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THE ROOTS OF *JACK SPRING V. LITTLE*

RICHARD H. CHUSED*

My goal is to recreate a bit of the mood of 1966. There will be a bit of “law-talk,” but mostly I’m going to tell stories. Think of it as a bit of autobiographical history — perhaps a reminiscence. During the summer of 1966, I was between my first and second years in law school at the University of Chicago and fortunate enough to be the recipient of a LSCRRRC Grant.¹ The proposal I put together called for me to participate in two projects — an ongoing rent strike at the Old Town Garden Apartments on Sedgwick Avenue² in the near-north side, and a study of a legal advice program set up by the Church Federation of Greater Chicago and the Chicago Bar Association in church fronts around the city. As it turned out, both tasks provided me with some telling insights into the status of landlord-tenant law and the tense culture in Chicago during the 1960s.

A significant portion of the tenants at the Old Town Garden Apartments were withholding rent after efforts to obtain repairs from the owners were unsuccessful.³ I made several visits to landlord-tenant court that summer as part of my work with the tenants. During one of my visits there, an event occurred that has stuck in my mind as a vivid tableau. The cases were being called by the clerk when a quite elderly, thin, white woman rose from her

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1. The Law Students Civil Rights Research was probably the first student organized civil rights group in legal education. Founded in 1963, it sent a number of people south to work in the civil rights movement and funded over 5000 summer grants for law students working in an array of projects. For more on the history of LSCRC see Amy Ruth Tobol, *A Badge of Honor: A History of the Law Students Civil Rights Research Council* (1999) (unpublished Ph.D. Thesis, State University of New York at Buffalo) (on file with author).

2. The strike even made it into the papers. See *Orders 137 Evicted, Offers Day in Court*, CHICAGO TRIBUNE, Aug. 31, 1966, at A2. Using both historic and low income tax credits, the buildings have now been rehabbed and marketed as the Marshall Field Garden Apartments. See Benjamin Historic Certifications, Landmark Nominations, <http://www.benjaminhistoric.com/landmark.htm> (last visited Apr. 8, 2007).

3. Eviction orders were eventually issued against 137 tenants in the 629 apartment complex of ten buildings. See *Orders 137 Evicted, Offers Day in Court*, *supra* note 2. As I recall, that order affected only some of the tenants on strike.

seat in response to hearing her name. Her gait was quite slow — stooped over, and supported by a wooden cane. She was dressed in a frilly, long white dress and a white hat with a veil. It struck me that she had picked out her finest clothes to wear that morning. Perhaps her generation thought it appropriate to dress up for a court appearance — like going to church. But this was no church. When she was about half way to the front of the court — even before she passed the bar — the judge impatiently asked, “Have you paid the rent?” She looked up at him as best she could and began softly speaking. “No, but . . .” She was cut off in mid-sentence by the court, curtly saying, “Judgment for landlord. Call the next case.” The woman continued to slowly approach the bench, raising her right hand — her left still resting on the cane — as if she was trying to get the judge’s attention. Her apparent desire to continue talking was stopped by the judge who without a hint of emotion said, “Maam, your case has been decided. You can go now.” Crestfallen, she slowly turned and with small, careful steps, worked her way out the rear of the room. The next case was called and decided before she reached the courtroom door. A few tenants watched her sadly. Most people in the room paid her no attention as additional cases were called and quickly disposed of. I was stunned. My first year in law school hinted only obliquely at the mess that was landlord-tenant law. A conference on the subject organized by students — a gathering that might have prepared me better for my summer experience — was held at the University of Chicago Law School, but not until the fall of my second year.⁴ But even a conference wouldn’t have primed me for what I saw. I have often wondered what happened to the old woman in a frilly white dress. Does anyone know? She attended the hearing by herself. Did she have any family members or friends looking after her interests?

The judge, while behaving in a completely heartless fashion, acted in total conformity to then existing law in Illinois. This is not the time to rehearse in great detail the history that got us to the place where such possession judgments were issued against elderly women in a heartbeat.⁵ The primary purpose of this essay

4. The proceedings of that conference, held in November, 1966, are on file in the library at the University of Chicago law school, see Papers, Conference on the Landlord-Tenant Relationship (1966). One of the papers at the conference, entitled Tenant Unions in the Common Law, was delivered by Peggy Hillman, Gil Cornfield’s law partner.

5. I have spoken and written at length about that history in other venues. See generally Richard H. Chused, *Impoverished Tenants in Twentieth Century America*, in LANDLORD AND TENANT LAW: PAST, PRESENT AND FUTURE, at 257 (Susan Bright ed., 2006); Richard H. Chused, *Saunders (a.k.a. Javins) v. First National Realty Corporation* [hereinafter Chused, *Saunders*], 11 GEO. J. ON POVERTY L. & POLY 191 (2004); Richard H. Chused, *Landlord-Tenant Court in*

is to discuss the atmospherics and events of the late 1960s, not the legal history of the nineteenth, and much of the twentieth centuries. Suffice it to say that tenants had no defense to an action for possession for non-payment of rent except for accord and satisfaction — payment of the rent. The standard statement of the common law rules I learned in law school that remained in effect in Illinois until 1972 went like this:

At common law the tenant became the possessory owner of an estate for a period of time and during that term the primary indicia of ownership passed to him. Thus it became the duty of the tenant to make repairs to the let property and also maintain his obligation to pay rent. Accordingly, the rule developed that in the absence of a covenant to repair, the landlord owed his tenant no duty of maintenance. Furthermore, even where an express covenant to repair by the lessor is given, the usual construction is that the covenants of the lessor and lessee are independent, so that the lessee may not treat the lessor's failure to repair as a basis for stopping rent payments. Thus, at common law, the breach by the landlord of his express covenant to repair can in no way be construed an available defense to a defaulting tenant in a suit merely determining the right of possession.⁶

As a result of the nationwide use of these rules, abetted by the widespread adoption by nineteenth century state legislatures of summary eviction statutes with narrow procedural options for tenants,⁷ urban, 1960s era landlord-tenant courts across America processed tens of thousands of eviction actions with enormous efficiency and speed. After all, even assuming that a tenant defied the norm and showed up for the hearing, it didn't take long to call a case, ask if the rent was paid, get a "No" answer and call the next case. There is no need to put a polite gloss on the situation. In Chicago and every other large city in the country, landlord-tenant court was an ugly place. Watching that elderly woman walk out of the courtroom was a symbol for the anguish of the era — a sometimes seething anger at the unwillingness of people in positions of authority to see unfairness even when it was literally staring them in the face.

The anguish and anger was not directed only at unseeing judges. The array of movements and demonstrations in Chicago

New York City at the Turn of the Nineteenth Century [hereinafter Chused, *Landlord-Tenant Court*], in PRIVATE LAW AND SOCIAL INEQUALITY IN THE INDUSTRIAL AGE: COMPARING LEGAL CULTURES IN BRITAIN, FRANCE, GERMANY AND THE UNITED STATES OF AMERICA, at 411 (Willibald Steinmetz ed., 2000).

6. This summary is taken from the dissenting opinion of Justice Thomas E. Kluczynski in *Jack Spring, Inc. v. Little*, 280 N.E.2d 208, 218 (Ill. 1972).

7. This history is laid out in Chused, *Landlord-Tenant Court*, *supra* note 5 at 413-20.

during the late 1960s touched on many areas of urban life. And the government of this city was almost always on the wrong side. The Daley machine that ran Chicago was remarkably efficient at making the lives of its opponents difficult. During another visit to Landlord-Tenant Court to watch Gil Cornfield⁸ as he undertook his largely futile⁹ representation of the tenants at Old Town Gardens, a remarkable and stunning event occurred. As during my other visits, the cases were called and resolved in predictable fashion. Virtually all of those tenants were not represented by counsel and, as far as I could tell, none had attempted to raise various defenses to their evictions. In the Old Town Garden cases, however, all sorts of legal issues were raised. Just before those cases were called, the judge then sitting on the bench rose and left the room. Another judge came in and took his place. The Old Town cases were then called and, despite vigorous protests from Cornfield, resolved quickly. All the various defenses and issues raised in various motions filed on the tenants' behalf were denied en masse and judgments were entered for the landlord. The second judge then rose and left the room only to be replaced by the original judge! The whole drama clearly was planned. I could see Cornfield seething with anger. After we left he told me that the judge hearing most of the cases that day had showed some signs of independence in the past and that the judge who walked in to hear the Old Town Garden dispute had been on vacation. Cornfield thought he was going to have an interesting hearing. The Daley folks, he opined, had brought back the vacationing judge to insure the result they wanted. That was almost surely an accurate assessment. Even if it wasn't, it accurately reflected the widespread sense that getting something important and progressive done in Chicago was difficult, if not impossible, while Daley was mayor.

Cornfield's anger was only a small blip on the radar screen compared to that swirling through the impoverished communities in the city. It all surged to the surface one day while I was working on my other project — the study of the Church Federation/Bar Association legal assistance program that brought volunteer lawyers to church fronts to help neighborhood residents:

8. Cornfield was a stalwart — maybe a hero — of the tenant movement in Chicago during the 1960s. His name turns up often when you browse through newspapers reports of the era on tenancy issues. Most notably, he was tenants' council in *Jack Spring*, 280 N.E.2d 208, the major case altering eviction law in the Illinois. He is still busily at work. See Cornfield & Feldman, <http://cornfieldandfeldman.com> (last visited Aug. 9, 2006).

9. As reported in the local press, evictions orders were entered against the striking tenants. See *Orders 137 Evicted, Offers Day in Court*, *supra* note 2. The issuance of the orders had a debilitating impact on the efforts to organize the tenants at the Old Town Garden Apartments. *Id.*

That study required me to do two things: review a sample of the intake sheets and files of clients to see what, if anything, was accomplished by the volunteers, and to observe some of the sessions in which assistance was offered. On Tuesday, July 11, 1966, I went to watch a session at a small church on Division Street on the near west side of the city. There were a few clients in the church, along with the preacher, the volunteer lawyer, and myself. It was a brutally hot day. Loads of people were outside seeking an escape from the stifling heat in their unairconditioned apartments across the street from the church. A half block to the east, kids had opened fire hydrants. The water gushed onto the pavement. Through the front window of the church, we could see kids dancing around and spraying each other with water to cool off. Not long after I arrived, police officers came by and turned off the fire hydrants. When they left, the kids turned them back on. In a few minutes, the police shut them off again, this time to hoots and angry shouts. When they left, the kids turned them back on again. Again the police came, now in force with sirens wailing. This third attempt to shut down the water created quite a commotion and drew a large crowd. Whether shutting off the hydrants was necessary to maintain water pressure in the city mains quickly became irrelevant. Pent up anger, together with the unempathetic way the situation was handled by the police, quickly led to an ugly scene. With dignity and sadness, the preacher suggested it was time for all of us to leave. I got in my car parked in front of the church, did a U-turn to avoid the growing maelstrom, headed west and then south back to my apartment in Hyde Park. By the time I got home, television and radio stations were crackling with bulletins about rioting on the west side of town. The efforts of the Chicago Commission on Human Relations, Chester Robinson and his colleagues at the West Side Organization, and Martin Luther King and the Southern Christian Leadership Council to keep the peace were unsuccessful. Several days of conflict ensued.¹⁰ A large area of Chicago, like Watts the year before and Hough the week after, went up in flames.¹¹

10. The events, of course, were widely reported on in the nation's newspapers. A fairly representative example summarizing the events in a fairly tabloid fashion was Donald Janson, *Armed Negroes Fight the Police in Chicago Riots*, N.Y. TIMES, July 15, 1966, at 1.

11. The program I was at the church to study was certainly a good faith effort to help. But the program, like many other programs for the poor, was an inadequate band-aid that was too little, too late. It was established largely at the instance of John Ferren, who was then a young lawyer at Kirkland, Ellis, Hodson, Chaffetz & Masters in Chicago. He worked with me to establish the parameters of my study under the LSCRRC Grant. Today Ferren is a retired judge of the District of Columbia Court of Appeals. He was

These events in Landlord-Tenant Court and the streets of Chicago tell us much about the atmospherics of Chicago in general and landlord-tenant court in particular during the mid 1960s. There certainly was some excitement in the air as reform groups earnestly went about their work. At times I was giddy with the grand — and naively optimistic — possibilities of changing the world. But for those less fortunate than me, reality was a gritty place. You could feel the tension in the air. Few — poor, rich, or in between — walked down the streets — any streets — of Chicago with smiles or jaunty steps. Even on a beautiful spring day, Chicago's mood often seemed cloudy. The cold-heartedness of eviction court was mirrored in the atmosphere of the city at large. Poor people knew how the system worked and their sullen reactions were noted and sometimes feared — though often not understood — by the rest of the city's residents.

Though discontent about eviction law was rife among the poor, the legal academy had paid virtually no attention to the issues before 1966.¹² Like many other university based protests

interviewed a few years ago and commented on the program:

I had lunch with a high school friend, an inner-city minister in Chicago, Rev. Coleman Brown, who later became the pastor at Colgate University. He told me that the need to address issues of race and poverty was great in Chicago. I was quite moved, and motivated as a church person to ask, (What did my own convictions require?) So in 1964 I helped the Church Federation of Greater Chicago. I began organizing volunteer lawyers to provide legal assistance to the poor through the only trusted community organizations I could think of, local churches. We started with 16 lawyers, and in two years we had 200. I think it was the first volunteer lawyer program anywhere in the country. I'm proud to say that it still exists today as Chicago Volunteer Legal Services, with more than 1,000 lawyers involved . . .

Legends in the Law: A Conversation with John M. Ferren, D.C. BAR REPORT (April-May, 2000), available at http://www.dcbar.org/for_lawyers/resources/legends_in_the_law/ferren.cfm. At the time I did my study, most of the lawyers did not provide actual legal assistance. They spoke with people coming to what were then styled as "legal advice clinics" and referred them to places that could help. My study, which followed up on a lot of the referrals and found very few that ended successfully, suggested that such a referral system was inadequate and that full representation should be offered to those with legal problems. The present program does that, according to the Chicago Volunteer Legal Services website, <http://www.cvls.org> (last visited Apr. 8, 2007).

12. There were only three articles on eviction law published by 1966: Hiram Lesar, *Landlord and Tenant Reform*, 35 N.Y.U. L. REV. 1279 (1960); Hiram Lesar, *The Landlord-Tenant Relation in Perspective: From Status to Contract and Back in 900 Years?*, 9 U. KAN. L. REV. 369 (1961); and Robert Schoshinski, *Remedies of the Indigent Tenant: Proposal for Change*, 54 GEO. L.J. 519 (1966). There was also one article urging reform of tort law that became something of a cult classic among reformers. Joseph Sax & Fred J. Hiestand, *Slumlordism as a Tort*, 65 MICH. L. REV. 869 (1965). The Schoshinski piece was the most

and reform movements of that era, the landlord-tenant conference held during my second year at the University of Chicago Law School — one of the earliest organized efforts to explore pathways for change — was planned by students, not faculty. But the lack of widespread academic interest had not stopped some poor people and a small band of lawyers from agitating for reform. Rent strikes by tenants, agitation about discrimination in public and private housing, and civil rights organizing on housing issues all preceded the 1996 summer disorders and helped lay the groundwork for changes in eviction rules finally announced by the Illinois Supreme Court in 1972.¹³ The rent strike I worked on at the Old Town Apartments was not the only one unfolding in Chicago during the mid 1960s. With their own tenacity and the help of a few organizers and lawyers, tenants in buildings scattered around the city were beginning to use their money to insist that their living environments be improved.¹⁴ Recognizing the difficulty of changing the rules in eviction courts and taking seriously the notion expressed in a 1965 law review article that “slumlordism” was tortuous,¹⁵ offensive law suits were filed against the owners of some buildings seeking the appointment of receivers to make repairs, or court orders requiring landlords to act.¹⁶

Perhaps the most interesting and important of the post-1966 community legal movements in Chicago was the organization of

important of the lot. It appeared just before the Chicago disorders in the summer of 1966.

13. Chicago, of course, was not the only place where tenants organized. New York City and other locations also witnessed a spate of activity in the 1960s. For a general history with a focus on New York, see Joel Schwartz, *Rent Strikes and Community Power, 1962-1971*, in THE TENANT MOVEMENT IN NEW YORK CITY, 1904-1984, <http://tenant.net/Community/history/hist04d.html> (last visited Apr. 8, 2007).

14. Gil Cornfield, who worked with the tenants at Old Town Gardens, also worked with a number of other groups around the city. Telephone Interview with Gil Cornfield, Partner, Cornfield & Feldman, Chicago, Illinois (June 2, 2006). Some strikes, in addition to that at Old Town Gardens, also made the newspapers. See, e.g., *Rent Strike Planned as City Readies Suit*, CHI. TRIB., Sep. 29, 1968, at SC7; Joe Sjostrom, *Arbitrator Helps Settle Five-Month Renter's Strike*, CHI. TRIB., Nov. 29, 1970, at S5; Angela Parker, *Tenants Union Uses Rent Strikes to Force Repairs*, CHI. TRIB., Jan. 28, 1971, at S4.

15. See Sax & Hiestand, *supra* note 12.

16. See Anne Getz, *Tenants Sue Owners for 'Slum,' Key Decision May Affect Nation*, CHI. TRIB., Feb. 20, 1966, at E1 (discussing the suit's implications for slum landlords and poor tenants); Fred Morache, *Housing Court Acts; Places 2 Buildings Into Receivership*, CHI. TRI., Feb. 19, 1970, at W1 (describing the condition of two Chicago buildings placed in receivership); *'Sweeping Changes' in Rights of Tenants*, CHI. TRIB., Apr. 26, 1970, at SCL4 (foreseeing recognition of building code requirements for land lords); *Judge Denies Dismissal of Building Code Suit*, CHI. TRIB., Aug. 9, 1970, at SCL5 (suggesting that the form leases used by slum landlord's may be found unconstitutional).

the Chicago Buyers' League and the litigation it brought.¹⁷ The group arose from the work of Jesuits, some of whom lived on Chicago's west side.¹⁸ They did remarkable research work tracing the titles and financing history of untold hundreds of parcels sold by whites to speculators, and then to blacks.¹⁹ They confirmed neighborhood complaints that black buyers were being charged too much and barred from standard mortgage financing by intentional and structural discrimination in the Chicago residential real estate market.²⁰ A large number of those buying their houses under installment contracts eventually began a payment strike seeking reductions in the prices for their houses, and refinancing with standard mortgages.²¹ Litigation, some of it on a large scale, followed.²² While those working with the Contract Buyers League could not stave off the eviction of many homeowners — in part because they could not pay the large bonds required in order to appeal eviction orders — they did manage to renegotiate the purchase terms for a large number of buyers. But most importantly for our purposes, they created some state law that became extremely helpful to tenants seeking to undo the landlord-tenant eviction rules I learned in law school.

*Rosewood v. Fisher*²³ was a consolidated appeal of 157 cases in which lower courts entered judgments for possession against those withholding payments on their contracts and declined to issue a judgment declaring that contract buyers could raise certain defenses in their eviction cases. *Rosewood* involved the same statute used in landlord-tenant cases.²⁴ Among other things, the

17. A terrific history of the early years of the organization and the litigation may be found in Note, *Discriminatory Housing Markets, Racial Unconscionability, and Section 1988: The Contract Buyers League Case*, 80 YALE L. J. 516 (1971).

18. *Id.* at 521 n.12.

19. *Id.*

20. *Id.*

21. *Id.*

22. Both local eviction and federal civil rights actions were filed. A number of opinions resulted, but the most important are *Clark v. Universal Builders, Inc.*, 501 F.2d 324 (7th Cir. 1974), *Baker v. F & F Inv.*, 420 F.2d 1191 (7th Cir. 1970), and *Rosewood v. Fisher*, 263 N.E.2d 833 (Ill. 1970). The federal litigation affirmed the use of federal civil rights statutes to challenge the existence of dual racial markets in the city, though using theories which are probably not accepted today. The plaintiff buyers eventually lost at trial after remand. *Clark v. Universal Builders, Inc.*, 409 F. Supp. 1274, 1277 (N.D. Ill. 1976). That result was affirmed in an opinion which viewed the 1974 *Clark* result skeptically. *Clark v. Universal Builders*, 706 F.2d 204, 213 (7th Cir. 1983).

23. 263 N.E.2d 833 (Ill. 1970).

24. Forcible Entry and Detainer Act, 735 ILL. COMP. STAT. § 5/9-101 (2005). The jurisdictional provision of the present version of the statute, with language added since *Rosewood* in italics, provides:

statute limited defenses to those “germane to the distinctive purpose of the action.”²⁵ When adopted, this language surely was intended to impose common law rules in possession actions. But the court, perhaps feeling the pressure from the widespread contract payment withholding by buyers in Chicago, the massive number of evictions it produced, and the riots of 1966, concluded “that the defenses going to the validity and enforceability [sic] of the contracts relied upon by the plaintiffs were germane to the distinctive purpose of the forcible entry and detainer actions and were improperly stricken”²⁶ by the trial courts.

In hindsight, this case looks much more important to the history of landlord-tenant law — both locally and nationally — than the extant literature suggests. It was the first case in the nation allowing defendants in summary eviction courts to raise defenses beyond accord and satisfaction — the claim that the obligation had been paid. The most famous case of this sort, *Javins v. First National Realty Corporation*,²⁷ was decided on May 7, 1970, just over three weeks after the *Rosewood* decision was rendered.²⁸ The second of the major reform cases, *Marini v. Ireland*,²⁹ came down in New Jersey about ten days after *Javins*. Clearly the dam was breaking. The timing suggests, at least in hindsight, that the buildup of pressure to change the legal norms

§ 9-102. When action may be maintained.

(a) The person entitled to the possession of lands or tenements may be restored thereto under any of the following circumstances:

...

(4) When any lessee of the lands or tenements, or any person holding under such lessee, holds possession without right after the termination of the lease or tenancy by its own limitation, condition or terms, or by notice to quit or otherwise.

(5) When a vendee having obtained possession under a written or verbal agreement to purchase lands or tenements, and having failed to comply with the agreement, withholds possession thereof, after demand in writing by the person entitled to such possession; *provided, however, that any such agreement for residential real estate as defined in the Illinois Mortgage Foreclosure Law entered into on or after July 1, 1987 where the purchase price is to be paid in installments over a period in excess of 5 years and the amount unpaid under the terms of the contract at the time of the filing of a foreclosure complaint under Article XV, including principal and due and unpaid interest, is less than 80% of the original purchase price shall be foreclosed under the Illinois Mortgage Foreclosure Law.*

735 ILL. COMP. STAT. § 5/9-102 (2005) (emphasis added and internal citations omitted).

25. *Rosewood*, 263 N.E.2d at 837.

26. *Id.* at 838.

27. 428 F.2d 1071 (D.C. Cir. 1970). For a complete history of this case, see Chused, *Saunders*, *supra* note 5.

28. *Rosewood* was decided on April 15, 1970.

29. 265 A.2d 526 (N.J. 1970). *Marini* came down on May 18, 1970.

in Chicago eviction courts here was just as strong, if not stronger, as in the nation's capitol or New Jersey. That the pressure was high is suggested not only by my personal experiences, but also by many other organizational and legal actions swirling through urban Chicago in the late 1960s that were of major national significance. In addition to rent strikes, racial disturbances, and the Chicago Buyers League, the city was confronted with the famous *Gautreaux* litigation, originally filed in 1966, challenging the site selection and tenant placement policies of the Chicago Housing Authority,³⁰ the efforts of the Southern Christian Leadership Council to integrate housing in the city that began in earnest in 1965 and continued for several years, and the epochal chaos of the Democratic National Convention of 1968.

But it wasn't just local activists that eventually forced Chicago — including the Daley machine — and the State of Illinois to sit up and take notice. National events — widespread urban disturbances, the assassinations of Martin Luther King, Jr., Malcolm X and Robert F. Kennedy, anti-war demonstrations, and university upheavals to name only a few — caused consternation and, at least initially, some positive political responses. Though I think it is fair to say that the urban disturbances were a very significant factor that led many whites to join the conservative coalition that has governed the country for most of the last several decades, a short burst of reforms emerged between 1965 and the mid-1970s. New community efforts and litigation strategies emerged. Some courts responded by announcing significant shifts in legal norms, and both state and federal legislatures reacted to the outcries of the poor with major new programs. Creation of the national legal services program certainly was one of the most important.³¹ The Office of Economic Opportunity, established in

30. The case eventually reached the Supreme Court. *Hills v. Gautreaux*, 425 U.S. 284 (1976). There is a fairly large amount of literature on *Gautreaux*. One example is A. Dan Tarlock, *Remedying the Irremediable: The Lessons of Gautreaux*, 64 CHI.-KENT L. REV. 573 (1988).

31. Some form of legal services for the poor had been around for quite a while, usually in the form of offices supported by donations from local bar associations. But these offices were usually small and unable to handle very much work. Some experimental offices also received funding from the Ford Foundation in the early 1960s. A major aspect of President Lyndon Johnson's War on Poverty, launched in 1964, was the creation of the Office of Economic Opportunity (OEO), designed to give grants for community organizing and other local projects to help the poor. See Economic Opportunity Act of 1964, Pub. L. No. 88-452, 78 Stat. 508. It was a remarkable program. The government actually gave out grants to groups of people pursuing complaints against local, state, and federal agencies. One of the first, most important and (other than Head Start) only long lasting effort of OEO was to fund legal services programs. In 1964, Jean and Edgar Cahn published what became a famous law review article advocating the establishment of a nationally funded legal

1964 as part of the War on Poverty, began to make grants to open legal services offices the following year. By the time I finished law school in 1968, offices were popping up all over the country. Eviction law was one of the major items on the agenda of virtually every legal services office in urban America. It was no accident that both *Javins* and *Marini* were handled by legal services lawyers.

With all of this as background, the arrival of *Jack Spring v. Little*³² — the *Javins* of Illinois — in 1972 is unsurprising, at least in hindsight. Joining what was quickly becoming an avalanche of appellate decisions, the Illinois Supreme Court allowed tenants to raise breaches of contract, housing code violations and implied warranties defensively in landlord-tenant actions for possession for non-payment of rent.³³ Citing *Rosewood* and *Javins*, the court majority provided some room for legal services and other lawyers working with the poor to actually help their tenant clients.³⁴ It marked the end of the road for doctrines well over a century old.

Re-reading *Jack Spring* recently was actually a remarkable experience. That may be a surprise. Reading cases, after all, is usually not very exciting. But the opinions are remarkable exemplars of the time in which they were written. There is a relentless quality to the majority opinion — systematically undoing a legal structure that had made Chicago's eviction court one of the most unappealing legal forums in the nation. But the court vote in the case was close — four to three! And the most important of the three dissenting opinions was written by Justice Thomas E. Kluczynski, a University of Chicago graduate and a Cook County lawyer and judge before being elected to the Illinois

services program. Edgar S. & Jean C. Cahn, *The War on Poverty: A Civilian Perspective*, 73 YALE L.J. 1317 (1964). The Cahns were also friends of Sargent Shriver, who was appointed by President Johnson to run the OEO, and had enormous influence on his decision to begin funding legal services offices. The OEO initiated a large-scale grant program in 1965. This infusion of funds allowed new legal services offices to open all over the country in the late-1960s. For more on the early history of legal services see EARL JOHNSON, JR., JUSTICE AND REFORM: THE FORMATIVE YEARS OF THE AMERICAN LEGAL SERVICES PROGRAM (1973); Alan W. Houseman, *Civil Legal Assistance for Low-Income Persons: Looking Back and Looking Forward*, 29 FORDHAM URB. L.J. 1213 (2002); Joan Mahoney, *Green Forms and Legal Aid Offices: A History*

of Publicly Funded Legal Services in Britain and the United States, 17 ST. LOUIS U. PUB. L. REV 223 (1998).

32. *Jack Spring*, 280 N.E.2d 208.

33. *Id.* at 217. The court also invalidated the appellate bond requirements in eviction actions, a crucial step in allowing poor people to seek redress from higher state courts. *Id.* at 210-13.

34. *Id.* at 210-13.

Supreme Court in 1966³⁵ with the full support of the Daley machine. It is a telling reminder to us that the struggles of that era were difficult. Chicago was a tough town.

35. Illinois Courts, Illinois Supreme Court Justices Archive, http://www.state.il.us/COURT/SupremeCourt/justicearchive/Bio_Kluczynski.asp (last visited Apr. 8, 2007).