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43 Essex Street: A Case Study in Shutting Down Tenant Harassment and Displacement with Community Organizing and Lawyering

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**43 ESSEX STREET:
A CASE STUDY IN SHUTTING DOWN TENANT
HARASSMENT AND DISPLACEMENT WITH
COMMUNITY ORGANIZING AND LAWYERING**

Cynthia Cheng-Wun Weaver and Donna Chiu†

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I. INTRODUCTION – 43 ESSEX STREET
TENANTS ASSOCIATION

Until it was taken down in May 2014, Misidor’s website stated that [Misidor LLC and Michel Pimienta] could vacate and relocate tenants from rent-regulated apartments so that its clients, ‘real estate owners and managers,’ could ‘realize the highest possible returns from their assets’ by re-leasing the apartments at a much higher market rate.¹

One morning we felt jackhammering under the bed. I could feel the room shaking. The floors were shaking, and powder was coming through the floors. One night [soon after] I went down there, and oh my god, I cried. I was just floored. Because they tore out all of the concrete under my floors, so the only thing holding me up is rotting beams. The electrical boxes ripped from the walls still had live wires exposed, right under my bed. It’s like someone dropped a bomb in there.²

Poor Americans are losing affordable housing and becoming increasingly rent burdened.³ As of 2013, around 20% of renter-households in the United States spent less than 30% of their income on rent, while over 50% of renter-households spent 50% or more of their income on rent.⁴ In New York City, where there were approximately 966,000 rent-stabilized apart-

¹ Assurance of Discontinuance Pursuant to Executive Law § 63(15), Att’y Gen. of N.Y., Civil Rights Bur., In the Matter of Misidor LLC & Michael Pimienta, AOD No. 14-152, at 1 (Oct. 23, 2014) [hereinafter Assurance of Discontinuance], <https://perma.cc/ZSSN-AJYX>.

² Emma Whitford, “*It’s Like Someone Dropped a Bomb in There*”: *LES Tenants Sue Landlord Over Illegal Construction*, *GOTHAMIST* (Apr. 30, 2015, 3:41 PM), <https://perma.cc/A9GN-6PCM>.

³ See Matthew Desmond, *Unaffordable America: Poverty, Housing, and Eviction*, FAST FOCUS (Inst. for Research on Poverty, Univ. Wis.), Mar. 2015, at 1, <https://perma.cc/XG24-4BAA>. “Rent-burdened” describes households that spend more than a third of their income on rent.

⁴ See *id.* at 2, fig.1.

ments as of 2017, about one-third of New Yorkers spent half of their income on rent.⁵ Unaffordable housing causes evictions. Evictions exasperate poverty and break apart families through instability and separation.⁶

Despite the heartbreaking, adverse consequences caused by evictions, landlords remain incentivized to evict tenants as frequently as possible in order to bring an apartment out of regulation. Every time a tenant-of-record moves out of a rent-regulated apartment, the rent increases.⁷ For some apartments, their high price-tags bring them out of rent regulation.⁸ While some evictions occur within the courts according to statutes and case law, landlords have searched for ways to push out tenants in what amounts to constructive eviction.⁹

⁵ N.Y.C. DEP'T OF HOUS. PRES. & DEV., SELECTED INITIAL FINDINGS OF THE 2017 NEW YORK CITY HOUSING AND VACANCY SURVEY 1, 6 (2018), <https://perma.cc/4RY8-M5J9>.

⁶ In Matthew Desmond's monumental study on evictions in Milwaukee, he discovered that families with children are more likely to be evicted. *See generally* MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* (2016). From abating lead paint to confronting child protection services, they cost landlords more money. In a *Mother Jones* interview, he explains some consequences of evictions:

Families not only lose their home, but their possessions, too. Often, they are taken by movers, locked up, and lost, or put on the curb. People's stuff just get lost. People obviously lose their communities and schools. Then there's these consequences that I just didn't anticipate, like job loss. I thought going into it, 'You lose your job, you're getting evicted.' That's certainly true. But we have strong evidence that you get evicted, you're much more likely to lose your job. It can kind of take over your life. And if you're working in a sector of the labor market where you don't have a lot of security and a lot of protections, an eviction can cause you to get fired. And then there's the effect on your health—your mental health, your spirit. Moms that get evicted are depressed and have higher rates of depressive symptoms two years later. That has to affect their interactions with their kids and their sense of happiness. You add all that together, and it's just really obvious to me that eviction is a cause, not just a condition, of poverty. It has to be part of the larger narrative that we are having today about inequality in America.

Edwin Rios, *Having Kids Makes You More Likely to Be Evicted*, *MOTHER JONES* (Mar. 1, 2016, 11:00 AM), <https://perma.cc/K5D9-VCY3> (interview with Matthew Desmond).

⁷ In New York City, the monthly rent for rent-regulated housing can only increase under specific circumstances: increases set by the Rent Guidelines Board annually; increases due to a new tenant-of-record moving into the apartment ("vacancy increase"); increases based on improvements made to the specific apartment ("individual apartment improvements"); and increases based on improvements made to the entire building ("major capital improvements"). *See* OFFICE OF RENT ADMIN., N.Y. STATE DIV. OF CMTY. RENEWAL, *FACT SHEET: #26 GUIDE TO RENT INCREASES FOR RENT STABILIZED APARTMENTS IN NEW YORK CITY 2, 5-6* (2017) [hereinafter *Fact Sheet #26*], <https://perma.cc/43HF-G8FB>.

⁸ *See id.* (describing the ways in which apartments may become de-regulated).

⁹ *Barash v. Penn. Terminal Real Estate Corp.*, 26 N.Y.2d 77, 83(1970) ("[C]onstructive eviction exists where, although there has been no physical expulsion or exclusion of the tenant, the landlord's wrongful acts substantially and materially deprive the tenant of the beneficial use and enjoyment of the premises."); *see also* N.Y. REAL PROP. LAW § 227 (McKinney 2018) (describing when a tenant does not have to pay rent if constructive eviction occurs).

In early 2015, a group of immigrant tenants contacted Asian Americans for Equality (“AAFE”), a community-based organization in New York City, to discuss how the gas in their building had been cut off. A new landlord had recently purchased the building. It soon came to light that the new landlord hired a tenant relocater to stalk the tenants, commenced serious gut renovations without obtaining necessary building permits or filing tenant protection plans, and shut off heat, hot water, and cooking gas for the entire building. The tenants inhaled dust and debris that crept into their living quarters, and found cracks and holes in their walls from the incessant and careless jack-hammering. AAFE reached out to Manhattan Legal Services (“MLS”), a non-profit legal services organization. Jointly, they commenced an affirmative case against the landlord to cease the harassment, and to repair and restore essential services and safety to the tenants’ homes.

Through persistence, community organizing, and lawyering, as well as assistance from various stakeholders, the tenants eventually got closure. The parties settled. Soon after, the landlord was indicted for mortgage fraud. The tenants exhibited patience and endurance in remaining in their homes; they participated and engaged in decision-making and strategy-making discussions, and they continued with the case until settlement after nearly two years of litigation which included over a dozen court appearances and a hand full of contempt motions. It is always our clients who inspire us to keep working and fighting.

This article takes a chronological look at how the tenants of 43 Essex Street in Lower Manhattan began and resolved their case. Section II introduces the parties involved and nuanced issues presented to the advocates. Section III dives into the history and laws governing a group Housing Part “HP” action as well as laws that were enacted to protect tenants and combat against harassment. Then, in Section IV, we describe the interpersonal dynamics in court during the pendency of litigation. Here, we discuss how different relationships with multiple parties and players were managed and organized. Equally important were the dynamics and work outside of court, including grassroots advocacy surrounding the passage of more tenant-protection bills and the use of media to empower tenants. We close this section by briefly proffering changes in the law we would like to see. Section V explains the settlement of the 43 Essex group-harassment HP, and the landlord’s ultimate criminal indictment by the New York State Attorney General. Finally, we conclude in Section VI with reflections on the lawyering and organizing and the lessons we learned from this litigation. The purpose of this article is simple. In sharing this case study, we hope to show the various efforts, considerations, and deliberations that go into organizing group housing cases, which are

being brought with frequency across New York City. We invite practitioners and organizers to reflect on their roles as social justice advocates in the dynamic and demanding practice of housing work while pressing on to identify their own areas of improvement in serving as advocates for low-income communities and communities of color.

II. THE PARTIES AND THE PROBLEM

A. *The Tenant Relocator*

Michel Pimienta is a tenant relocater. The New York State Office of the Attorney General's ("OAG") Civil Rights Bureau investigated Pimienta, along with his company, Misidor LLC, for operating as a real estate broker without a license.¹⁰ Pimienta and his business assist landlords with emptying apartments and, allegedly, relocating the tenants to other living quarters. Each apartment vacatur allows for an automatic vacancy increase as well as any individual apartment improvement increases for renovations made to each unit.¹¹

Pimienta's business seems straightforward until the details are studied and parsed. To try to get tenants to voluntarily leave their apartments, Pimienta would follow tenants on the streets and badger them with unfairly termed buyout offers to vacate. He showed up at tenants' places of employment and also knocked on apartment doors at odd hours of the night. He acted as if he was the landlord's attorney; he falsely told tenants that they must sign new renewal leases with a rent increase that is higher than the amount permitted by law; he threatened lawsuits based on inaccurate statements of the law.¹² Simply put, he terrorized rent-regulated New Yorkers.

The Attorney General found that Pimienta violated several laws by: engaging in a tenant-relocation business without a real-estate broker's license; negotiating the sale and rental of real estate without a real-estate salesperson's license; receiving compensation from people other than the licensed real-estate broker with whom he is associated; harassing rent-regulated tenants by exploiting dangerous conditions and uncorrected housing code violations, warning tenants their apartment conditions would not be repaired; repeatedly urging tenants to accept buyout offers

¹⁰ See Assurance of Discontinuance, *supra* note 1; Press Release, N.Y. State Office of the Att'y Gen., A.G. Schneiderman Secures Agreement Shuttering Company that Engaged in Unlawful Tenant Harassment (Oct. 27, 2014), <https://perma.cc/JKB6-4WFD>.

¹¹ See *supra* footnote text accompanying note 7.

¹² For example, Pimienta would tell tenants that they must vacate and that family members did not have succession rights, even though they may have. He would also advise tenants that they cannot own property elsewhere even though they used their rent-regulated apartment as their primary residence.

and making persistent and unwanted contact with them even after indicating they did not wish to be contacted.¹³

To settle their investigation, the Attorney General entered into an Assurance of Discontinuance (“AOD”) with Pimienta and his company whereby Pimienta agreed to refrain from certain conduct between October 23, 2014 and October 23, 2017.¹⁴ Such conduct included ceasing from engaging in or holding themselves out as tenant relocators for one year unless they apply and obtain a real-estate broker license in New York. If Pimienta chose to apply for, and so receive, a broker’s license, Pimienta must then create an OAG-approved policy for providing tenant buyouts and relocations. This policy would bar Pimienta from engaging in tenant harassment and holding himself out as an attorney. Pimienta was also barred from acting as a private investigator.¹⁵

The Attorney General’s investigation and the resulting AOD all occurred before any of the events underlying AAFE’s and MLS’s litigation occurred.

B. Tenants and Landlord

The 43 Essex Street tenants who approached AAFE represented four units in the ten-unit building.¹⁶ Another four of the building’s units were vacant at the time. They were seniors, most of whom were monolingual Chinese-speakers, and some lived with disabilities and mobility issues. All of their units were rent-stabilized apartments with affordable rents ranging from \$484.80 to \$1200 per month. They were long-term tenants, their tenancies spanning six to thirty-one years.¹⁷

Dean and Paul Galasso purchased the building in December 2014.¹⁸ At the time, the Galassos held a real estate portfolio that included several buildings in Chinatown, one of which Paul had already flipped into luxury apartments and also listed as his personal address. Galasso had a presence in the community. He is not a small-time landlord.

¹³ See Assurance of Discontinuance, *supra* note 1. Pimienta told a tenant that “life would be uncomfortable” if they refused to vacate the apartment.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See Verified Petition at 2, *Acosta v. 43 Essex LLC*, No. HP-15N000947/2015(N.Y. Civ. Ct. Apr. 24, 2015).

¹⁷ *Id.* at 2.

¹⁸ Deed between Rebecca Zerling and 43 Essex LLC (Dec. 19, 2014), <https://perma.cc/R8UR-Y2H8>. The property’s deed cites Paul Galasso as the principal on behalf of 43 Essex LLC, but Dean Galasso was the party who handled court appearances. The previous landlord’s daughter also lived in the building at the time. Due to past interactions and history between the prior landlord and our clients, we were not retained to represent the prior landlord’s daughter, who eventually retained private counsel.

Tenant #1 reported to us that someone at the building was harassing him to leave. Tenant #1 later identified Michel Pimienta as the person who was following him, via a photo on the internet. In one instance, in an effort to disrupt the tenant's quiet enjoyment, Pimienta knocked on Tenant #1's door during dinner time and then hid when Tenant #1 opened the door. Pimienta self-identified as an attorney and told Tenant #1 that he no longer had the right to live in the apartment because he did not have a lease.¹⁹ This information was false. In addition, Pimienta had violated his AOD by posing as an attorney and practicing law when he did not have the license to do so.²⁰ When we spoke with Tenant #1 at a later time, he explained that Pimienta's constant harassment was causing him serious mental health issues. Tenant #1 was deeply concerned about his health and the possibility of moving out of the building.

In addition to Pimienta's unwanted buyout offers,²¹ Galasso began gut renovating the vacant units without obtaining proper permits. Tenant #2 stated that major construction was going on in the vacant units, but he did not see any work permits posted at the building. The workers were moving the construction debris from the top floor to the first floor. As a result, dust spread throughout the building, which made breathing difficult for the elderly tenants. The ongoing construction in the apartment above Tenant #2's home caused the ceiling in his bedroom to dislodge from the wall. The ceiling looked as though it would cave in at any moment. Tenant #2 also reported that urine from the upstairs apartment was leaking into his apartment. There was also no heat or hot water. Tenant #2 showed Dean and Paul Galasso the damage the construction upstairs was causing to his apartment. The Galassos did not seem to take him seriously. In an attempt to prevent the dust from seeping through cracks into his apartment, Tenant #2 stuffed the cracks with crumpled up newspapers.

Tenant #3 stated that shortly after the Galassos bought the building, her apartment no longer had electricity. One day, Tenant #3's apartment suddenly went dark when the apartment's electrical wires were cut. She knew this was what occurred because her grandson, who was a licensed electrician, came to her apartment and identified the places with which the electric wires were tampered. Tenant #3 investigated and reported that no other apartment had their electricity cut off. She felt that she was targeted because she was the oldest tenant-of-record in the building. Tenant #3's grandson saw Dean Galasso at the building and confronted him. The

¹⁹ See Assurance of Discontinuance, *supra* note 1.

²⁰ *Id.*

²¹ Tenant #1 had an experience late in the night when he received a knock on the door by Pimienta. When the tenant opened his door, Galasso jumped from behind and said, "Guess who?"

grandson informed Galasso that what had happened to his grandmother was illegal. He accused Galasso of cutting her electric wires in an attempt to instill fear in her.

Tenant #3 recounted that she saw Galasso's face when her grandson confronted him.²² Galasso's expression was the face of someone who got caught doing something "very, very bad" – "a shame-face."²³ After this incident, Tenant #3's apartment was always either too hot or too cold. She continued to live with persistent cracks in her walls from the ongoing construction.

Tenant #4 endured the same conditions as the other long-term tenants. He was forced to inhale construction dust and debris and to live without essential services such as hot water. His floors shook from endless construction in the apartment below, which also caused hours of loud banging. Like the other tenants, Tenant #4 could not cook and had to spend his fixed and limited income on prepared meals.

Tenant #2 went to AAFE on countless occasions for assistance to end the illegal construction at his building. On one occasion, we called 311, which used interpretation services to help understand his complaints.²⁴ Through 311, Tenant #2 made three separate complaints—one to the New York City Department of Housing and Preservation and Development ("HPD"), one to the New York City Department of Health and Mental Hygiene ("DOHMH"), and one to the New York City Department of Buildings ("DOB"). Later, the tenants returned to AAFE for help to file additional 311 complaints online; however, the tenants' frustration with the system's lack of result began to show. The 311 system at the time did not have "illegal construction" as a category to code complaints. This made it difficult to get inspectors to visit buildings. Even though the HPD inspectors eventually visited the building, they did not issue stop work orders and ultimately, the multiple inspections were of no use.

Over the course of two weeks, Tenant #2 repeatedly told the workers to stop construction because they were causing damage to his apartment. However, the contractors ignored him. The tenant was advised to take photographs of the damage as documentary evidence. At this point, it became increasingly obvious that the landlord's actions were causing serious health and safety conditions at the building. These tenants needed help. They needed resources. Moreover, this situation was part of an emerging trend seen across the City with rent-regulated buildings.²⁵

²² Interview with Tenant #3, in New York, N.Y. (Oct. 20, 2017).

²³ *Id.*

²⁴ *Id.*

²⁵ ICON is a landlord which, like Galasso, allegedly terrorized rent stabilized tenants. Press Release, N.Y. State Office of the Att'y Gen., A.G. Schneiderman, Gov. Cuomo, & Mayor de Blasio Announce Settlement with Major NYC Landlord to End Tenant Harassment and

C. Bridging Tenants to the Tenant Harassment Prevention Task Force

AAFE contacted New York City Council Member Margaret Chin's office to investigate the situation. A few days after AAFE forwarded the 311 complaint numbers and photos of the illegal construction to Councilmember Chin's office, DOB issued a stop work order. It was not clear what propelled the agency to act on the complaints but the tenants welcomed the Council Member's assistance. As it turns out, the fire department came by the building because the landlord tried to convert the heating system from oil to gas without the proper permits. Tenant #2 said the fire department shut off the gas because the conversion was not authorized.

Next, AAFE met with the tenants to discuss the importance of organizing and forming a tenant association. Donna Chiu, who practiced housing law prior to joining AAFE, discussed with the tenants about retaining an attorney to bring a HP case. Donna reached out to Cynthia Cheng-Wun Weaver, an attorney with MLS, for a group intake meeting.

In March 2015, we met with the tenants to go through point-by-point what had happened since Galasso appeared in their lives. The attorneys conducted a building visit and reviewed each tenant's apartment.

The tenants were reliable and accurate reporters. The landlord was using the building's air vent as a makeshift garbage disposal for the construction debris. The debris entered the apartments through the kitchen and bathroom windows. In order to keep dust out, the tenants had to cover up their windows with cloth, plastic bags, and newspapers. In one apartment, the walls had started to sink and separate, creating long cracks that

Hazardous Living Conditions (Sept. 27, 2017), <https://perma.cc/FHA2-88DZ>; Nicole Dissler, *East Village Tenants Say 'Enough is Enough' to Alleged Predatory Landlord*, BEDFORD + BOWERY (Nov. 25, 2015), <https://perma.cc/73PF-9EM5>. Steven Croman was fined and sentenced to a year in jail for predatory practices against rent-regulated tenants. Sarah Maslin Nir, *Notorious Landlord Is Sentenced to a Year in Jail*, N.Y. TIMES (Oct. 3, 2017), <https://www.nytimes.com/2017/10/03/nyregion/steven-croman-landlord-sentenced-rikers.html> [<https://perma.cc/FEB6-YBVX>]; Emily Nonko, *Notorious Landlord Steve Croman to Pay a Record \$8M to Tenants*, CURBED N.Y. (Dec. 21, 2017, 10:00 AM), <https://perma.cc/FK5L-MWTR>. Ephraim Vashovky deprived his tenants of heat, hot water, and used illegal construction as harassment against his tenants. He was indicted in 2016 for reckless endangerment and other offenses. Mireya Navarro & Kim Barker, *Landlord Accused of Harassing Tenants Is Arrested*, N.Y. TIMES (July 26, 2016), <https://perma.cc/L9MB-F3LF>. Joel and Aaron Israel had pled guilty to their misconduct, including destroying apartments and tenant intimidation with hired hands. Colin Moynihan, *Landlord Brothers Admit to an Illegal Eviction Campaign in Brooklyn*, N.Y. TIMES (Nov. 29, 2016), <https://perma.cc/KJS8-P8PM>. Raphael Toledano was also investigated by the New York Attorney General's Office for tenant harassment. Mark Maurer, *Toledano's Fast and Rocky Ride*, REAL DEAL (June 1, 2016, 2:47 PM), <https://perma.cc/BE5J-TMCH>.

ran from the floor toward the ceiling. Newspapers were stuffed into these cracks to prevent debris from entering. Other tenants had dust smeared over all surfaces in different rooms even though there were no obvious cracks in the walls. One tenant's kitchen and bathroom tiled-floors cracked from the incessant construction.

The tenants could not breathe in their homes and feared for their safety by staying there. This was precisely Galasso's intended result of illegal construction, to force tenants to voluntarily leave their homes.

In April 2015, the tenants filed a group harassment HP against the landlord. A few months earlier, in February 2015, several state and city agencies formed the Tenant Harassment Prevention Task Force to address tenant harassment by landlords.²⁶ The taskforce sent a team of agency inspectors to conduct an unannounced sweep of the building.

The agencies were able to enter the locked, vacant apartments. In one apartment, Galasso's workers took down all of the structural support beams and gutted the entire floor to the studs. The adjacent building's outer brick wall was visible. Tenant #4 could not use his bathtub because a DOB engineer feared it would collapse and fall through the floor. Another tenant, the prior landlord's daughter, was vacated. The engineer deemed her apartment unsafe since it could collapse at any time. That tenant came home just as the City was taping up her door. A partial vacate order was placed on the building.

The tenants were shocked at what had happened. They knew it was bad, but did not know that the building would be partially vacated. The City preferred to not vacate tenants but had opined that ideally, no one should be returning to the building in that condition.

The DOB subsequently placed a full stop work order on the building and called for an immediate restoration of support beams and fire retardant materials to the building. Because the building lacked fire retardant materials, HPD assigned 24/7 building guards to watch the building in case of a fire. Galasso was supposed to install temporary structural support within several days, which unsurprisingly, he did not do.

Two weeks later, the HP case was scheduled for its first court date.

²⁶ Press Release, N.Y. State Office of the Att'y Gen., Governor Cuomo, A.G. Schneiderman, Mayor Bill de Blasio Join Forces to Combat Landlord Harassment of Tenants (Feb. 19, 2015), <https://perma.cc/TD4K-4MPD>.

III. HISTORY OF A HARASSMENT HP ACTION

A. *A Creature of Statute*²⁷

While New York City Housing Court is chiefly known as the place to evict tenants, evictions did not serve as the original impetus for establishing the court. Housing-code violations used to be prosecuted in Criminal Court.²⁸ The criminal bench treated code violations as ancillary duties, requiring only summons appearances that resulted in *de minimus* fines.²⁹ Criminal Court's higher burden of proof, along with an emphasis on punishment rather than restoration of apartments, failed to meet the code's purpose of maintaining the City's housing stock.³⁰ An amendment to the Civil Court Act in 1973 created the Housing Part of the New York City Civil Court, whose jurisdiction included "actions and proceedings involving the enforcement of state and local laws for the establishment and maintenance of housing standards"³¹ The amendment permitted judges to consolidate proceedings arising from the same building and impose civil penalties to leverage compliance with housing-codes.³² Bluntly put, Housing Court's original purpose was to adjudicate code violations in order to maintain the health of New York City's housing stock and its tenants, in the interest of the public at large.³³ But before any Housing Court was created, the legislature added non payments, holdovers and illegal lockout cases to the Court's jurisdiction, recognizing "the mutuality of obligations in landlord-tenant relationships and to promote a unified resolution of landlord-tenant disputes."³⁴

In a "Housing Part" or "HP" action, an individual tenant or a group of tenants petition the court to compel a landlord to make repairs.³⁵ A HP action is also considered a special proceeding subject to the provisions of

²⁷ Since the Honorable Gerald Lebovits had produced the seminal HP primer, *inter alia*, detailing the history of the HP action, we will only provide a brief discussion of the process in this article. For detailed information on HP proceedings, see GERALD LEBOVITS, LEGAL UPDATE FOR JUDGES & COURT ATTORNEYS, HP PROCEEDINGS: A PRIMER (2007).

²⁸ *Id.* at 2.

²⁹ *Id.* at 3. In practice, landlords did not have a business incentive to make apartment repairs until August of 1975, when the warranty of habitability doctrine came into existence, allowing tenants to seek rent abatements for those landlords who refused to do them. *Id.* at 4.

³⁰ *Id.* at 3.

³¹ *Id.* at 3-4; N.Y. CITY CIV. CT. ACT § 110(a) (McKinney 2018).

³² LEBOVITS, *supra* note 27, at 2-5.

³³ *Id.* at 5.

³⁴ *Id.* at 5-6.

³⁵ It is statutorily authorized by the CITY CIV. CT. ACT § 110 and NEW YORK, N.Y., ADMIN.CODE § 27-2115 (2018).

Article 4 of the New York State Civil Practice Law and Rules.³⁶ HP actions can provide two main remedies: (1) an order to correct, for violations of the Housing Maintenance Code, Multiple Dwelling Law, Building Code, or Health Code;³⁷ and (2) an order requiring owner to pay civil penalties to HPD.³⁸ In addition, a tenant may use a HP action as leverage in an affirmative position to negotiate and obtain rent abatements or monetary damages, even though such relief is not authorized by statute in a HP action.³⁹ Other remedies include issuing injunctions, restraining orders, and awarding attorney's fees.⁴⁰ HP actions are heard in the HP Part of Housing Court, but since each Housing Court part has jurisdiction over code violations—each and every part can issue orders to cure code violations and grant rent abatements.⁴¹

B. Commencing an HP Action

A HP action may be commenced by an order to show cause.⁴² A tenant completes a verified petition with a list of conditions to be inspected and files it with the court clerk. The tenant must name the landlord and HPD as respondents.⁴³ If the order to show cause is granted, the judge sets a return date. The court clerk faxes the conditions form to HPD and schedules inspection dates. Between the filing date and the return date, HPD inspects the apartment with tenant-provided access, and serves notices of violations to the landlord. When the parties return to court, the landlord

³⁶ See CITY CIV. CT. ACT § 110(a) (considered both an action and proceeding); N.Y. C.P.L.R. 105 (McKinney 2018) (defining “action” as including special proceeding). Unlike an action where discovery is available to the parties as of right, discovery can only be sought by leave of court in a summary proceeding. C.P.L.R. 408.

³⁷ CITY CIV. CT. ACT § 110(a)(1).

³⁸ CITY CIV. CT. ACT § 110(a)(7).

³⁹ Alanna Schubach, *What Happens to Tenants When Con Ed Turns the Gas Off?*, BRICK UNDERGROUND (Sept. 21, 2016, 8:59 AM), <https://perma.cc/38LV-KY3A> (“HP actions do not provide financial relief, but often within the process of settling them, landlords will agree to an abatement.”). We often remind landlord’s counsel that it is more cost-effective to negotiate an abatement in an HP action than preparing for and going through an abatement trial in a nonpayment proceeding where a tenant has withheld rent.

⁴⁰ NEW YORK, N.Y., ADMIN. CODE § 27-2115(o) (2018); see also 313 W. 100th St. Tenants Ass’n v. Kepasi Realty Corp., 139 Misc.2d 57 (N.Y. Civ. Ct. 1988); CITY CIV. CT. ACT § 110(a)(1)–(9).

⁴¹ CITY CIV. CT. ACT § 110(c).

⁴² HP cases are generally treated as special proceedings, not a plenary action because they are commenced by an order to show cause. ANDREW SCHERER & FERN FISHER, RESIDENTIAL TENANT LANDLORD L. IN N.Y. § 19:53 (2017).

⁴³ HPD must be named as a respondent because it is the agency responsible for enforcing the Housing Maintenance Code. See *D’Agostino v. Forty-Three East Equities Corp.*, 12 Misc.3d 486 (N.Y. Civ. Ct. 2006); *Schanzer v. Vendome*, No. 6065/2005 (N.Y. Civ. Ct. Apr. 27, 2005). However, even though HPD is a New York City agency, no notice of claim is required to commence an HP action. SCHERER & FISHER, *supra* note 42 at § 19:59.

may settle by agreeing to make repairs or opt for a trial on whether an order to correct should be issued. HPD violations can be taken with judicial notice and are difficult to dispute.⁴⁴ Landlords may argue that repairs were made but they have yet to certify with HPD that they are corrected, or they may falsify certifications of compliance with HPD, in which case a tenant should request an additional HPD inspection.⁴⁵ A landlord's failure to make repairs by a certain date may be met with a motion for civil or criminal contempt filed by a tenant.⁴⁶ A Housing Court Judge has the power to issue a criminal summons against a landlord and place him or her in jail.⁴⁷ This is a rarity.

Despite statutory time restrictions, many tenants and advocates are frustrated with the snail-pace process of getting repairs made. For example, Class C violations are "immediately hazardous" and must be corrected within twenty-four hours.⁴⁸ The deprivation of heat, hot water, electricity, or gas is considered a Class C violation.⁴⁹ Yet, it is unrealistic for a landlord to restore either service within 24 hours of the court date because the process usually entails installing the proper equipment by the landlord and multiple inspections by Con Edison and the DOB. Thus, even though these time frames are proscribed by law, judges and tenant advocates often agree to extend deadlines for work completion. In these situations, tenant advocates have to persuade landlords and judges that their proposed deadlines are reasonably proportional to the work that needs to be completed. Landlords argue against deadlines, pointing to obstacles that are out of their control such as inspection dates assigned to them by the agency or company. Advocates must then focus on nuanced points of contention such as drafting interim stipulation language requir-

⁴⁴ See N.Y. MULT. DWELL. LAW § 328(3) (McKinney 2018).

⁴⁵ HPD does not always require re-inspection to confirm that the repairs are made.

⁴⁶ *In re Dep't of Hous. Pres. & Dev. v. Deka Realty Corp.*, 208 A.D.2d 37, 39-40 (2d Dep't 1995) (laying out the difference between civil and criminal contempt).

⁴⁷ *Dep't of Hous. Pres. & Dev. v. 24 W. 132 Equities*, 137 Misc. 2d 459, 461 (1st Dep't 1987); see also N.Y. JUD. LAW § 751(1) (McKinney 2017).

⁴⁸ NEW YORK, N.Y., ADMIN CODE § 27-2115(c)(3) (2018) (describing other categories and time frames such as Class B violations, which are considered "hazardous" and must be corrected within thirty days and Class A violations, which are "non-hazardous" and must be corrected within a reasonable time frame, usually two weeks).

⁴⁹ *Matter of Mujahid v. N.Y. City Dep't of Hous. Pres. & Dev.*, 2012 WL 539106, slip op. at 3 (N.Y. Sup. Ct. 2012) ("Pursuant to § 27-2115 of the Administrative Code, all HMC violations are classified as non-hazardous (Class A), hazardous (Class B), or immediately hazardous (Class C). Respondent has an Emergency Repair Program for Class C violations, including the failure to provide essential services, such as heat and hot water. C violations must be corrected within 24 hours.")

ing the landlord to do everything possible to facilitate a *successful* inspection and avoid unacceptable workmanship that was done intentionally or negligently.

There are a number of other defects with HP actions. Missed deadlines are rampant in the HP court and thus, contempt motions are also used rampantly as a vehicle to elicit a proper penalty.⁵⁰ Other shortcomings include complaints arising over the quality of HPD inspectors, some of whom only inspect what is listed on the conditions form, while others will look more closely at the apartment to discover additional, unlisted conditions that constitute code violations or even shoddy repairs that require additional work. Another failing is that civil penalties are given to HPD, not the tenant, who suffers from a lack of repairs or essential services provided. There is no realistic or meaningful mechanism for the tenant to compel HPD to enforce a penalty against a landlord.

C. New York City Tenant Protection Act of 2008

Many tenants and advocates are frustrated with what they see as the intentional refusal of the landlord to make repairs or provide essential services, no doubt the result of rapid gentrification. These tactics are used to harass and constructively evict tenants. When a landlord is engaging in this sort of conduct, they typically cut off water, heat or cooking gas for an entire building, or fail to repair severe ceiling leaks and collapses. Other harassment efforts include initiating frivolous lawsuits to disrupt tenants' lives and engaging in other aggressive fear-inducing tactics.

In 2008, the City passed the Tenant Protection Act, granting housing court the jurisdiction to hear harassment claims.⁵¹ Tenants may now allege a harassment claim in their HP action pursuant to the New York City Administrative Code 27-2004 and 27-2005, otherwise known as the Housing Maintenance Code.⁵² This provision defines harassment as any act or omission by, or on behalf of a landlord, that causes a lawful tenant to vacate the unit. The statute lists specific conduct, including, but not limited to: the use of force or implied threats of force against the tenant; prolonged deprivation of essential services; commencing frivolous lawsuits; removing tenant's belongings from the apartment; removing the

⁵⁰ The presiding judge of the HP part sets the tenor of the court and there is no formal process for transferring cases out from the HP part to the trial part. Thus, while attorneys should not necessarily tailor their litigation strategy to the whims of judges, they must make themselves aware of each judge's inclinations in anticipation of various outcomes.

⁵¹ NEW YORK, N.Y., Local Law No. 7 (2008). This law was upheld by the New York State Appellate Division in 2010. *Prometheus Realty Corp. v. City of New York*, 80 A.D.3d 206 (1st Dep't 2010).

⁵² NEW YORK, N.Y., ADMIN. CODE §§ 27-2004, 27-2005 (2018).

door to the apartment; and other repeated acts intended to interfere with tenant's use of the apartment.⁵³

A finding of harassment is a Class C condition, where each violation potentially incurs \$1,000 to \$10,000 in civil penalties.⁵⁴ A prior harassment finding within the past five years increases the base to \$2,000 to \$10,000 per violation.⁵⁵ Moreover, HPD must post on its website the following when a landlord has been found to have committed tenant harassment: address of the building; landlord's name; civil penalty imposed; date of the civil penalty; and whether a restraining order was issued to prevent the landlord from engaging in harassing conduct.⁵⁶

In recent years, advocates have urged for stealthier anti-harassment laws with a more expansive scope. Specifically, the focus was placed on illegal construction as harassment in response to trends in bad landlord behavior. The 43 Essex Street matter arose at the beginning stages of this campaign, and represents one building out of many across the City. Some laws were passed during the pendency of the litigation while others came after settlement.⁵⁷

⁵³ The statute specifically states:

- (i) Causes or is intended to cause any person lawfully entitled to occupancy of a dwelling unit to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy, and
- (ii) Includes one or more of the following . . .
 - a. Using force against, or making express or implied threats that force will be used against any person lawfully entitled to occupancy of such dwelling unit;
 - b. Repeated interruptions or discontinuances of essential services, or an interruption or discontinuance of an essential service for an extended duration or of such significance as to substantially impair the habitability of such dwelling unit;
 - c. Failing to comply with the provisions of subdivision c of § 27-2140 of this chapter;
 - d. Commencing repeated baseless or frivolous court proceedings against any person lawfully entitled to occupancy of such dwelling unit;
 - e. Removing the possessions of any person lawfully entitled to occupancy of such dwelling unit;
 - f. Removing the door at the entrance to an occupied dwelling unit . . .
 - g. Other repeated acts or omissions of such significance as to substantially interfere with or disturb the comfort, repose, peace, or quiet of any person lawfully entitled to occupancy of such dwelling unit and that cause or are intended to cause any person lawfully entitled to occupancy of a dwelling unit to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy. ADMIN. CODE § 27-2004(a)(48).

⁵⁴ ADMIN. CODE §§ 27-2004, 27-2005, 27-2115. The maximum amount was increased from \$4,000 to \$10,000 in 2014.

⁵⁵ ADMIN. CODE § 27-2115(m)(2).

⁵⁶ ADMIN. CODE § 27-2115(m)(6). This is a new requirement as of 2014. NEW YORK, N.Y., Local Law No. 47(2014).

⁵⁷ These laws are discussed in greater detail in Section IV, *infra*.

IV. DYNAMICS IN AND OUT OF COURT

The 43 Essex Street case, *Acosta, et al. v. 43 Essex LLC et al.*, commenced in the Spring of 2015 and ended in settlement during the Winter of 2016.⁵⁸ The nearly two years of litigation was peppered with both incremental victories and missteps. As part of the organizing and legal team, we met people who played different roles in the community, and so we learned to tailor our expectations to their abilities and limitations. This section traces the organizing that took place outside of the court proceeding as well as the dynamics that went on at court appearances. The process revealed tensions that arose between different stakeholders and service providers as well as areas where tenant protections are lacking.

A. Out of Court - Organizing and Media Presence

Attorneys with experience representing tenants in HP cases have a general idea of the remedies available under the Housing Maintenance Code, how much time landlords will get to make the repairs, and the loopholes that landlord attorneys take advantage of in court. In litigation, there is generally one winner and one loser. Our legal system is set up as a “zero-sum” game,⁵⁹ which is a reason for parties to settle rather than fully litigate a case. Low-income tenants who are up against landlords with diverse real estate portfolios, high cash flows, and attorneys on retainer, are unfairly disadvantaged. However, tenants can level the playing field out of court with non-legal tactics and tools to push the landlord to do something the Housing Maintenance Code does not obligate them to do. We refer to these out-of-court measures as organizing.

Organizing the tenants of the 43 Essex Street Tenants Association (“TA”) necessarily starts with earning the tenants’ trust. For Tenants #2, #3, and #4, who were long-term, monolingual Chinese-speaking tenants in the community, they had already gone to AAFE for help in the past on other matters. They knew AAFE as a neighborhood-based resource in the community that people went to if they had a problem. Thus, for their problem with their landlord, they also went to AAFE for help. And in turn, they were able to introduce Tenant #1 to AAFE, who had developed a trusting relationship with the other tenants over the years.

A critical component of organizing work is empowering the tenants themselves. There are many reasons for this, but principally, advocacy

⁵⁸ Verified Petition, *Acosta v. 43 Essex L.L.C.*, No. HP-15N000947/2015 (N.Y. Civ. Ct. N.Y. Cnty. Apr. 24, 2015); Stipulation of Settlement, *Acosta v. 43 Essex LLC*, No. HP-15N000947/2015 (N.Y. Civ. Ct. Apr. 24, 2015).

⁵⁹ See generally James Marshall, *Lawyers, Truth and the Zero-Sum Game*, 47 NOTRE DAME L. REV. 919 (1972).

work should be self-sustaining and be driven from the bottom-up and rather than top-down.⁶⁰ When decisions are made from the top—i.e. when lawyers or organizers make the decisions for the people they serve—we question whether this is organizing. Perhaps it is a form of advocacy or community lawyering; however, when the lawyer or organizer has done the work for the client, it eliminates an opportunity to empower the client.⁶¹

For the 43 Essex Street TA, where three of the four members are Chinese immigrants who came of age during the Cultural Revolution in China,⁶² there was both a palpable and critical challenge we had to overcome in our organizing.⁶³ How do you encourage people who were openly discouraged from “organizing” to organize?

One thing about the Chinese-speaking tenants that helped with the organizing was their instinctive respect for lawyers. Though coming of age during the Cultural Revolution in China may have made it hard for them to “organize,” it seemed the Chinese culture’s long history of reverence for scholars and learning allowed them to take what we advised with appreciation. Donna began to contrast and compare how the tenants reacted to her opinions vis-a-vis her non-attorney colleagues at AAFE. The majority of AAFE’s clients were monolingual Chinese immigrants. Whether they were recent immigrants or were settled in New York for decades, they instinctively addressed Donna as “Lawyer Chiu” after learning that she was an attorney who could help with their legal problems. Donna noticed they spoke to her in a manner and tone that they did not use with her non-attorney colleagues. The clients valued what Donna said, treating her advice as something that was not easy to obtain. Donna soon realized she had to explicitly balance the tenants’ interest and trust in a lawyer with achieving actual community empowerment.

After MLS helped the TA sue Galasso in a HP, AAFE organized the TA by hosting monthly tenant meetings. Since the tenants lived merely a

⁶⁰ See generally Greg Jobin-Leeds, *Bottom Up Organizing: Transformative Movements Can Only be Realized with Authentic Grassroots Leadership*, EDUC. WEEK: DEMOCRACY & EDUC. (May 31, 2012, 12:01 PM), <https://perma.cc/964B-GD2N>.

⁶¹ Susan Bennett gives a great example: when the lawyer calls the fire inspector, as opposed to the tenant, she has “unnecessarily lawyerized an organizing moment.” Susan D. Bennett, *On Long-Haul Lawyering*, 25 FORDHAM URB. L.J. 771, 785 (1998).

⁶² For a brief overview of China’s Cultural Revolution, which occurred from 1966 to the mid-1970’s, see Austin Ramzy, *China’s Cultural Revolution, Explained*, N.Y. TIMES (May 14, 2016), <https://perma.cc/9AJU-LN3E>.

⁶³ During an interview with Donna on Oct. 20, 2017, Tenant #4 was asked whether he voted in the primary in September 2017 and whether he planned to vote on November 7, 2017. Tenant #4 responded, “I don’t plan to vote on election day. I’m not interested in politics. In China, we didn’t involve ourselves in these things.” Interview with Tenant #4, in New York, N.Y. (Oct. 20, 2017).

few blocks from AAFE's storefront office, the monthly meetings took place at AAFE and included the tenants, an organizer, and an attorney. The monthly meetings were critical because it was a way for all of us to exchange information, visually see each other's commitment to the cause, discuss updates about the court case, and agree on strategy and next steps. We were mindful to ensure that each decision made was facilitated by our research and deliberation but reached solely by the tenants as a group. Thus, we made it a point to be transparent and legitimate with the TA and provided them with all necessary information about each step of the litigation. We discussed the pros and cons of a particular choice, and encouraged the TA to make decisions for itself.

Access also became critical to earning the tenants' trust. Because AAFE's office was located around the corner from where the tenants lived, the tenants were able to notify us immediately of new developments. Since Donna speaks the same Chinese dialect as the tenants, none of the members of the TA had any problem communicating with her directly. Cynthia could also communicate in the same Chinese dialect with the tenants, for meetings and phone calls. Language access was critical because their message to us was never delayed by the need to find an interpreter; nor was their instinctive desire to tell us something about the situation inhibited because they felt they could not communicate with us.⁶⁴

The last piece to earning the tenants' trust was being able to deliver resolutions. Donna observed that the clients came to see her at AAFE because they were bothered by a problem they could not solve on their own. They initially sought advice but soon realized they required full representation because they did not have the means or ability to resolve the matter themselves. They wanted reassurance that Donna could take away one of their many burdens. No matter how small a request from these tenants, Donna tried to help them with it. During the course of the two years that we organized them, AAFE assisted the tenants in a list of non-litigation matters, including: filling out rent checks with the landlord's name and the envelopes to mail the checks in; renewing annual rent subsidies; assisting with food stamp renewal applications; contacting a hospital's billing department regarding a bill for payment; and calling Con Edison to resolve incorrect bills.

Around the same time that we were organizing the 43 Essex Street tenants, the Stand for Tenant Safety Coalition was gaining momentum

⁶⁴ See generally *On Choosing a Language Access Provider*, LIMITED ENGLISH PROFICIENCY, <https://perma.cc/T7JF-WWEP>(on cultural nuances).

with their work to reform the DOB and put an end to owners' use of construction as harassment.⁶⁵ Additionally, Cooper Square Committee ("CSC"), a community-based anti-displacement organization and one of the founding members of Stand for Tenant Safety ("STS"), contacted AAFE to administer surveys to AAFE's clients about the prevalence of reduced essential services at their buildings because of construction. CSC was working to reform DOB through their Real Time Enforcement ("RTE") campaign by administering surveys to collect data to present to DOB.⁶⁶ AAFE participated because it was important for our clients' experiences to be included in the data. Donna connected the 43 Essex Street experience to construction harassment. The tenants were part of Galasso's fast and furious plan to renovate the building for flipping and selling. The tenants were forced to live with the contractor's construction schedule for the building. Additionally, Galasso had no intention of restoring essential services or engaging in safe construction practices because he wanted the tenants to be uncomfortable and move out.

To strengthen our advocacy for the tenants, AAFE joined STS as a steering committee member. AAFE attended and actively participated in the bi-weekly Coalition meetings and organized the tenants to attend rallies and testify at multiple City Council hearings on proposed bills to end construction as harassment. Donna highlighted the 43 Essex Street tenants' experiences in her testimony before the Committee on Housing and Buildings in support of bills that would require DOB to inspect buildings before issuing construction permits where more than 10% of the building is occupied; to allow DOB to issue Orders to Correct simultaneously with partial vacate orders; implement the Real Time Enforcement at DOB to allow quicker response to complaints; and prohibit an owner from self-certifying if he has done construction without a permit in the past.

To leverage the filing of the lawsuit against Galasso in Housing Court, MLS and AAFE jointly issued press releases and held a press conference at 43 Essex Street on April 29, 2015.⁶⁷ We prepared Tenant #1 to speak at the press conference and share his story with local reporters. We garnered interest from widely-read neighborhood news sites such as DNAinfo, Bowery Boogie, Gothamist, and other Chinese language press.⁶⁸ Not only did we want to share the tenants' stories, but we also

⁶⁵ See discussion *infra* Section IV.C.ii.

⁶⁶ Daniel Weinberg, *Stand for Tenant Safety (STS) Campaign*, COOPER SQUARE COMMITTEE (Jan. 27, 2014), <https://perma.cc/6Z2H-D2EL>.

⁶⁷ *Essex Street Tenants File Suit Against Landlord for Hazardous Conditions and Harassment*, LEGAL SERVICES NYC (Apr. 29, 2015), <https://perma.cc/J4HB-2TGH>.

⁶⁸ Lisha Arino, *Essex Street Tenants Suing Landlord Over Illegal Gas Work and 'Harassment'*, DNAINFO (Apr. 30, 2015, 8:23 AM), <https://perma.cc/SC7Y-Q7UR>; Ed Litvak, *Tenants Sue Owner of 43 Essex St., Claiming Dangerous Construction, Harassment, LO-*

wanted to show Galasso that the tenants were fighting back. We used the press strategically to call out Galasso's conduct at the building, to send him a message that we were watching his next moves very closely, and highlight that the tenants had the community's support. If construction as harassment was merely a business cost to Galasso, we wanted him to know his business costs would continue to increase.

In the pending HP litigation, the tenants agreed to give Galasso time to fix the problems instead of pushing the case to trial for an Order to Correct which would have obligated him to restore the heat and hot water within 24 hours. In response, if Galasso asked the Court for more time to restore the heat and hot water, he would have gotten it. The tenants made the strategic decision to give the landlord just enough time in exchange for monthly rent abatements that helped to offset the difficulties from living without essential services. During this time, we continued to make the OAG and New York County District Attorney's Elder Abuse Unit aware of the ongoing construction harassment. We worked closely with counsel for DOB and HPD to keep tabs on the landlord's progress on repairs. We also continued to organize our clients to participate in grassroots organizations, such as the Stand for Tenant Safety Coalition, to change the laws to strengthen tenant rights. We also prepared our clients to give testimony at hearings for the twelve bills that had been pushed by the Stand for Tenant Safety Coalition to reform DOB and end construction as harassment. We worked with the tenants to speak with the media about these bills. We had to do all of these things simultaneously as part of our strategy to battle on all fronts.

B. In Court - Lawyering

Tenant engagement was key to our lawyering plan. Once we earned the tenants' trust, we were able to mobilize them to appear on multiple court dates. There were many strategic and important reasons for the tenants to be in court. First, we wanted Galasso to see and believe that the TA was united, in order to discourage him from trying to break it up. Landlords use tactics to break up TAs, which include refusing to allow tenants to host tenant meetings in the common areas of buildings and pay-

DOWN (Apr. 30, 2015, 11:07 AM), <https://perma.cc/DH59-RQ2M>; *Tenants of 43 Essex Street File Lawsuit Against Landlord for Harassment and Hazardous Conditions*, BOWERY BOOGIE (last modified Apr. 29, 2015, 7:33 AM), <https://perma.cc/43X4-GUXT>; Xīn Fáng Dōng Zhào Zhuān Yè Quàn Qiān Zhōng Jiè Gǎn Zū Kè [New Landlord Looking for "Professional Exhortation" Intermediary to Drive Away Tenants], EPOCH TIMES (Apr. 30, 2015, 10:36 AM), <https://perma.cc/6N4V-552U>.

ing off tenants to withdraw from participation. Second, we wanted Galasso and his lawyers to see that the tenants were ready for trial. Getting a judge to issue an Order to Correct is one way to win an HP case. We wanted Galasso and his lawyer to see that we were ready for the judge to hold a hearing and issue a decision directing him to restore essential services and correct the other housing standard violations. With the tenants in court, we were prepared to go to trial if necessary. We had more leverage to push the negotiations our way. Third, we wanted to remind Galasso, his lawyers, the judge, and the City attorneys, that the Petitioners were real people. Their complaints were real. We wanted the decision-makers in court to face the tenants.

The battle against Galasso had many moving parts. It was important for us, as the lawyers and organizers, to properly manage ourselves and also manage the relationships with state and city agencies. We realized early on the importance of clarifying our individual roles to avoid duplicative work and to genuinely support each other in carrying out our roles.

From the inception of the partnership, we agreed that as the lawyer in the case, MLS would manage communication with Galasso's lawyer, HPD, and DOB. AAFE, as the organizer, would be the front-line advocate working with the tenants. Cynthia had to identify multiple potential outcomes for each court date, confer with Donna and the tenants about agreeing to certain interim terms, and then determine how best to reach the preferred result. She had to obtain the positions and statuses of the landlord, government agencies, and contractors, to use as leverage for negotiating abatements, timelines for work, and access dates. As for Donna, because the tenants had unfettered access to her to discuss anything, she needed to accomplish two things very well. First, Donna had to identify the tenants' issues related to the lawsuit. Second, Donna needed to manage tenant expectations about what could be helped with and the likelihood of success. Because the organizer is the first person clients speak to, the organizer must make sure to engage with the client in a way where she earns their trust while also addressing the fast-paced nature of organizing based on a court schedule. For example, Donna needed to have honest conversations with tenants about buyouts just hours before a court date. As the organizing and legal team, we understood how the other person worked, the challenges they faced, and gave each other time to complete their tasks.

C. New Tenant Protection Laws

1. Tenant Buyout and Relocation Bills

As our case continued in court, Mayor Bill de Blasio, along with other tenant advocates and elected officials, were working on bills to address unwanted tenant buyouts and relocation. In September 2015, the Mayor signed legislation amending the NYC Administrative Code concerning tenant harassment.⁶⁹ These laws make it unlawful for an owner to: make a buyout offer within 180 days of a tenant explicitly refusing one; to threaten a tenant, to contact tenants at odd hours, or to provide false information to a tenant in connection with a buyout offer; and make a buyout offer without informing tenants of their rights to stay in their apartment, to seek an attorney's advice, and to decline any future contact on a buyout offer for 180 days.⁷⁰

Although these laws were not enacted until after our case was commenced, we included facts on the tenant relocater Pimienta within our petition, to notify the court of his unlawful tenant relocation work. We were also able to invoke the new law while negotiating with opposing counsel in court, highlighting the extent of Galasso's ill-intended behavior and possible liability in other legal forums.

2. Stand for Tenant Safety Bills

Tenants, who have concerns about illegal construction and lack of essential services, have long suffered from the frustrations of a slow moving HP court.⁷¹ Tenants and tenant-advocates across the city realized that in order to change the way agencies regulated landlords the law needed to change.

The Stand for Tenant Safety Coalition ("STS") is a citywide coalition of community organizations demanding systematic reform of the DOB and the end of landlords' use of construction as harassment.⁷² The rise in real estate property values following the collapse of 2008 served

⁶⁹ NEW YORK, N.Y., Local Law No. 83(2015); NEW YORK, N.Y., Local Law No. 81(2015); NEW YORK, N.Y., Local Law No. 82(2015); *see Mayor de Blasio Signs Three New Laws Protecting Tenants from Harassment*, OFFICE OF THE MAYOR: NEWS (Sept. 3, 2015), <https://perma.cc/NJB9-LRDJ>.

⁷⁰ Local Law No. 83(2015); Local Law No. 81(2015); Local Law No. 82(2015).

⁷¹ Based on our combined fifteen years of litigating HP cases, tenants bringing HP cases generally do not get repairs until after they bring their landlords to court multiple times. Landlords generally do not comply with Orders to Correct and thus, the burden is on the tenant to restore the case back to the court's calendar to ask the judge to enforce it. During the hearing, the landlord can provide evidence to justify why it needs more time to make repairs.

⁷² *About STAND FOR TENANT SAFETY*, <https://perma.cc/CSW9-Z8WQ>.

as an incentive for investors to purchase buildings and flip them.⁷³ Soon after a new landlord buys a building, usually one with rent stabilized units, the landlord will begin extensive construction to renovate empty individual units in addition to the common areas, to increase the rental value of the units.⁷⁴ The remaining tenants are forced to live in an active construction site where essential services such as heat, hot water, and cooking gas are shut off frequently without prior notice. This is unsafe, disruptive, and incredibly frustrating for tenants. This conveniently becomes a way for landlords to harass long-term rent regulated tenants into moving out. Once a rent-regulated apartment is empty, the landlord can gut-reno-vate the apartment in order to take certain legal rent increases and remove the unit from rent regulation.⁷⁵ The landlord can then rent it to the next tenant at market rate or market value.⁷⁶

The STS Coalition was formed in the winter of 2014–2015. It started organically in the summer of 2013 as a reaction to the construction and lack of essential services problems that tenants in the Lower East Side and Chinatown were forced to deal with.⁷⁷

After its formation, the STS Coalition worked closely with New York City Council members on legislation to end construction as harassment. By October 2015, the City Council introduced twelve bills that comprised the Stand for Tenant Safety Package. On the day that the STS Package was introduced to the City Council, the Coalition organized a rally on the steps of City Hall with the City Council Members, who sponsored the legislation, other elected officials, local activists, and tenants. STS organized the rally to pressure the DOB and the City to pass the bills.

For the next two years until the bills' passage in August 2017, the STS steering committee members worked together actively on the logistics to get the bills passed. They took turns moderating the meetings and taking notes. They identified tasks that needed to be completed. They formed subcommittees to tackle larger issues. Every group volunteered to take on tasks. Throughout these two years, the coalition organized breakfast meetings for City Council Members and their staffers to meet and

⁷³ See Josh Barbanel, *New York City Property Values Surge*, WALL ST. J. (Jan. 15, 2016, 8:23 PM), <https://perma.cc/8QHM-45AX>.

⁷⁴ OFFICE OF RENT ADMIN., N.Y. STATE DIV. OF CMTY. RENEWAL, INDIVIDUAL APARTMENT IMPROVEMENTS (2017), <https://perma.cc/8KGS-MCYY>; OFFICE OF RENT ADMIN., N.Y. STATE DIV. OF CMTY. RENEWAL, FACT SHEET #24 MAJOR CAPITAL IMPROVEMENTS (MCI) (2017) [hereinafter Fact Sheet #24], <https://perma.cc/D8E6-FTTA>.

⁷⁵ N.Y. COMP. CODES, RULES & REGS. tit. 9, § 2522.4(a)(1) (2018) (describing when an owner is entitled to a rent increase for an individual apartment improvement); N.Y. UNCONSOL. LAW § 26-504.2 (McKinney 2018) (describing how a unit can become deregulated if the legal regulated rent is above \$2,700).

⁷⁶ STAND FOR TENANT SAFETY, *supra* note 72.

⁷⁷ Weinberg, *supra* note 66.

hear directly from the tenants experiencing construction as harassment. STS also organized rallies to coincide with the filing of additional HP actions alleging construction as harassment, and organized Town Hall Meetings with the Borough Presidents' Offices for residents to discuss and debate construction as harassment issues. Lastly, STS worked with tenants to prepare them to testify at public hearings on the bills and carried out call-in actions by tenants to City Council Members to pass the bills.⁷⁸

By August 2017, "construction as harassment," first coined by STS, was widely accepted as a term of art.⁷⁹ It had been part of the Coalition's purpose to highlight this issue, get people talking about it, and get people to use our language to describe the problem. The Coalition was successful in persuading the media, DOB, City Hall, and others to refer to the problem as "construction as harassment."

Another success came in August 2017 when the City Council passed twelve separate STS bills, which enhanced tenant protections. Introductions 1530-A, 1548-A, 1549-A, 347-B, and 1556-A, offered ways to empower tenants engaged in housing court harassment cases.⁸⁰ This group of legislation now proscribes how tenants can prove harassment in certain cases, prevents landlords from contacting tenants at odd hours without consent, and allows harassment victims to recover damages and attorney's fees. Specifically, 1530-A creates a rebuttable presumption that the landlord committed an act of harassment intended to force a tenant out. Additionally, the legislation shifts the burden of proving harassment from the tenant to the landlord to disprove harassment.⁸¹ Introduction 1548-A expands the definition of harassment to include a landlord who, without written consent, repeatedly contacts a tenant at odd hours in a manner to harass the tenant.⁸² Introduction 1549-A allows tenants to pursue harassment actions where a landlord repeatedly interrupts the provision of essential services throughout the building or commences frivolous lawsuits throughout the building.⁸³ Introduction 347-B allows tenants who prevail in harassment cases to collect compensatory damages, or \$1,000, from the

⁷⁸ STAND FOR TENANT SAFETY, *supra* note 72.

⁷⁹ J. Oliver Conroy, *Construction as Harassment*, BEDFORD & BOWERY (Aug. 10, 2017), <https://perma.cc/LE44-JT5B>; Antonio Reynoso et al., *Protecting Tenants from Construction Harassment*, GOTHAM GAZETTE (July 31, 2017), <https://perma.cc/H6SF-R5CX>; Eileen Stukane, *Residents Speak Out on Construction as Harassment*, MANHATTAN EXPRESS (Jan. 12, 2017), <https://perma.cc/M95C-WPVD>.

⁸⁰ NEW YORK, N.Y., Local Law No. 148 (2017); NEW YORK, N.Y., Local Law No. 162 (2017); NEW YORK, N.Y., Local Law No. 163 (2017); NEW YORK, N.Y., Local Law No. 164 (2017); NEW YORK, N.Y., Local Law No. 165 (2017).

⁸¹ NEW YORK, N.Y., Local Law No. 162 (2017).

⁸² NEW YORK, N.Y., Local Law No. 163 (2017).

⁸³ NEW YORK, N.Y., Local Law No. 164 (2017).

landlord plus attorney's fees and costs. In addition, this legislation empowers courts to issue punitive damages for harassment.⁸⁴ Introduction 1556-A increases the minimum penalty for tenant harassment violations from \$1,000 to \$2,000, and for landlords with a previous finding of harassment within the preceding five years, a minimum of \$4,000 from \$2,000.⁸⁵ These bills rigorously expand tenants' rights, and both tenants and advocates should invoke them in court.

In addition to addressing tenant harassment, the STS bills package was designed to reform construction and other practices related to the DOB. The bills were intended to stop landlords from creating hazardous construction conditions to constructively evict tenants:

Local Law 149 requires DOB to audit at least 25% of the professionally certified applications for rent-regulated and affordable housing dwellings that are subject to a rent overcharge application, which are at least 25% occupied. This bill prohibits applications for buildings listed on the HPD website as having been subject to a finding of harassment.⁸⁶

Local Law 150 requires DOB to include the date by which an owner must certify the correction of any and all violations along with a written vacate order.⁸⁷

Local Law 151 creates a task force consisting of DOB, HPD, DOHMH, DEP, City Council, and the Mayor, to evaluate each agency's practices regarding construction work done by landlords.⁸⁸

Local Law 152 expands the definition of distressed buildings to include those subject to ECB judgments as a result of building code violations. DOB is required to report on tax lien activities as a result of ECB debt.⁸⁹

Local Law 153 allows the City to impose tax liens on buildings which have 20 or more dwelling units where the total value of all judgments against the building is \$60,000 or more or a building that contains between 6 and 19 dwelling units where the value of

⁸⁴ NEW YORK, N.Y., Local Law No. 148 (2017).

⁸⁵ NEW YORK, N.Y., Local Law No. 165 (2017).

⁸⁶ NEW YORK, N.Y., Local Law No. 149 (2017).

⁸⁷ NEW YORK, N.Y., Local Law No. 150 (2017).

⁸⁸ NEW YORK, N.Y., Local Law No. 151 (2017).

⁸⁹ NEW YORK, N.Y., Local Law No. 152 (2017).

the judgments is \$30,000 or more. HPD preservation projects are exempt from this bill.⁹⁰

Local Law 154 amends the information that is required to be included in tenant protection plans. The bill prescribes measures that DOB and the landlord must take to ensure compliance with the plan. DOB is required to inspect the sites for compliance with the plans.⁹¹

Local Law 155 requires DOB to compile and maintain a watch list of contractors found to have performed work without a required permit in the preceding two years. DOB must engage in increased oversight of any worksite where a listed contractor works and provide a timeline under which the contractor can be removed from the list.⁹²

Local Law 156 increases penalties for work without a permit for one- or two- family homes.⁹³

Local Law 157 increases the penalties for violating a stop work order from \$5,000 to \$6,000 for the initial violation and from \$10,000 to \$12,000 for subsequent violations.⁹⁴

Local Law 158 imposes additional penalties for construction work without a permit and increases oversight for buildings where this work was performed. Posting of information concerning occupancy status of a building subject to a permit is required.⁹⁵

Local Law 159 requires a “Safe Construction Bill of Rights” be posted for occupants of a dwelling when the owner seeks to conduct any construction work that requires a DOB permit.⁹⁶

Local Law 188 creates a Real Time Enforcement Unit at DOB.⁹⁷

On August 30, 2017, Mayor Bill de Blasio signed these tenant protection bills into law at a senior center on the Upper West Side of Manhattan, so that long-term tenants the bills were intended to protect could attend.⁹⁸ The City Council Members who sponsored the bills, notably the

⁹⁰ NEW YORK, N.Y., Local Law No. 153 (2017).

⁹¹ NEW YORK, N.Y., Local Law No. 154 (2017).

⁹² NEW YORK, N.Y., Local Law No. 155 (2017).

⁹³ NEW YORK, N.Y., Local Law No. 156 (2017).

⁹⁴ NEW YORK, N.Y., Local Law No. 157 (2017).

⁹⁵ NEW YORK, N.Y., Local Law No. 158 (2017).

⁹⁶ NEW YORK, N.Y., Local Law No. 159 (2017).

⁹⁷ NEW YORK, N.Y., Local Law No. 188 (2017).

⁹⁸ *Mayor de Blasio Signs 18 Bills Strengthening Legal Protections for Tenants*, OFFICE OF THE MAYOR: NEWS (Aug. 30, 2017), <https://perma.cc/H2T3-NFVX>.

members of the Progressive Caucus, were really the leaders of the process. They worked with the Coalition to ensure there was enough support so that the twelve STS bills would pass. By being involved in this coalition work, one gets a real sense that there is genuine commitment to strengthening tenant protections.

Even after passing the STS bills, the City continued to strengthen tenant protections. In late 2017 and early 2018, the New York City Council enacted two laws to expand the definition of harassment to include: discriminatory threats and requests for proof of citizenship status,⁹⁹ and making a false statement or misrepresenting a material fact in any application or construction documents for a work permit.¹⁰⁰

3. Attorney General's Tenant Protection Act of 2017

In May 2017, one month after Galasso was indicted, former New York State Attorney General, Eric Schneiderman, introduced the Tenant Protection Act of 2017.¹⁰¹ The legislation would make it easier to criminally prosecute landlords who improperly force tenants out.¹⁰² The Act moves beyond the current state law, which requires prosecutors to meet a high evidentiary bar to convict a landlord of harassment of a rent-regulated tenant.¹⁰³ The Act also removes the physical injury requirement and allows for prosecutions for more commonplace harassing conduct such as depriving tenants of essential services such as heat and hot water.¹⁰⁴ As of May 1, 2018, the proposals are still un-enacted.

4. Moving Forward

New bills addressing housing and tenant harassment are frequently introduced, especially in response to investigative reporting, and practitioners should be mindful of new developments in the law.¹⁰⁵ The follow-

⁹⁹ NEW YORK, N.Y., Local Law No. 48 (2018).

¹⁰⁰ NEW YORK, N.Y., Local Law No. 24 (2018).

¹⁰¹ Press Release, N.Y. State Office of the Att'y Gen., A.G. Schneiderman Introduces Legislation to Criminally Crack Down on Tenant Harassment (May 24, 2017), <https://perma.cc/P6PS-3W3W>.

¹⁰² S.B. 6473A, 2017-2018 Leg., Reg. Sess. (N.Y. 2017); Assemb. B. 7992A, 2017-2018 Leg., Reg. Sess. (N.Y. 2017).

¹⁰³ Press Release, N.Y. State Office of the Att'y Gen., *supra* note 101.

¹⁰⁴ S.B. 6473A; Assemb. B. 7992A. As of November 10, 2018, Bill passed the Assembly.

¹⁰⁵ For example, in response to the NY Times investigative series "Unsheltered," Borough President Ruben Diaz Jr. of the Bronx urged Mayor de Blasio to move quicker on the "right to counsel" law that provides qualifying tenants in housing court with counsel and State Senator Brad Hoylman of Manhattan introduced legislation to require DOB to review landlord applications for renovations, specifically whether those applications are for vacant units. Alexandra S. Levine, *New York Today: Fixes for a Broken Housing System*, N.Y. TIMES (May

ing is a very short list of changes we believe would help curb tenant harassment. More elected officials must support the Tenant Protection Act of 2017, which must ultimately become black letter law. We would like to see stronger criminal penalties for the physical and mental injuries caused to our clients and other tenants in similar settings. The graduated penalties in the current laws can be set much higher, despite having just recently been increased. In addition to the agencies, tenants should be able to collect monetary penalties incurred by landlords if the agencies are unwilling or unreasonably delaying enforcement. Better yet, the monetary penalties should go to the tenant, whether directly or as part of victim funds.¹⁰⁶

V. SETTLEMENT & INDICTMENT

In the end of 2016, after eighteen months, cooking gas was finally restored to the building and the HP case was closed. The harassment claim was settled by a modest monetary amount to the tenants.

A couple of factors successfully drove the litigation in favor of the 43 Essex tenants. First, we had robust institutional knowledge and resources from MLS and AAFE to work on the case. Second, we were not afraid of filing contempt motions and going to trial. At our first court appearance, the tenants received a \$300 monthly rent reduction—or respectively, 51%, 81%, and 61% in percentages—for having no heat, hot water, and cooking gas. We got Galasso to agree to restore the essential services. When he missed a deadline, we restored the case to enforce the orders. In settling the contempt motion, we got Galasso to agree to waive all the rent and even had money paid to tenants directly as a penalty for not getting heat and hot water and gas restored. This was a great win for the tenants. They did not have high expectations of what the court could do for them; hence, the monetary compensation came as a surprise and helped them to endure their horrendous living conditions.

On April 6, 2017, five months after the case settled, Donna received a call from the OAG. Their office had indicted Dean Galasso on six felony

24, 2018), <https://perma.cc/2W46-QZ8A>; see also Aameena Walker, *NYC Implements Anti-Tenant Harassment Pilot Program*, CURBED NEW YORK (Oct. 12, 2018), <https://perma.cc/N6WU-6KLY> (discussing the implementation of the Certification of No Harassment Pilot (“COHN”) Program, which directs landlords to meet certain requirements to ensure no harassment has taken place before obtaining permits to make major alterations).

¹⁰⁶ As an example, the Federal Office for Victims of Crime (“OVC”) oversees the Crime Victim’s Fund. This Fund was established by the Victims of Crime Act of 1984 and as of September 2013, had almost \$9 billion for allocation to crime victims. *Crimes Victims Fund*, OFFICE FOR VICTIMS OF CRIME, <https://perma.cc/49JD-4MJD> (last visited July 11, 2018). New York State also has an Office of Victim Services that provides financial compensation. *About OVS*, NEW YORK STATE, <https://perma.cc/5N6M-K35L> (last visited July 11, 2018).

charges for committing mortgage fraud. Specifically, he was charged with filing false mortgage documents to Investors Bank, including a falsified rent roll, to get a mortgage in the amount of \$5,025,000 to finance the purchase of 43 Essex Street.¹⁰⁷ Galasso was also charged with forging leases for units in the building, in an attempt to provide support for the false information in the rent roll.¹⁰⁸ The Bank relied on the information and documents to sign off on the mortgage.¹⁰⁹

It is uncertain how Galasso's indictment will affect the tenants, though this is something the tenants wanted to see for a long time. The indictment of the landlord is a vindication for our clients and for us. As of November 27, 2018, Galasso is awaiting trial.

VI. CONCLUSION

A. Lawyering: Client Versus Case, & Competencies

Cynthia:

Community lawyering at heart is the advocate being able to realize that before she is an attorney, she is a human being: perhaps poor herself once, an immigrant, of color, or simply seeking justice through her chosen career. We need to expose our ignorance about the people we serve, our inability to know the solutions to all problems, and our own class, social, and ethnic biases. Like any human relationship, community lawyering is reciprocal trust building that does not always need to be outcome-driven.¹¹⁰

Did I become a public-interest lawyer for myself or for my clients and their communities? Am I performing client-selection or case-selection work?¹¹¹ These questions routinely show up in my case work and certainly acted as guideposts while I worked on 43 Essex Street. I think the process of unpacking them instructs me on how an attorney can examine requisite competencies for accomplishing their work. In this section, I briefly discuss the competencies I saw as critical to working the 43 Essex case, as well as community lawyering generally, namely: (1) identities work; (2) professional consequences; and (3) political dynamics. As with

¹⁰⁷ Press Release, N.Y. State Office of the Att'y Gen., A.G. Schneiderman Announces Indictment of NYC Landlord Dean Galasso for Mortgage Fraud (Apr. 6, 2017), <https://perma.cc/U4EZ-TA7F>.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ Tammi Wong, *Race-Conscious Community Lawyering, Practicing Outside the Box*, 42 CLEARINGHOUSE REV. J. POVERTY L. & POL'Y 165, 172, (2008), <https://perma.cc/8XJT-5724>.

¹¹¹ Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 CLINICAL L. REV. 355, 368–71 (2008) (discussing “case-centered” law school clinical models that prioritize student learning and skill acquisition over the social justice impact of the substantive work).

other qualities, I see these abilities as continually developing and evolving in ways unique to each attorney. At the same time, it is critical that attorneys are provided time and space to be thoughtful and contemplative when working a case.

“Know your stuff.”¹¹² Identify your interests and disinterests, strengths and weaknesses, edges and limitations, advantages and disadvantages, accomplishments and potential, and angles and biases. Being the unshakable and perfectly fair and patient advocate is challenging because they do not exist. But if you know who you are and what you have and lack before stepping into a client’s narrative, you will have clarity on which is the proper path to take. You will have clarity on where the edges are located and how far you can push and expand your comfort zone. I knew that I must also know my culture. I am a public-interest lawyer, and right now, I am an anti-poverty lawyer serving both the poor and working-poor. Based on my background and upbringing, some of my clients and I have some shared race-, gender-, and economically-based experiences. For those clients with whom I do not have immediate similarities, I try to acquire an understanding of their upbringing and their daily routine. It is incumbent on us as their attorneys to understand the client’s profile. I cannot tell their stories persuasively or believe in them without exercising empathy. For the 43 Essex tenants, Donna and I were not simply lawyer and organizer. We respected the tenants as older, more experienced members of our community and acknowledged their cultural and generational characteristics and differences.

Identify what identities you give yourself and those that society gives you. The impact of race and gender on the 43 Essex litigation weighed heavily on me. I had to know my stuff. The landlord and his attorneys are white men. Donna and I are immigrant women of color representing poor, older, immigrants of color. Our adversaries, and even some regular bystanders in court, treated us as if we would fold and acquiesce to their offers of settlement, and then disappear. They were entertained by the extent of our frustration, thinking we did not have the same skills and tools that they had even though we too, are advocates. As much as I tried to be conscious of the biases imposed on us, we had to meet the others where they were and adjust our strategies to achieve desired results. In many ways, our clients’ vulnerabilities, but also the similarities between us, drove me to do better and be a better advocate. I learned to tell their stories to different media outlets and investigators, each time as if it was the first time, mindful to be effective but not brash, impassioned but not frenzied. Attorneys need to be given an environment that is conducive to this type

¹¹² I attended a training where the social-work-instructor used and emphasized this phrase in discussing client interaction. I attempt to regularly incorporate this phrase into my practice.

of work in order to further the community lawyering organization's work and mission.

Client and case selection have professional consequences.¹¹³ Opportunities to acquire new legal and non-legal skills are undoubtedly attractive to attorneys, especially those who are relatively inexperienced. For the agency, the immediate priority on client-selection is case-selection—a case that both fulfills funding quotas and brings impactful, systemic change to a community. For some attorneys, there is a tendency to take on a client because their case provides an opportunity for the attorney to do something new or interesting. I do not disagree that professional development is important in retaining attorneys and creating sustainable public interest careers. An organization cannot expect to keep quality attorneys without providing them room for interesting legal and policy work amidst a horrifyingly high caseload. However, there needs to be a middle-ground where it is balanced with the best interest of the client and their community.

We should refrain from an opportunity that benefits us more than our clients because that could interfere with the effectiveness, and ultimately, the purpose of the representation. This sounds obvious but I have heard attorneys across the public interest spectrum explain their motivation for taking cases and going in a certain direction to acquire particular skill-sets even though those strategies were inapposite to the client's objectives. They are using a client as an experience for themselves. That, to me, is a form of exploitation.

Donna and I were aware that our clients could be exploited with a quick soundbite or photo-op showing one of them in a moment of desperation and misery. It may elicit human sympathy but it may also be highly unnecessary. We did not want or require that type of publicity or attention and strove to protect them from that exploitation as best as we could, though we did not always succeed. We advised our clients that they did not have to share their stories with anyone with whom they were uncomfortable. The focus of community-lawyering is not to launch legal careers. Community-lawyering should launch community-based social movements. I do not think this is a controversial goal.

Lastly, community-lawyering and client-selection work require some understanding of the politics relevant to the community. Advocates ask for contacts to different government agencies and are often frustrated when they do not have the same experience as others. Each case and its embedded dynamics are different. Agencies are motivated by a range of incentives and what constitutes success may mean different things. Each agency's priorities change from administration to administration. Being

¹¹³ See Ashar, *supra* note 111.

able to understand an entity's strengths and limitations allows the advocate to leverage power and resources appropriately and effectively. I strive to be resourceful, imaginative, and talented in my work. I try to learn the roles, motivations, sources of resources, social and political capital, and scope of limitation for each stakeholder I encounter. I recognize that it is a lot of trying that may not result in the desired outcome but the process should be equally significant.

Litigating the long HP action taught me that desired outcomes look different to different people at different times. At many points, I felt I had failed the tenants and Donna despite the tenants maintaining satisfaction with a particular decision or result. But they taught me that the relationships developed among us, the trust that had been built, mattered so much more than I would have known. This case crystallized for me that being a public-interest attorney is only meaningful if it is for the client and their community. I repeat to myself, community-lawyering should launch social movements, not legal careers. I am here for the ride, having colleagues who are sources of support, meeting with people who have common goals, ensuring that the landlords' highest possible returns from their property assets are the development and retention of a diverse New York City where everyone can live and build their families in safety, dignity, and love.

B. Organizing: Reflections and Recommendations

Donna:

Because the City's process and system for tenants to have repairs completed relies almost exclusively on the landlord's initiative and self-monitoring, the onus is on the tenants to sue their landlords to force repairs. HP cases are even a necessity in no-gas cases where multiple parties are required for the gas to be restored. The real "work" to making sure the landlord does what he agreed to comes after the tenants have secured a directive from the judge for the landlord to correct the problem or a settlement where the landlord has agreed to fix the problem by a fixed date. Landlords often "default" in making the repairs by the agreed to deadline. The burden is then on the tenants to bring the landlord back to court to enforce the court's order. It is difficult for a tenant to navigate and comply with the legal requirements to enforce the order. It is nearly impossible for tenants who do not understand or read English to try and enforce the order themselves even with the assistance of the court interpreter. There are strict rules on how the legal papers must look, how they must be delivered to the landlord, and what the tenants must show.¹¹⁴

¹¹⁴ See N.Y. JUD. LAW § 756 (McKinney 2018).

Tenants, represented by counsel in these cases, send the landlord the message early on that the order will be enforced. The lawyer watches and collects evidence of the landlord's default. The lawyer will then bring these defaults to the judge's attention and seek penalties for the landlord's failure to comply. Thus, the lawyer is critical to fight off construction as harassment.

The organizer is also critical to this process because the organizer is the conduit between the lawyer and the tenants. The organizer insures that the parties maintain communication so that the tenants continue to drive the litigation, rather than the landlords. The organizer plays an important role in framing the different steps of the litigation in ways that match the tenants' expectations and goals. For example, in our case, we helped the tenants secure rent credits from the landlord early on in the litigation because of the pressure from the press conference announcing the litigation and their united presence in court on the first court date. The tenants questioned our strategic choices; however, we explained that we were doing the best we could to represent them. Here, the organizer then serves to manage the tenants' expectations. It is natural for the clients and their lawyer to have different expectations from the lawsuit. Because the law's limitations can be incredibly frustrating, clients often feel their needs have not been met by their lawyer. In these situations, the organizer can diffuse misunderstandings between the tenants and their lawyer because of the organizer's close relationship with the tenants. The organizer can help both parties see each other's perspectives.

Organizers and lawyers must be consistent and unified in their representation of tenants who are living with uncertainty. This can be challenging because organizers and lawyers might differ in their views. I strongly believe that my ability to understand the legal issues and challenges from litigating HP cases myself helped me exercise discretion on *how* I explained things to the tenants. I believe this allowed Cynthia and I to appear on the same page most, if not all, of the time. Tenants looked to us for strength. We strove to gain their trust, even in times of uncertainty, like when we were learning about the process of how to restore the gas ourselves. The key is mutual trust and support between the lawyer and organizer.

A few other factors were key to the tenants' successfully fighting back against Galasso and saving their homes. Here, we had the active participation of the tenants at multiple press conferences, City Hall hearings and attendance at multiple court hearings to exert pressure on Galasso in different ways and on multiple fronts simultaneously. Our senior citizen tenants surely experienced fatigue in the endless actions we asked them to participate in. Cynthia and I tried our best to accommodate them by making house calls so they would not have to leave their apartments

in the cold and meeting an hour before court to slowly walk over to the court house together. These little things mattered because they were opportunities for us to bond with our clients and for us to show our commitment to them through our actions.

Learning how to influence allies became critical. We solicited the support of a City Council Member, lawyers from the New York State Attorney General's Office, lawyers from the Manhattan District Attorney's Office, lawyers from other legal services organizations, and other community advocates. Different organizations have different priorities. They do not have any mandate to help with a specific case. They have discretion as to which cases to take on. In my case, I reminded myself that people have different personalities and different approaches so I should not take setbacks personally. Sometimes people would talk to me like they knew the tenants better than I or they expected to be talked to or addressed in a certain way. In these circumstances, egos can easily derail collaboration. Four personal rules I followed helped me to stay on track:

- (1) Pick and choose your fights wisely.
- (2) Do not take it personally and do not make personal attacks. Being aggressive does not mean you have to be unprofessional.
- (3) Leave your ego at the door. Do I want to put my client's goals first or do I want to put my feelings first?
- (4) Never forget why you got involved in the work in the first place. Let your passion and purpose drive the work.

After eighteen months, the tenants won more than just their heat, hot water, and cooking gas. In some ways, they forced Galasso to acknowledge that they had a right to stay and were not going anywhere. After the lawsuit, instead of ignoring the tenants' request for repairs, Galasso would send the superintendent to address it in a timely manner. According to Tenant #3 and Tenant #2, they felt the process forced Galasso to respect them. Prior to this lawsuit, Galasso's actions as the landlord gave the impression that he had intended to scare the tenants into vacating their homes. He suddenly shut off their essential services and engaged in dangerous and unpermitted construction work that compromised the structural integrity of the building. Had the city and state anti-harassment task force not stepped in to stop the illegal construction work in March 2016, all the tenants would have been forced to vacate their homes.

Another success to note was the money that Galasso paid directly to the tenants very early in the litigation. This was a rare victory because the HP judge is not authorized to reduce the monthly rent because of repair issues. The judge may order rent reductions as compensatory damages in

response to contempt motions, but that typically happens much later in the litigation. We persuaded Galasso to agree to compensate the tenants through extra-judicial leverage and pressure. We strategically used our strengths and leveraged the strengths of the city and state agents, the press, and others to meet the tenants' goals to get us to the finish line.

Which leads me to reflect on, what is organizing? I am a lawyer by trade and I have never been trained in organizing. I learned how to help the tenants of 43 Essex Street from watching other organizers. I learned how to canvass buildings, do door-knocking, and talk to tenants about their landlords and their housing rights from shadowing other organizers. To me, organizing is the vehicle towards the purest, most organic form of empowerment. Organizing gives people choices and opportunities to attain the goals they have set for themselves for better living conditions, situations, or lives. Organizing is also about not making any judgments about those goals because people are different.

Organizing must accompany lawyering to end tenant harassment in the gentrification of Chinatowns in Manhattan and Brooklyn, which is why I took a break from being a lawyer and took a job organizing immigrant Chinese tenants. As long as the city condones gentrification as part of city planning, landlords will continue to harass tenants into vacating their homes. I began organizing without preconceived notions of what organizing was and what organizers do, which helped me better serve our clients. The clients who went to AAFE for help did not respond well to the usual organizing techniques that I observed and learned from career organizers. For example, we were unsuccessful asking the tenants to elect or identify a leader, share their views publicly on how they felt about a particular situation, or volunteer publicly to do specific tasks. Partly, this had to do with *who* we were organizing.

A majority of the local residents who seek AAFE's tenant advocacy services are retired senior citizens. They are monolingual Chinese speakers, usually speaking the Cantonese dialect. They immigrated to New York decades ago and have survived by toiling in the restaurant or construction industries or made a living as a factory worker or a home attendant. They raised children who moved away to the suburbs when they grew up. AAFE clients rarely travel outside of Manhattan's Chinatown or outside of the City's other Chinatowns for pleasure. When they do have to travel outside of their comfort zone, they usually rely on someone to travel with them to show them which train or bus to take, what stop to get off, and how to navigate the streets. Generally, this group of AAFE's clients are culturally and linguistically isolated.

Through trial and error, and my lived experiences, I found an effective approach to working with this Chinese population. AAFE's clients were not very different from my own relatives, many of whom are also

monolingual Chinese immigrants that are culturally and linguistically isolated. Because I was raised by the Chinese immigrant community, I could predict my clients' reactions to certain situations or predict their concerns or questions. I intuitively used my own personal experiences, which helped my representation of this population.

I leveraged my personal experiences to better advocate for my clients. I became more sensitive to *how* I was serving my clients. I realized my approach delivering the message was just as important as the message itself. For my clients, impressions mattered. In preparing for tenant meetings, I often asked myself what my parents or relatives would feel or think if they were in those situations. How would they react? In respecting my clients' boundaries, I learned to embrace my immigrant Chinese background and culture.