



NEW YORK  
CITY BAR

**PRESENTATION OF SHEILA S. BOSTON AND ROGER JUAN MALDONADO  
RESPECTFULLY SUBMITTED TO THE NEW YORK ADVISORY COMMITTEE  
TO THE U.S. COMMISSION ON CIVIL RIGHTS**

**EVICCTIONS AND RACIAL DISCRIMINATION**

**ORAL PRESENTATION JUNE 25, 2021**

**WRITTEN SUBMISSION JULY 23, 2021**

**I. INTRODUCTION**

Good afternoon and thank you for inviting the New York City Bar Association to testify today. My name is Sheila Boston and I am the President of the City Bar. In my “day” job, I am a partner at the law firm of Arnold and Porter and my area of practice is products liability litigation.

The City Bar, which was founded in 1870, is a voluntary association of approximately 25,000 lawyers and law students covering a wide range of private and public practice areas, living and working in New York City and across the state, country and globe. I began my term in May 2020 and will end my term in May 2022. I am grateful for the opportunity to speak on the critical topic of evictions and racial discrimination and I thank the panel for facilitating this important public dialogue. Before I begin, I’d like my partner in testimony, Roger Juan Maldonado, to introduce himself as well.

Good afternoon. My name is Roger Juan Maldonado and I was Sheila’s immediate predecessor as City Bar President. In my day job, I am a partner and the head of the commercial litigation practice in the New York Office of Smith, Gambrell & Russell. In my prior professional life, I was a legal services attorney representing tenants in New York City Housing Court. I also am a member of the City Bar’s Task Force on the Civil Right to Counsel.

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**(Sheila Boston.)** When I began my term in May 2020, the country faced ongoing threats to the rule of law; a global pandemic and its economic fallout; and the killing of George Floyd which brought with it collective sadness and outrage, calls for reckoning with racism in this country, and demands for police reform (something the City Bar has been passionately engaged

**About the Association**

*The mission of the New York City Bar Association, which was founded in 1870 and has 25,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.*

in). At around that time, I decided to create “Six Pillars” of my Presidency in order to help guide the work of our members: COVID-19 recovery, access to justice, criminal justice reform, diversity, equity and inclusion, protection of the rule of law, and mental health and wellness. I mention this because today’s topic touches on all six. We’re talking about one’s home, where we gather with friends and family / where our kids go to school / and where we lay our heads at night. How we come to live where we live; how some people - especially people of color, people of less economic means, and people with criminal records – face barriers to housing; the mental health impacts of being forcibly evicted from one’s home or, on the other end, the mental health benefits of stable housing; the economic fallout of COVID-19 and the impact on housing and the looming eviction crisis; and the clearly positive access to justice and rule of law implications when the legal process used to evict tenants from their homes is leveled by making sure respondents have legal assistance even if they can’t afford it.

## II. SECRETARY JEH JOHNSON’S “EQUAL JUSTICE” REPORT

At around the time I began my term as City Bar President, the Chief Judge of the State of New York, the Honorable Janet DiFiore, appointed former Secretary of Homeland Security, Jeh Johnson, to review and report on the matter of racial bias in the New York State court system. On October 1, Secretary Johnson delivered a devastating report and said this, “The sad picture that emerges is, in effect, a second-class system of justice for people of color in New York State.”<sup>1</sup> Remarking that “[t]his is not new” he went on to report the findings of a similar 1991 review, which found “there are two justice systems at work in the courts of New York State, one for Whites, and a very different one for minorities and the poor.”<sup>2</sup> Regarding Housing, Family, Civil and Criminal courts of New York City, in particular, Secretary Johnson reported that, “Over and over, we heard about the “dehumanizing” and “demeaning cattle-call culture” in these high-volume courts. At the same time, the overwhelming majority of the civil or criminal litigants in the Housing, Family, Civil and Criminal courts in New York City are people of color.”<sup>3</sup>

Secretary Johnson reported a litany of instances in which attorneys and litigants of color experienced “the gamut of overt racism, racial bias and racially tinged condescension” in court. One interviewee called out the racialization of Housing Court in particular, as “an environment where the litigants of color are often being evicted and the landlords and attorneys pursuing the evictions are overwhelmingly white.”<sup>4</sup> Many interviewees reported being fearful of speaking up about racist behavior they had witnessed or endured, including court personnel of color.<sup>5</sup> Concerning court officers in particular, Secretary Johnson noted that “[a]lmost every interview touched on what appears to be a culture of toxicity and unprofessionalism exhibited by court

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<sup>1</sup> Jeh Johnson, *Report from the Special Advisor on Equal Justice in the New York State Courts*, STATE N.Y. UNIFIED CT. SYS., 3 (Oct. 1, 2020), <http://www.nycourts.gov/whatsnew/pdf/SpecialAdviserEqualJusticeReport.pdf> (last visited June 17, 2021) [hereinafter Johnson Report].

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 58; *See also* Appendix hereto.

<sup>5</sup> Johnson Report, *supra* note 1, at 61.

officers towards litigants, litigants’ relatives and attorneys of color,” although interviewees stressed that not all court officers behave in a hostile manner.<sup>6</sup>

### **III. FOCUS OF TESTIMONY: LEGAL REPRESENTATION**

With that background and context, let me start by honing in on the focus of our testimony. It is this: legal representation of tenants in Housing Court is a powerful response to evictions and racial discrimination. This is a cause that the City Bar will continue to stand behind 100%.

Why? Because we know that New York City’s right to counsel law, passed in 2017, is working, and we know that it is a program that will have positive impacts on respondents. (*See* Appendix A, which is our summary of how well it is working.) Tenant representation is going up, evictions are going down, default judgments against tenants have dropped, and tenants with counsel are far more successful in being able to retain their homes. It is a game-changer, a matter of equal justice under the law. It’s leveling the playing field in Court, giving people a fighting chance to assert their legal rights, and sending a message that the lives and homes of New York City’s low-income households and litigants of color are entitled to be treated with dignity and respect. We know that legal representation is an important part of the solution to an eviction crisis and the racial inequities that are attendant to that crisis.

#### **a. Why is this a Cause That the Legal Profession Should Embrace?**

Let’s start with the mission of the City Bar: “to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.” What does this mean as a practical matter? On a general level, it means that we, along with many other bar associations and the ABA, advocate for and support robust funding of the Legal Services Corporation on the federal level; closer to home, we advocate and support state and local funding of legal services organizations working to level the playing field for low-income litigants in New York, particularly in Civil, Family and Housing Courts; and, it means we support “Civil Gideon” – the notion that any person facing a loss of one of life’s essentials – like shelter – should be provided with a lawyer if he or she cannot afford one. It means that we speak up when the justice system is perpetuating (intentionally or not) a gross and discriminatory injustice. As City Bar members have heard me say before, “to whom much is given, much is required.” It is a matter of simple fairness, and as Roger said in one of his statements as City Bar President, “Justice and fairness are simply baked into the legal profession and...lawyers, no matter our practice area or our position, should conduct ourselves accordingly.”<sup>7</sup>

Many other bar associations have mission statements that are similar, referencing public-minded missions regarding access to justice, diversity and protection of the rule of law. In fact, we saw that the Cleveland and Philadelphia Bar Associations affirmatively advocated in favor of

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<sup>6</sup> *Id.* at 62.

<sup>7</sup> Roger Juan Maldonado, Column, *The Lawyer’s Obligation*, NEW YORK CITY BAR (July 16, 2018), <https://www.nycbar.org/media-listing/media/detail/the-lawyers-obligation-by-roger-juan-maldonado> (last visited June 17, 2021).

their cities' tenant right to counsel initiatives.<sup>8</sup> But it's nowhere near universal yet. The question, then, is how do we translate public-minded mission statements into an actionable agenda item without being concerned about taking a position that is perceived as partisan or divisive or one-sided, but which we view as fulfilling our duties as officers of the court and custodians of the legal process? I offer three reasons.

First, anything that pertains to court operations implicates lawyers, the legal profession and bar associations. So, if the overwhelming evidence indicates that a particular court is operating or applying the law in a way that is fundamentally unfair or unjust, or that has a racially disparate impact on people of color or largely unrepresented litigants, then lawyers have a duty to step in. None of us should countenance the notion that there are two systems of justice in this country - as Secretary Johnson referenced, one for whites and one for minorities and the poor - although far too often, that is precisely what we see. Regardless of whether we practice in Housing Court, it falls upon us to reject this proposition, to look critically at why a particular system is failing and how it can be improved, especially when the stakes are so high such that one is at risk of losing her home.

Second, if a majority of litigants facing a severe consequence such as eviction are without counsel, then that imbalance must be addressed, not just as a matter of fairness, but also, as a matter of efficient and effective judicial administration. A court should be a forum which permits all parties to be heard and all issues to be fully litigated, and attorneys are especially equipped to facilitate this process. A court should not be overburdened by having to assist - and ensure a fair and equal forum for - a large number of unrepresented litigants. The courts' ability to administer needed justice is facilitated by the presence of attorneys in eviction proceedings. And, as Roger will discuss further, the effectiveness of any right to counsel depends on the ability to connect tenants with their lawyers as early in the process as possible.

Third, bar associations should defend court integrity. Prior to passage of the right to counsel law, we saw the court and a high-stakes legal process being used to the consistent disadvantage of unrepresented litigants: i.e., high numbers of eviction filings and unacceptably high numbers of default judgments against largely unrepresented litigants of color living in rent-regulated housing in New York City. Proceedings, if they happened at all, were conducted in quick order, or settlements were "negotiated" and produced in hallways. Bar associations and fair-minded lawyers should speak out when a system is failing, particularly when the legal process and our courts are part of the systemic failures. As Roger will further discuss, there is more work to

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<sup>8</sup> See e.g., *Cleveland May Join Crusade to Increase Eviction Attorney Access*, LAW360 (Aug. 25, 2019), [https://www.law360.com/access-to-justice/articles/1192105/cleveland-may-join-crusade-to-increase-eviction-atty-access?nl\\_pk=fbf4b500-f074-4493-b773-afa035f5c122&utm\\_source=newsletter&utm\\_medium=email&utm\\_campaign=access-to-justice](https://www.law360.com/access-to-justice/articles/1192105/cleveland-may-join-crusade-to-increase-eviction-atty-access?nl_pk=fbf4b500-f074-4493-b773-afa035f5c122&utm_source=newsletter&utm_medium=email&utm_campaign=access-to-justice) (last visited June 17, 2021) ("The legislation is the brainchild of the Housing Justice Alliance, a coalition of officials from Cleveland City Council, the Legal Aid Society of Cleveland, the Cleveland Metropolitan Bar Association and the Cleveland Academy of Trial Attorneys"); Deborah R. Gross, *Testimony of Deborah R. Gross, Chancellor of the Philadelphia Bar Association Before City of Philadelphia City Council Committee on Licenses and Inspections and the Committee on Public Health and Human Services*, PHILADELPHIA BAR (Mar. 20, 2017), [https://www.philadelphiabar.org/WebObjects/PBAReadOnly.woa/Contents/WebServerResources/CMSResources/TestimonyChancellorGrossMarch20\\_2017.pdf](https://www.philadelphiabar.org/WebObjects/PBAReadOnly.woa/Contents/WebServerResources/CMSResources/TestimonyChancellorGrossMarch20_2017.pdf) (last visited June 17, 2021).

be done to right the system, but, at a minimum, we cannot go back to the model that existed prior to passage of the right to counsel law.

**(Roger Maldonado.)** I'm going to talk briefly about how the City Bar first decided to advocate for the right to counsel law and then, looking forward, I'm going to talk about specific areas to focus on so that we maximize what we've learned over the past three years (including during the pandemic).

## **b. Background.**

Through the City Bar's committees, primarily our Housing Court Committee and our Pro Bono and Legal Services Committee, at the start of our deliberative process, we heard a number of concerns: (1) New York's landlord-tenant and housing law is incredibly complex; more complex than many other areas of NY law, yet cases are allotted a minimal amount of time for attention, and Housing Court judges carry an overwhelming caseload; (2) The summary eviction process in Housing Court does not lend itself to the issues being fully litigated; (3) Far too many proceedings involve unrepresented tenants who unknowingly waive defenses and sign stipulations that land them right back in court or being evicted; (4) the physical conditions of many of New York City's Housing Courts are deplorable and insufficient; (5) the vast majority of litigants without representation in Housing Court are people of color; and (6) implicit and explicit racial and gender bias are recurring problems in Housing Court.<sup>9</sup>

Based on these views, the City Bar decided to speak out on the problem and align with a broad coalition of advocates,<sup>10</sup> and we did so in a report<sup>11</sup> supporting the City Council legislation establishing the right to counsel. This followed various meetings with stakeholders, discussions with the tenant and landlord bar and Housing Court personnel, City Council members sponsoring the legislation, and in conjunction with a study we commissioned from the business advisory firm Stout Risius Ross, which concluded that the right to counsel would actually save the City money

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<sup>9</sup> See, e.g., *Testimony of the New York City Bar Association Before the New York City Office of Civil Justice*, NEW YORK CITY BAR, 3 (Nov. 23, 2020), <https://s3.amazonaws.com/documents.nycbar.org/files/2020810-TestimonyoftheNYCBA.pdf> (last visited June 15, 2021); See also City Bar Report on Int. 214, [https://s3.amazonaws.com/documents.nycbar.org/files/20072864-RightCounselHousingNYC\\_ProBono&HousingCourt\\_ReissuedFINAL\\_9.22.16.pdf](https://s3.amazonaws.com/documents.nycbar.org/files/20072864-RightCounselHousingNYC_ProBono&HousingCourt_ReissuedFINAL_9.22.16.pdf).

<sup>10</sup> For a description of the decades of work that went into passage of RTC by community groups, academics and others, including the work the New York State court system to highlight the access to justice gap, see *Implementing New York City's Universal Access to Counsel Program: Lessons for Other Jurisdictions*, NYU FURMAN CTR., 3-6 (Dec. 2018), [https://furmancenter.org/files/UAC\\_Policy\\_Brief\\_12\\_11-18.pdf](https://furmancenter.org/files/UAC_Policy_Brief_12_11-18.pdf) (last visited June 16, 2021).

<sup>11</sup> See *Report supporting legislation to provide the right to counsel in eviction, foreclosure and/or ejection cases in New York City which can result in the litigant's loss of shelter*, NEW YORK CITY BAR (Sept. 2016), <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/report-supporting-legislation-to-provide-the-right-to-counsel-in-eviction-foreclosure-and-or-ejection-cases-in-new-york-city-which-can-result-in-the-litigants-loss-of-shelter>; ALISON KING & ANDREW SCHERER, *Testimony of the New York City Bar Association Before the New York City Office of Civil Justice*, TASK FORCE CIV. RIGHT TO COUNS., NEW YORK CITY BAR (Nov. 23, 2020), <https://s3.amazonaws.com/documents.nycbar.org/files/2020810-TestimonyoftheNYCBA.pdf> (last visited June 17, 2021).

because if people stay in their homes, all other attendant costs go down.<sup>12</sup> That is, even without regard to the profound humanitarian benefits of eviction protection that prevents homelessness, the cost of eviction prevention through provision of free legal services is materially lower than the cost of shelter and other direct expenses of homelessness.

Successive City Bar Presidents testified in support of the law.<sup>13</sup> We held programming to educate our membership. We viewed and framed it as an access to justice issue, a racial justice issue, and one in support of the fair and effective administration of justice. We explained that the process as it existed violated international norms and standards. Our Presidents, including myself, devoted our periodic membership columns to it.<sup>14</sup>

### **c. Formation of the Task Force.**

After the bill passed in 2017, we established and continued to monitor the enactment of the law through our Task Force on the Civil Right to Counsel. The Task Force has a diverse cross-section of members and meets regularly with all stakeholders, including government agencies, tenant organizers, legal service providers and bar association leadership. The Task Force acts as a convener and a witness. The members facilitate open and honest stakeholder discussions, and provide a place to build consensus, air differences, and provide recommendations on how to best implement the law. They help to bridge the gap that can sometimes exist as between community members, lawyers and the court. These conversations have helped to grow positive results in the effectiveness of the law's implementation. As we summarize in Appendix A, the data itself demonstrates the effectiveness of the law. Of course, as the rollout began, it was no surprise to anyone that eviction filings decreased and that a tenant with a lawyer was far more likely to avoid eviction and remain in affordable housing than one without a lawyer.

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<sup>12</sup> New Study Finds Right to Counsel in Eviction Cases Would Save Money for NYC, NEW YORK CITY BAR (Apr. 8, 2016), <https://www.nycbar.org/media-listing/media/detail/new-study-finds-right-to-counsel-in-eviction-cases-would-save-money-for-nyc-1> (last visited June 17, 2021).

<sup>13</sup> See e.g., ROGER MALDONADO, ALISON KING, & ANDREW SCHERER, *Universal Access Hearing Nov. 2018 Written Statements*, NYC.GOV, 56-59 (Nov. 15, 2018), <https://www1.nyc.gov/assets/hra/downloads/pdf/universal-access-hearing-nov-2018-written-statements.pdf> (last visited June 17, 2021) (statement of Roger Maldonado on behalf of the New York City Bar); John S. Kiernan, *Written Testimony of the New York City Bar Association in Support of Int. 214-A*, NEW YORK CITY BAR (Sept. 26, 2016), [https://s3.amazonaws.com/documents.nycbar.org/files/20073165-written\\_testimony\\_on\\_Int\\_214-a\\_PROBONO\\_HOUSING\\_9.26.16.pdf](https://s3.amazonaws.com/documents.nycbar.org/files/20073165-written_testimony_on_Int_214-a_PROBONO_HOUSING_9.26.16.pdf) (last visited June 17, 2021).

<sup>14</sup> See, e.g., Blog, *Q&A with City Bar President Roger Juan Maldonado*, NEW YORK CITY BAR (May 28, 2018), <https://www.nycbar.org/media-listing/media/detail/qanda-with-city-bar-president-roger-juan-maldonado> (last visited June 17, 2021) (stating that we need to continue to secure rights to counsel for basic needs such as housing); John S. Kiernan, *supra* note 5; Debra L. Raskin, Column, *City Bar Year in Review*, NEW YORK CITY BAR (June 15, 2015), <https://www.nycbar.org/media-listing/media/detail/city-bar-year-in-review-debra-l-raskin> (last visited June 17, 2021). See also Sheila S. Boston, Video, *Video Message from New York City Bar Association President Sheila S. Boston*, NEW YORK CITY BAR (Aug. 13, 2020), <https://www.nycbar.org/media-listing/media/detail/message-from-new-york-city-bar-association-president-sheila-s-boston> (last visited June 17, 2021) (stating, at 5:22-5:40, that access to justice is one of six of her priorities moving forward).

#### **d. Looking Forward.**

I want to look forward now by highlighting what I think the next questions are, for the Task Force, for the Bar and for other stakeholders in this field.

One of the first topics tackled by the Task Force – and one on which there is strong support among stakeholders – is the deplorable and inaccessible physical conditions of the Housing Court facilities in New York City. This situation has gone on for years and it is unclear when we will see real change. The condition of the facilities, in our view, demonstrates a fundamental lack of respect and dignity afforded to the litigants in Housing Court, another indicia of racial inequities in the courts as underscored by Secretary Johnson in his report.

Second, we need to learn our lessons from the pandemic-required move to remote proceedings. If done right – and this doesn't mean it is right for all cases - we could potentially put an end to the “hallway justice” model of Housing Court. Tenants would have a lawyer; the judge's attention would be on one case at a time, with more time allotted; and legal arguments and defenses would be heard and decided. Importantly, we need to connect tenants with their lawyers as early in the eviction process as possible. This is critical and we will continue to work with the Office of Civil Justice and the court system to make sure it happens.

Third, as federal funding becomes available for eviction prevention (in New York, this is called the E-Rap (Emergency Rental Assistance) program<sup>15</sup>), the Task Force and others need to monitor to make sure that the funds are used to pay back rent and also to ensure that necessary repairs are made. We don't want to create a situation where landlords receive money and don't make repairs or where they commence eviction proceedings despite having received money. We should explore the creation of a permanent federal funding stream that can be used by municipalities that want to create a right to counsel law and have emergency rental assistance programs. These programs should be designed to provide emergency economic relief in order to divert cases and avoid eviction; they should cover rental and utility arrears, and temporary rental assistance for households with gross incomes at or below 200% of the federal poverty level.<sup>16</sup> We need to ensure that the E-Rap and similar programs are run correctly and, if so, they will help to avoid evictions, preserve affordable housing, and help to get money to landlords to cover their expenses. But, these programs should not be a weigh station on the way to an eviction proceeding.

Finally, the courts should be encouraged to consider more efficient and effective data collection to assist the right to counsel efforts. There is much room for improvement in the courts' use of data collection to ascertain such information as who the litigants are (especially concerning race and economic status), case outcomes and length of case. In particular, this will help to understand the disparate racial impacts at play.

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<sup>15</sup> See generally *Emergency Rental Assistance Program*, OFF. OF TEMP. & DISABILITY ASSISTANCE, NEW YORK STATE, <https://otda.ny.gov/programs/Emergency-Rental-Assistance/> (last visited June 17, 2021).

<sup>16</sup> At the local level, we have supported increasing RTC's income eligibility level from 200 percent to 400 percent of the federal poverty level. See *Report on Legislation*, NEW YORK CITY BAR (March 2020), <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/expanding-right-to-counsel-for-tenants-in-new-york-city-housing-court>.

**(Sheila Boston.)** To encapsulate: New York City’s right to counsel law is working and it’s confronting what was an unjust legal and judicial process. It is producing improved outcomes for, in particular, poor people of color in New York City who, with the help of lawyers, are able to stay in their homes.

This leads to the question: how do we expand this work nationwide? How do we involve other bar associations and make this an issue of central importance to the legal profession as a whole? We have a few suggestions.

First, lawyers and bar associations should continue to talk – holistically - about the necessity of right to counsel when the loss of one’s home is at stake. This is a matter of equal access to justice, racial and economic justice, and the fair and effective administration of justice. It has the potential, done right, to preserve low-income housing, assist the court, stabilize and stem the displacement of individuals and families, promote stability in the households of thousands of children, whose development depends on it, and reduce the incidence of homelessness and its concomitant human and governmental costs.

Second, we should advocate for increased funding for the Legal Services Corporation so that more monies can be directed towards providing counsel in eviction cases.

Third, as Roger discussed, we need to explore the creation of a federal funding stream that can be used by municipalities that want to create a right to counsel law so that programs like E-Rap can function as designed, and we should involve bar associations in those conversations.

Fourth, bar associations need to collaborate and work together with many other stakeholders – the state court system, community-based organizations, legal services organizations, and the private bar (particularly through law firm pro bono programs).<sup>17</sup>

The groundwork for expansion has been laid. Since New York City passed its landmark legislation, eight additional localities have adopted the right to counsel modeled on New York City’s law, including Newark, San Francisco, Santa Monica, Cleveland, Philadelphia, and, as of this past election day, Boulder and Baltimore. Also, in April 2021, Washington State became the first state to enact a right to counsel for tenants. At least eight state legislatures and more than a dozen additional cities have had legislation introduced or have campaigns underway to secure a right to counsel for tenants who face eviction. New York State is one of these localities. The New York State Legislature has introduced Senate Bill S.6678 and Assembly Bill A.7570, which guarantees a right to counsel to persons who are threatened with losing their homes.<sup>18</sup> Cities that have enacted the right to counsel have reaped the benefits. Based on the data, the City Bar has urged the Biden-Harris Administration to publicly embrace the notion that no tenant should face

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<sup>17</sup> See ROGER MALDONADO, ALISON KING, & ANDREW SCHERER, *Universal Access Hearing Nov. 2018 Written Statements*, NYC.GOV, 56-59 (Nov. 15, 2018), <https://www1.nyc.gov/assets/hra/downloads/pdf/universal-access-hearing-nov-2018-written-statements.pdf> (last visited June 17, 2021) (statement of Roger Maldonado on behalf of the New York City Bar). See generally *Right to Counsel: The Nationwide Movement to Fight the Eviction Crisis*, STOUT (Oct. 14, 2019), <https://www.stout.com/en/insights/article/right-to-counsel-nationwide-movement-fight-eviction-crisis> (last visited June 17, 2021).

<sup>18</sup> See <https://www.nysenate.gov/legislation/bills/2021/s6678>.



removal from her home without legal representation, and to support the nationwide expansion of the New York City right to counsel model through stakeholder meetings, public outreach, legal guidance and federal grants programs.<sup>19</sup>

Finally, we are developing a potential resolution that can be adopted by, we hope, a broad group of stakeholders, setting forth principles that would govern any proceeding where the loss of one's home is at stake, such as these:

- A well-supported system that allows tenants to obtain legal assistance as early in the eviction process as possible. This will enable tenants to avoid waiving important rights and maximize their ability to protect their homes, as well as reduce the burden on the court of unnecessary filings.
- Well-designed court processes, adequate court facilities, and Housing Court Judges prepared to accommodate the shift from a primarily pro se court to a court equipped to resolve litigation between represented parties and a court marked by civility and decorum.
- Sufficient resources to assure that the legal services organizations are able to provide effective legal representation, including adequate compensation, support, supervision and training to the staff attorneys for the delivery of services, as well as sufficient flexibility to allow services tailored to particular geographic communities, persons with special needs and persons simultaneously faced with legal proceedings in family court, criminal court and other forums.
- Effective systems for ongoing communication and information sharing on a range of levels: most importantly to tenants so that they can be made aware of and can effectively avail themselves of this new right; between the court and the legal services organizations; as well as between the different provider organizations.
- Robust technology to streamline the flow of information, and to make appropriate and relevant information available expeditiously to the court, to litigants, and to their legal representatives.
- More data! We need to determine what data is important, and for what purposes, and to have systems in place to collect that data and make it readily available as needed. Housing Court should be able to document the results of those with legal counsel and those without counsel, noting, as well, the effectiveness of legal counsel for respondents.
- Sufficient staff and resources in Housing Court, with trainings and interventions focused on creating and maintaining a court culture that respects the dignity of all litigants.

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<sup>19</sup> *Policy Recommendations Respectfully Submitted to the Biden-Harris Administration Regarding Civil Legal Services and Access to Justice*, NEW YORK CITY BAR (March 30, 2021), <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/pro-bono-biden-harris-transition>.

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Thank you for your time and consideration.

Sheila S. Boston, President  
New York City Bar Association

Roger Juan Maldonado, Past President  
New York City Bar Association

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**Contact**

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## APPENDIX A

### **SUMMARY OF DATA REGARDING NEW YORK CITY RIGHT TO COUNSEL LAW: HOW WELL IT IS WORKING AND WHO IT IS SERVING**

In the three years since New York became the first city in the country to create a right to counsel in eviction and foreclosure cases, the effort has had an undeniably positive impact on low-income and racially diverse New Yorkers facing the loss of their homes to eviction or foreclosure. As a supplement to the testimony of New York City Bar Association President Sheila S. Boston and Past President Roger Juan Maldonado, we highlight below some of the most compelling statistics.

#### **I. GENERAL SUMMARY AND POSITIVE OUTCOMES**

An overwhelming majority of households served by the New York City Housing Court fall below the federal poverty level and include people of color. Of particular note, as reported early in the RTC rollout, two-thirds of tenant households served in the Bronx fell below the 100% federal poverty level.<sup>1</sup> In FY 2020, it was estimated that **92%** of households served by Housing Court were “income-eligible” for assistance under the right to counsel law (“RTC”)<sup>2</sup> and 44% of those who fell below the 200% federal poverty level assisted were also receiving public benefits such as Cash Assistance or Supplemental Nutrition Assistance Program (“SNAP”).<sup>3</sup>

As of June 30, 2020, nearly **450,000** New Yorkers have received free legal representation, advice, or assistance in eviction and other housing-related matters administered by the New York City Human Resources Administration.<sup>4</sup>

For those New Yorkers represented by an Office of Civil Justice (“OCJ”)-funded attorney in FY 2020, **86% were able to remain in their homes.**<sup>5</sup>

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<sup>1</sup> *Universal Access to Legal Services: A Report on Year One of Implementation in New York City*, OFF. CIV. JUST., HUM. RES. ADMIN., DEPT. OF SOC. SERVS., 16 (Fall 2018), <https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ-UA-2018-Report.pdf> (last visited June 11, 2021 [hereinafter 2018 Report]). The Office of Civil Justice is referred to herein as OCJ.

<sup>2</sup> *Universal Access to Legal Services: A Report on Year Three of Implementation in New York City*, OFF. CIV. JUST., HUM. RES. ADMIN., DEPT. OF SOC. SERVS., 23 (Fall 2020), <https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ-UA-Annual-Report-2020.pdf> (last visited June 10, 2021) [hereinafter 2020 Report]. “Ninety-two percent of households served in Housing Court eviction proceedings in FY2020 were “income-eligible” as defined under the Universal Access law – that is, households with an annual gross household income not in excess of 200% of the federal poverty guidelines as updated periodically by the United States Department of Health and Human Services.”

<sup>3</sup> *Id.* at 24.

<sup>4</sup> *Id.* at 6.

<sup>5</sup> *Id.* at 11.

Evictions in New York City have **dropped by nearly 41%** since 2013.<sup>6</sup>

Regarding warrants, the New York City Housing Court issued 42,417 warrants of eviction in FY 2020<sup>7</sup>; the year prior, in FY 2019, the Housing Court issued 81,297 warrants of eviction<sup>8</sup>—**a 52% decrease.**

In FY 2020, OCJ and legal services providers served 86,440 households and individuals by providing eviction legal representation and advice.<sup>9</sup> 62,061 (71%) of those New Yorkers received full legal representation.<sup>10</sup> **Approximately 38% of New York City residents had legal counsel in eviction proceedings in FY 2020, compared to 1%** of represented residents when Intro 214-b was enacted.<sup>11</sup> If one zooms in on certain ZIP codes - neighborhoods where eviction and displacement risks and pressures are acute and where OCJ first concentrated the RTC rollout – the number of represented tenants is even greater. In the first half of FY2020, the overall rate of legal representation for tenants in those ZIP codes was 67% – two of every three tenants facing eviction in court.<sup>12</sup>

In FY 2020, **61%, of households assisted under RTC lived in rent-regulated buildings;** this number varied among boroughs: in the Bronx 73% of assisted households were in rent-regulated apartments; in Manhattan, 61%; and Brooklyn, 64%. This was much higher than in Queens or Staten Island where 35% and 21% of households were in rent-regulated properties respectively.<sup>13</sup> The discrepancy is likely due to the fact that the Bronx, Manhattan, and Brooklyn have larger, multi-unit apartment housing available, compared to owner-occupied or single-family properties, which are more prevalent in Queens and Staten Island.<sup>14</sup>

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<sup>6</sup> *Id.* at 10. Starting in NYC Fiscal Year 2013, mayoral funding for tenant legal services programs first became available and in that fiscal year, amounted to approximately \$6 million. *Id.* at 15.

<sup>7</sup> *Id.* at 13.

<sup>8</sup> *Universal Access to Legal Services: A Report on Year Two of Implementation in New York City*, OFF. CIV. JUST., HUM. RES. ADMIN., DEPT. OF SOC. SERVS., 9 (Fall 2019), [https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ\\_UA\\_Annual\\_Report\\_2019.pdf](https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ_UA_Annual_Report_2019.pdf) (last visited June 10, 2021) [hereinafter 2019 Report].

<sup>9</sup> See 2020 Report, *supra* note 2, at 17.

<sup>10</sup> See *id.*

<sup>11</sup> *Id.* at 2, citing *Chief Judge's Hearing on Civil Legal Services*, Third Dep't, Oct. 6, 2014 (statement of Hon. A. Gail Prudenti, Chief Administrative Judge, New York State Unified Court System, at 6, Exhibit B at 3). Available in *Permanent Commission on Access to Justice*, Appendices to Report to the Chief Judge of the State of New York, 2014, page 609 (retrieved from ) [http://ww2.nycourts.gov/sites/default/files/document/files/2018-05/2014%20CLS%20Report\\_Appendices\\_Vol%202.pdf](http://ww2.nycourts.gov/sites/default/files/document/files/2018-05/2014%20CLS%20Report_Appendices_Vol%202.pdf). By contrast, most landlords in Housing Court are represented by counsel.

<sup>12</sup> *Id.* at 8.

<sup>13</sup> *Id.* at 25.

<sup>14</sup> 2018 Report, *supra* note 1, at 19.

**9,424, or 41%, of residents assisted in FY 2020 had lived in their homes for ten or more years,**<sup>15</sup> demonstrating that those assisted had truly made their homes in their tenant housing arrangements.

Many cities have followed New York City's lead in passing similar ordinances recognizing a right to counsel in eviction proceedings. These localities—including Newark, San Francisco, Philadelphia, Santa Monica, Cleveland, Boulder, and Baltimore—have also enjoyed great success.<sup>16</sup> In San Francisco, two-thirds of represented tenants have remained in their homes and the filing rate dropped 10% in just one year.<sup>17</sup> In Cleveland, 93% of represented tenants have avoided eviction or an involuntary move.<sup>18</sup> Washington State also signed into law a right to counsel for tenants as of April 2021.<sup>19</sup>

## II. IMPACT OF COVID-19 PANDEMIC

The COVID-19 pandemic and Executive Orders implemented to protect New York residents may raise questions regarding the relative impact of court closures and eviction moratoria vis-à-vis the progress of RTC. Here, we look to FY 2018 and FY 2019 to examine the advancements achieved with the implementation of RTC, a trend that seems sure to continue.

FY 2018 marked the first year of the law's phased-in implementation and saw immediate progress. As of June 30, 2018, 246,369 New York City residents had received free legal representation, advice, or assistance in eviction and other housing-related matters.<sup>20</sup> In FY 2019, 350,000 New York residents had received this assistance since its implementation.<sup>21</sup> To reiterate, as of FY 2020, that number has continued to grow to 450,000.<sup>22</sup>

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<sup>15</sup> See 2020 Report, *supra* note 2, at 22.

<sup>16</sup> *Id.* at 1. See also *Baltimore Becomes 7th City with Tenant Right to Counsel*, NAT'L COAL. FOR A CIV. RIGHT TO COUNS. (Dec. 1, 2020), [http://civilrighttocounsel.org/major\\_developments/1467](http://civilrighttocounsel.org/major_developments/1467) (last visited June 16, 2021).

<sup>17</sup> Dean Preston, *Supervisor Dean Preston Holds Hearing on Implementation for Right to Counsel Law*, BD. OF SUPERVISORS, CITY & COUNT. OF SAN FRANCISCO (Feb. 24 2020), [http://civilrighttocounsel.org/uploaded\\_files/262/PRESS\\_RELEASE\\_-\\_Supervisor\\_Dean\\_Preston\\_Holds\\_Hearing\\_Monday\\_on\\_Implementation\\_for\\_Right\\_to\\_Counsel\\_Law.pdf](http://civilrighttocounsel.org/uploaded_files/262/PRESS_RELEASE_-_Supervisor_Dean_Preston_Holds_Hearing_Monday_on_Implementation_for_Right_to_Counsel_Law.pdf) (last visited June 11, 2021).

<sup>18</sup> *Annual Report to Cleveland City and Courtesy Report to Cleveland Mayor's Office*, RIGHT TO COUNS., 2 (Jan. 31, 2021), <https://lasclev.org/wp-content/uploads/January-2021-report-on-initial-6-months-of-Right-to-Counsel-Cleveland-high-res.pdf> (last visited June 11, 2021).

<sup>19</sup> *Washington is the 1st State to Enact Right to Counsel for Tenants*, NAT'L COAL. FOR A CIV. RIGHT TO COUNS. (Apr. 22, 2021), [http://civilrighttocounsel.org/major\\_developments/1500](http://civilrighttocounsel.org/major_developments/1500) (last visited June 16, 2021).

<sup>20</sup> 2018 Report, *supra* note 1, at 1.

<sup>21</sup> 2019 Report, *supra* note 8, at 2.

<sup>22</sup> 2020 Report, *supra* note 2, at 6.

In FY 2018, 68,921 New Yorker households and individuals depended on RTC’s full legal representation,<sup>23</sup> which grew to 80,270 households and individuals aided with full legal representation in FY 2019.<sup>24</sup>

**In FY 2018, 84% of households were able to remain in their homes with the assistance of legal representation.**<sup>25</sup> FY 2018 also saw an increase of households represented in eviction matters (from approximately 1% in 2013) to 30% in 2018. This progress was maintained and continued in FY 2019: it was found that 84% of New Yorkers represented in Housing Court were able to remain in their homes,<sup>26</sup> and 32% of households had legal representation.<sup>27</sup> Warrants of eviction had also declined since the implementation of the law. In FY 2018 warrants of eviction issued declined 27% from 2013<sup>28</sup> and maintained a similar number of issued warrants of evictions in FY 2019.<sup>29</sup>

### III. THE CLIENTS ASSISTED BY RTC AND RACIAL IMPACT

Filing for eviction is a discretionary action on part of the landlord, and research has shown that it is a tool disproportionately used against Black and Latinx renters. Even before the pandemic crisis, 19% of Latinx tenants in New York City were threatened with eviction and 14% of Black tenants were threatened, compared to 8% of white and 4% of Asian communities.<sup>30</sup>

Tenants living in **predominantly Black populated ZIP code areas were three times more likely to be evicted.**<sup>31</sup> Across the United States, **although 20% of renters are Black, almost 33% of eviction filings are against Black households,** and the filing rate against Black women is almost twice as prevalent as the filing rate against white women.<sup>32</sup> Despite a large decrease in eviction filings overall in New York City, the ZIP codes with the highest filing rates continued to be those with higher populations of Black and Latinx households, and residents with

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<sup>23</sup> See 2018 Report, *supra* note 1, at 10.

<sup>24</sup> See 2019 Report, *supra* note 8, at 13.

<sup>25</sup> 2018 Report, *supra* note 1, at 2.

<sup>26</sup> 2019 Report, *supra* note 8, at 6.

<sup>27</sup> *Id.* at 4.

<sup>28</sup> 2018 Report, *supra* note 1, at 7.

<sup>29</sup> 2019 Report, *supra* note 8, at 9.

<sup>30</sup> Oksana Mironova, *Race and Evictions in New York City*, CMTY. SERV. SOC’Y (June 22, 2020), <https://www.cssny.org/news/entry/race-evictions-new-york-city> (last visited June 16, 2021) (based on “The Unheard Third is a scientific telephone survey designed by Community Service Society in collaboration with Lake Research Partners who administer it using Random Digit Dialing and professional interviewers.”).

<sup>31</sup> *Id.* (based on 2017-2019 DOI eviction data and US Census 2017 ACS 5 Year estimate).

<sup>32</sup> GRACIE HIMMELSTEIN & MATTHEW DESMOND, *Eviction And Health: A Vicious Cycle Exacerbated By A Pandemic*, HEALTH AFFAIRS (Apr. 1, 2021), <https://www.healthaffairs.org/doi/10.1377/hpb20210315.747908/full/> (last visited June 16, 2021). See also PETER HEPBURN, LOUIS RENNEE, & MATTHEW DESMOND, “Racial and Gender Disparities among Evicted Americans.” 7 SOCIAL SCIENCE 649, 654 (Dec. 16, 2020), [https://sociologicalscience.com/download/vol-7/december/SocSci\\_v7\\_649to662.pdf](https://sociologicalscience.com/download/vol-7/december/SocSci_v7_649to662.pdf) (last visited June 16, 2021) (confirming statistics of eviction filing discrepancy by race and gender).

lower incomes.<sup>33</sup> Further, these communities encounter serial eviction filings, or repeated filings, more frequently than other races.<sup>34</sup>

The disparity in eviction filings may be partly explained by economic factors. Racial and economic disparity was further exacerbated by the pandemic, during which half of New York State's Black tenant households fell behind on rent.<sup>35</sup> For a snapshot, data for the period May 26 - June 7, 2021 looked at New Yorkers who experienced loss of employment income and broke it down by race characteristics as follows: 1,317,674 Black New Yorkers; 811,394 Latinx New Yorkers; 503,139 white New Yorkers; and 205,435 Asian New Yorkers lost employment income during this period.<sup>36</sup> **This totals to 2,837,642 New Yorkers who had a loss of employment income, 46% of whom were Black and about 29% were Latinx.** Researchers refer to this a “vicious cycle” since being evicted or having a threat of eviction is a further obstacle to financial and health stability.<sup>37</sup>

In 2017, rent-stabilized units comprised 45% of the renter-occupied housing stock in New York City.<sup>38</sup> Most units were in Brooklyn (about 25%), the Bronx (about 30%), and Manhattan (about 25%), but the Bronx had the most dramatic difference with more rent-stabilized units than private, non-regulated units.<sup>39</sup> Forty-two percent of Latinx tenants, 24% of white tenants, 22% of Black tenants, and 11% of Asian tenants occupied rent-stabilized units in 2017.<sup>40</sup>

**Sixty-four percent of rent-stabilized occupants are below the 80% HUD Income Limit.**<sup>41</sup> Further, rent-stabilized households are twice as likely to receive at least one type of

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<sup>33</sup> *State of the City 2019: Eviction Filings*, NYU FURMAN CTR. (2020), <https://furmancenter.org/stateofthecity/view/eviction-filings> (last visited June 16, 2021).

<sup>34</sup> PETER HEPBURN, LOUIS RENNEE, & MATTHEW DESMOND, “Racial and Gender Disparities among Evicted Americans.” 7 *SOCIAL SCIENCE* 649, 656 (Dec. 16, 2020), [https://sociologicalscience.com/download/vol-7/december/SocSci\\_v7\\_649to662.pdf](https://sociologicalscience.com/download/vol-7/december/SocSci_v7_649to662.pdf) (last visited June 16, 2021).

<sup>35</sup> *Id.* (based on U.S. Census Bureau Household Pulse Survey at weeks 1,3,5)

<sup>36</sup> *Week 31 Household Pulse Survey: May 26 – June 7*, U.S. CENSUS BUREAU (June 16, 2021), <https://www.census.gov/data/tables/2021/demo/hhp/hhp31.html> (Employment Tables, Table 1. Experienced and Expected Loss of Employment Income by Select Characteristics, NY Page) (last visited June 16, 2021) [hereinafter Employment Table].

<sup>37</sup> GRACIE HIMMELSTEIN & MATTHEW DESMOND, *Eviction and Health: A Vicious Cycle Exacerbated By A Pandemic*, HEALTH AFFAIRS (Apr. 1, 2021), <https://www.healthaffairs.org/doi/10.1377/hpb20210315.747908/full/> (last visited June 16, 2021).

<sup>38</sup> *Sociodemographics of Rent Stabilized Tenants: An analysis based on the 2017 New York City Housing and Vacancy Survey (NYCHVS)*, NYC DEPT. OF HOUS. PRES. & DEV., 1 <https://www1.nyc.gov/assets/hpd/downloads/pdfs/services/rent-regulation-memo-1.pdf> (last visited June 16, 2021). This document focuses on “a subset of renter-occupied units, specifically rent stabilized and private, non-regulated units, instead of the overall rental universe that also includes rent controlled, public housing, Mitchell-Lama rental, and other regulated units. Rent stabilized and private, non-regulated units make up about 87% of the rental stock [in New York City].” (Rent controlled units and other public housing account for about 10%.)

<sup>39</sup> *Id.* at 2.

<sup>40</sup> *Id.*

<sup>41</sup> NYC DEPT. OF HOUS. PRES. & DEV., *supra* note 38, at 4—5. See also *Income Limits*, OFF. OF POL'Y DEV. & RSCH. (“HUD develops income limits based on Median Family Income estimates and Fair Market Rent area

**public benefit program**, like the aforementioned Cash Assistance or SNAP, than private, non-regulated unit occupants. Indeed, between 2017 and 2018, a majority of recipients of SNAP assistance were Black and Latinx, and 57% of recipients were women.<sup>42</sup> During the pandemic, in April 2021, HRA assisted New York City residents with several cash assistance programs such as the Family Assistance Program and the Safety Net Assistance (“SNA”) Program. The vast majority of people in need of assistance under these programs were Black and Latinx households.<sup>43</sup>

This summary of findings comports with the experiences of City Bar members who work in this field, as well as the content of the October 2020 Report of the Special Advisor on Equal Justice in the New York State Courts.<sup>44</sup>

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definitions for each metropolitan area....”); *Profile of Rent-Stabilized Units and Tenants in New York City*, NYU FURMAN CTR., 5 (June 2014), [https://furmancenter.org/files/FurmanCenter\\_FactBrief\\_RentStabilization\\_June2014.pdf](https://furmancenter.org/files/FurmanCenter_FactBrief_RentStabilization_June2014.pdf) (showing that this number has not decreased since 2011).

<sup>42</sup> *Social Indicators and Equity Report 2019*, MAYOR’S OFF. FOR ECON. OPPORTUNITY, 70 (2019), <https://www1.nyc.gov/assets/opportunity/pdf/SIER-2019.pdf> (last visited June 16, 2021).

<sup>43</sup> *HRA Facts Quarterly Supplement: April 2021*, HUM. RES. ADMIN. 3 (Apr. 2021), [https://www1.nyc.gov/assets/hra/downloads/pdf/facts/hra\\_facts/2021/hra\\_facts\\_2021\\_04.pdf](https://www1.nyc.gov/assets/hra/downloads/pdf/facts/hra_facts/2021/hra_facts_2021_04.pdf) (last visited June 16, 2021) (e.g., Black and Latinx households made up 90% of FAP assistance).

<sup>44</sup> See *Report from the Special Advisor on Equal Justice in the New York State Courts*, STATE OF N.Y. UNIFIED CT. SYS. (Oct. 1, 2020), <http://www.nycourts.gov/whatsnew/pdf/SpecialAdvisorEqualJusticeReport.pdf> (last visited June 26, 2020).