if you get into it now you will be part of an incredible wave that is going to change things.

PROFESSOR POLLACK: He's totally right. But we can't leave without talking about the pending litigation that Judge Gonzales alluded to: the takings and due process clause challenge to the statute. So, Ed, Andy, if either one of you want to comment on the litigation, the strategy behind that,

or whatever you understand the strategy to be behind that litigation and its potential resolution.

ED JOSEPHSON: Right. Well my organization together with the Legal Aid Society just successfully moved to intervene in that case and it's an important reminder that even though we've made big progress in this little way in our little bubble, this is all embedded in a very cold and cruel world outside of New York City. And this complaint that they filed, Andy was saying how we're making progress moving away from the middle ages, but actually, this is a reminder that there are forces that are trying to push us back really to the middle ages in serious ways or back to Germany in the 30's. And someone described their complaint as a libertarian rant that would have embarrassed Ayn Rand. And really it was an absolutist view of property rights that, better a million people become homeless than that one property owner should lose a single penny. And if they do lose a single penny that is an unconstitutional taking of their sacred right of property. And the complaint, it doesn't just attack the new law. It attacks the whole concept of rent regulation as it goes all the way back to World War Two and before ; they argue that the concept of regulation that reduces profits is in itself unconstitutional. And so the thing is you say, "well hasn't that been decided?" And of course it has in many, many ways, since the 19th century, since the New Deal, really. And in particular there are two, fairly recent Supreme Court decisions, *Yee v. Escondido* and *Pennell v. City of San Jose*, that say rent regulation is absolutely constitutional. There is a recent ten-year-old case from the Supreme Court that said commercial rent regulation in Hawaii was constitutional. And there are numerous Second Circuit cases. What are they thinking? Because they're just going to lose. There is no way the district judge can go against all this precedent. But of course, you know what they're thinking, right? They're going to lose in the district, they're going to lose at the circuit and then they're going to hope that Judge Gorsuch and Judge Kavanaugh are going to, as they've already signaled that they're willing to do, just erase decades of precedent. And that's what they're gambling on, that this will be an eraser of all the law that goes back to Roosevelt. And in light of 2016 and everything that has happened, which of us can say that is impossible? It is possible. But I will say one ray of hope here is, well, first of all, the Supreme Court has a lot of things to do and so they may not be able to squeeze this onto their docket. It's going to happen not this year but several years from now. We don't know what the country will look like politically then. But the other thing is that really, when I was looking at this, there is really no difference between rent regulation and any other kind of regulation really, because all regulations mean that people with property make less profit than they would otherwise, right? Whether it's oil companies or whatever. And so the question is, would the Supreme Court be

willing to basically erase regulation? Now that's a heavy-duty thing, even if you are believing in capitalism as an ideology and an economic system. Since the New Deal the consensus has been that capitalism needs some ground rules, and even if you are General Motors, you'd want Chrysler to be playing by the same ground rules. And if you're Halliburton, you want Mobil Oil to be playing by some ground rules because otherwise it is chaos and chaos, at least in some versions of capitalism, is bad for markets, bad for long-term planning and so to just destroy all of that, maybe even the recent Trump appointees are not willing to go that far.

PROFESSOR SCHERER: I couldn't agree more with what Ed just said about it., I think that is really well put. It actually goes back to World War One, not World War Two. And the Supreme Court in 1920 or 21 decided *Block v. Hirsh* and upheld the first type of rent regulation which wasn't really fundamentally all that different in Washington D.C. than what was enacted in New York during World War One. And really the precedent from that day on is completely solely in support of the Constitutionality of rent regulation. But a lot of things are changing. I think there is a climate in which it could be revisited and that does make me nervous.

PROFESSOR POLLACK: One final question I received from the audience. It says there was a recent N.Y. Times article about vacancies in the luxury real estate market. The person writes they've heard talk of a vacancy tax on landlords. Do you have thoughts on a vacancy tax as a way of trying to disincentivize rents that are so high no one is interested in renting the apartment?

PROFESSOR SCHERER: That idea has been out there for years. They used to call it a warehousing tax. I'd rather see the housing expropriated and used for homeless shelters. There's probably better ways to go about it. But yeah, there might be some disincentive.

ED JOSEPHSON: Yeah, there was a terrible case called *Seawall Associates v. New York* from the New York Court of Appeals. Landlords were holding SRO hotels empty and New York passed a law saying they had to rent them out. And then the New York Court of Appeals said it was an unconstitutional taking of property because you were forcing these landlords to have strangers move in. And I mean, it seems so ridiculous because of course you rent to strangers, you don't rent to your friends. But that was what really somehow offended the judges. These strangers camping out on your property. And so they shut that down, the compulsion of it. But it is compulsion of people who are in a business to make them keep doing that business. I don't know if Paris has an opinion of whether a vacancy tax would be constitutional under *Seawall* or not.

PROFESSOR PARIS BALDACCI (IN AUDIENCE): It would be hard.

ED JOSEPHSON: It would be hard, yeah. That's what I was thinking. So that's really frustrating. There's talk of doing eminent domain. And the only problem with eminent domain is that as you take the building you have to pay for it. And you have to pay market price. But it could be that in some parts of the city that might be a viable thing to do.

PROFESSOR SCHERER: And if they are going vacant, a legitimate market price is probably a lot less than they might be saying they want. Interesting little footnote to that is that *Seawall* was decided the same day as *Braschi* was decided by the New York State Court of Appeals. Which really opened up housing for non-traditional families.

PROFESSOR POLLACK: The law gives and the law takes, right?

PROFESSOR SCHERER: And sometimes at the same moment.

PROFESSOR POLLACK: Right. Alright. So can we thank our panelists, please? For a lovely conversation. And with that, the reception is still ongoing. So you can all return back to the lobby to chat more about these issues. Thank you all for coming.

