TESTIMONY OF ANDREW SCHERER
POLICY DIRECTOR, IMPACT CENTER FOR PUBLIC INTEREST LAW
AT NEW YORK LAW SCHOOL

Before the New York City Council Committee on Courts and Legal Services, on INTRO 736, which amends the City Charter to establish an Office of Civil Justice

April 15, 2015

Good afternoon. I am Andrew Scherer and I am the Policy Director of the Impact Center for Public Interest Law at New York Law School. The Impact Center was launched by New York Law School in the fall of 2014 to advance the public interest, to support the practice of public interest law and to help NYLS students become public interest law practitioners. I am directing a Right to Counsel Project at NYLS and am an active member of the NYC Coalition for a Right to Counsel in Housing Court.

I have a long history with civil legal services and the movement for access to justice. For over thirty years, starting in the late 1970’s, I was a civil legal services attorney with Legal Services NYC; my last 9 years there, I was the Executive Director. As a young staff attorney, representing tenants in the South Bronx in the days when the Bronx was truly burning, I saw the transformative difference we could make for our clients. Since leaving Legal Services NYC in 2010, I have travelled the country and, to some extent the world, as a consultant -- advising, evaluating and visiting civil legal services programs, and I’ve seen the enormous impact legal help has on people’s lives, and the problems that fester when they cannot get the legal help they need. I concluded in my early days in legal services, and continue to firmly believe, that access to legal assistance for fundamental matters such as loss of one’s home, must be a right. I wrote my first law review article on the topic in the late 1980’s.

After many years in the proverbial wilderness, it is enormously heartening to see the progress being made toward meaningful access to justice in New York. The City Council and the Administration have displayed amazing, unprecedented and overwhelming commitment to access to justice. The increased funding for civil legal services through the efforts of the Mayor, the Speaker and the Council -- amounts both already realized and those projected -- is truly awesome.

The creation of a Civil Justice Coordinator’s office through Intro 736 represents an important and critical step in building an infrastructure in New York City to assure
access to justice. The Office's mandate under the City Charter provision is to do all the right and necessary things to further access to justice – examine needs, coordinate services, assess efficacy and capacity, and plan for expansion of services. The charter provision rightly prioritizes the expansion of legal assistance with housing matters. Without doubt, the Office is a necessary step towards a civil right to counsel in housing matters. Necessary, but not, alone, sufficient.

I urge the Administration, the Speaker and the Council to now take the bold next step – to establish, through legislation, a right to counsel for people who face losing their homes in legal proceedings. Establishing a right does what no amount of funding can do – it completely shifts the dynamic for the long haul and sends a powerful message about respect and human dignity. Funding can be eliminated. A right is far more difficult to take away.

The time is right. This is a problem-solving administration that is, in partnership with the Council, not afraid to take on the big, important issues, not afraid to make change where change is needed. There is a broad consensus that this change is needed. On December 5, 2014, the Impact Center at NYLS hosted a public forum on the right to counsel. I have attached quotes from the experts who spoke at that forum to this testimony.

I'm going to talk about the reasons the city should create a right to counsel for low-income people who face losing their homes in legal proceedings, and the reasons the City can create the right. But ultimately, the question comes down to what kind of city we want to live in.

Here are the reasons the City should create the right:

- The right to counsel in housing matters shifts the paradigm in our system of justice, from a system of pay to play where low-income are always left out, to a system that treats people with the dignity and respect they deserve.

- The right to counsel conveys a strong, incontrovertible message that the lives, homes and families of New York City's lowest income residents matter.

- The right to counsel fosters equity in a city increasingly polarized, and faith in the possibility of a single system of justice for all. And because of the nexus between race and income, the right to counsel fosters racial as well as economic equity.

- The right to counsel vindicates the constitutional rights of due process and equal protection and fundamental human rights under international law.

- Quite simply, the right to counsel keeps people in their homes and averts the personal tragedy and rising social cost of homelessness.
The right to counsel protects the affordable housing stock—under current law, every eviction and displacement from rent regulated housing creates an opportunity for the landlord to raise rents and deregulate the housing unit, leaving one more family without affordable housing and one less unit of affordable housing.

The right to counsel will save public dollars better spent elsewhere.

The right to counsel will forever change, for all of us, our expectations about what is right and just.

And, the right to counsel places New York City where it should be, and where it always has been, leading the country in a matter of fundamental civil rights.

And here are the reasons the City can create the right:

The city has the legal authority to create the right. The State’s delegation of power to the City under the state constitution and the Municipal Home Rule Law is clear, the City is empowered to protect the well-being of its people.

- The City has done it before. In 1993, the City established a right to counsel by statute for people with tuberculosis who are subject to detention.
- The City has often led the way—with the first housing code, the first public housing, the first zoning law, with human rights protections.

The City can afford to create the right. Indeed, it cannot really afford not to. In the short run, it will be a cost. The IBO and City Council Finance Division estimates vary greatly, from $117 to $170 million fully implemented. BUT:

- The amounts projected for eviction-prevention legal services for next year are a third of the overall cost and could cover the first phase of implementation.
- All of the projections show that the cost of counsel is more than offset by the savings in the shelter system realized by preventing homelessness. If the costs of counsel were shared by the federal and state governments the way the costs of shelter are shared, the city’s expense for counsel would be more than offset by its savings.
- None of the cost estimates take into consideration the impact on affordable housing, one of the Mayor’s top priorities. Every unit of affordable housing retained means that one less family needs a new affordable unit.
- This is not a huge expense to change the face of the justice system for low-income New Yorkers. By comparison, the NYT recently reported that there are single apartments for single families selling in midtown Manhattan for over $100 million each.
• In addition, the city can handle the logistics of establishing the right. It would have to do an orderly phase in by creating the Civil Justice Coordinator Office and building capacity of the providers first and then phasing in the right over time. This is not overwhelming or unrealistic in a City with an administration and a Council with the wherewithal to move mountains – Just look at what was done in a short time frame with universal pre-K.

In sum, I applaud the City for moving forward with creating the Office of Civil Justice and giving civil justice the focus and attention it deserves and I urge the City to move forward just as expeditiously through that office to establish the right to counsel for people who face losing their homes in legal proceedings.

To paraphrase an early religious scholar:
If not now, when?
And if not New York City, who?
What the Experts Are Saying

Quotes from
Housing Justice: A Public Forum on New Yorkers’ Right to Counsel in Eviction Proceedings

Organized by the Coalition for a Right to Counsel in Housing Court and hosted by the Impact Center for Public Interest Law at New York Law School on December 5, 2014

Introduction

On December 5th, 2014, the Impact Center for Public Interest Law at New York Law School hosted Housing Justice: A Public Forum on New Yorkers’ Right to Counsel in Eviction Proceedings. This all-day forum, organized by the Coalition for a Right to Counsel in Housing Court, included a series of panel presentations, in which bar leaders, judges, community members, members of academia and other experts presented and discussed their views on the need for a right to counsel in eviction proceedings in New York City. Panels addressed: the impact that the Right to Counsel would have on housing and homelessness, public welfare, and the administration of justice as well as what could be learned from experiences throughout the country and around the world. Participants in one panel discussed their personal experience with eviction and Housing Court. This report contains excerpts from the day’s discussions. All statements were reviewed and approved by the persons quoted. The report is still a work in progress; a final, expanded version of this report with quotes from additional participants is forthcoming.

Thank you very much to NYLS Impact Center Fellows Renee Daniel and Sean Farrow who did the heavy lifting on producing this report – reviewing the transcript and video, selecting quotes, confirming wording with panelists, etc. Many thanks also to the law firm, Skadden, Arps, Slate, Meagher & Flom and particularly to Special Counsel Ronald Tabak, for using the firm’s resources, pro bono, to transcribe the day’s discussions.

The New York City’s Council is considering legislation that would make New York City the first jurisdiction in the United States to establish a right to counsel for low income people who face eviction from their homes. We hope that this report will be of use to policymakers as they contemplate taking this historic step.

Andrew Scherer, Policy Director
Impact Center for Public Interest Law at NYLS
April 17, 2015
Opening Panel

Dean Anthony Crowell, New York Law School
“"This is an important subject and I think one of the things that we have to understand is that there is an incredible urgency to address housing justice issues especially with the acute rise in evictions and the persistent challenge of homelessness that we are faced with.”

Commissioner Steven Banks, New York City Human Resources Administration
“In terms of what it really means to implement the right to counsel -- and I know that there are challenges as people grapple with our approach with the expansion of implementing a provision of counsel of program -- we also have to understand the speed and the urgency of doing things and sometimes the perfect is the enemy of the good.”

Susanna Blankley, Director, Community Action for Safe Apartments
“A year and a half ago we released a report, called “Tipping the Scales” and it was the first report in the city to come entirely from tenant experiences of Housing Court in the Bronx. More than 2,000 people go through that court every day. One of the main demands that came out of that report, is that the most important thing that we need to do to tip the scales of justice in the Housing Court system, and to make it a right for folks to defend their homes.”
“For the last few days, we have been chanting that black lives matter and that systemic racism has got to go. The reality is that right to counsel is a racial justice issue. The majority of people that get evicted from our system’s courts are people of color. Right to counsel can stop making people homeless, it can stop making people poor.”
“Since the mayor took office, he has built 23 new shelters to deal with a 13% increase in homelessness. We can’t build our way out of this crisis.”

Andrew Scherer, Policy Director, Impact Center for Public Interest Law at NYLS
“Once people have a right, it is very hard to take a right away. Making it a right will make an enormous difference.”
“The wealth gap has been rising in a very alarming way. Federal district courts have 1200 judges and magistrates to deal with their cases and the NYC Housing Court has 50 judges to deal with the same number of cases. Federal courts have a budget of $2.6 billion and NYC Housing Court has a budget of about $32 million. So the federal courts are spending almost 80 times as much per case as Housing Court and the Housing Court judges handle about 140 times as many cases as do the federal court judges.”
“This is the next important step that needs to be taken; it’s such an important area of human rights and NYC can lead the nation in making it happen.”

Bar Leaders Panel

Edwina Francis Martin, Board Member, Network of Bar Leaders

“More than 3 million New York City residents have incomes lower than 200 percent of the federal poverty level yet fewer than 800 of the 75,000 lawyers in NYC are dedicated to
providing legal services to the poor. As a result of this and lack of legal funding for civil legal services the Chief Judge’s Task Force on Expanding Access to Civil Legal Services has consistently found that less than 20 percent of the legal needs of New Yorkers are being met.”

“We keep talking about being in recovery but where is it happening. The percentage of those living below poverty went from 18.4% in 2008 to 20% in 2012.”

*Debra Raskin, President, New York City Bar Association*

“The NYC Bar Association for decades has been committed to the concept of access to justice; without meaningful legal representation there is in fact no access to justice. It’s essential that litigants who cannot afford a lawyer can obtain representation, someone with legal training to navigate the morass of laws that control proceedings in the Housing Court and allow people to protect fundamental rights.”

“We focus, in particular, on eviction cases because of the high consequences of loss of a home, and family disruption and homelessness that follow from that. As you’ve heard, over 90% of the individuals who appear in housing court as tenants do so without a lawyer, and it’s inexcusable.”

“Our support for the right to counsel is evidence-based policy. This is based on statistics. This is based on numbers. This is based on the realities in housing court.”

“One of the other areas the NYC Bar Association works on is pro bono representation, that is, having lawyers represent individuals without payment. We strongly support that, although, it is very clear from our work over many years in pro bono representation, that is far from sufficient for a crisis of the magnitude of the housing shortage here and the problems in evictions and housing court.”

*Alan Rothstein, General Counsel, New York City Bar Association*

“According to the Chief’s Justice Task Force on Civil Legal Services, nearly 2 million people walk into NY courts every year to handle their legal matters without lawyers. This problem is particularly acute in the city’s Housing Court, where 90% of tenants have no lawyer and over 90% of landlords have counsel. The organized bar is quite aware of and concerned about the lack of counsel in Housing Court.”

*Lewis Tesser, President, New York County Lawyers’ Association*

“New York County Lawyers Association has a justice center which each year addresses the most substantial public problems that we face. This past October marks the tenth anniversary of NYCLA’s justice center conference exploring issues facing NY’s Housing Court crisis in the 21st century. In the aftermath of that conference, NYCLA passed one of the first policy
resolutions calling for a right to counsel for all New Yorkers facing eviction proceedings who could not hire an attorney. In the ten years since we passed that resolution, NYCLA has reaffirmed that commitment on multiple occasions calling for greater representation of low income tenants."

“As part of our research concerning the challenges facing litigants in Housing Court, NYCLA has studied the changing social and economic demographics of the city, high rates of homelessness, substantive legal issues affecting housing conditions, hold-overs, and non-payments. One of NYCLA’s findings is the discrepancy between representation of landlords and that of tenants despite the work of the Legal Aid Society, non-profit organizations, and law school clinics.”

“Approximately 90% of tenants are unrepresented. This enormous imbalance correlates with higher eviction rates and higher homelessness rates. NYCLA has found that tenants who have counsel have been more successful in opposing eviction.”

Community Voices Panel

Carmen Vega-Rivera, Community Action for Safe Apartments

“If it wasn’t that I had legal representation, it doesn’t matter your income, it doesn’t matter your size, it does not matter your education, I would have been homeless.”

“We don’t fit into a box of: we look alike, we talk alike, we dance alike, we eat alike. We are quite diverse. We have something in common, the process of being evicted and the trauma that it causes someone and their family.”

“I want heat and hot water everyday, not just when he (the landlord) feels like it. I want a working elevator, because I pay for it. Not that I have to miss appointments because I can’t get up and down the steps. I am one in less than 10% that has legal representation.

Shanequa Charles, Community Action for Safe Apartments

“There is nothing that can be said that can clearly demonstrate the emotional impact on a family when you are facing losing your home. When the marshal is at your door, then you have about three minutes to grab those kids and get something that is very important to you and head out the door, because your landlord has evicted you. Your dream is over. Grab your stuff and go. By the way, the marshal is not a nice guy. By the way, the marshal stands there and treats you as if you are a criminal until you get your things and you get out of that apartment. We are now faced with this bad dream every single day. At least 30,000 times in 2013, that happened to someone. It doesn’t have to.”
“The shelter reporting is not the accurate amount of homeless folks. Those are only the ones in the shelter. We are not talking about the families that are bunched up underneath the bridge, trying to find good pieces of cardboard, and children that are getting sick, and can’t focus on school, and mommy can’t work because she has to take care of the sick baby.”

“Housing should no longer be looked at like a commodity. It should be a human right to have a roof over your head. “Funding the Right to Counsel is an absolute necessity.”

*Maria Cortes, Client of Make the Road New York*

“In my particular case, what we are asking for is respect and dignity. We want to live like everyone else in the world. We have a right to have housing, to be able to participate in the society as citizens. The question is, do they just want all people of color to pack up and get out of the city?”

“We have had a lot of experiences with evictions and what we need in the Housing Court are more interpreters and lawyers. There aren’t enough interpreters and when we ask for one, they treat us very rudely. Another problem is that the interpreters speak too fast or they do not interpret appropriately.”

“There are rising rents and the issue of eviction is affecting particularly the Latino communities and other minority communities and this is something that we are facing in all of the neighborhoods in the state of NY.”

*Monica Ross, Client of New York Legal Assistance Group*

“I am part of a growing trend of military women coming back from combat that are facing homelessness. My experience in Housing Court was frightening at first because, I did not have legal representation. I met with the landlord’s attorney and the first thing he told me was pay this money or we are going to evict you. The first thing on an attorney’s mind is “We want you out so we can get somebody else in.”

*Housing, Homelessness, and Social Services Panel*

*Matthew Desmond, Professor, Harvard University*

“Eviction is commonplace in the city’s African-American neighborhoods. If eviction weren’t so common, poor families would not exhibit such high rates of residential instability, which often bring about other forms of instability in families, schools, communities, compromising the life chances of kids and adults.”
"If you want to know why some poor families live in substandard housing conditions, which really hurts kids health, one answer is that they are compelled to do so in the hurried aftermath of an eviction."

"Even after accounting for how much tenants owed their landlord and several other factors, the presence of kids in the household almost triples your odds of receiving an eviction judgment. Far from being a mitigating factor, children are an aggravating factor in eviction court."

"Eviction doesn't spare your mental health. There are some findings for a national data set called the Fragile Family and Child Wellbeing Study from about 2,000 low-income mothers. We found that evicted mothers report higher rates of depression compared to observationally identical mothers who avoided eviction. Their rates of depression are 20% higher, even after accounting for homelessness and other shocks to the system."

"Providing stable housing by lowering evictions is a human capital investment, analogous to education or job training and one that would decrease child poverty and child homeless and stabilize families, schools and neighborhoods. If we want to give poor kids a fighting chance to realize their full potential, we have to provide them with a stable place to live."

Joshua Goldfein, Homeless Rights Project, Legal Aid Society

"Having more tenant lawyers benefits everyone, including the courts. Judges would much rather deal with lawyers than pro se litigants, and most other lawyers would as well, courts run more efficiently that way. At least 90% of the landlords are represented in housing court compared to less than 10% of the tenants. Therefore, judges spend most of their day talking to unrepresented tenants, without having the time to fully assure themselves that the tenant understands what is happening."

"When a tenant sees us (tenant lawyers) in court, they know they have rights and that the others lawyers in the building do not represent them."

"The last (mayoral) administration did not invest enough resources in eviction protection and cut off its own supports for families to move out of the shelter system. When you don't provide sufficient anti-eviction services and don't provide housing subsidies to shelter residents, then you will continue to watch the homelessness problem expand."

"If the city does not offer services to prevent people from having to come into the shelter system and doesn't help people move out of the shelter system, we will continue to see the shelter system grow and expand forever. This is what we have seen in the recent past, the continuous expansion of the number of homeless people as a direct result of short-sighted housing policy by the prior administration."

Tom Waters, Housing Policy Analyst, Community Service Society
"One of the contributing factors to homelessness and unaffordable rents is moving. Whenever tenants move, there will be a huge increase in rent for those tenants -- even if their new apartment is rent regulated, but especially if it isn't. Even if they move to a less expensive or less desirable neighborhood, everyone that is forced out or leaves voluntarily always pays more rent for the next apartment. So every move decreases affordability, often by a tremendous amount. Then, in that apartment the tenant has vacated, the rent is also going to go way up -- even if the apartment is regulated -- and the next tenant is going to pay a lot more."

Administration of Justice Panel

Sateesh Nori, Attorney-in-Charge, Legal Aid Society, Queens

"The landlord’s attorney really wins either way whether there is an attorney for the tenant or not, but tenants have so much to lose if they do not have an attorney and it's really their lives that are at stake."

"How would the Right to Counsel change my practice, the practice of lawyers like me? We would be able to use our limited resources better. We would need to engage in less triage, less screening ideally, and we would be able to take on cases right away, eligible cases, viable cases where we could make a difference immediately. We would be able to take on more cases at strategically significant points in the case."

David Udell, Executive Director, National Center for Access to Justice

"New models ask our judges to be proactive and engaged in order to protect the tenant who does not have legal representation. Judge Lippman and Judge Fisher are to be commended for trying everything possible to make the system work better, given that so few people have lawyers. In fact, the courts in New York and in other states are also trying to simplify the laws and to simplify procedures. Courts are also committing more resources to having interpreters and translators. But, none of these efforts should be equated with the importance of having a lawyer."

Mary Zulack, Professor, Columbia Law School

"No matter what happens there will always be people in that court without lawyers and we will always need an administration of justice including the judges themselves, who are mindful of how to deal with people without lawyers."

"Many people describe the Housing Court as somewhat like a Halloween Funhouse. The Housing Court Answers table sort of turns on the light, shows you what's happening, they give you some help, and make it a very different and much brighter place."
National and International Experience Panel

Kate Donald, Executive Director, Center for Economic and Social Rights

"Under international human rights standards, access to legal aid or free legal assistance is required in civil cases when human rights are at stake, as they clearly are in tenancy disputes and eviction decisions."

"The U.N. Special Rapporteur on the Right to Housing, an independent expert appointed by the UN Human Rights Council to monitor the enjoyment of that right, has clearly stated that providing legal aid is an important part of ensuring that human rights are not violated in eviction proceedings."

John Pollock, Coordinator, National Coalition for a Civil Right to Counsel

"Does counsel make a difference in certain kinds of cases? Massachusetts completed a set of eviction pilots just a few years ago. The pilots studied two different courts, district court and housing court. Prior to these pilots, one study had found that Massachusetts tenants without counsel retained possession only 2% of the time. The pilot study found that at one of the sites, tenants with counsel retained possession 66% of the time. The group at that same site that got only ‘assistance’ instead of full representation did half as well as that. It was the full representation that made the difference."

"In San Francisco they completed a study that examined about 800 cases altogether. They found that full representation was more effective than limited or no representation. When they estimated how much this representation saved the city, it turned out to be about $1 million."

"If landlords knew ahead of time that every single tenant in that courtroom would have representation, do you think landlords would still try doing whatever it is they are thinking about doing in the first place? The impression the study designers got in San Francisco was that the more systemic the representation, the less they saw landlords trying to “get one over” on tenants. They didn’t bring the frivolous lawsuit; they didn’t refuse to do the repairs, because they knew if they went to court, they were going to lose. That is systemic change. That’s why it is so important. Every tenant, every time, as long as they are indigent, should have the right to counsel. Period."

"The right to counsel and the right to housing are both critical. We have to make it clear when talking about both things that what is at stake in a housing case is not just your apartment. If people think that, they are not seeing and understanding the whole picture. And the right to counsel is the means to protect the really important right, the right to housing."