



# EQUAL JUSTICE AMERICA

## Summer 2023 EJA Fellow:



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**Organization:** Urban Justice Center – Safety Net Project

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### Update 1:

This summer I have the privilege of working at the Urban Justice Center’s Safety Net Project. I am incredibly thankful to Equal Justice America for providing me with summer fellowship funding so that I can help advance housing justice in New York.

I look forward to working with tenants around the city in rent strikes, fighting illegal rent overcharges, and assisting with right-to-counsel work in Bronx Housing Court. I am also participating in Temple’s Law & Public Policy program, where I will be using lessons from my role at the Safety Net Project as part of an independent policy research paper over the course of the summer.

The housing crisis is an ongoing nightmare and a policy choice. Direct legal service, impact litigation, and policy advocacy are important parts of advancing housing justice; to get all the way we need communities organized and active. If you need help finding housing organizers near you, just reach out!

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### Update 2:

I get on the J at 7am on a Saturday. There is a man sleeping on the long blue bench seating. He doesn’t seem to have any bags. I transfer to the C at Broadway Junction. When I get off, there are two more people sleeping on the platform. Neither looks to have more than they could carry with them.

At the office, an attorney steps out of the office behind me.

“I’m in a meeting. What’s up? ... Ok. They just announced? The sweep is the 16th?”

In New York, sleeping on the streets isn’t just a symptom of not having a place to stay, it’s a license for the state to take your property. Dispossession happens in “sweeps,” where anything someone isn’t holding is taken out of a homeless encampment, along with anyone sleeping on the street. On the books, these people should be given notice beforehand and connected with services as part of a sweep; in practice, the city is depriving homeless residents of their due process and 4th amendment rights, emptying promises made to the most vulnerable.

After one sweep, office conversation turns to the bicycles that were taken:

“Were they someone’s or were they just left there?”

“They were clean. I’d use them.”



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“Ok, because sometimes you see one that’s been left there, with the tires missing or something, and I’d get that.”

“No, it wasn’t like that. These were people’s bikes.”

“Damn. I feel bad for the people who left them there. Can you imagine coming back and the cops took your bike? I’d be pissed.”

This is what happens when homelessness is treated like a social contaminant. If it was treated as a personal failure, we would keep the treatment to individuals. If it was treated as a symptom of the system, we would build a better safety net. We treat it like a contaminant, as if the streets have to be scrubbed clean of it, as if anything that comes close enough to it must be disposed of. It doesn’t matter if the person to whom the contaminated items belongs is suffering from it or not, the risk is unacceptable to the state.

Next time you see someone sleeping rough, note what they have with them. Think if it can all be carried with them, then why that might be. After that, ask if the reason is just.

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On the D train up to Bronx housing court, a man carrying nothing sleeps on the blue bench of seats between the doors and the end of the car. In midtown three officers poke their heads in and bang on the railing at the end of the bench. They only exit when the man is awake and sitting upright. Sleep disturbed them.

At Fulton St (9/11 Memorial) a man sleeps on the stairs down to the lower tracks. He has nothing with him but his clothes. Three flights up is the financial district.

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## Update 3:

In a dimly lit 4th-floor courtroom in the Bronx, three attorneys sit before a judge. Two represent a tenant, the third represents the landlord. No clients are present. Over 20 court appearances have been made in the case.

The tenant had been pressured into agreeing to move out at an early court appearance, now several years ago. Afterwards, her attorneys started to piece together that she was not of sound mind. In fact, she could not recall having signed the agreement at all.

While the housing court judge discusses the tenant’s condition with her attorneys, the landlord’s attorney squirms. He moves uncomfortably in his seat and motions as if he is being personally wronged. The Judge reassures him, “I will give you time to speak. I always do.”

The tenant is not present because she is being assessed by Adult Protective Services (APS) on the same morning. The judge was not given notice of this because APS is scheduling close to day-of. This is the second time APS has been called for the client; the first person APS sent only spoke English. Like many low-income people in the Bronx, the tenant speaks Spanish, and the first APS visit meant almost nothing because of it.

The case itself started when the tenant refused to give access to the apartment for necessary repairs. Just for this, the judge is prepared to assign the tenant a guardian for her case. No-access holdovers, she says, are a red flag. The landlord’s attorney argues that a guardian is unnecessary, that restarting after one is appointed is just dragging things out, and that he cannot explain to his client that any delay the court creates is insignificant in the grand scale.

Things end with an agreement that a guardian be appointed, that nothing moves forward until after that, and another court date set for a month out. The tenant attorneys are pleased, feeling it’s a step towards keeping someone housed.



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Stopping evictions often means prolonging the paperwork limbo enough to get government and non-profit assistance lined up for the client. Our office has more social workers and benefits advocates than paralegals for exactly this reason. There often isn't a solution entirely within the law, but someone has to stand before the court to give others time to actually remedy the situation.

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## Update 4:

The Bronx is where we do most of our work because it is where landlords do most of their evictions. In other boroughs, housing court is in the same building as the rest of the civil court. Bronx housing court is its own separate building, overflowing with cases such that some are still heard a few blocks down in the old courthouse. It is loud and chaotic, somewhat resembling a high school on the first day of classes with the number of people nervously searching for rooms and brushing past the others in hallways.

Manhattan civil court, home to its housing part, is nearly empty by comparison. Certain hallways are completely empty. On a busy day on a busy floor the New York City Housing Authority might bring a number of cases in that court, but that would only fill one hallway at most. It is a quiet place.

A Big Law attorney in his 9th year of practice but first at the firm represents a co-op member in a case against the elderly tenant she has been leasing to for decades. He wears a slightly too-small indochino suit with slightly too-much pride for a man who would put someone on the street if someone else wrote him a check for it. He meets us in the hallway to discuss a potential stipulation over incomplete repairs.

Our client does not pay us, because he cannot and that is why we have his case. We represent his interests beyond what one might if they were being paid; we raise every defense because there is no reason to economize and take the risk of short-windedness. When we decline to allow a videotaping of the tenant's apartment, an argument starts. The Big Law attorney says we make the profession look bad and walks away.

Who do we embarrass in an empty hallway when no one is watching? If it is only the principle of professionalism, then what good is the word to anyone but those who cut checks? Are we really to be lower lords of an American aristocracy, paid off by those without patents of nobility and responsible primarily to our own class interests? I think this is what he meant.

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## Update 5:

One of the biggest slumlords in New York has cases in Bronx Housing Court today. His attorney is in a courtroom while he roams the halls. The attorney has brought her son, who wears a tie with no jacket and a black eye shaped like fumbling rather than a fight. The landlord has brought his son, who wears a designer suit in a building that rarely sees them.

The landlord, his son, and the attorney's son cross paths on the third floor, just as the tenant's attorney rips off a carbon copy of a stipulation for adjournment.

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Most of my work this summer involved research on rent overcharges. Rent overcharges occur when landlords, who are responsible for calculating and reporting the legal regulated rent for rent stabilized apartments, charge an illegally high amount, usually done by willful miscalculation. I followed a recent change to the main exception to the statute of limitations, which applied to all overcharges done before June 2019.



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Tenant attorneys counterclaim for rent overcharges as a way of reducing the client's arrears, often relying on the exception and reducing rents that were illegally raised long ago.

The exception is called the fraud exception, which previously required only signs of a scheme to deregulate an apartment. In 2020, a case changed the exception with a footnote to require the five elements of common law fraud. In April, a court ruled that the element of reliance cannot be met where the landlord was filing their required reports with the state. In late July a court further explained that the reports' insufficiency in proving its content did not matter, and that the simple filing of a report legalizes an illegal rent after four years. None of these cases analyzed prior precedent on fraud generally, and the total effect bars over a million residents from bringing claims they previously might have had against their landlord.

In June, three other interns and I knocked over 100 doors in Harlem. Our office had analyzed rent histories across their buildings, found the typical signs of a scheme to deregulate, and was ready to bring a suit on these people's behalf. By the end of July we were no longer sure we could bring a case, were scheduling calls to explain this to the tenants, and I was starting the first draft of a memo arguing for cases to be overturned.

I think about this past spring, how our ConLaw professor didn't know what to do with the court's move away from stare decisis. I think about his attempts to preserve the legitimacy of the courts. But here I am in New York housing court, seeing the same bad decision making from highly trained judges at the local level. Roughly 1,100 judges in New York haven't even been to law school; my hopes for the state's legal system are not high. My estimate of legal culture is also not good.

A realist analysis of these changes can be nothing but marxist with how clear the parties are. The courts have legalized the illegal behavior of property owners, allowing them to extract value from tenants without limit. Tenants were put on notice of a new obligation to check their rent histories after the statute of limitations had already barred their claims, giving them no recourse against property owners. "Rent stabilized" apartments effectively got set back to market rate where landlords decided to break the law and see if they could get away with it. Tenants either take the rent offered or move somewhere else.

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"Our forefathers have been forced out of many, many places at a moment's notice"

"Maybe that's why we always wear our hats"

And maybe that's why I work in eviction defense.

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The landlord realizes who the young man with a black eye is and grabs him by the shoulder. He grabs his own son by the shoulder and introduces the two. They smile, exchange greetings, shake hands. The bourgeois landlord and his petit-bourgeois attorney will pass to their children their titles of bourgeois landlord and petit-bourgeois attorney. Their tenants will likely be part of the 73% of Americans who die in debt, passing nothing to their own children.