Getting to "There": Inter/Intra City Solidarity and Lawyering for Right to Counsel Movements

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Abstract

The need for a "civil Gideon" has been reiterated and revisited throughout the ongoing urgency of the affordable housing crisis in the United States. As frivolous eviction proceedings are brought against tenants by landlords seeking to "flip" units and capitalize on ongoing waves of gentrification across major urban epicenters, unrepresented tenants suffer due to the disproportionate bargaining power of landlords.

Right to Counsel is but one tool to tackle the affordable housing crisis. By allowing tenants falling under certain criteria to have guaranteed legal representation, tenants are able to fight back against the consequences of the eviction process while also biding time for a collective movement. This larger movement is focused on the eventual outcome of housing as a human right.

The Right to Counsel movement is well underway in major cities across the United States. New York was able to successfully enable Right to Counsel through the direct efforts of tenants organizing. The nuance of a tenant-led movement allowed for legislation and the Right to Counsel rollout to directly abide by the conditions called for by tenants, for tenants. The remarkable difference of a tenant-led movement is a key feature of evaluating how a successful nationwide Right to Counsel movement could sustain itself.

The successes of the Right to Counsel movement in New York can become a framework for larger commentaries on the role of certain players in the movement and how these players were able to fundamentally transform the nature of housing court. In the midst of these players, the role of the lawyer is a hotly contested question. The role of the lawyer must be tool-based and should be structured so that the movement remains tenant-led. This assertion highlights that movement lawyering should not co-opt a tenant-led struggle while still performing essential functions through direct representation, advocacy, and litigation.

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Introduction

Because I grew up in Queens, I reflect in retrospect on the ways in which my family of immigrants from the Dominican Republic were effectively neglected by landlords. As I encountered procedural defenses and counterclaims in my own legal education, I became aware of the countless claims my *own* family could have brought against many landlords. The unfortunate reality of my own upbringing in Queens, as well as the upbringing of many of my peers was the following: the landlord neglect that we experienced was seen as "business as usual." That is, these conditions were normalized as simply the product of living in New York.

Though I equated these conditions with the nature of "you get what you pay for" while growing up in Queens as a first-generation Dominican woman, immersing myself in legal academia illuminated the true injustice that my communities encountered. Why is crucial legal information such as important defenses not given to the communities that are actively contesting eviction proceedings? Of course, the answer was: the system is inherently built upon scarce access to knowledge. This "knowledge" is predicated on who has power, capital, and wealth. The legal system operates under this paradigm.

During the summer following my first year of law school, I was the Housing Rights Project intern for Queens Legal Services. I was told that I would assist with "Right to Counsel Day." As the concept was explained, I realized that I had no idea that a "civil *Gideon*" did not exist in Housing Court. Just as *Gideon v. Wainwright*[1] guarantees every individual charged with a felony the right to an attorney regardless of ability to afford an attorney, so a "civil *Gideon*" argument asserts that "in many civil cases, the stakes are as high as those in criminal cases, and consequently the concept of equitable access to justice is empty without a recognized right to counsel in these cases."[2] I had perhaps naively assumed that access to legal representation would be an inherent norm for tenants. Wearing a magenta pin with the Right to Counsel NYC Coalition's logo, I approached named tenants in the courtroom and informed them that their zip code fell under the Right to Counsel Program and that they were subsequently eligible to receive legal representation after an intake process. Tenants were, for the most part, unaware that they had such a right available to them. They had either attempted to hire expensive legal representation, or they had come into court *pro se*.

After my first Right to Counsel Day, I volunteered to attend Right to Counsel NYC Coalition meetings. Through the structure of the meetings, I was able to understand an incredibly powerful organizing structure: the Coalition, joined by tenants, lawyers, organizers, students, researchers, academics, and advocates, showed me that the movement was a *collaborative* one that necessitated the resources and capacities of a wide range of actors. Above all, it operated under the ethos that housing is a human right, and Right to Counsel was more than just a legal funding infrastructure.[3]

These Right to Counsel Coalition meetings represented a core element of why Right to Counsel was so successful in New York: it was a movement *led* by tenants. The current model of Right to Counsel organizing utilizes multiple facets of community coalition-building with tenant resistance and advocacy, policy advocacy, and community/movement lawyering. It represented the true notion that, when it comes to tenants' rights, "when we fight, we win."

Right to Counsel is not fully implemented in all New York City zip codes[4], but the idea has steadily gained momentum. This momentum was spurred along by the momentous passing of the Housing Stability and Ten-

[1] 372 U.S. 335 (1963).

[2] Rachel Kleinman, *Housing Gideon: The Right to Counsel in Eviction Cases*, 31 FORDHAM URB. L.J. 1507, 1509 (2004).

[3] *See* Andrew Scherer, *Why a Right: The Right to Counsel and the Ecology of Housing Justice*, *in* 2 IMPACT: COLLECTED ESSAYS ON EXPANDING ACCESS TO JUSTICE 11, 11–20 (2016).

[4] *See Oversight Hearing T2020-5733: Implementation and Expansion of Right to Counsel in Housing Court Before N.Y.C. Council Comm. on Justice Sys. and Comm. on Hous. & Bldgs.*, at 2 (Feb. 24, 2020) (written testimony of New York City Bar Association President Juan Maldonado) http://documents.nycbar.org/files/RTChearingWrittenTestimony_2.24.20.pdf [https://perma.cc/X73X-668A].

ant Protection Act of 2019,[5] because of which rent laws became increasingly pro-tenant. The shift in legal frameworks for housing law seems to be a step towards a larger movement: invoking housing as a human right, and using this movement to tackle displacement.

This Article explores the tenant-led movement behind Right to Counsel, and the long-term organizing that led to its mass success. By using the Right to Counsel toolkit[6] created by the Coalition itself, this Article will illuminate the groundbreaking organizing strategies that could serve a blueprint for similar Right to Counsel movements across the United States. Although the Housing Stability and Tenant Protection Act of 2019 played a major role in creating a pro-tenant legal landscape in New York City, the law itself would not have been marked by urgency had it not been for the tactics of the Right to Counsel coalition. Therefore, the Right to Counsel toolkit is one mechanism that directly contributes to policy change.

Part I describes the various impediments within the courtroom that create a pro-landlord landscape and disadvantages pro se tenants in housing court. While instruments like informal tenant blacklists are not a direct product of the court, the utilization of court dockets to deny housing to tenants is one way in which the court system operates to the detriment of tenants, even once their official interaction with the court has ended. Mediation in housing court is also a barrier to tenants' rights, leading tenants to settle into unfavorable agreements that lead them back into the courtroom. Sheer statistical data surrounding who is represented and who faces evictions further highlights the place that Right to Counsel can play in addressing the disparate outcomes of eviction proceedings.

Part II explores the legal landscape that allows for the proliferation of the landlord-tenant power imbalance in the courtroom. The parallel connections drawn between *Gideon* and Right to Counsel would create space for countless advocates to posit that although *Gideon* is nuanced to the criminal (in)justice system, a Right to Counsel reinforces the same values of *Gideon*, but in a housing context. This argument, combined with arguments about Due Process and Equal Protection, leaves much room for creative policymaking on why such legislation should be enacted to support tenants. The push to argue that Right to Counsel in a housing context should be a constitutional right is one that has been contested by actors such as landlords; due to the precarity of a constitution-oriented argument, this Article focuses more on the policy justifications that were later codified into law.

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[5] Housing Stability and Tenant Protection Act of 2019, ch. 36, 2019 Laws of N.Y. 154; *see also* Denis Slattery, *New York Enacts Pro-Tenant Rent Law Overhaul as Landlords Plan Legal Challenge*, N.Y. DAILY NEWS (June 14, 2019), https://www.nydailynews.com/news/politics/ny-rent-regulations-tenants-landlords-overhaul-20190614-ezcbph2fvbf2bn4vmfg5aetfay-story.html [https://perma.cc/JU4S-XYDH].

[6] *See* RIGHT TO COUNSEL TOOLKIT, https://www.rtctoolkit.org/ [https://perma.cc/XM92-ZBB5]. The "Right to Counsel Toolkit" constitutes the majority of the Right to Counsel NYC Coalition's website.

Part III provides a bird's eye view of the system of power that creates the disparities we see in Housing Court. On a systemic level, the prevalence of landlord-corporate power is able to reinforce itself through the institutionalization of racial capitalism. I explore what racial capitalism signifies in the affordable housing crisis and how the nation's housing regime is governed by selective disenfranchisement of communities of color.

Part IV explores the demands of the movement and the factors that played into the vitalization of a tenant-led movement in a major urban area. These demands and factors will touch upon the strategic campaign tactics leveraged by Coalition actors to conduct effective outreach and apply pressure for a successful victory in New York City. It is important to note that the coalitions established for Right to Counsel are not *only* devoted to Right to Counsel. Rather, these coalitions are groups of organizers set on a framework of housing justice, where Right to Counsel is but one of many pit stops.

Part V highlights the various tactics that the Right to Counsel movement utilized in pushing back against the endless structural elements that sought to uphold the status quo of inaccessible affordable housing. These tactics involved creative, visual means of honoring tenant narratives while highlighting the egregious practices of landlords throughout New York City and boosting accountability. Although the tactics used by the Right to Counsel Coalition were tailored to the localized interests of communities in New York City, such tactics can and should be leveraged by other coalitions outside of New York City. Other coalitions can utilize the Right to Counsel NYC movement's tools to address their own local housing law, policy, and actors.

Part VI posits lingering models of social change espoused by the Right to Counsel movement. In employing a movement lawyering model, I assert that lawyers must resolve not to disrupt the importance of a tenant-led movement and ought to imagine their role as more of a "tool" as opposed to becoming centralized key players in radical coalition-building.

In writing this Article, I do not intend to serve as a spokesperson for the movement. That is, as someone who had the honor of viewing Right to Counsel meetings through my short-term presence at Queens Legal Services, I was not a part of the long-term movement to bring such change to the nature of housing law. Rather, I write these reflections and observations as a Queens native humbled and inspired by the on-the-ground movements that have combated the displacement of thousands of communities of color across each borough. By putting forth these reflections, I hope to present an alternative lens that will propel thoughtful critiques of the role of the lawyer and how a remodeling the role of the lawyer can help, rather than systematically harm.

I. The Courtroom And Disproportionate Bargaining Power

In providing the backdrop of systemic forces and other underlying circumstances that necessitate Right to Counsel, a review of the current courtroom landscape is appropriate. The impediments that the current system poses to tenants' rights demonstrate how a "civil *Gideon*" provides a meaningful opportunity for tenants to emerge out of the exhaustion of Housing Court with the conviction that they can fight for their rights.

In cities like New York, it is abundantly clear that Housing Court is a site of mass confusion: tenants are often demoralized by Housing Court's ability to systematically strip them of their nuanced lived experiences in order to produce speedy decisions issued by a judge overloaded with an extensive docket.[7] The process on its face is not only demoralizing, but it also creates a setting where tenants have to compound the shame associated with the eviction process with dehumanization by the courtroom's own infrastructure.[8]

There are many bureaucratic barriers that prevent tenants from equitable access to Housing Court. Tenants must jeopardize their own employment in order to appear in court and prevent default. They do not receive sufficient interpreter services. These factors, along with the pure volume of Housing Court caseloads, make it clear that Right to Counsel could provide foundational assistance to tenants already burdened by the severe systemic inequality of the courtroom process.

Many of the courtroom conditions that create hardships for tenants, however, are not actively condoned by the courtroom itself: many of these conditions are the material results of the leverage that landlords and their allies harbor within. This disproportionate bargaining power already presents immense difficulty for tenants looking to have their "day in court" and to present their own defenses and motions in front of a judge. This unequal footing means that Right to Counsel would provide a form of representation that can slowly destroy the hurdles that tenants face daily in housing court.

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[7] *See* Harvey Gee, *From Hallway Corridor to Homelessness: Tenants Lack Right to Counsel in New York Housing Court*, 17 GEO. J. ON POVERTY L. & POL'Y 87, 87 (2010) (noting that New York City's Housing Court, at the time of publication, dealt with more than 300,000 new cases per year and stating that "Housing Court judges in New York City handle more cases than their counterparts in all federal district courts combined").

[8] *See id.* at 92–93. (noting that "[t]he combination of massive caseloads, litigants largely unfamiliar with the legal process and limited judicial resources has resulted in an environment that more closely resembles a hospital emergency room than a court"). Even if a right to counsel would theoretically raise the possibility of an increase in dockets, the outcome of such an increase is leveled out by the ability for tenants to stand against the mass confusion of the proceeding and be able to argue their own defenses and claims with the additional help of a lawyer.

A. Tenant Blacklists

Evictions are notably harmful not only because of their displacing effects, but also because of the long-term stigma that follows the proceeding in the form of an extensive paper trail. A judgment entered against a tenant and in pursuance of a full-scale eviction shows on credit reports.[9] The effects of evictions on one's credit and ability to take out loans, apply for jobs, and other essential opportunities for a standard quality of life are often debilitating.

However, even if a tenant is not evicted, the very fact that they were involved in a court proceeding can negatively affect their lives. Landlords often use courtroom dockets to effectively create "tenant blacklists" which landlords utilize as a screening device in deciding who can and cannot have access to fair, affordable housing.[10] Tenants can be included on a blacklist regardless of the outcome of the summary process proceeding - the existence of the docket itself remains a "red flag" for landlords. Even if the outcome of a court appearance were in the tenant's favor, the publicly listed appearance itself is often looked up negatively by landlords who will often take housing court appearances as signs of "unruly tenants" or tenants who are assumed to not pay rent on time. A simple mark of appearance on public records goes a long way in creating assumptions and biases that effectively bar tenants from fair access to housing. Although the court does not condone the use of court dockets as a tenant screening/blacklist service, the practice is still rampant and unchecked. In fact, the misuse of such personal data to predict consumer behavior is a larger problem of capitalism and affects the functionality of the legal system. Even if the existence of tenant blacklists is not "systemic" insofar as it is not sanctioned by the court, the ability for landlords to gather this information and utilize it becomes a tool in systemic displacement.[11]

The use of docket lists as a means of creating an accessible "tenant blacklist" device for landlords is an example of the existence of a surveillance regime. The digitization of court appearances makes it easy for landlords to simply search a tenant's first and last name in housing court.[12] The surveillance of tenants in housing court becomes an extension of the role of capitalism in influencing a landlord's decision. Even if the tenant is able to settle the claims against them, and even if the tenant is able to attain what they believe is a favorable outcome, landlords nonetheless bar tenants from access

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[9] *See* Rudy Kleysteuber, *Tenant Screening Thirty Years Later: A Statutory Proposal to Protect Public Records*, 116 YALE L.J. 1344, 1346 (2007).

[10] *See* Esme Caramello & Annette Duke, *The Misuse of MassCourts as a Free Tenant Screening Device*, BOS. B.J., Fall 2015, at 15, https://bostonbar.org/docs/default-document-library/bbj-fall-2015-vol59-no4.pdf [https://perma.cc/5UBK-GY5S].

[11] As of June 2019, the Right to Counsel Coalition in NYC was able to have tenant blacklist practices banned, but landlords' informal use of this information is still entirely possible. *See* Brian Bieretz, *A Right to Counsel in Eviction: Lessons from New York City*, HOUSING MATTERS (Dec. 31, 2019), https://housingmatters.urban.org/articles/right-counsel-eviction-lessons-new-york-city [https://perma.cc/AWF7-TJ8V].

[12] *See* Caramello & Duke, *supra* note 10, at 15.

to units purely because tenants have taken the initiative to become involved in the legal process to fight their own displacement.

It is clear that tenants entering the court are already pitted against a system that seeks to further jeopardize access to fair, affordable housing. If tenants continue to deprived of fair access to housing due to informal tenant blacklists and screening devices, tools such as Right to Counsel allow this discriminatory practice to be challenged. Indeed, it was precisely the advocacy of organizers and lawyers in the movement that brought an end to the use of tenant blacklists in 2019. Even if this practice is still utilized in innocuous ways, the Coalition's work to tackle other forms of inaccessibility that tenants face in Court shows that continually contesting such practices is an essential part of sustaining the Right to Counsel.

B. Mediation in the Courtroom

Mediation is a way to silo landlord-tenant disputes in order to seek outcomes without the need for a judge and/or jury. Courtroom dockets in housing court are often so congested that judges will encourage parties to engage in mediation prior to bringing a motion before the court. Some judges will refuse to hear a motion before the parties have tried mediation, even if parties are adamant on arguing their case, with the justification that parties should at least be open to mediation beforehand. Mediation as it exists within the realm of alternative dispute resolution has a breadth of applicable benefits and drawbacks to those who seek to use it as an alternative to the adjudicative process.[13]

Parties often pursue mediation as a way to mitigate potential court cases associated with litigation. Because they may avoid the potentially unpredictable rulings that a judge may determine, parties may view mediation as a venue in which they can assume more agency over the outcome of a dispute.[14] Additionally, mediation can be perceived as less reliant on legal doctrine and precedent. Another benefit of mediation and alternative dispute resolution more generally is its fulfillment of the desire to "vent."[15] Additionally, mediation provides the ability to tailor an agreement to the exact needs of the tenant as opposed to relying on the unpredictable whims of a judge.[16] Mediation is often seen as a "faster and much cheaper resolution to

[13] *See generally* David A. Hoffman et. al., Mediation: A Practice Guide for Mediators, Lawyers, and Other Professionals (1st ed. 2013). Hoffman discusses advantages and disadvantages of mediation as it relates to the general realm of alternative dispute resolution. *See id.* § 1.8.

[14] *See id.* (describing the advantages of mediation, which include cost savings, privacy, and preservation of ongoing relationships).

[15] *See* Jennifer E. Beer & Caroline C. Packard with Eileen Stief, The Mediator's Handbook 87 (rev. & expanded 4th ed. 2012).

[16] *See* Gary Allen, *Using the Court System*, *in?* Legal Tactics: Tenants' Rights in Massachusetts 327, 332 (Annette R. Duke ed., 8th ed. 2017), https://www.masslegalhelp.org/housing/lt1-chapter-14-using-court-system.pdf [https://perma.cc/LZ3S-97H7].

problems."[17] Mediation could eliminate extensive fees associated with discovery and landlords' counsel billing. It could also ensure that tenant do not have to take time off from work and other commitments in order to prioritize housing court. Another advantage involves the notion that mediation could provide "an opportunity to repair the often very personal relationships between landlords and tenants."[18] This relationship-oriented advantage could be compelling for tenants who might want to stay in their unit but had one issue with payment, or for tenants whose landlords are also coincidentally family friends or even family.

Despite these advantages, the drawbacks of mediation are plenty. The principal disadvantage that reigns in the world of housing court mediation is that tenants may not be on "equal footing" with their landlord and may subsequently be unable to negotiate a favorable agreement.[19] Even in a seemingly innocuous sense, the presence of a "strong personality," be it the persistent opposing counsel who attempts to prod tenants to accept unfavorable terms that are loaded with jargon, or the landlord who displays a haughty reaction to the process, may make it impossible to attain a favorable agreement.[20] Although tenants are more than capable of holding their own during interpersonal encounters of any kind (and advocates for increasing legal representation should not say otherwise at risk of sounding extremely paternalistic), the presence of another party with the tenant can remind the landlord and his attorney that the tenant is not alone and possibly "negate" the bravado of landlord's attorney. Many tenants already come well-prepared to shut down landlord attorney's legal quips and larger use of "legalese" to intimidate them. With a Right to Counsel, however, even more tenants may be able to distribute the labor of arguing certain legal claims and making certain decisions that may be a burden to make on one's own.

Another glaring disadvantage involves the logistical barriers of resource allocation to tenants. Requesting an interpreter, for instance, can often be a painstaking process. Given the sheer volume of dockets in civil court, the limited availability of interpreters for mediations may encumber a tenant's ability to mediate their own claims. Even though tenants have the right to request an interpreter, there have indeed been instances where landlords try to convince tenants that there is no need for an interpreter.[21] All of these factors create an environment where tenants feel compelled to accept an agreement that is contrary to their best interests.

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[17] *Id.*

[18] *Id.*

[19] *See id.*

[20] *See id.*

[21] This claim is based on my own advocacy in Housing Court in Boston. In one instance, a landlord attorney attempted to get a tenant to agree to a payment plan. When I had asked the landlord's attorney if I could go over the agreement with the tenant and ensure that it was proper and that they understood it (the tenant was Spanish-speaking), the attorney was perplexed—if not visibly annoyed. There also have been a handful of times when tenants came to volunteer student attorneys and told us of an instance where they did not know what they had signed onto, and they were not given an interpreter.

Owen M. Fiss's *Against Settlement* outlines core policy-based arguments that apply to the shortcomings of mediation in housing court.[22] An inequitable bargaining process will create an environment where "the settlement will be at odds with a conception of justice that seeks to make the wealth of the parties irrelevant."[23] Settlement is easily influenced by these disparities, as: 1) the party with less means "may be less able to amass and analyze the information needed to predict the outcome of the litigation," which could be remedied by some form of legal advice 2) the tenant may be "induced to settle as a way of accelerating payment" and 3) the tenant may be forced to settle because of the ways in which opposing counsel may impose additional expenses, along with the sheer financial burden of litigation alone.[24] Mediation also prevents tenants from experiencing their "day in court," especially since judges often requires mediation as a pre-requisite to court.

If tenants engage in mediation without representation while landlords retain legal counsel, landlords would possess disproportionate bargaining power, which presents a barrier to favorable outcomes within housing court. It would be reductionist to state that mediation provides *no* positive benefits to tenants. However, the lack of positive benefits for tenants stems from the structural deficit of legal representation and holistic services provided to tenants in housing court. If tenants were able to attain the full-scale representation that rights such as Right to Counsel would institute, there is a strong possibility that tenants would be able to attain favorable agreements through mediation. Mediation is and could be a positive venue for tenants, but until the severe disproportionate bargaining power inherent to housing court is addressed, the current normative outlooks on mediation in housing present glaring disparities in access.

C. Beyond the Bureaucracy

Inaccessibility is sanctioned not only by the bureaucratic shortcomings of housing court, but also by the lack of implemented policy recommendations that would alleviate congestion. The first of such policy recommendations is, of course, a Right to Counsel—but the Right to Counsel is but one tool. Policy recommendations gathered by the community and for the community have already embodied the legal critiques of mediation and of tenant blacklists, and much more.

In March 2013, Community Action for Safe Apartments (CASA) and the Community Development Project created a report titled *Tipping the Scales: A Report of Tenant Experiences in Bronx Housing Court*.[25] This report

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[22] *See* Owen M. Fiss, *Against Settlement*, 93 Yale L.J., 1073, 1075 (1984).

[23] *Id.* at 1076.

[24] *Id.*

[25] Comty. Action for Safe Apartments & Comty. Dev. Project, Tipping the Scales: A Report of Tenant Experiences in Bronx Housing Court (2013), https://www.rtctoolkit.org/docs/2/Report-CASA-TippingScales-full-201303.pdf [https://perma.cc/9S6X-MU8V].

was incredibly significant not only because of its exhaustive policy recommendations and empirical data, but because it also relied on the power of *tenant narrative* to show that systemic barriers were prevalent across the board. The report noted that almost eighty-five percent of tenants reported that "no one told them that they had the right to object to legal fees," while fifty-six percent of tenants reported that "no one explained their options if the landlord did not make repairs as promised in the agreement."[26]

CASA's organizing work does not only illuminate the nitty gritty details of bureaucratic shortcomings to legal processes. Rather, the report discusses basic shortcomings of inaccessibility in the courtroom that are often taken for granted or overlooked by those in positions of power. The report highlighted the pervasive lack of assistance from Bronx Housing Court personnel.[27] The report noted that, out of the tenants who participated in the project: "[fifty-four percent] of tenants were NOT helped by court personnel to get to the proper place in the court building; [fifty-three percent] of tenants reported that court personnel, including judges, did NOT explain rules or court procedures to them; [and] [d]uring judge observations, two-thirds of the courtrooms did not have any rules and procedures posted."[28]

The report's most highlighted policy recommendations included the following: increasing resources for tenant representation, requiring court attorneys to be present at negotiations, requiring judges to fully allocate stipulations before they are signed, requiring all court personnel to wear clear and visible IDs, improving quality of language access, improving procedural information given to tenants and information concerning rights, increasing information resources for tenants, providing childcare, and passing legislation to create a Repair Enforcement Board.[29] Although reform in the courtroom will not completely remove the complexities and emotional difficulties of going through housing court, addressing and naming these widespread barriers will allow advocates, organizers, lawyers, and other actors to be more proactive in understanding how the courtroom is not exempt from enabling forms of harm. As the courtroom is enabling injustice, the work of community organizations and coalition-building will allow for a truly impactful movement of demanding accountability, transparency, accessibility, and reform for those who rely on courtroom processes to maintain dignity and livelihood in a capitalist society.

II. Setting the Stage for Right to Counsel

The case to be made for Right to Counsel is fundamentally tied to the larger movement of housing as a human right. Every individual is deeply aware of the significance of housing to one's sense of identity, wellbeing, and

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[26] *Id.* at 14, 18.
[27] *See id.* at 11.
[28] *Id.*
[29] *See id.* at iii–iv.

livelihood. Housing is not an isolated issue. On the contrary, housing is central to other economic, social, and cultural rights.[30] Housing and prison abolition movements, for instance, go hand in hand: as formerly incarcerated individuals are unable to access affordable housing, a movement for prison abolition is a movement that remains tied to housing justice.[31] Housing and education are connected to wellbeing, as the quality of a child's home life and access to stable, affordable housing is directly tied to performance in school. Our collective narrative of the importance of a "house versus a home" highlights the conclusion that home is directly correlated to sense of belonging, which informs how we navigate our daily lives.

The right for an individual to maintain their human dignity is inherently tied to the right to housing. For so many social justice advocates, the notion that housing should be a human right is intuitive. However, because our nation views housing as "a commodity to be determined primarily by the market,"[32] housing as a human right would disrupt an existing model so heavily entrenched and reliant on profit before people. To say that housing is a human right, therefore, is to challenge an entire system—a system that landlords and corporate entities will fight to preserve. Yet, even though corporate regimes challenge the idea of housing as a human right, many legal practitioners nevertheless champion the Right to Counsel, finding the absence of such a right to be contradictory to basic jurisprudence.[33]

The reason that Right to Counsel is referred to as a "civil *Gideon*" is precisely because of its symmetry to the intent behind *Gideon v. Wainwright*.[34] As *Gideon* guaranteed every individual charged with a felony the right to an attorney regardless of their ability to afford one, a "civil *Gideon*" argument asserts that "in many civil cases, the stakes are as high as those in criminal cases, and consequently the concept of equitable access to justice is empty without a recognized right to counsel in these cases."[35] The invocation of *Gideon* has been a strategic means of highlighting that since a model of legal representation for indigent individuals already exists, a civil model is in the realm of jurisprudential possibility.[36]

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[30] *See* Martha F. Davis et al., *Introduction to the Symposium on Bringing Economic & Social Rights Home: The Right to Adequate Housing in the United States*, 45 COLUM. HUM. RTS. L. REV. 732, 732–37 (2014).

[31] Individuals with "criminal" records have dealt with constant systemic barriers to accessing vouchers through Section 8 programs, including overall individual biases of landlords who may openly discriminate against formerly incarcerated individuals on account of their record.

[32] ERIC TARS, NAT'L LOW INCOME HOUSING COALITION, HOUSING AS A HUMAN RIGHT, at 1-14 (2017), https://nlihc.org/sites/default/files/AG-2017/2017AG_Ch01-S06_Housing-Human-Right.pdf [https://perma.cc/96LQ-SFRK].

[33] *See generally* Andrew Scherer, *Why People Who Face Losing Their Homes in Legal Proceedings Must Have a Right to Counsel*, 3 CARDOZO PUB. L. POL'Y & ETHICS J. 699 (2006).

[34] *See* Gideon v. Wainwright, 372 U.S. 335, 343–44 (1963).

[35] Kleinman, *supra* note 2, at 1509.

[36] *See* John Whitlow, *Gentrification and Countermovement: The Right to Counsel and New York City's Affordable Housing Crisis*, 46 FORDHAM URB. L.J. 1081, 1117 (2019). According to Whitlow, *Gideon* and a "civil *Gideon*" are "rooted in dignitary considerations." *Id.* However, a right to counsel for housing carries more of an emphasis on positive outcomes in court, as

Arguments for Right to Counsel have been compelling insofar as they provide a viable framework to suggest that counsel for indigent tenants is legally permissible.[37] For instance, a rational basis test under an Equal Protection analysis is easy for a government actor to satisfy, should the following prerequisite exist: "[I]f a law neither burdens a fundamental right nor targets a suspect class, [a court] will uphold the legislative classification so long as it bear a rational relation to some legitimate end."[38] If a strict scrutiny analysis would be applied under the hesitation that the legislation would "burden" a right or discriminate against a suspect classification, an argument would have to made that would prove "either that the assistance of council is a fundamental right, or that discrimination based on wealth should be considered a suspect category."[39]

In New York City, other legal arguments have been added to basic Equal Protection analyses. Article XVIII of the New York State Constitution mandates that: "[t]he aid, care, and support of the needy. . . shall be provided by the state."[40] Judges even have direct agency in deciding how a right to counsel could be instituted in their own courtroom: Article 11 of Civil Practice Laws and Rules gives judges the "power to assign counsel to civil litigants who have sought leave to proceed as a [low-income] person when appropriate."[41] A Due Process analysis could be boiled down to a procedural argument: a tenant's property and liberty interests are at stake in an eviction proceeding, and the tenant therefore should be entitled to legal representation.[42]

A. The Policy Argument for Right to Counsel

There is a wealth of policy-based justifications for why Right to Counsel could have an enormously positive impact beyond tenants who are seeking equitable access. Harvey Gee notes that "landlords' knowledge that tenants would have counsel would probably encourage resolution rather than encourage protracted litigation. Attorneys are interested in efficient adjudications and saving their clients' money."[43] Judges and clerks also lament about the congested courtroom dockets that create the same conditions

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opposed to just due process. *See id.* Whitlow also notes with important consideration that right to counsel is in "contention with private power," and not just public power. *Id.* at 1118.

[37] *See* Kleinman, *supra* note 2.

[38] *Id.* (quoting Romer v. Evans, 517 U.S. 620, 631 (1996) (citation omitted)).

[39] *Id.* at 1509–10.

[40] Gee, *supra* note 7, at 99 (quoting N.Y CONST. art. XVII, § 1).

[41] *Id.* (quoting N.Y. C.P.L.R. 1102(a) (McKinney 2008)).

[42] *See* Kleinman, *supra* note 2, at 1511–12; *see also* Andrew Scherer, *Gideon's Shelter: The Need to Recognize a Right to Counsel for Indigent Defendants in Eviction Proceedings*, 23 HARV. C.R.-C.L. L. REV. 557, 561 (1988). Scherer's use of a liberty/property interest analysis is in response to *Mathews v. Eldridge*, 424 U.S. 319 (1976) (presenting a balancing test in determining due process for loss of property, which includes an analysis of the private interest that will be affected, the risk of erroneous deprivation of the interest, and the government's interest).

[43] Gee, *supra* note 8, at 100.

preventing tenants from having their narratives heard with respect and dignity. By instituting a Right to Counsel, which could disincentivize landlords from filing evictions, courts could one day reach a point where they operate less like "eviction mills" and more in a way that harbors "greater civility and greater respect of tenants' rights across the board."[44]

B. Criticisms of Right to Counsel

The long movement to bring Right to Counsel in so many cities begs the question: *why* has it taken so long for our decision makers to pass such legislation in hotspots like New York City? Many already know the answer: allowing such a program would fundamentally change the nature of Housing Court. Those who benefit from the status quo of inaccessibility would vehemently oppose such a change. Arguments made *against* Right to Counsel range from the "high" government cost, to the "high" cost to landlords, to increased incentives to litigate.

Although Right to Counsel advocates emphasize that "the government interest is served by the provision of counsel to indigents and increased equality with respect to access to justice," critics of Right to Counsel rely on the belief that "the financial cost to the government of providing legal services might arguably outweigh other government interests."[45] These critics also foresee that the provision of legal services could lead to "the revocation of any number of rights" when resources are scarce, such as in times of fiscal crisis.[46]

On the issue of cost, critics point to the burdens that landlords would face in response to a Right to Counsel. In a 1973 study on the effects of legal representation for indigent tenants in eviction proceedings in New Haven, John Bolton and Stephen Holtzer concluded the following:

> [T]he time differential created by lawyers' zealous representation of tenants puts financial burdens on landlords. Landlords facing tenants represented by counsel have increased legal fees of their own, and they do not receive rent from tenants pending the outcomes of these hearings. These costs . . . are then passed on to other tenants in the form of rent increases and poorer quality in housing conditions.[47]

This assertion that the cost of legal representation for all indigent tenants would paradoxically lead to poorer quality of living for indigent tenants, however, ignores the number of instances where eviction proceedings are halted or completely stopped due to advocacy. In situations where the proceeding is successfully settled or cured, the alleged detrimental effects

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[44] *Id.*

[45] Kleinman, *supra* note 2, at 1520.

[46] *See id.*

[47] *Id.* at 1521–22 (citations omitted) (discussing John Bolton & Stephen Holtzer, *Legal Services and Landlord-Tenant Litigation: A Critical Analysis*, 82 YALE L.J. 1495 (1973)).

articulated by Bolton and Holtzer are overstated.[48] In addition, those who argue that Right to Counsel would financially burden landlords largely ignore the reality that a Right to Counsel aims to ameliorate the already inherent disproportionate bargaining power between landlords and tenants. In other words, a Right to Counsel would level the playing field to some extent, and in the case of small landlords without such access, a Right to Counsel would perhaps provide tenants an opportunity for mediation and other forms of compromise that can prevent a long proceeding.

Finally, critics assume that the presence of a Right to Counsel would create an "overly-litigious society."[49] Namely, tenants would bring "frivolous claims" or put forth "unmeritorious defenses."[50] This argument fails because tenants do not begin eviction proceedings, so the assertion that they would bring forth frivolous claims ignores the structure of eviction cases.[51] Additionally, such a contention ignores the obligations and duties of the lawyer in this model—based on the rules of professional conduct, lawyers are advised not to litigate frivolous claims. Ultimately, this fear of an increased "incentive to litigate" ignores the fundamental purpose of a right to counsel: it is a means for tenants to have a *defense* mechanism against the possibility of displacement and houselessness.

All of these arguments against Right to Counsel simply belie a hesitation and unwillingness to be more intentional in fighting the underlying systemic forces that have allowed such disparity to exist. The hesitation is the result of a reactionary politic that does not view the courtroom as a site for building tenant power. Right to Counsel would mean that courts would be forced to acknowledge the ways they have allowed landlords to manipulate the legal system to their advantage and would have to dramatically alter themselves in response to tenant demands.[52]

C. *Addressing Lingering Criticisms of Capacity of Right to Counsel as Social Change*

Right to Counsel guarantees tenants the right to full legal representation while enduring the trauma of an eviction proceeding. The tool of Right to Counsel, which provides tenants with every possible resource to maximize the chance of preventing displacement, is of course one part of a larger process of tackling mass displacement and landlord-corporate power. However, lawyers and legal professionals should take care to avoid viewing legal repre-

[48] *See id.* at 1522–23.

[49] *Id.* at 1523 (citing DEBORAH L. RHODE & DAVID LUBAN, LEGAL ETHICS 253, 727 (2001)).

[50] *Id.*

[51] *See id.*

[52] Perhaps the system itself is already designed to do what it has been doing. Invited by the Harvard College Project for Justice, Yusef Salaam remarked that "criminal justice reform" is a misnomer because the system is "doing exactly what it was designed to do," which is to sustain a prison-industrial complex. Yusef Salaam, "When They See Us: A Conversation with Dr. Yusef Salaam," (Oct. 22, 2019).

sentation itself as the sole solution to mass displacement. Lawyers who operate under such a limited understanding of the movement will not interrogate the larger structural inequalities present in the housing justice landscape.

John Whitlow's *Gentrification and Countermovement: The Right to Counsel and New York City's Affordable Housing Crisis* explains many of the critiques of an over-emphasis on Right to Counsel.[53] Whitlow cautions against viewing representation as a remedy to structural racism and other "isms" by pointing to Paul Butler's argument in *Poor People Lose: Gideon and the Critique of Rights* that "an over-investment in rights [in this context] diverts attention from necessary political-economic and racial critiques of the criminal justice system, as well as the critical solidarity-building and organizing efforts that are required to change it."[54]

By naming the potential pitfall of losing sight of the underlying political-economic and racial critiques of the affordable housing landscape, Whitlow also leaves space for a complementary perspective of the benefits of such intentional legal rights-oriented movements championed by individuals like Kimberlé Crenshaw:

> [S]ocial movements have deployed legal rights as a central organizing feature, insofar as the use of a rhetoric of rights becomes a potent movement-building act for people who have been constructed as right-less. In addition to rights signaling a sense of belonging to those who have been excluded from the body politic, a discourse of legal rights can mobilize group action, as well as provide an agenda for group mobilization.[55]

Those who pinpoint certain legal rights as the resolution to a larger systemic issue will fail to see the underlying structural frameworks that allow such systemic issues to exist. At the same time, those who discount the importance of a legal rights-oriented movement are also perpetuating harms. So often, critiques of rights-oriented movements are made by those who enjoy positions of privilege and do not realize that having access to legal representation is indeed a massive win for disenfranchised communities who are already at a severe disadvantage in the court system.[56] Indeed, Whitlow recognizes the shortsightedness of such perspectives by offering the powerful perspectives of Susanna Blankley:

> [T]he RTC Coalition sees Housing Court as a piece of a broader political-economic puzzle that is structured by deep-seated power

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[53] Whitlow, *supra* note 36.

[54] *Id.* at 1119 (discussing Paul Butler, *Poor People Lose: Gideon and the Critique of Rights*, 122 YALE L.J. 2176, 2196–97 (2013)).

[55] *Id.* at 1121 (discussing Kimberle Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1365 (1988)).

[56] Of course, using the "master's tool" is never a truly radical means of enabling social change. At the same time, however, allowing for the possibility of tenants to be able to even *have* the option of legal representation is perhaps better than no representation at all.

> imbalances. For the RTC Coalition, the right to counsel is a means to protect tenants from eviction, although that is important. It is a tool to help subordinated people articulate a collective narrative of their systematic mistreatment by a legal system that favors landlords, in a political economy dominated by real estate. Through the expansive framework of the right to counsel that is deployed by the RTC Coalition, tenants come to see their grievances as commonly held, and they can consequently build solidarities that enhance their organizing capacity.[57]

It is crucial to recognize the power of collective narrative as an organizing strength and as a form of solidarity-building for larger movements within housing justice. The ability for tenants to speak their truth, to live with dignity, and to be able to fight back against landlord attempts to strip them of their livelihood is a powerful ability indeed—and one that ought to be protected within the Right to Counsel movement. One must simply return to the values underlying Right to Counsel and its role in the fight for affordable housing: housing should be a human right, and every tenant should be able to enjoy the values of home that are prominent within our nation's social fabric.

Hesitation surrounding Right to Counsel is part and parcel of the underlying structural issues that sustain inequities within the current system. Part III will touch upon these structural and systemic inequities that have spurred organizers to action.

III. Racial Capitalism and the Affordable Housing Crisis

The call for Right to Counsel is inextricably linked to the rise of gentrification and increasing cost of living for historically marginalized communities. In New York City, low-income communities of color face the brunt of gentrification as transplants and non-native New Yorkers move to the city. The discourse on gentrification and its impact on the accessibility of affordable housing has been at the forefront of urban law and policy throughout major cities.

The history of evictions and the nature of the power imbalance that lends to landlord-corporate power is linked to access to wealth, capital, and privilege. These connections are legitimized by current legal regimes. In property law, for instance,[58] the definition of what is deemed "valuable"[59] and

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[57] *Id.* at 1129 (discussing Susanna Blankley, *The Right to Counsel Is an Important Victory*, Socialist Worker (June 25, 2018), https://socialistworker.org/2018/06/25/the-right-to-counsel-is-an-important-victory [https://perma.cc/2WQW-TQKW]).

[58] *See generally* Cheryl Harris, *Whiteness as Property*, 106 Harv. L. Rev. 1707 (1993).

[59] *Id.* The dehumanization of such subjects in order to assign them "value" as means of production to fund white profit has remained clear with respect to chattel slavery as the bedrock of property law. I bring Harris's scholarship to remind that the nature of property law is not a neutral matter: it was intentionally built as a project of maintaining the white supremacist

who is able to own property[60] have been directly tied to a common system of disenfranchisement that has burdened communities of color through the history of the United States.

The phenomenon of gentrification in New York City has stretched from Brooklyn all the way to 125th Street. The association of Brooklyn with hipsters and the common adage among communities of color, "there goes the neighborhood," both speak to this fact. As a result of gentrification, the material landscape of the city has changed: neighborhood bodegas[61] that reached the same age as many of the neighborhood elders either shut down or remodeled to cater to the vegan, gluten-free diets of newly arrived transplants. Costs of living that were already insurmountably high skyrocketed in response to a massive influx of students, start-up tech company employees, and freelancers consuming new urban frontiers as material for their art form.

Although discourse on gentrification is not new, it is crucial to point out underlying systems of power that unite with gentrification to produce systemic marginalization of low-income tenants of color. Such systems of power are not only the result of market-driven factors, but also of ascribing normative societal value to whiteness. In saying this, I primarily would like to draw attention to not only what makes gentrification brutal for low-income communities of color (particularly Black communities), but also to why neoliberals legitimate gentrification. Neoliberals and liberals alike see gentrification as "the inevitable" and thus condone their own movement into areas where low-income communities of color are facing rapid displacement. Liberals and neoliberals are unexpected allies in condoning and benefitting from the displacement and rapid transformation of Black and brown communities. Even if one may harbor good politics, at the end of the day, displacement is a bipartisan project.

Rather than repeating the oft-discussed historical narrative of the affordable housing crisis, which includes the history of predatory lending[62] and

notion of racial subordination. To discuss housing, which is a property law issue, is to remind ourselves that this conversation is tied to racial justice.

[60] Harris also argues that whiteness and property both share a "right to exclude," and that whiteness as property has evolved to become a "legal legitimation of expectations of power and control" that "enshrine the status quo" through a codification of white privilege. *Id.* at 1714–15. The "visibility" of whiteness even in space and place is precisely how gentrification is able to become a successful initiative by an elite seeking to completely displace communities that deviate from such norms.

[61] *See* Ethan Davison, *The Future of the Bodega is Clear*, CURBED N.Y. (Oct. 23, 2019), https://ny.curbed.com/2019/10/23/20925428/nyc-bodega-corner-store-design [https://perma.cc/8QK2-7BL6]*; see generally* Whitlow, *supra* note 36.

[62] *See* Nikitra S. Bailey, *Predatory Lending: The New Face of Economic Injustice*, A.B.A. (July 1, 2005), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/human_rights_vol32_2005/summer2005/hr_summer05_predator/ [https://perma.cc/A7D6-LTNE]*; see also* Sandra Phillips, *The Subprime Crisis and African Americans*, 37 REV. BLACK POL. ECON. 223 (2010). The foreclosure crisis and 2008 housing market crash generally had various contributing factors that underscore "misconduct by those within the financial services industry and a lax regulatory environment that allowed abusive products and practices to be developed and expanded." *Id.* at 226. Among these factors include: "decades of housing and lending discrimination that led to the exponential growth in abusive subprime

redlining,[63] I offer a parallel analysis by utilizing discourse on the system of power that has allowed the affordable housing crisis to reach exorbitant highs in urban centers like New York City: racial capitalism. The use of racial capitalism to describe the necessity for Right to Counsel emphasizes that low-income communities of color are not only being devalued and rendered expendable by an elite, but that they are also being paradoxically valued for the social and material capital they provide to this predominantly white elite.

The concept of "racial capitalism" is attributed to Cedric Robinson's prominent text, *Black Marxism: The Making of the Black Radical Tradition*.[64] In his text, Robinson makes the powerful claim that capitalism and racism are *not separate* axes of power. Rather, he asserts:

> In contradistinction to Marx's and Engels' expectations that bourgeois society would rationalize social relations and demystify social consciousness, the obverse occurred. The development, organization, and expansion of capitalist society pursued essentially racial directions, so too did social ideology. As a material force, then, it could be expected that racialism would inevitably permeate the social structures emergent from capitalism.[65]

Robin D.G. Kelley, another brilliant figure closely acquainted with Robinson's teachings, further explains that capitalism and racism "did not break from the old order but rather evolved from it to produce a modern world system of 'racial capitalism' dependent on slavery, violence, imperialism, and genocide."[66] Capitalism cannot be divorced from its codependence on racism. Racism cannot be divorced from its codependence on capitalism.

Applying this framework to the urban landscape, the role of gentrification as a capitalist means of displacement inextricably implies racism. In New York City, predominantly Black neighborhoods like Bedford-Stuyve-

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loans, the deregulation in the financial sector . . . , lack of adequate regulations in the mortgage lending sector, failure to enforce existing consumer protection laws, the unchecked close relations between rating agencies and companies packaging mortgages and selling securities, and failure of the Securities and Exchange Commission (SEC) to oversee the brokerage firms." *Id.* at 228–229. Paradoxically, "predominantly [B]lack and Latin[e] communities shifted from being objects of *economic exclusion* to targets for *financial exploitation* by intermediaries seeking to expand the pool of loans available for securitization." *See* Justin P. Steil et al., *The Social Structure of Mortgage Discrimination*, 33 HOUSING STUDIES 759, 761 (2018) (emphasis added).

[63] *See generally* Phillips, *supra* note 62. Redlining reflects a process of rating and assigning risks for loans to be used on refinancing or reversing the dangers of foreclosure. *See id.* at 224. The word "redlining" is a nod to the literal drawing of a red line on a map "to distinguish those neighborhoods where lending would occur from those neighborhoods where no lending would take place—'banks would not make loans to areas that were [B]lack, turning [B]lack, or threatened with the possibility of [B]lack entry.'" *Id.*

[64] CEDRIC ROBINSON, BLACK MARXISM: THE MAKING OF THE BLACK RADICAL TRADITION (Univ. of N.C. Press 2000) (1983).

[65] *Id.* at 2.

[66] Robin D.G. Kelley, *What Did Cedric Robinson Mean by Racial Capitalism?*, BOS. REV. (Jan. 12, 2017), https://bostonreview.net/race/robin-d-g-kelley-what-did-cedric-robinson-mean-racial-capitalism [https://perma.cc/EDJ4-HXZD].

sant have been converted into a site where "hipster" transplants seek housing for lower market-value rents than they could find in other (predominantly white) neighborhoods. Paradoxically, sites that have historically been undermined by systemic racism become a site of profit for white tenants seeking to extract benefits from nonwhite residents. This is effectively racial capitalism at work. With racial capitalism looming in the backdrop of the housing market and threatening the quality of life of nonwhite residents, a Right to Counsel would provide residents with the tool to fight back against this landlord-corporate power and to operate effectively in entities like tenant associations without fear of retaliation. Even though the presence of a lawyer would not reduce the instances of exploitation and appropriation through racial capitalism per se, the availability and accessibility of legal representation would allow tenants additional resources to contest and fight back against evictions caused by waves of gentrification.

Racial capitalism is inherently violent. When self-professedly liberal/progressive "hipsters" gentrify neighborhoods while paradoxically donning "Black Lives Matter" pins, they might have trouble viewing the immediate *violence* of this occupation in the same way that they would view the genocide and conquest that formed the basis for racial capitalism. To help situate this paradox of a liberal elite enacting violence while touting solidarity with those directly burdened by racial capitalism, I would like to point to Nancy Leong's "Racial Capitalism." Leong's text defines racial capitalism as "the process of deriving economic and social value from the racial identity of another person."[67] Leong uses as a case study institutions that tout commitment to people of color, yet profit from them while offering them little support. In doing so, Leong illuminates a form of contemporary racial capitalism where "white individuals or predominantly white institutions exploit relationships or affiliations with nonwhite individuals in order to accumulate for themselves the capital associated with nonwhiteness."[68]

Leong's analysis is mostly relegated to conversations on affirmative action and its utilization by white institutions. Affirmative action is enormously beneficial in remedying past injustice, but when white institutions leverage nonwhite bodies as a diversity selling point to bolster the institution's own legitimacy and profitability, that is simply racial capitalism at work.[69] This example, along with other systemic commentary, aims to show that racial capitalism is a system where white institutions determine what they deem as the "selling points" of communities of color, and figure out how to leverage that into a source of capital and profit. These institutions

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[67] Nancy Leong, *Racial Capitalism*, 126 HARV. L. REV. 2151, 2156 (2013).

[68] *Id.*

[69] *See* Sean Illing, *How Capitalism Reduced Diversity to a Brand*, VOX (Feb. 16, 2019), https://www.vox.com/identities/2019/2/11/18195868/capitalism-race-diversity-exploitation-nancy-leong [https://perma.cc/QZ9J-A88G]. Illing details how racial capitalism is predominantly manifesting within higher education and academia in general. Examples include the use of diversity media campaigns to highlight that an institution's acceptance of students of color as somehow denoting that the institution is aligned with values of inclusiveness, equality, and community. Such institutions often ignore the exact needs of these same students.

further remove the agency and autonomy of nonwhite communities under the guise of a mission of "diversity" or other larger social visions of community development.

In discussing the diversity rationale in relation to racial capitalism, Leong states that racial capitalism "values nonwhiteness in terms of its worth to white people."[70] Even further, she postulates that rationales related to racial capitalism "confers on white people and predominantly white institutions the *power* to determine the value of nonwhiteness."[71] Nonwhiteness, however, is "valued in terms of what it adds to white people's experiences or endeavors," leading white people to "determine what nonwhiteness is worth."[72]

This assignment of value to nonwhiteness is directly relevant to the functioning of the real estate market. The relative attractiveness of particular communities of color to transplants and the overall "allure" of the Other to the gaze of a white elite seeking to partake in a new urban landscape are key drivers of racial capitalism. Nonwhiteness has always been present in neighborhoods across the country. What is new is that the addition of whiteness to traditionally nonwhite spaces is now characterized by buzzwords and phrases such as "up and coming neighborhoods"—a statement implying that prior to the introduction of white institutions, white bodies, and the white elite's gaze, the community was not of the same proximate "value." With neighborhoods like Bushwick and Bedford-Stuyvesant quickly converting to zones of kava cafés and white-owned dive bars, the inflow of white residents who seek to increase their own wealth while consequently *surging* the cost of living for Black and brown residents is increasing drastically. This will cause New York City to become unlivable for the people of color who were there first. It is precisely this phenomenon that causes countless proceedings in housing court: landlords increase property value after performing renovations to attract white transplants (where white transplants are entranced by the "aesthetic" of Black communities as a site of appropriation by occupation), and with that, those who cannot keep up with the rising cost of living are forced to relocate or face housing insecurity.

Even if Leong's racial capitalism analysis was predominantly rooted in adding value to an elite institution based on a diversity rationale, the core of her analysis can be applied to the housing context to produce the following observations: 1) the reason gentrification is occurring is because certain communities are now looked upon with an eye toward how they can be rebranded to contribute "value" to a gentrifying elite, 2) the forces of market demand, real estate, and physical development of new units are reliant on what a gentrifying elite sees as a profitable site for bourgeois interests, and 3) the "diversity" of communities that are gentrified seemingly "enriches" the

[70] Leong, *supra* note 67, at 2170.
[71] *Id.* at 2171.
[72] *Id.*

lived experience of a gentrifying elite that then dilute such communities into a space easily consumed by transplants.

This same paradigm is exactly what contributes to the need for Right to Counsel. Low-income communities of color are directly impacted due to racial capitalism in New York City. Eviction proceedings and the extensive dockets in civil court confirms that this demographic is the most heavily impacted by racial capitalism. Right to Counsel's effects in this sense allows it to be a tool of racial justice and a tool of dismantling the hegemony in the affordable housing crisis—a hegemony that impacts Black and brown communities that have long thrived prior to the severe disruption of displacement projects. Instead of being pushed out of their communities because of racial capitalism at work, long-term residents would be able to leverage legal representation to effectively contest a landlord's attempt to displace them. This, combined with collective action via tenants' associations, creates a larger messaging to gentrifying communities that it is *possible* to fight back against the forces that aim to devalue their existence through profit.

IV. The Demands Of The Right to Counsel Movement

The Right to Counsel movement converts an understanding of the systemic trauma and mass displacement attendant to evictions into concrete demands and agendas through organizing. The Right to Counsel NYC Coalition's organizing capacity is unique and powerful in its ability to create a large alliance of members contributing their own resources, experiences, and expertise in a holistic mission for housing justice. The Coalition's work itself is not solely focused on achieving a right to counsel for tenants in housing court: rather, the Coalition's work views Right to Counsel as one tool of a larger movement. To further this outlook, the Coalition's organizing structure and governance is designed to respond in real time to urgent issues impacting tenants across the five boroughs while also remaining focused on pushing legislators to create a Right to Counsel in New York City.

One of the most powerful assets of the Coalition's work is a virtue attributable to powerful on-the-ground grassroots organizing: it recognizes that its movement is a part of a national struggle and that, because of this, its strategies and successes should be made available as a form of institutional knowledge for other coalitions. The Right to Counsel NYC Coalition attempted to make this knowledge a collective platform by publishing The Right to Counsel Toolkit.[73] This resource reminds other coalitions that although material circumstances may differ from city to city,[74] the underlying issue is the same: tenants throughout the nation are not able to access the

[73] *See* Right to Counsel Toolkit, https://www.rtctoolkit.org/ [https://perma.cc/XM92-ZBB5].

[74] *See 11. Celebrating and Documenting Your Win*, Right to Counsel Toolkit, https://www.rtctoolkit.org/chapters/11-celebrating-and-documenting-your-win/ [https://perma.cc/EH3B-VRW8].

courtroom, to honor their narrative, or to maintain dignity in the face of the trauma of the eviction process. Part IV of this Article will discuss the campaigning and organizing strategies that the Right to Counsel NYC Coalition utilized. The Right to Counsel NYC Coalition's framework is an admirable example of organizing led by tenants for a cause that directly impacts tenants.

A. Players in the Field

Housing is inextricably linked to many other on-the-ground movements. The Right to Counsel NYC Coalition,[75] led by tenants and with a deeply rooted understanding of the precarity of tenants' position in this citywide struggle, describes itself as an organization composed of "law schools, legal services organizations, tenant advocacy groups, and tenant organizing groups."[76] For the Coalition, membership is extended to "any organization that does direct advocacy and/or organizing around issues of housing and displacement in NYC and is committed to building tenant power in NYC."[77] This allows for extensive cross-community collaboration and capacity building that does not exclude any coalition living in the same "world" of tenant organizing. Members hold decision-making capacity within the Coalition.[78] The Coalition also accepts supporters within their organizing model. Supporters are described as "an individual or an organization that cannot commit time or resources to the regular meetings or planning of events, but supports the Coalition's goals."[79]

The decision-making structure of the Coalition reflects the ethos of a true collective organism. Decisions are made by general consensus, with decision-making often taking place at monthly meetings.[80] To foster true solidarity, the Coalition created a structure where brainstorming sessions, forums, and public forums ensure that tenant groups and tenants who are not "official" members of the Coalition can contribute their expertise and be a part of the collective power of movement-building.[81]

The Coalition itself is divided into three committees: the Research and Data Committee, the Community Organizing Committee, and the Legal Services Model Committee. Many of the meetings feature break out groups among these committees, which are a crucial means of disseminating updates on the Coalition's work, plans, and events in different boroughs. The purpose of the committees includes an overall assessment and internal scan of what resources are available. The Legal Services Model Committee, for

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[75] I will refer to the Right to Counsel NYC Coalition as the Coalition, or at times, the Right to Counsel Coalition.

[76] *See Tool 3.1 RTCNYC Coalition*, RIGHT TO COUNSEL TOOLKIT, https://www.rtctoolkit.org/docs/3/RTCNYC%20Structure.pdf [https://perma.cc/73QX-QB5G].

[77] *Id.*

[78] *See id.*

[79] *Id.*

[80] *See id.*

[81] *See id.*

instance, could provide a wealth of resources through its own capacity-building: access to legal research mechanisms, publicity models through close relationships with consulting and public relations firms,[82] and rapport with Bar Associations are useful resources to draw upon.

The Coalition has been able to build a robust community of tenants, organizers, lawyers, students, and advocates who are committed to providing resources and capacity to a tenant-led movement seeking to implement a Right to Counsel alongside other necessary reforms for housing justice. As these key players are incorporated into the organization's structures, the ongoing pieces of the movement allow for these players' assets and access to resources to be leveraged to the benefit of activating necessary allies and audiences for the Right to Counsel NYC Coalition's mission.

B. Pieces to the Movement

The pieces of the Right to Counsel NYC Coalition's own movement for their historic win might be specific to the needs of citywide tenants during that moment, but may still nonetheless be referenced and utilized by other coalitions seeking a right to counsel in their own cities. Many of the tools of the organizing strategy are applicable to successful organizing campaigns, with the understanding that such a movement necessitates an active power analysis.[83]

The different agencies and institutions that the Coalition had targeted as part of its campaign strategy included the Office of the Administrative Justice Coordinator, the Comptroller, NYCHA, HPD, and the Department of Youth and Community Development (to name a few).[84] This clear idea of which actors would lend crucial support to movement meant that the Coalition was able to execute clear cut media campaigns and outreach strategies that would skillfully present the mission of the Coalition in a way that intersected with the target institution's goals.

The overall strategy of the campaign became the following: outreach to tenants/members, outreach to secondary targets (i.e. state elected officials), outreach to a primary target (the mayor), platforms for tenants to tell their stories, addressing opponents, and garnering media appearances.[85] The more that the Coalition organized and established such relationships, the more the

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[82] *See Tool 3.2: How to Leverage the Power of Institutional Members*, RIGHT TO COUNSEL TOOLKIT, https://www.rtctoolkit.org/docs/3/Leveraging%20the%20Full%20Power%20of%20Your%20Coalition.pdf [https://perma.cc/6U5B-UAEV].

[83] The Coalition discusses the importance of a constant power analysis, particularly in Chapter 4 of its toolkit: Campaign Strategy, Development and Implementation. *See 4. Campaign Strategy, Development and Implementation*, RIGHT TO COUNSEL TOOLKIT, https://www.rtctoolkit.org/chapters/4-campaign-strategy-development-and-implementation/ [https://perma.cc/32CN-4CYH].

[84] *See Tool 4.3: Outreach to Agencies and Institutions*, RIGHT TO COUNSEL TOOLKIT, https://www.rtctoolkit.org/docs/4/Outreach%20to%20Agencies%20and%20Institutions.pdf [https://perma.cc/MT2D-69K8].

[85] *See Tool 4.1: Campaign Plan*, RIGHT TO COUNSEL TOOLKIT, https://www.rtctoolkit.org/docs/4/RTC%20Campaign%20Plan.pdf [https://perma.cc/Q9XG-DC2E].

Coalition created an extensive resource archive of presentation materials, sample letters and outreach materials, and memos of support.[86]

The key framing used by the Coalition revolved around a description of Right to Counsel as a *right*. This framing as a "right" was meant to push elected officials and other allies to be more proactive about instituting the movement's demands. This framing is crucial not only because it conveys the movement's urgency but also because it affirms the dignity of tenants who are consistently disenfranchised and abused in housing court. The framing of Right to Counsel as a right rather than as a discretionary expansion of funding is not just a tool to impress urgency upon decision-makers and audiences who are not entirely familiar with the movement or its platform. Rather, these campaign tactics involved the Coalition's mission to stay true to its identity as a tenant-led movement and continue to put tenants' voices front and center.[87]

The Coalition used a combination of outreach, solidarity-building, legislation-lobbying, and public pressure through media to achieve its goals.[88] A media plan is essential to spreading awareness about the issue to those who may have little to no knowledge of the necessity of a Right to Counsel. The Coalition's intent was to create its own publicity to engage the public, to share information about the progress of the campaign, and to "create and control [its] own narrative."[89] The Coalition's effort to create media highlighting tenant power efforts and on-the-ground work can be seen as a radical focus on disenfranchised communities that are usually not afforded screen time in elite-controlled mainstream media.

V. Tactics of the Right to Counsel Movement

The Right to Counsel NYC Coalition also employed tactics designed to combat landlord-corporate power. Through the use of visual data, the power of narrative, and calls for accountability, the Right to Counsel movement was able to reach new highs in its ability to spread knowledge and awareness of the deeper systemic barriers at hand in eviction processes.

The Coalition's knowledge sharing focused on illuminating the egregious actions of landlords and corporate actors through the City, particularly their reputation for evicting record numbers of tenants. These actions not only led the Coalition to bring this behavior to the forefront of its model of showing *why* Right to Counsel is needed to tackle such actors, but also led

[86] *See 5. Conducting Institutional Outreach and Building Allies*, Right to Counsel Toolkit, https://www.rtctoolkit.org/chapters/5-conducting-institutional-outreach-and-building-allies/ [https://perma.cc/D795-NS7T].

[87] *See Mobilizing Communities*, Right to Counsel Toolkit, https://www.rtctoolkit.org/chapters/8-mobilizing-communities/ [https://perma.cc/N6Z2-533K].

[88] *See 10. Garnering and Creating Media*, Right to Counsel Toolkit, https://www.rtctoolkit.org/chapters/10-garnering-and-creating-media/ [https://perma.cc/L425-59J6].

[89] *Id.*

tenants across the city to share their narratives as part of a mission of housing justice. Such tactics are the focus of Part V of this Article.

A. The People's Tribunal

Landlords utilize summary court processes dockets and credit checks as a resource for screening tenants. These screening devices not only effectively prevent tenants from accessing fair, affordable housing, but they also create a more extensive network of knowledge for landlords. In light of this paradigm, the Right to Counsel Coalition in New York City partnered with allies to create institutional knowledge of the harms perpetuated by large-scale landlords.

The "Worst Evictors List" is an example of the Right to Counsel movement's efforts to create large-scale knowledge of "repeat players" in housing injustice. This list used extensive empirical data gathered from summary process outcomes and dockets. Just as landlords use this data to screen tenants, tenants have re-appropriated court data as a way to create visibility into exploitative landlords' tactics. The website is a powerful tool that is easily accessible as a URL: worstevictorsnyc.org.[90] Not only does the website put pressure on landlords looking to maintain their credibility in the city, but it is also a way for tenants to feel a sense of camaraderie and solidarity if one of the landlords listed is indeed their own.

NYC's Worst Evictors welcomes visitors to the site with the following preliminary context and mission:

> Right to Counsel (RTC) is a law passed in New York City in 2017, giving tenants the right to an attorney in housing court. It will be fully in effect by 2022, and is currently being phased in by neighborhoods. The first 20 neighborhoods to have RTC were chosen by the city, in part, because they have some of the highest rates of eviction.
>
> After one year of RTC, evictions are down, landlords are suing people less, and almost everyone who had an attorney through RTC stayed in their homes. We are also seeing tenants across the city fight landlord abuse, with bold actions like rent strikes, because they know RTC will protect them if the landlord retaliates.
>
> But in order for RTC to remain powerful, tenants have to know about this right. There are 345,000 renter households in the 20 neighborhoods that currently have RTC. Many of these tenants don't know about the new RTC law. Also, because evictions are terrifying and traumatic, many tenants choose to move out instead

[90] *See generally* NYC's Worst Evictors, https://www.worstevictorsnyc.org/ [https://perma.cc/UA9Z-5LC6].

> of to fight their case. Landlords know this and sue thousands of people betting on tenants' fear. We shouldn't let them.
>
> We created the RTC Worst Evictors List as a call to action. This list focuses on the landlords who carry out evictions in neighborhoods where tenants currently have RTC. We want tenants who have this new right to know about it, use it, and fight to stay![91]

The Worst Evictors List was generated using holistic data of residential evictions executed by City Marshals in 2018.[92] The information regarding landlords and other entities marked as responsible for mass evictions was gathered through HPD Registrations and HPD Contacts datasets.[93] The data sources collectively involved HPD Registration and Registration Contacts, Marshals Evictions Data, Evictions Filing Data from the Public Advocate's office, ACRIS lender data, building unit counts from Pluto 18v1 (Department of City Planning) and rent stabilization unit estimates from taxbills.nyc.[94]

The descriptions of legal representation for the Worst Evictors were gathered through the New York State Unified Court System database of cases; the compilation of accounts related to each landlord and their dense volume of evictions was gathered through press news and accounts from tenant associations and organizers.[95] The significance of NYCHA evictions and the sheer amount of evictions that also occur for tenants who lose their public housing (and may also lose their Section 8 vouchers) illuminate the breadth of data gathered to compile this website. The possibility of this data aggregation was made possible through collaborative efforts between the Right to Counsel Coalition, JustFix.nyc, and the Anti-Eviction Mapping Project.[96]

The Worst Evictors List can be accessed either as a map or as a list broken down citywide or by Right to Counsel zip code.[97] The list breaks down the landlord statistics through the following sets of data: number of evictions, the number of families housed, the number of families sued, the number of lawsuits per family, and the percentage of units that are rent-stabilized.[98] The list also details who funds the landlords and lists the legal

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[91] *Id.*

[92] *See id.*

[93] *See id.*

[94] *See id.*

[95] *See id.*

[96] JustFix.nyc is "a nonprofit that builds technology and support . . . for over 50 long-standing tenants rights organizations, legal aid, and neighborhood groups." *About This Project*, NYC'S WORST EVICTORS, https://www.worstevictorsnyc.org/about/ [https://perma.cc/5J22-8YTJ]. The Anti-Eviction Mapping Project is "a volunteer-run data visualization, data analysis, and storytelling collective documenting the dispossession of residents in gentrifying landscapes." *Id.*

[97] Note that this list is based on data from 2018 alone.

[98] *See About This Project*, *supra* note 96.

representation utilized by the landlord.[99] Under each landlord's statistical breakdown, the Coalition gives a brief description of the landlord's history of eviction tactics, as well as detailed instances of when other Tenant Coalitions have attempted to demand that the landlord cease specific tactics within and outside their units. The Coalition also encourages tenants who have had experiences with the landlord to reach out directly to the Coalition as an organizing effort.

The Worst Evictors List is an exemplary tool of tenant power: digital media and empirical data becomes a site for knowledge sharing, for coalition-building, and for a call to organize and create wider implementation of Right to Counsel in New York City. The byproduct of the website is a form of putting landlords on notice for their practices and a larger accountability process by coalitions who have demanded basic housing rights within localized movements. Similar to a bad Yelp review, the Worst Evictors List is a tool that other tenants can use to steer clear of the landlord. Additionally, highlighting egregious practices strip the landlord's business of its credibility and legitimacy. By putting such landlords on the map (quite literally), the Right to Counsel Coalition reminds tenants of the power of organizing in numbers, and removes the fear that may often accompany the desire to hold landlords accountable for their practices.

The Worst Evictors List's goal to illuminate the conduct of landlords citywide has not been pursued solely to the website and its tracking system. The Right to Counsel NYC Coalition, along with tenants across the city, decided to emphasize the urgency and severity of mass evictions by creating events like the "People's Tribunal on Evictions."[100] The Right to Counsel Coalition members described the event as the following: "In NYC, landlords try to evict hundreds of thousands of people every year. It's time we put them on trial for the eviction crisis in NYC."[101] The event itself, which is available as a digital recording, allowed tenants to present specific egregious actions of landlords who are notorious for mass evictions. Interpreters were able to translate the mass scale of evictions in languages like Haitian Creole and Spanish. Prior to the Tribunal, tenants were invited to attend a Tenants' Rights Info & Resource Fair, which gave additional opportunities for tenants to collectively organize and find legal and community-based resources for landlord-tenant disputes.[102] By using the rhetoric of "putting landlords on trial," the movement leveraged community power to expose landlords on a mass scale for their actions in a way that could harm their personal and business reputations. This strategy is a way to boost tenant morale, to high-

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[99] *See id.*

[100] *See* Alyssa Figueroa, *Save the Date! People's Tribunal on Evictions!*, RIGHT TO COUNSEL TOOLKIT, https://www.righttocounselnyc.org/save_the_date_people_s_tribunal_on_evictions [https://perma.cc/C99M-3ZYF]. *See also*, "The People's Tribunal Jury Indicts Landlords and the City on Charges Against Tenants' Rights," RIGHT TO COUNSEL COALITION, https://www.righttocounselnyc.org/the_jury_indicts_landlords_and_the_city [https://perma.cc/2CBK-4GPV].

[101] *Id.*

[102] *Id.*

light the violence of eviction, and to create institutional memory for movements.

All of these tools used by the Right to Counsel NYC Coalition and other movements in tandem reveal that effective organizing does not only have to take place in the courtroom or through lawyering. The movement's ability to highlight the most egregious evictors in New York City, create robust paper trails to document these patterns, and create spaces for sharing narratives builds morale for the Right to Counsel movement while also shifting shame away from tenants. As the eviction process can leave many tenants feeling a sense of shame and hopelessness, these organizing tactics remind tenants that the true shame should be redirected to the private, for-profit entities that attempt to remove access to affordable housing. This is a way to build up tenant power and to build up a community movement.

B. *When We Fight, We Win!*

On July 20, 2017, forty-two council members voted to pass Right to Counsel in New York City. The bill was signed into law on August 11, 2017.[103] Local Law 136 (file Int. 0214-2014B)[104] provides clear information on what legal services are guaranteed under Right to Counsel in New York. Full legal representation is defined as "ongoing legal representation provided by a designated organization to an income-eligible individual and all legal advice, advocacy, and assistance associated with such representation. Full legal representation includes, but is not limited to, the filing of a notice of appearance on behalf of the income-eligible individual in a covered proceeding."[105] Brief legal assistance is defined as "individualized legal assistance provided in a *single consultation* by a designated organization to a covered individual in connection with a covered proceeding."[106]

With regard to the actual *provision* of legal services, the law mandates that "all covered individuals receive access to brief legal assistance no later than their first scheduled appearance in a covered proceeding in housing court, or as soon thereafter as is applicable; and all income-eligible individuals receive access to full legal representation no later than their first scheduled appearance in a covered proceeding in housing court, or soon thereafter as is practicable."[107] It is important to note that the Right to Counsel also applies to the provision of legal services in administrative proceedings of NYCHA.[108]

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[103] *See RTC History Interactive*, RIGHT TO COUNSEL TOOLKIT, https://www.rtctoolkit.org/docs/11/RTC%20History%20Interactive--revised%202018.pdf [https://perma.cc/53FR-GWUY].

[104] *See* File #: Int 0214-2014B, N.Y.C. COUNCIL, https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1687978&GUID=29A4594B-9E8A-4C5E-A797-96BDC4F64F80&Options=ID%7cText%7c&Search=214 [https://perma.cc/UE9V-HKNJ].

[105] *Id.*

[106] *Id.*

[107] *Id.*

[108] *See id.*

As the law went into effect, the next tremendous step would be the gradual implementation of Right to Counsel in housing courts throughout New York City. Notwithstanding the fact that this implementation would require continuous organizing by the Coalition to ensure that the Right to Counsel is respected, the law itself is a testament to the true power of a tenant-led movement led by those who are experiencing systematic disenfranchisement firsthand. The next module of Right to Counsel, even though it has already passed, is taking place today: the rollout has yet to reach all zip codes, but courtroom accountability processes are still an active mission.

With the lessons learned from the movement[109] and the tools it provided to countless housing justice movements throughout New York City, another transformative wave surfaced in our understanding of housing justice in New York City. On June 14, 2019, Governor Cuomo signed the Housing Stability and Tenant Protection Act of 2019, one of the strongest laws protecting tenants in New York.[110] Among the many components of the Act include the extension of rent regulation laws, the repeal of vacancy bonuses, the reform/caps of Major Capital Improvement increases, limitations of security deposits to one month's rents, and a ban on landlords evicting tenants for good-faith complaints about violations of warranty of habitability.[111] Such an Act, when combined with Right to Counsel, can drastically change the extent to which landlords assume that they can bring frivolous eviction proceedings. It is very possible that tenants who have access to Right to Counsel could experience a monumental increase in positive outcomes in Housing Court.

VI. Final Reflections: What Lawyers Outside The Right To Counsel Movement Can Learn

The Right to Counsel success in New York City reveals not only the power of persistent community-power building, but that a tenant-led reform movement does not have to include a central role for the lawyer. Many of those who enter the legal field for social change often observe an emphasis on the role of law and the role of the lawyer in instituting radical change. However, it is difficult to institute such change when one participates in the very system that perpetuates harm. When we attempt to use the system to change the system, our efforts are likely to fall short. Even if a current harm

[109] *See* RTC NYC, Lessons from NYC's Right to Counsel Campaign, https://www.rtctoolkit.org/docs/11/Lessons%20Learned.pdf [https://perma.cc/9KV9-UKXS].

[110] *See From the Field: New York State Legislators Pass 'Housing Stability and Tenant Protection Act of 2019'*, Nat'l Low Income Housing Coalition (July 1, 2019), https://nlihc.org/resource/field-new-york-state-legislators-pass-housing-stability-and-tenant-protection-act-2019 [https://perma.cc/Z72S-CKZQ].

[111] *See id.*; *see also New Rights for Tenants: Housing Stability and Tenant Protection Act of 2019*, N.Y. State Senate (Sept. 19, 2019), https://www.nysenate.gov/newsroom/articles/2019/new-rights-tenants-housing-stability-and-tenant-protection-act-2019-1 [https://perma.cc/QA9D-VAQ3].

might be removed or mitigated, other harms quickly arise because the underlying systemic issues that gave rise to the problem were never fully addressed. The legal field can never be fully cured of its systemic disenfranchisement and inaccessibility by a single direct legal services model or an impact litigation model.

The tenant-led movement we have seen through Right to Counsel shows that lawyers should continually center the works of grassroots organizers. This includes centering platforms of intentionally politicized value systems that move away from the seemingly "neutral" stance that the law encourages as a form of "justice." A crucial facet of the Right to Counsel movement has been that the Right to Counsel is not an end, but simply a tool. The intentional strategy of organizing to allow tenants to have the tool of legal representation is one facet of a long movement of racial justice and anti-capitalism within housing justice.

A movement lawyering[112] framework can ensure that similar movements to Right to Counsel—that is, legal tools aimed at providing tenant power—will honor the interests and immediate needs of the individuals most directly impacted by the systems of power that burden them daily. By continually contesting the role of the law, of the lawyer, and of the courtroom, movement lawyers can understand the importance of supporting the needs of grassroot organizers through capacity-building and resource redistribution.

A. Movement Lawyering Frameworks

Throughout the course of the Right to Counsel movement's lifespan, there has been debate among organizers and legal organizations about whether we should be centering Right to Counsel as an anti-displacement tactic. Those who view the legal field as a venue of social change may conceptualize Right to Counsel as a due process tool that could cause a ripple of systematic reform in the courtroom. However, for many organizers and movement lawyers, such an emphasis on the role of law and the role of legal representation fails to recognize a core issue that has spurred the Right to Counsel movement: that the system we operate under is inherently tied to wealth disparity, inequality, disenfranchisement, and capitalist hegemony.

Even though some may view the courtroom as an opportunity to "have your day in court," it is still true that the court cannot be an all-encompassing remedy when the court is an extension of the issue itself. For movement lawyers, understanding the power that the court has and the harms it has

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[112] For introductory works, see generally Scott L. Cummings, *Movement Lawyering*, 2017 UNIV. ILL. L. REV. 1645 (2017); Alexi Nunn Freeman & Jim Freeman, *It's About Power, Not Policy: Movement Lawyering for Large-Scale Social Change*, 23 CLINICAL L. REV. 147 (2016); Betty Hung, *Movement Lawyering As Rebellious Lawyering: Advocating with Humility, Love and Courage*, 23 CLINICAL L. REV. 663 (2017); Susan D. Carle, Forward, *Ethics and the History of Social Movement Lawyering*, 2018 WIS. L. REV. 12 (2018).

sanctioned throughout the course of our nation's history leads to the conclusion that Right to Counsel is simply a tool, but not a solution, and certainly not a complete fix to a housing justice movement.

Movement lawyering can provide a useful lens that supplements existing legal work. There are many ways to describe movement lawyering. Law For Black Lives, for instance, states that movement lawyering "means taking direction from directly impacted communities and from organizers, as opposed to imposing our leadership or expertise as legal advocates. It means building the power of the people, not the power of the law."[113] Movement lawyering can be perceived as an ethos that a lawyer harnesses when practicing law in a variety of fields, contexts, and missions. The purpose of movement lawyering is to be intentionally *political* as a practice: a Right to Counsel movement for community stakeholders, for instance, can be conceptualized as a pro-Black, pro-queer, anti-capitalist, anti-colonial outlook. Movement lawyering is an active practice of naming systems of power and harm, and recognizing that the lawyer is *not exempt* from these systems.

Jim Freeman's *Supporting Social Movements: A Brief Guide for Lawyers and Law Students* succinctly describes five essential elements of movement lawyering. Such elements have been broken down into the following attributes of a movement lawyer: 1) dedication to building the capacity and power of oppressed communities, 2) willingness to address the root causes of structural disempowerment and oppression, 3) use of knowledge, skills, and connections to support community organizing and movement-building, 4) commitment to meeting the full array of on-the-ground advocacy needs, and 5) professional humility.[114]

In naming these attributes, Freeman also spends (rightfully) a considerable amount of time discussing the prominent barriers that lawyers impose on themselves and their own affiliated movements when not operating under a movement lawyering framework. Lawyers, for instance, may operate in an openly or subtly paternalistic way when engaging with community partners This can occur during strategic organizing discussions, in which lawyers adhere so rigidly to doctrine and their litigation strategy that they derogate the community's own ideas for building solidarity and power. Lawyers may even use community spaces to paradoxically disempower the community—by using the tools of legal practice, which are in and of themselves linked to a tool of systematic oppression, lawyers may reinforce the same systems of harm that they hoped to combat.[115]

Additionally, lawyers may hamper a movement by conceptualizing the harms voiced by community members as simply a "legal violation" committed by a landlord or other entity. For those deeply committed to social movements and aware of the fact that there is not one "legal violation," but

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[113] *What We Can Do: Movement Lawyering in Moments of Crisis*, LAW FOR BLACK LIVES, http://www.law4blacklives.org/respond [https://perma.cc/LCR6-6FHG].

[114] *See* Jim Freeman, *Supporting Social Movements: A Brief Guide for Lawyers and Law Students*, 12 HASTINGS RACE & POVERTY L.J. 191, 195–203 (2015).

[115] *Id.* at 195–97.

interlocking forms of inequities, the lawyer's perspective may be perceived as myopic and overly concerned with the technicalities of the law.[116]

To avoid these pitfalls, the movement lawyer must show up and intentionally cultivate community relationships and be aware of the community's history and the community's own timeline of movement-building. The lawyer must be ready to recognize that the legal system confers upon them elite status and seek to redistribute their access to power and wealth. The lawyer must be ready to take risks in response to the interests and asks of the community. This is all, of course, not part of an exhaustive list—the list is extensive, and varies by issue area and community. In addition to these tasks and the many more that will be demanded of the lawyer as they embody a movement lawyer ethos, the lawyer must be endlessly aware and self-reflective of their own complicity and power within the system they are fighting against. This awareness will only strengthen the movement, and will allow lawyers to be more responsive and useful to the needs of the community when called upon to build coalitions.

B. *What Next for Legal Services Organizations?*

With new rent laws in cities like New York City, as well as new Right to Counsel programs in other major cities, the role of legal services organizations is unclear, especially considering the influx of representation that will be promulgated by Right to Counsel. We must apply the movement lawyering perspective to legal services organizations. Such an analysis, of course, could remain at odds with the very fact that many legal services organizations may not immediately envision each individual case as a larger "systemic" battle—each client has their own individual facts, and their desired outcome in a case may not be compatible with the larger goals of a movement.

Direct legal services models provide essential services for indigent clients. It is an *understatement* to say that legal services have profoundly impacted the lives of countless clients who seek such representation while tackling larger systemic barriers. Especially for cities with Right to Counsel, legal services organizations have been able to provide clients with the opportunity to build tenant power while fighting landlord-corporate power.

However, for those committed to organizing a sustainable movement for a certain cause, legal services can sometimes be limiting. One divergence between some legal services lawyers and movement lawyers is that the former may center the presence of lawyers and the hiring of more lawyers as the *solution* to many of these systemic barriers, while the latter sees the lack of lawyers as a relatively small problem compared to the attendant disparity in power.[117] Additionally, individual clients are not interlocutors of a whole

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[116] *Id.* at 197.

[117] *See* Purvi Shah & Chuck Elsesser, *Community Lawyering*, COMMUNITY JUSTICE PROJECT (Jun. 2010), http://communityjusticeproject.com/media/2014/9/24/purvi-chuck-commu-

movement, and should not be treated as such (favorable outcomes for one tenant, for example, might not be compatible with the needs of a movement or a larger group). Because of this, the individual wins of legal service representation might chip away at the issue, but do not constitute a long-term solution. The technicalities of certain legal services organizations also might not provide enough space for lawyers to assume roles for organizing with movements; organizations funded by Legal Services Corporation (LSC) are limited insofar as many cannot bring class actions and cannot engage in lobbying.[118]

Notwithstanding this tension, the role of legal services organizations in the time of Right to Counsel must still heavily incorporate the concepts of community lawyering and movement lawyering as they work in the interests of the people, particularly as tenants are more empowered to endure the courtroom process without feeling completely at odds with landlords who may already have representation.

Legal services organizations will still undoubtedly operate on client-centered models of advocacy. This client-centered advocacy, however, does not have to deviate from a movement lawyering model in which lawyers are constantly available and in tune with the asks of on-the-ground movements led by grassroots organizers. In fact, the Right to Counsel NYC Coalition was already doing this work: the coalition included advocates from legal services organizations, in addition to organizers and tenants. Legal service providers have and will inherently view these forms of advocacy as part and parcel of a larger movement of housing justice. Thus, to expect legal services organizations to collaborate with grassroots efforts is not an unrealistic ask, nor is it an ask that is only relevant to "movement lawyering." Normalizing the lawyer's responsibility to be mindful and aware of ongoing organizing, and to be proactive in redistributing resources to aid such causes, is needed now more than ever.

Perhaps a larger question that will become more salient as Right to Counsel rolls out in other cities where legal services capacity was limited is the question of hiring practice. As Right to Counsel rolls out, it will be clear that hiring capacity will be extended in order to account for more legal representation for tenants in housing court. However, adding more lawyers might not further the goals of the Right to Counsel movement if the lawyers hired carry profound implicit biases or counterintuitive methods to lawyering that do not operate within community or movement lawyering ideology. To preserve the radical ethos of movement lawyering centered on a mission of racial justice, legal services organizations must create hiring practices that allows for a diverse range of legal representation. Although diversity in and

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nity-lawyering [https://perma.cc/38PH-Q5ZJ]. This awareness of the fact that lawyers are not the end-all, be-all for these larger systemic issues are indeed deeply understood by members of legal services organizations in close collaboration with the Right to Counsel NYC Coalition. I only bring this point as a larger commentary on divergences that happen between various lawyers when conceptualizing various means of social change.

[118] *See id.*

of itself does not necessarily mean that a lawyer will be able to zealously advocate for their client[119], such hiring practices and training modules for legal services organizations will allow lawyers to be more aware of the underlying power analyses and imbalances when they work with clients. That is, an intentional desire to incorporate a mission of racial justice in housing justice means ensuring that lawyers are adequately trained to combat implicit biases. As mentioned, legal services organizations that combine a movement lawyering practice with their current representation and community partnership models will be highly in demand as other Right to Counsel programs are instituted.

The ripple effect of Right to Counsel will challenge existing legal services organizations in their own determinations as to whether their current infrastructure will respond well or poorly to the extended Right to Counsel for tenants throughout a city. To account for this pending massive shift, legal services organizations have an enormous opportunity to revisit their missions, their value systems, and how often they center tenants in their mission. This reimagination of values and praxis will allow legal services organizations to emerge into the Right to Counsel landscape with a reinvigorated perspective on a model of lawyering compatible with a long-term, sustainable movement for social change.

Conclusion

The Right to Counsel is not a complete solution to the affordable housing crisis, nor is it a cure for the countless issues presented by the eviction mill regime. Despite the fact that this is but one tool for housing justice, Right to Counsel is a testament to the power of tenant coalition-building in spaces that seek to contest their rights and livelihoods in the midst of displacement and gentrification. The tactics of the Right to Counsel NYC Coalition are but one example of a sustainable housing justice movement in but one city. Adapting Right to Counsel's approaches to the nuances of other

[119] It should be reminded that even for legal services organizations, hiring practices rooted in diversity should also operate under the same caution as discussed above with regard to racial capitalism and the use of diverse staff to reflect value to an organization based on what this nonwhiteness adds to the organization's own image (assuming the organization is also only representative of a large elite in its governance structure and does not provide safeguards for its staff of color). Even if a legal services organization is diverse on its face, this does not necessarily mean that the staff will be aware of the distinct struggles of their clients—relational identity might be helpful, but lawyers still enter the lawyer-client relationship with a large degree of power and privilege (an access that is not shared by the client). Furthermore, even if such organizations are "diverse," this does not mean that a legal services organization cannot commit harms to communities of color with respect to its inability to hear the community's narratives. While incorporating a more diverse workforce, legal services organizations must still perform inner structural reform and assessment as to how staff and structure currently embody implicit biases and how such biases may be reflected in the governance structure and operations of the organizations. It is only after this work is done that legal services organizations can employ new tactics that adjust to the demands of a movement lawyering ethos.

cities would present an immense victory nationwide in tempering the calamitous effects of landlord abuse.

Now that the Right to Counsel has been on the radar of decision makers across the nation, the question then becomes how other localized movements can continue to center tenant narratives in order to build a collective groundwork for social change. Coalition-building is endlessly re-invented in response to the immediate needs of a movement. Such adaptability and creativity in leveraging a wide variety of tools and allies are components of current Right to Counsel movements occurring on the ground. Tenants are learning to be responsive to context when conducting power analyses of the actors who are preventing them from living with dignity. Such a tactic, when spread as collective knowledge, will prove to be an insurmountably powerful force that will alter the way movements navigate housing justice.

As lawyers, it is crucial to remain mindful of the forces that threaten a full implementation of Right to Counsel. Lawyers must also understand what they can do to mitigate harms closely associated to a lack of Right to Counsel: namely, a lack of rent freezes during crises, increases in rent caused by gentrification, retaliation in response to tenants asserting their rights, and the stigmatization and denial of tenants from units because of their membership in a protected class. The roster of issues that countless movements are still fighting for are endless, but the mission remains the same: movements on-the-ground, and those who are in solidarity with such movements, are continually demanding that our nation recognize that housing is a human right and that access to housing be expanded by any means necessary.