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**Impact Center for Public Interest Law
Equal Before the Law?: Civil Rights and Access to Justice
Access to Justice for Vulnerable Populations Panel**

Continuing Legal Education Materials

DATE: Friday, April 8, 2016

TIME: 9:20a.m. – 11:00a.m.

LOCATION: New York Law School
Auditorium
185 West Broadway
New York, NY 10013

PANELISTS: **Hon. Sheila Abdus-Salaam**, New York State Court of Appeals
Lenni Benson, Professor of Law and Director, Safe Passage Project,
New York Law School
Seymour James, Attorney-in-Chief, The Legal Aid Society
Maria MottCla, Executive Director, New York Foundation

MODERATOR: Professor **5bXyk Scherer**, New York Law School

CLE: 2.0 Continuing Legal Education credits, Ethics and
Professionalism

Equal Before the Law? Civil Rights and Access to Justice

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WHY A RIGHT: The Right to Counsel and the Ecology of Housing Justice

Andrew Scherer¹

“The good we secure for ourselves is precarious and uncertain . . . until it is secured for all of us and incorporated into our common life.”
— Jane Addams ²

Introduction-

There are many reasons why establishing a right to counsel for low-income tenants who face eviction in New York City would change the lives and communities of its low-income residents for the better and be good for the city. The right to counsel would help people keep their families together and stay in their homes and communities. The right to counsel would stem the loss of affordable housing. It would keep people out of homeless shelters and save them from the trauma and long-term consequences of eviction and homelessness. The right to counsel would address growing economic inequality. And the right to counsel would save government money because the cost of legal assistance would be greatly offset by the savings in keeping families together, preserving communities and preventing homelessness. These points have been made by others, as well as by me, in law

¹ Policy Director, Impact Center for Public Interest Law, New York Law School and Director of the Impact Center’s Right to Counsel Project as well as author, *Residential Landlord-Tenant Law in New York (Thomson-Reuters 2015-2016)*. The author wishes to thank the following tenant leaders from Community Action for Safe Apartments (CASA) for their thoughtful contributions to the ideas that are discussed in this essay: Joseph Cepeda, Fitzroy Christian, James Fairbanks, Paulette Hew, Althea Matthews, Evelyn I. Rivera, Sigilfredo Roman, Aaron Scott and Gwynn Smalls. These ideas, expressed at a group consultation / focus group conversation that was videorecorded at CASA on November 17, 2015, are quoted and referenced throughout this essay. And this essay is dedicated to these individuals as well as the other tenant leaders and activists at CASA and other organizations throughout New York City who are advocating for a right to counsel in eviction proceedings for themselves and their fellow New Yorkers.

The author also wishes to thank the law firm Orrick for transcribing the November 17 discussion.

A version of this article will be published by the Impact Center for Public Interest Law at New York Law School in summer 2016 as part of IMPACT, a collection of essays on access to justice issues.

² Social and political activist, author and lecturer, community organizer, public intellectual (b.1860, d.1935).

review articles and in other writings.³ Arguably, many of these benefits could be achieved, albeit in the short term and to a lesser degree, by increasing the availability of counsel and not guaranteeing a right. However, this essay addresses the question of why it is so important to establish a *right* to counsel in eviction proceedings.

The context for this essay is the very real possibility that the New York City Council and Mayor will adopt legislation that would make New York City the first jurisdiction in the United States to guarantee a right to counsel for low-income tenants who face eviction.⁴ Proposed legislation to that effect has been pending before the New York City Council since 2014,⁵ and, as of publication, the legislation has the support of 40 of the Council's 51 members. While the legislation has not yet been adopted, the City has responded to the advocacy for a right to counsel by vastly increasing funding for eviction prevention legal assistance. In 2016, the City will quintuple its funding for eviction prevention legal assistance, and a great many more low-income tenants will be able to receive legal help in eviction cases in New York City than ever before.⁶

This vast expansion of funding for eviction prevention legal assistance has led some to question why we need to make access to counsel a "right," when the City is willing to expand funding and make it easier for low-income New Yorkers to obtain representation. The central point of this essay is that, while an expansion of funding for legal assistance to

³ A number of articles making these points can be found on the website of the Right to Counsel Project of the Impact Center for Public Interest Law at New York Law School. Right to Counsel, *Resources*, IMPACT CENTER FOR PUBLIC INTEREST LAW, <http://www.nyls.edu/impact-center-for-public-interest-law/projects-and-institutes/right-to-counsel-project/resources/> (last visited Mar. 9, 2016). An even more comprehensive listing of articles, reports and other documents related to the civil right to counsel can be found on the website of the National Coalition for a Civil Right to Counsel. *Civil Right to Counsel Bibliographies*, NATIONAL COALITION FOR A RIGHT TO COUNSEL, <http://www.civilrighttocounsel.org/resources/bibliography> (last visited Mar. 9 2016).

⁴ Mireya Navarro, *Push to Provide Lawyers in New York City Housing Court Gains Momentum*, N.Y. TIMES, Dec. 16, 2014, http://www.nytimes.com/2014/12/17/nyregion/push-to-provide-lawyers-in-new-york-city-housing-court-gains-momentum.html?_r0.

⁵ Intro 214, NEW YORK CITY COUNCIL, <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1687978&GUID=29A4594B-9E8A-4C5E-A797-96BDC4F64F80>.

⁶ See *Text of Mayor de Blasio's State of the City's Address*, N.Y. TIMES, Feb. 3, 2015, <http://www.nytimes.com/2015/02/04/nyregion/new-york-mayor-bill-de-blasios-state-of-the-city-address.html>.

people facing eviction is enormously helpful, it is not enough to simply increase funding; there are many important and compelling reasons why access to counsel should be a *right*. A *right* protects right-holders against government error and unfairness and advances the rule of law. A *right* protects right-holders' well-being, security and stability. A *right* reinforces right-holders' dignity and respect. A *right* fosters equality. And perhaps most importantly, a *right* fundamentally shifts power to the right-holder. And, by increasing fairness in the operations of the Court, improving the status and treatment of tenants, fostering equality and altering the balance of power, the right to counsel would disrupt the existing ecology and bring about concrete changes in the practices of New York City's Housing Court and the relations between landlords and tenants.

What is a right?

Any discussion of the importance of a right must begin with a working definition of the term, "right." While the concept of a "right" is commonly understood and, in the United States especially, deeply embedded in history and the national psyche,⁷ it's important to be explicit about the meaning of the term, "right." The Merriam Webster Dictionary defines a "right" as "something to which one has a just claim."⁸ Merriam Webster defines a "legal right" as "a claim recognized and delimited by law for the purpose of securing it, and. . . *for the infringement of which claim the state provides a remedy in its courts of justice.*"⁹

It is that enforceability of a remedy in a "court of justice" for violation of a right, that enables a right-holder to derive power from a right, and what distinguishes it from a privilege or a benefit. Thus, while funding an expansion of the availability of counsel to

⁷ See, e.g., James H. Hutson, *The Emergence of the Modern Concept of a Right in America: The Contribution of Michel Villey*, 39 AM. J. JURIS. 185, 186 (1994) ("They assume that the people who stepped off the *Mayflower* and the *Susan Constant* brought with them the idea of a right and understood the concept much as we do today. In a typical scholarly assessment two constitutional experts claimed in 1987 that 'from the beginning, it seems, the language of America has been the language of rights'").

⁸ *Right*, MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/right> (last visited Mar. 9, 2016) (emphasis added).

⁹ <http://www.merriam-webster.com/dictionary/legal%20right>.

those facing eviction confers an important benefit, it does not confer a right or an entitlement, and the benefit can be denied or terminated at will and with impunity.

When access to counsel is dependent on funding, as it is for people who cannot afford to pay for counsel, the true “gatekeeper” for access is the provider of funding for the service. The City of New York has now become the primary funder of legal assistance to low income tenants who face eviction in the City and in the absence of a right, can choose to continue to provide the funding and continue the service or not. The city and other government and nonprofit funders of legal assistance delegate the gatekeeping task to the nonprofit legal organizations that provide the service, so that when low-income tenants facing eviction are turned away and denied services by the nonprofit providers, they experience the providers as the gatekeepers because they hear the word “no” directly from them. But the providers are merely the instruments; they can only do as much as their available resources allow. The real control over access is held by the funder(s). When legal assistance becomes a governmentally-recognized-and-provided “right,” a “court of justice,” and not the city or the provider becomes the gatekeeper, and the beneficiary of the right can compel government to provide the assistance or, as in this context, compel the government to fund the provision of the service. This ability to enforce thus represents a fundamental shift of power to people who previously lacked it.

The right to counsel is also a “civil right” in the sense that it is a right that pertains to an aspect of our justice system that is understood to be “civil” as opposed to “criminal.” It is also a “civil right” in the sense that it is a right deeply connected to the movement for civil rights, equality and human dignity for all the reasons set forth below. As one legal dictionary definition states, “[a] civil right is an enforceable right or privilege, which if interfered with by another gives rise to an action for injury. Examples of civil rights are freedom of speech, press, and assembly; the right to vote; freedom from involuntary servitude; and the right to equality in public places.”¹⁰ A right not to be deprived of a meaningful opportunity to defend one’s home in the courts because of one’s poverty fosters

¹⁰ Cornell University Law School, *Civil Rights*, LEGAL INFORMATION INSTITUTE, https://www.law.cornell.edu/wex/Civil_rights (last visited Mar. 9, 2016).

equality and, in protecting the ability to have a home, protects the ability to exercise many other of the important civil rights, such as the right to vote and the right to equal opportunity in work and education.

Fairness has long been seen as a core element of what constitutes a “right” and there is certainly a general intuitive sense of fairness about having a right to counsel in a civil legal matter with as significant a consequence as eviction from one’s home. When polled, many Americans simply assume that there is a right to counsel in such cases as there is in criminal proceedings.¹¹ Under the theory of natural rights, the rights we believe we are entitled to as members of society are the rights entitled to recognition. According to the French legal philosopher, Maurice Villey “[t]o give someone his right (*suum jus*) meant in the classical world to give him ‘what he deserved,’ ‘his due.’ What was due to the individual in society? His just share (*‘le part juste’, ‘le bon partage’*). Here, said Villey, was the meaning of classical natural right: a just or fair share for every individual of society’s benefits and burdens.”¹²

This notion that rights are rooted in the human expectation of fair and equitable treatment can be seen in economic terms as well; a framing that is particularly relevant to the right to counsel in eviction matters, where the court conflict balances economic interests and the fundamental need for a roof over one’s head. In the United States, the conventional wisdom, or at least the national mythology, is that we operate with a free market economy, but the reality is quite different. A huge number of interventions by government are constantly at play, affecting economic markets and reapportioning rights and values. This is particularly true in with respect to housing, where, among other areas of government intervention, zoning, taxation, banking regulation, transportation policy and rent regulation all profoundly affect real estate value and the ability to have a home. In any event, in theory, to work fairly and equitably, a free market economy depends on “rational cooperation, full information and zero transaction costs.”¹³ Yet, none of these essential

¹¹ BOSTON BAR ASSOCIATION TASK FORCE ON THE CIVIL RIGHT TO COUNSEL, THE IMPORTANCE OF REPRESENTATION IN EVICTION CASES AND HOMELESSNESS REPRESENTATION at 1 (Mar. 2012), <http://www.bostonbar.org/docs/default-document-library/bba-crtc-final-3-1-12.pdf>.

¹² Hutson, *supra* note 7, at 189–90.

¹³ See, e.g., Jules L. Coleman & Jody Kraus, *Rethinking The Theory Of Legal Rights*, 95 YALE L.J. 1335, 1336

elements are even minimally present in eviction proceedings in New York City's Housing Court. To the contrary, Housing Court is well recognized as being a difficult, hostile environment in which most landlords are represented by counsel who are familiar with the law and the court and most tenants appear without legal help, and where the "transaction cost" for those unrepresented tenants in lost wages, child-care costs, stress and anxiety are exceedingly high.¹⁴ Under an economic approach, legal rights are intended to correct market failures such as these by allocating entitlements.¹⁵ In Housing Court, a right to counsel would foster "rational cooperation, full information and zero transaction costs."

At a time of increasing economic inequality, seismic transformation of communities through gentrification, rising homelessness and racial tensions, the movement for a right to counsel in eviction proceedings in New York City should come as no surprise.¹⁶ The claim for rights often "percolates up" from communities and movements of people who perceive injustice and lack of fairness in their lives.¹⁷ People thus have an intuitive sense of justice and rights in circumstances in which their lives are affected. This theory is certainly borne out in the right to counsel context in New York City. Scholarly analysis of what it means to have a right is echoed by the sentiments of tenant leaders:

The right to counsel means living in dignity and being treated as a human being, which they don't do at all. And also, mental well-being. You know, the right to counsel gives you mental well-being. How do you get that? You have a home, you go to sleep and you get piece of mind and you're able to think out what problems you had the day before and what you're going to face tomorrow. So that's a big plus. Also, the right to counsel will stop all the hostile tactics of eviction, of harassment, of overcharging, of the multiple, you know, multiple MCIs, nonservices, cutting down on services, you know, turning off the elevator, not picking up the garbage. It goes on and on, and the right to counsel would empower people to be human beings again and stop being abused the way they are. And also, the right to counsel will

(1986).

¹⁴ See, e.g., URBAN JUSTICE CENTER, TIPPING THE SCALES: A REPORT OF TENANT EXPERIENCES IN BRONX HOUSING COURT (Mar. 2013), http://cdp.urbanjustice.org/sites/default/files/CDP.WEB.doc_Report_CASA-TippingScales-full_201303.pdf.

¹⁵ Coleman & Kraus, *supra* note 13, at 1336.

¹⁶ See generally Susanna Blankley, *The Fight for Justice in Housing Court: From the Bronx to a Right to Counsel for all New York City Tenants*, in IMPACT.

¹⁷ For an in-depth discussion of this notion – referred to as "*jurisgenesis*" – and its adherents, see: Michael McCann, *The Unbearable Lightness of Rights: On Sociolegal Inquiry in the Global Era*, 48 LAW & SOC'Y REV. 245, 248, 256 (2014) (discussing the views of Robert Cover and others about "the persistent proliferation of claims about justice and rights that percolate up from communities and movements in civil society").

stop big money from doing gentrification and creating homelessness in the city and the right to counsel will save the city a lot of money by addressing all of these issues because you have shelters, you have all kinds of other mental issues that can go on with people not being able to live in a home. So the right to counsel means peace of mind and well-being and living in dignity as a human being and that's why we need it.¹⁸

What does it mean for people to have a right?

Making something a “right” is transformative in a number of respects. It transforms government behavior by protecting against error and unfairness. It fosters the right-holder’s sense of security and well-being. It grants the right-holder greater dignity and respect. It conveys greater equality. And it transfers greater power to the right-holder.

A right provides protection against government error and unfairness

I saw where even when tenants were right they still had a very good chance of being evicted or might have been evicted for paying a debt that they already paid because they did not know how to present their defenses properly. They did not know their rights so were not able to win very winnable cases that would’ve been easily won if they had an attorney.¹⁹

Rights are generally seen as providing protection against government error and unfairness. Rights cause government to act in a manner that is more deliberative, less arbitrary, more thoughtful; and in so doing, rights foster the rule of law. Due to their common nature, rights affect others around them as well as government actors. As one scholar put it, “[b]y definition, the creation of a right alters not only the status of one individual but also the status of the government and all individuals that the right holder comes into contact with.”²⁰

¹⁸ Joseph Cepeda, CASA focus group, Nov. 17, 2015.

¹⁹ Fitzroy Christian, CASA focus group, Nov. 17, 2015.

²⁰ David McKennett, *Who Can Create Your Rights? On Save Our Valley V. Sound Transit, the Inability of Agencies to Create Personal Rights, and the Implications on the Non-Delegation Doctrine*, 15 GEO. MASON U. C.R. L.J. 179, 209 (2004). See also Holiday Hunt Russell, *The Search For a Section 1983 Right Under the Dormant Commerce Clause*, 15 NOVA L. REV. 263 (1991) (“Rights are all things which inure to the person upon which that person can claim to be free of governmental action”).

This alteration of status would certainly be true with the introduction of a right to counsel in eviction proceedings in New York City's Housing Court. In Housing Court, there are a number of regular players who interact on a daily basis in a relatively closed environment – Judges, court officers, housing agency and other city and state government representatives, landlords, landlord's lawyers (who represent most or the landlords who appear in court), unrepresented tenants and tenant lawyers (who represent a fraction of the tenants who appear in court). That environment is not only closed, it is relatively static, with patterns of behavior and mutual understandings that have evolved over many years. The ecology of that environment will be greatly disrupted with the introduction of a right to counsel and the resultant changed expectations and understandings and cadre of tenant lawyers who will be there to implement the right.

Under New York law, "self-help" eviction is illegal; a landlord must use a court in order to evict.²¹ When tenants appear in court without counsel, they generally do not have the capacity to convey sufficient and relevant information in an acceptable form to enable the court to make a fair decision on the law and the facts. Thus, the right to counsel is a right that checks the power of government by assuring that government has sufficient and relevant information on which to make a decision.

In this sense, rights limit government authority and "the creation of a new individual right might so much affect the power of the Government and strengthen the status of particular individuals that their creation might be fundamentally different than the mere creation of a law."²²

I was evicted one time. I lived up on Mosholu Parkway and I did not understand "stipulation."

Did you have a lawyer?

I did not. I thought I knew what I was doing, but it's not just the money that you have to pay, if they tell you 'you have to pay it on Tuesday the 10th, you do not pay it on Thursday the 14th.

Right.

²¹ See generally ANDREW SCHERER, *Origins of Summary Proceedings and Need for Judicial Process*, in RESIDENTIAL LANDLORD-TENANT LAW IN NEW YORK (2015-2016).

²² McKennett, *supra* note 20, at 209.

And when they want you out, they want you out.²³

A right protects the individual's well-being, security and stability.

Rights also serve to protect an individual's well-being, security and stability,²⁴ and a right to counsel in eviction cases would make an important contribution to the well-being and sense of security and stability of low-income tenants in New York City. The devastating and destabilizing effects of both eviction and the threat of eviction cannot be overstated. In his recent book, Evicted: Poverty and Profit in the American City, Professor Matthew Desmond of Harvard University describes in great detail the impact eviction has on low-income households in Milwaukee – homeless shelters and the streets, dilapidated housing and dangerous neighborhoods, depression and illness, and long term developmental consequences for traumatized children.²⁵ All the evidence shows that representation by counsel prevents evictions.²⁶ Thus, while the right to counsel will not extinguish evictions entirely, it will reduce them significantly and create a buffer of protection for tenants between having and not having a home. For low-income people, the awareness of that protection would be a relief that fosters their sense of security, stability and well-being. Tenant leaders know this very well:

Everybody that I grew up with, that grew up in that neighborhood, that went to grammar school with me, they have all moved out because harassment, and they told me personally "I'm moving out because of harassment." Not because my rent is \$1400 for one bedroom, or my rent is \$2400 for a three bedroom, it's not because of that. I can afford it. It's just, can't take harassment. . . .

People won't be stressed out economically, psychologically, okay, if they have the right to counsel. They won't miss a day of work, like they do. The right to counsel, you know, will give you the right to be represented correctly and cannot be taken away. A right is a right, okay? . . . It would take away the fear, the ignorance, and the feeling of despair and failure that people have when they go to housing court. Right

²³ Gwynn Smalls, CASA focus group, Nov. 17, 2015.

²⁴ Richard H. Fallon, Jr., *Individual Rights and the Powers of Government*, 27 GA. L. REV. 343, 353–54 (1993).

²⁵ See generally MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* (2016).

²⁶ See BOSTON BAR ASSOCIATION TASK FORCE ON THE CIVIL RIGHT TO COUNSEL, *supra* note 11; Caroll Seron ET AL., *The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City's Housing Court: Results of a Randomized Experiment*, 35 LAW & SOC'Y REV. 419 (2001), available with free jstor account at <http://www.jstor.org/pss/3185-408>.

to counsel would give me peace of mind to live with dignity and even the unfair playing field that landlords play with in Housing Court.

The sanctity of a home where you can have, you know, your sanctity when you come home, unwind and think about how attacking tomorrow's, you know, problems that are going to confront you and then you could pursue, okay, happiness, and that's what we're about, we want to be happy.²⁷

and:

I believe that if you have a basic need, if you don't provide food, shelter, and clothing for your children they will take your children away or your child away. So the right to counsel is built on having those principals to protect not only your children but yourself, as well. And so I believe that with the right to counsel it would be more of a battlefield with knowledge against knowledge. Not one that is crippled by not knowing. This way it would be more people from being tossed out to the street.²⁸

An important component of one's sense of well-being is the interest in agency or autonomy, particularly in situations that are difficult or stressful or that are fraught with risk. ²⁹ When people feel they have the ability to make decisions and assert their will, as they would with a right to be represented by counsel when their homes are in jeopardy, they have a greater feeling of agency and autonomy:

I was in housing court at one point back in 2013, two years after my mother had passed away where she was living in NYCHA³⁰ and I was her primary care provider, and we was going to court because my name wasn't on the lease. And after going back in forth with the other people that was living in the apartment, I had decided to just leave the apartment and I think it was more stressful with the people than with the Housing Court, but at that time, though, I did not have an attorney to represent me. I did know of succession rights and stuff like that, little things you know, that I tried to educate myself to fight my own battle. However, with NYCHA we don't have succession rights, I found that out, because the NYCHA has their own set of rules. . . . But I decided just to leave the apartment and I've just been floating around and trying to get my head above the water It would have made a difference if I'd had an attorney. It would have helped me better educate myself and know my rights to how to keep the apartment and get rid of the other people that was in the apartment, as well... ³¹

²⁷ Joseph Cepeda, CASA focus group, Nov. 17, 2015.

²⁸ Althea Matthews, CASA focus group, Nov. 17, 2015.

²⁹ Fallon, *supra* note 24, at 353–54.

³⁰ The New York City Housing Authority

³¹ Althea Matthews, CASA focus group, Nov. 17, 2015.

A right reinforces the right-holders' dignity and respect.

The notion that rights confer dignity upon and respect for the rights-holder became a focal point for human rights law in the aftermath of the horrors of World War II. Countries like Germany and, more recently, South Africa, given their history in particular, have focused on the importance of the “dignitary” aspect of rights.³² However, that notion is very relevant to the movement for a right to counsel in eviction matters.

In contemporary United States, growing activism in low-income communities of color is drawing attention to incidents of police brutality that reflect that the system of justice is unequal and that the members of those communities are not treated with the dignity and respect they deserve. Much of this activism centers around the police and the criminal justice system, and the “Black Lives Matter” movement has emerged out of that activism as a call for respect and dignity. But a parallel critique can be made of the civil justice system, particularly in Housing Court, where people are effectively denied their right to be heard when they face losing their homes simply because of their poverty and, as a consequence, the brunt of evictions, displacement and homelessness falls disproportionately on low-income communities of color. A right to counsel in eviction proceedings would convey a strong message to those communities of color that their lives, homes and communities matter and will be treated with the dignity and respect they deserve.

Treating all people with dignity and respect is an important social value and an important element of human rights.

Contemporary constitutional law draws from the religious and Kantian conceptions of human dignity and embraces the inherent dignity of all individuals as a legal principle. This modern form of “dignity” necessarily conflicts with and rejects the traditional social view of dignity as a mark of distinction for particular individuals and groups. The endowment of human dignity entitles everyone in modern society to demand equal respect and consideration for his personality from the government as well as from other individuals. The claims of equal dignity are largely normative and serve to ground human rights. Therefore, regardless of whether individuals actually possess equal dignity in some traditional or social sense of being “dignified,” there may be practical reasons for asserting the equality of dignity in order to support basic human rights and avoid the most egregious violations of

³² See Neomi Rao, *On the Use and Abuse of Dignity in Constitutional Law*, 14 COLUM. J. EUR. L. 201, 202 (2008).

human rights.³³

The need for a new order of dignity and respect by establishing a right to counsel is well understood by tenants whose lives are directly affected:

When I went to court I wanted to talk to the judge. The lawyer from the other side, they said “Why would I have to talk to the judge?” I say “I want to talk to the judge. I want to tell my story to the judge.”, and they say “No, you cannot talk to the judge.” So I asked the clerk if I can talk to the judge and he go like this, like yes you could do. So, I mentioned that I was missing time from my job and they were putting overcharge in my rent also. I had an overcharge, for long time.³⁴

For me, [the right to counsel] is knowing that when you’re about to go before the judge, that you’re not alone. There’s somebody there that can interpret for you, that’s not working for the lawyer, that is not working for the court, that won’t have an attitude if you say “I can’t read.” That won’t have an attitude if you say, “These numbers don’t figure out. You’re going too fast.” . . . it means that you’re guaranteed somebody for you when you go before that judge and when you come back, and that will help you understand why you’re there in the first place. Because sometimes you just really don’t know.³⁵

With the right to counsel it’s not all about the tenants going up against the landlord in a negative way, it’s going up against the landlord in a positive way and letting the landlord know that we are aware of what the rules and regulations are and we both can abide by those rules, not just that we’re fighting the landlord to try to get on. Some people might think that that’s what the right to counsel is. No. . . . The right to counsel, let’s face it, they went to school for this. We did not go to school for this. So it has nothing to do with being ignorant. It has a lot to do with how they were educated in that field. So as tenants we have to have a right to counsel and that right to counsel, attorney, have to be really for the tenants, not siding with landlords.³⁶

A right fosters equal treatment

Ronald Dworkin, the renowned legal scholar, has argued that there is a moral right to be treated as an equal in decision-making processes. While external preferences and

³³ *Id.* at 207.

³⁴ Evelyn Rivera, CASA focus group, Nov. 17, 2015.

³⁵ Gwynn Smalls, CASA focus group, Nov. 17, 2015.

³⁶ Paulette Hew, CASA focus group, Nov. 17, 2015.

political pressures inevitably influence decision-making processes, “our legal system should and does counteract their influence by identifying in advance the interests these preferences are most likely to infringe upon and then providing these interests with special protection. These interests thereby become rights.”³⁷ Dworkin’s thesis is highly relevant to eviction proceedings in which the vast imbalance in money, power, influence and, most importantly, access to counsel or legal firepower, cries out for the special protections required to secure equality in the decision-making process.

The inordinate imbalance in resources, power, influence and access to counsel in Housing Court gives rise to the widely perception of a need to “level the playing field.”

Well I went to court and then this guy showed up, you know, I’m representing myself and I thought he was gonna help me and he’s like, “Oh, I’m here to help you” and then lo and behold when I get into court it’s him against me.

So you didn’t have your own lawyer then?

No, no. At that point I did not have a lawyer, and if I had a lawyer, I would not have been evicted...³⁸

A right fundamentally shifts power to the right-holder

Ultimately, as discussed above, the creation of rights shifts power to the rights-holder and away from government. This concept has been recognized as far back as the Romans.³⁹ When low-income tenants facing eviction have a right to counsel at government expense, they gain power. In a very real sense, they gain a power that government gives up when it gives up its discretion to grant or deny legal assistance for any or no reason at all. But they not only gain power within the eviction proceeding itself. The security of knowing that they will have a meaningful opportunity to be heard and that their interests will be protected if they should be brought to court in an eviction proceeding empowers

³⁷ R. Lea Brilmayer & James W. Nickel, *Taking Rights Seriously*, 77 COLUM. L. REV. 818, 819 (June, 1977)(reviewing RONALD DWORKIN, *TAKING RIGHTS SERIOUSLY* (1977)).

³⁸ Joseph Cepeda, CASA focus group, Nov. 17, 2015.

³⁹ Hutson, *supra* note 7, at 192.

them to organize and assert their rights in their homes and communities. And that empowerment could very well produce results that avert court proceedings altogether by enabling pre-litigation resolution of disputes over housing conditions, rent levels and the like.

You know, we have a right to organize, now we need the right, the human right, of free lawyers in housing court to back up the work of low income people who are organizing.⁴⁰

A right to counsel, I think would be a very good thing. It would be one step towards empowerment in this great, big city that is about regentrification and it would mean that people could have and feel comfortable about organizing to stay in their homes.⁴¹

A right will disrupt the ecology of housing justice

By increasing fairness in the operations of the Court, improving the status and treatment of tenants, fostering equality and altering the balance of power, the right to counsel would disrupt the existing ecology and bring about concrete changes in the practices of New York City's Housing Court and in the relations between landlords and tenants. The current ecology is based on well-established and long-standing expectations and understandings about how things work. Attitudes, behavior and decisions of the tenants, landlords, managing agents, community organizers, landlords lawyers, tenants lawyers, Housing Court Judges, court clerks, court attorneys and other who participate in the system of housing justice are based on a current set of expectations and understandings. As the core expectations and understandings change, the behavior, attitudes and decisions will change.

We can only speculate as to the kinds of changes that would result from the advent of a right to counsel, but there is broad consensus among those most familiar with Housing Court – the attorneys who practice in the court on behalf of landlords and tenants and the judges who preside in the court – as to at least some of those changes that would affect the

⁴⁰ Jim Fairbanks, CASA focus group, Nov. 17, 2015.

⁴¹ Althea Matthews, CASA focus group, Nov. 17, 2015.

court. I did an informal and unscientific poll of about 200 landlord and tenant attorneys as well as Housing Court Judges at the 2015 Jack Newton Lerner Landlord-Tenant Institute at the New York County Lawyers Association on October 15, 2015 and there was general agreement among members of the audience that a right to counsel would bring about at least the following changes: with attorneys on both sides, the role of judges would become easier, there would be more decorum in the court and there would be less stress over the complicated role of judges when presiding over proceedings in which one side has legal representation and the other does not; settlements of cases would be more permanent and less likely to be vacated because they would be negotiated between attorneys, leading to fewer “repeat” cases brought and fewer applications for emergency stays (orders to show cause) sought; and there would be greater attempts by landlords and tenants to resolve cases before they result in litigation, and expanded efforts to address public policies that impact on landlord-tenant litigation such as, for example, the availability of government benefits to pay rent.

Conclusion

No doubt, expansion of funding for eviction-prevention legal assistance is a good thing, and New York City’s huge and growing investment in legal services for tenants will bring positive results. But expansion of funding is a short term measure with doubtful sustainability and it will not cause a fundamental shift in power, attitudes or culture. As one tenant leader put it:

It is good that the city is now providing some funding to protect tenants in areas where landlords may be using methods to push them out and displace them. But that funding can be taken away at the will of the legislature. A right cannot be taken away. It can, but it is a whole lot more difficult to lose that right. So a right to counsel means that the same way people accused of criminal activity automatically have the right to an attorney at their arraignment and they will have one during their trial, the right to counsel and housing court has to do the same thing and this is what we have been asking for. Something that can’t be taken away. Something that can’t be changed with a change of administration that says listen we are not going to fund

this program. Because it is a right that will always be financed, will always be funded, will be there always so that the right is protected at all times.⁴²

Moreover, increased funding for a benefit cannot bring about the shift in power dynamics, the change in the ecology of the court, the security and sense of well-being that would be generated by establishing the right to counsel. Increased funding does not treat people as equals, and does not convey the message of dignity and respect that is so sorely-needed in the city's low-income communities. For government officials, as for all of us, giving up a power and flexibility is not an easy thing to do; it takes strength and courage. The bold step of establishing a right to counsel would shift power to low-income people from government and would generate a long-overdue recalibration of the balance of power between landlords and tenants in Housing Court and elsewhere. It would have a lasting and transformative effect on the ecology of housing justice.

You know what? They talking about bringing a panda from what country? To come over here...

From China.

From China, for \$1 million a year? What? You know, they get money [for that] and an animal is more important than a human life, and that's sad.⁴³

⁴² Fitzroy Christian, CASA focus group, Nov. 17, 2015.

⁴³ Althea Matthews, CASA focus group, Nov. 17, 2015.

Caught in the Web: Immigrant Children in Removal Proceedings

By Claire R. Thomas and Lenni B. Benson¹

I. Introduction: Caught in the Web

The day of his hearing arrives. It is 8:30 a.m. He wears his best shirt and his jeans are clean and pressed. He grips the arms of the courtroom chair so hard that his knuckles are white. He is so small that his feet do not touch the floor. The Immigration Judge is speaking to him slowly and kindly, but he turns his small face up to look only at the court's Spanish-speaking interpreter. He does not understand English. The government prosecutor, an attorney for Immigration and Customs Enforcement (ICE), holds a document listing the charges against him; she is ready to proceed with his deportation case. He is eight years old.

In the United States, the individual state governments are primarily responsible for protecting children. Today, the basic normative principle governing domestic children's law is found in the legal standard known as the "best interests of the child." While this standard is not succinctly defined in the U.S. legal system,² scholars have noted that the "best interests of the child" generally "prioritizes the child's safety, permanency, and well-being."³ This flexible criterion guides agencies and judges through many critical legal decisions affecting the daily life of a child, such as guardianship, custody and visitation, economic support, abuse and neglect proceedings, and determinations relating to mental health and incarceration for juvenile infractions, while allowing the child to have a voice in the proceedings affecting his or her life.⁴

When the child is born abroad, but is now physically residing in the United States, the state's primary obligation to promote the child's welfare can also be woven into the complex web of federal immigration, education, and benefits law.⁵ Navigating through this intersecting

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² The United Nations Convention on the Rights of the Child (CRC) clearly defines the standard of "best interests of the child." While the United States had an active role in drafting the CRC and signed the CRC on February 16, 1995, it has not yet ratified the Convention. The United States has, however, signed and ratified both optional protocols to the CRC. *See* Convention on the Rights of the Child, Sept. 2, 1990, 1577 U.N.T.S. 3 (1990); *see also* *Convention on the Rights of the Child*, UNITED NATIONS TREATY COLLECTION, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en (last visited March 18, 2016).

³ Bridgett A. Carr, *Incorporating a "Best Interests of the Child" Approach Into Immigration Law and Procedure*, 12 YALE H.R. & DEV. L. J. 120, 127 (2009).

⁴ *See* Carr, *supra* note 3, at 127.

⁵ Children born outside the territorial United States may have a claim to citizenship if one or both of their parents were U.S. citizens at the child's birth. The rules can be complex and have changed over time. Today the relevant statutory provision is found in Immigration and Nationality Act, 8 U.S.C. § 1401. This article is primarily focused on non-citizen children. As volunteers at the Immigration Court we have met young children who were born abroad to U.S. citizen fathers and who did not realize they had the ability to claim U.S. citizenship.

web of competing or overlapping jurisdictions is extremely difficult even for the experienced *pro bono* attorney or professional social worker. The people least able to navigate these bureaucratic borders alone are children. Children who are caught up in the complexity and are unprotected are incredibly vulnerable. The confusion created by this web leaves non-citizen children without protection.

Sadly, in immigration law, the federal system has failed to provide free counsel to anyone, let alone children, who are often invisible and voiceless as a bureaucratic system operates around them.⁶ Data gathered through Freedom of Information Act requests indicates that between fiscal year 2005 and December of 2016, the government has initiated 169,684 juvenile cases in the immigration court, known as the Executive Office for Immigration Review (EOIR).⁷ The number of juveniles in the immigration removal system has steadily increased. In fiscal year 2005, approximately 8,910 juvenile cases began in immigration court.⁸ Ten years later, in fiscal year 2015, 28,819 juvenile cases were filed in immigration court. In 2014, the number of juvenile cases filed in immigration court was 56,167. And perhaps of greater importance is that juvenile cases have been a growing percentage of the overall EOIR workload. In fiscal year 2014, the cases initiated for juveniles represented 24% of the total of new cases filed.⁹

Only as the crisis widened and expanded did the Obama Administration find limited funds through the Corporation for National and Community Service (CNCS) to assist with the dearth of legal counsel. In 2014, the CNCS created the Justice AmeriCorps program that funded less than 100 one-year attorney fellowship positions.¹⁰ The Justice AmeriCorps fellows can only

⁶ In recent litigation in Southern California, the Department of Homeland Security (DHS) agreed to provide appointed counsel in cases where the respondent non-citizen was mentally incompetent. The Executive Office for Immigration Review (EOIR) which is part of the Department of Justice is in the process of developing more procedures to try to recruit and locate free counsel for the mentally incompetent. *Franco-Gonzales v. Holder*, 767 F. Supp. 2d 1034 (C.D. Cal. 2010). *See also* Judge Robert A. Katzmann, U.S. Court of Appeals for the Second Circuit, The Orison S. Marden Lecture of the Ass'n of the Bar of N.Y.C.: The Legal Profession and the Unmet Needs of the Immigrant Poor (Feb. 28, 2007), *available at* http://webcache.googleusercontent.com/search?q=cache:v7_KcCfj_oAJ:www.aila.org/File/DownloadEmbeddedFile/40681+&cd=1&hl=en&ct=clnk&gl=us&client=safari. The EOIR does provide some funds for “know your rights presentations” provided by nonprofit legal services organizations. Organizations receiving these funds may not provide direct legal representation under the terms of the grants. AM. BAR. ASS'N, THE FUND FOR JUSTICE AND EDUCATION 2009-2010 ANNUAL REPORT, *available at*, http://www.americanbar.org/content/dam/aba/images/fund_justice_education/fje_ar0910.pdf.

⁷ *See* Juveniles—Immigration Court Deportation Proceedings, TRAC IMMIGRATION, at <http://trac.syr.edu/phptools/immigration/juvenile/> (last visited on Feb 21, 2016) (data shared in a tool reported on juvenile cases before EOIR).

The official statistical yearbook of the EOIR does not separate out cases classified as unaccompanied children or juveniles. Statistical Year Book, U.S. DEP'T OF JUST., <http://www.justice.gov/eoir/statistical-year-book> (last visited Feb. 21, 2016).

⁸ *See* Juveniles, *supra* note 7 (data shared in a tool reported on juvenile cases before EOIR).

⁹ The EOIR reported 225,896 new cases initiated in fiscal year 2014 and the TRAC data reported 56,097 new juveniles cases for that time period. The 2015 fiscal year data is expected to be published by EOIR in March of 2016.

¹⁰ *See* Justice AmeriCorps Legal Services for Unaccompanied Children, CORP. FOR NAT'L AND COMMUNITY SERV., <http://www.nationalservice.gov/build-your-capacity/grants/funding-opportunities/2014/justice-ameri-corps-legal-services> (last visited Feb. 21, 2016). Safe Passage Project received a grant under this program and actively participates in the Justice AmeriCorps program. It is hoped that this program will help establish that providing free

represent unaccompanied children who are under the age of 16 at the time of entry to the United States. Fellows are expected to handle twenty-five to forty cases during their one year fellowships; a challenging goal as many cases require more than one year to complete and most fellows are new attorneys with limited experience. The funding provides stipends of \$19,800 annually (a sum that is less than half of the public interest fellow salary in most major cities). Whether this program will be renewed or expanded beyond 2015 is unknown. Further, the need for qualified, trained, and free counsel continues to grow.¹¹

Around the time that the Administration created Justice AmeriCorps, the U.S. Department of Health and Human Services' Office of the Administration for Children and Families announced that they would appropriate some funds for full legal representation of children to those legal services organizations which had been providing some "Legal Orientation" programs inside the Office of Refugee Resettlement (ORR) detention facilities managed by this agency. The full figures are unclear, but the program found the funds to authorize legal assistance to approximately 6,000 children.¹²

Yet even as the Administration was responding by trying to mobilize limited legal resources for children, the number of immigrant youth arriving grew dramatically. By the summer of 2014, nearly 4,000 children a month arrived at the Southern Border of the United States from three main countries: Honduras, Guatemala, and El Salvador. The U.S. government began to describe the arrivals as a "surge" but also recognized the issue as a humanitarian crisis.¹³ The Department of Homeland Security (DHS), which is charged with enforcing the immigration laws, and the Department of Justice (DOJ), which contains the Immigration Courts with its Executive Office for Immigration Review (EOIR), entered into a memorandum of understanding that for all new child arrivals after May 1, 2014, the EOIR would schedule the removal (deportation) cases within twenty-one days of receipt of the charging the document. This fast-tracked "priority docket" or "rocket docket" was created both in an effort to resolve the claims quickly to help those individuals who might qualify for protection and to respond to

counsel to indigent children is cost effective and helps reduce the length of the immigration case thereby reducing government costs in the administration of the cases as well.

¹¹ In July 2014, the American Civil Liberties Union (ACLU), in conjunction with the American Immigration Council, Northwest Immigrant Rights Project, Public Counsel, and K&L Gates LLP, filed suit in U.S. District Court in Seattle, Washington, on behalf of unrepresented immigrant children in removal proceedings. This class-action lawsuit, *J.E.F.M. v. Holder*, No. 2:14-cv-01026-TSZ, 2015 WL 9839679, (W.D. Wash. Apr. 13, 2015), is pending as of January, 2016. The plaintiffs' request for an injunction was not granted and the case is proceeding with discovery and other pretrial motions. The District Court has refused class certification and the federal government also filed an interlocutory appeal to the Ninth Circuit Court of Appeals challenging the court's subject matter jurisdiction. In August of 2015, the District Court dismissed several of the plaintiffs from the suit because they had managed to secure some immigration relief or hired counsel. The District Court scheduled a hearing on the merits of the children's constitutional claims to appointed counsel on May 2, 2016. *See id.*

¹² U.S. DEP'T OF HEALTH AND HUMAN SER'V, OFFICE OF REFUGEE RESETTLEMENT (ORR), LEGAL RESOURCE GUIDE- LEGAL SERVICE PROVIDER LIST FOR UAC, REV. (February 9, 2015) *available at* https://www.acf.hhs.gov/sites/default/files/orr/lrg_5_legal_service_provider_list_for_uac_in_orr_care_e02_09_15.pdf. The provision of legal counsel funded by ORR is discussed by David Rogers, *Under 16 and Ordered Deported-with No Lawyer*, POLITICO (Nov. 18, 2015), <http://www.politico.com/story/2015/11/under-16-and-ordered-deported-with-no-lawyer-215944#ixzz3yBkMrTOM>.

¹³ Barack Obama, President Of The U.S., Remarks by the President on Border Security and Immigration Reform (June 30, 2014), *available at* <https://www.whitehouse.gov/the-press-office/2014/06/30/remarks-president-border-security-and-immigration-reform>.

strong criticism within the U.S. Congress that the lengthy delays within the immigration court system created the impression in the children and mothers arriving that they would get “permisos” or work permits while their cases slowly worked through the court.¹⁴ In fact, few people qualify quickly for any type of work authorization and children are not generally authorized to work in the United States until they are over the age of sixteen.¹⁵

The government also began a comprehensive public relations campaign in Central America to deter children from coming to the United States and in a very unusual move created an overseas refugee processing program called the Central American Minors (CAM) program.¹⁶ This limited program does allow minor children of parents living *with status* in the United States to file an application to have their child considered for refugee admissions or if the child (again acting alone and without representation) could not convince the interviewer that she or he had a bona fide refugee claim to be considered for permission to travel and enter the United States under humanitarian parole. The program was announced in 2014 and by the end of the fiscal year, no child had successfully completed the process. In the late fall of 2015, approximately 90 children were admitted to the United States.¹⁷ Further, the Administration coordinated actions with the government of Mexico to try to increase apprehensions of children in Mexico in order to reduce the migration of Central American children to the United States.¹⁸

At first these efforts appeared to reduce the number of children arriving at the southern border of the United States. Still in 2015, over 33,000 children arrived. In the last two months of 2015, the numbers of children arriving at the southern border of the United States increased to over 5,000 per month, the highest rate of apprehensions of unaccompanied children in the history of the record keeping during those months.¹⁹ Many are calling the people fleeing El Salvador,

¹⁴ Testimony given to House Subcommittee hearings in July 2014. Oversight of U.S. Citizenship and Immigration Services: Hearing Before H.R. Comm. on the Judiciary, 113th Cong. 9-23 (2014) (statement of The Honorable Leon Rodriguez, Director, U.S. Citizenship and Immigration Services) (*available at* <http://judiciary.house.gov/cache/files/e7d4d5f8-2139-4c56-8419-56962569569a/113-99-88919.pdf>). Congressman Goodlatte sent a letter to President Obama demanding an explanation of why the administration said most of the children would be sent back and cited the authors’ letter to the *New York Times* that many of the children would in fact qualify for relief. Lenni B. Benson & Claire R. Thomas, *Lawyers for Immigrant Youths, To the Editor*, N.Y. TIMES (May 27, 2014), http://www.nytimes.com/2014/05/28/opinion/lawyers-for-immigrant-youths.html?partner=rssnyt&emc=rss&_r=0. See also Letter from Bob Goodlatte, Virginia Congressman, Committee On The Judiciary Chair, to Barack Obama, President of the United States (June 24, 2014), *available at* <http://judiciary.house.gov/cache/files/c0ad486f-e935-4ba0-9dfc-f1d4acc781c0/062414bguamlettertoobama.pdf>.

¹⁵ In our experience reviewing notes and talking with volunteers who have interviewed over 1,000 young people at the New York immigration court, no child or adult has told us they expected a permit to stay and most express surprise when we explain the child may qualify for legal protection and status within the United States.

¹⁶ *In-Country Refugee/Parole Processing for Minors in Honduras, El Salvador and Guatemala (Central American Minors – CAM)*, U.S. CITIZENSHIP IMMIGR. SERV., <http://www.uscis.gov/CAM> (last viewed Feb. 21, 2016).

¹⁷ Michael D. Shear, *Red Tape Slows U.S. Help for Children Fleeing Central America*, N.Y. TIMES (Nov. 11, 2015), <http://www.nytimes.com/2015/11/06/us/politics/red-tape-slows-us-help-for-children-fleeing-central-america.html>.

¹⁸ Adam Isacson, Maureen Meyer & Gabriela Morales, *Mexico's Other Border: Security, Migration, and the Humanitarian Crisis at the line with Central America*, WOLA: ADVOC. OF HUM. RTS. IN THE AM. (June 17, 2014), http://www.wola.org/publications/mexicos_other_border#usaid.

¹⁹ *United States Border Patrol Southwest Family Unit Subject and Unaccompanied Alien Children Apprehensions Fiscal Year 2016*, U.S. CUSTOMS AND BORDER PROTECTION, <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2016> (last viewed Mar. 18, 2016); see also Julia Preston, *U.S. to Open Shelters for New Surge of Youths Crossing the Southwest Border*, N.Y. TIMES, (Dec. 7, 2015), <http://www.nytimes.com/2015/12/08/us/us-to-open-shelters-for-new-surge-of-youths-crossing-southwest-border.html>.

Honduras and Guatemala, “The Other Refugee Crisis” and comparing the flight of Central Americans with the unprecedented number of people fleeing Syria and Afghanistan.²⁰

The purpose of this essay is to demonstrate the need for adequate and free legal counsel for non-citizen children who are caught in this web of bureaucratic borders. Although immigration statutes guarantee the right to counsel, there is no counsel provided at government expense.²¹ Given children’s limited knowledge of the law and of potential avenues for immigration relief, inability to contract and hire legal counsel, and “greater potential for being victims of trafficking and other forms of abuse and neglect or abandonment,” children are in particular need of appointed counsel in the immigration context.²² Creating a stable, funded, legal defense system will benefit the overall system not only for helping these desperate children but also for systemic efficiencies and reforms that are possible when the court system operates with effective and prepared counsel.

II. Miguel: Navigating Alone

Miguel is eight years old.²³ He is from El Salvador. His mother left him when he was a baby—he does not have a relationship with her. His father traveled to the United States a few years ago to work to support Miguel and his uncles. Miguel came to the United States on buses with a teenage cousin across Mexico after his uncles were killed by gang members who threatened to murder their entire family. U.S. Customs and Border Protection apprehended Miguel at the southern border of the United States. He was taken to a juvenile detention center run by the federal Office of Refugee Resettlement (ORR) and a representative of the federal government interviewed him and learned that his father is living in New York City. They contacted Miguel’s father. After several weeks, they released Miguel to his father, who was designated his “ORR Sponsor,” and handed them a packet of papers explaining that Miguel is in removal proceedings and will receive a letter that tells him when he must appear at Immigration Court in Manhattan. These papers explain that if Miguel does not attend, the Department of Homeland Security can order him deported.

The day of Miguel’s hearing arrives. He and his father traveled to downtown Manhattan at 8:30 a.m. Miguel is in the courtroom. He wears his best shirt and his jeans are clean and pressed. He tightly grips the arms of the courtroom chair. He is so small that his feet do not touch the floor. The Immigration Judge is speaking to him slowly and kindly but Miguel turns his

²⁰ Clara Long, *The Other Refugee Crisis, from Central America to the U.S.*, THE PROGRESSIVE, (Sept. 18, 2015), <http://www.progressive.org/news/2015/09/188320/other-refugee-crisis-central-america-us>; see also *The Other Refugee Crisis*, The Brian Lehrer Show, WNYC, with Lenni B. Benson, (Nov. 6, 2015), available at <http://www.wnyc.org/story/other-refugee-crisis/>.

²¹ 8 U.S.C. § 1362 (1996). See also 8 U.S.C. § 1229a(b)(4)(A) (2006).

²² New York City Bar Association Position Paper on the “Right to Counsel,” <http://bit.ly/1EUrONw>. See also Letter from Lenni B. Benson, Comm. on Immigration and Nationality Law Chair, to the Senate Judiciary Committee, regarding Position Paper on the “Right to Counsel”, available at <http://www2.nycbar.org/pdf/report/uploads/20072470-SupportofRighttoCounselbill.pdf>.

²³ Professor Lenni B. Benson witnessed Miguel alone at the New York Immigration Court and as a result, expanded Safe Passage Project to expand and have a presence in the Court in order to assist more vulnerable immigrant youth. Miguel’s case is discussed in testimony Claire Thomas provided at a New York City Council hearing on February 25, 2014. Testimony of Claire R. Thomas Before New York City Council, Safe Passage Project (Feb. 25, 2014), available at <http://www.safeassageproject.org/claire-r-thomas-testifies-before-new-york-city-council/>.

small face up to look only at the court's Spanish-speaking interpreter. The judge is asking, "Are you here alone today?" Miguel responds, "No, I am here with my father." "Where is your father?" the Judge asks. Miguel pauses. He looks at the judge. He turns his head to the left and looks at the government prosecutor from Immigration and Customs Enforcement (ICE). He turns to the interpreter. Slowly he says, "I don't know. He is outside?" Miguel's father has no papers. He is undocumented and afraid, like so many immigrants, to come inside the courtroom.

This scene is repeated with small variations every day at the New York Immigration Court. The Immigration Judges see many unrepresented people in the courts and now, a growing percentage of people facing deportation alone are children.

III. Entering Immigration Court Alone

At Miguel's hearing, he will be asked if he would like to retain counsel. He will be given a list of organizations in New York that provide free services and will hopefully have the opportunity to meet with one of the non-profit organizations for a consultation.²⁴ Although he is likely to be granted a continuance to try to secure *pro bono* counsel or to allow his father to hire an immigration attorney, at the second or possibly third appearance before the immigration judge he will have to plead to the allegations that the CBP wrote in the charging document that initially placed him into removal proceedings. CBP likely charged Miguel with being an arriving alien who lacked documentation to enter the United States and who seeks to immigrate. When a person is charged as an "arriving alien," the burden is on that person, referred to as the "respondent," to prove his ability to enter the United States.²⁵ In the vast majority of immigration cases the respondent, especially a child, admits the allegations and the immigration judge finds that he is removable. The case then progresses to determining whether the respondent can qualify for any relief from removal.

IV. Possible Forms of Relief from Removal for Immigrant Youth **a. Asylum and/or Withholding of Removal**

In Miguel's case, he may have at least two avenues of relief from removal, the first of which is asylum and/or withholding of removal based on the persecution and trauma he suffered in El Salvador and/or fears suffering should he be forced to return. Because Miguel was apprehended by CBP without a parent or guardian and before he turned eighteen, he is classified as an Unaccompanied Alien Child (UAC).²⁶ He is therefore entitled to file his application for asylum with the Asylum Office of the U.S. Citizenship and Immigration Services, as opposed to

²⁴ The list of free providers is available on the EOIR website. Many of the listed organization will not accept cases of people in detention and are oversubscribed so that it is very possible that none of the organizations will accept representation of a child who called. Please visit <http://www.justice.gov/eoir/new-york-city-immigration-court> for a list of providers and more information.

²⁵ 8 U.S.C.A. § 1229b (2008); 8 C.F.R. § 1001.1 (2009) (Current through May 21, 2015); 8 C.F.R. § 1.2 (2011) (Current through May 21, 2015); 8 C.F.R. § 1.2 defines arriving alien as a non-citizen who has not yet been inspected and admitted at a port of entry.

²⁶ Memorandum of Chief Immigration Judge and Asylum Office, April 2, 2013 on jurisdiction. *See* Memorandum from Ted Kim, Acting Chief of Asylum Division, on Updated Procedures For Determination Of Initial Jurisdiction Over Asylum Applications Filed By Unaccompanied Alien Children to All Asylum Office Staff (May 28, 2013) (available at <http://www.aila.org/infonet/uscis-initial-jurisdiction-unaccomp-alien-children>).

having his asylum case heard in the first instance by an immigration judge. Nevertheless, whether an asylum claim is made by a child or an adult, the applicant must show that: 1) he meets the statutory definition of a “refugee;”²⁷ 2) he is not subject to any statutory bars from asylum; and 3) he merits a grant of asylum in the adjudicator’s discretion. A child meeting these three criteria may be granted asylum under Section 208 of the Immigration and Nationality Act.

b. Special Immigration Juvenile Status: Bifurcated State and Federal Protection

In the alternative, as a second avenue of immigration relief, Miguel may also be eligible for Special Immigrant Juvenile Status (SIJS).²⁸ This is an unusual immigration protection that does not originate out of international treaties. Congress created the SIJS category to help homeless non-citizen youth in state foster care programs. State social work agencies testified in Congress about the problem with children who, due to a lack of immigration status, found themselves unemployable, exploited, and possibly homeless when they “aged-out” of state foster care upon their eighteenth birthdays. In 2008, Congress revised the SIJS statute to expand the qualifying criteria to allow children who are not in foster care to be eligible for SIJS.²⁹ This status, which leads to lawful permanent residence and potentially to citizenship, is available to immigrant youth who can demonstrate that they meet the following criteria:

1. The child is under 21;
2. The child is unmarried;
3. The child is “dependent” on a juvenile or family court within the United States, or a court “has legally committed to, or placed [the child] under the custody of, an agency or department of a State or an individual or entity appointed by a State or juvenile court located in the United States”;³⁰
4. A state juvenile court has made a finding that the reunification with one or both of the child’s parents “is not viable due to abuse, neglect, abandonment, or a similar basis found under State Law”;³¹ and
5. In judicial or administrative proceedings “it has been determined...that it would not be in the [child’s] best interest to be returned to the alien’s or parent’s previous country of nationality or country of last habitual residence”[.]³²

²⁷ See 8 U.S.C. § 1101(a)(42)(A).

²⁸ 8 U.S.C. § 1101(a)(27)(J). A person who qualifies for special immigrant juvenile is granted lawful permanent resident status. Created in 2000 by Unaccompanied Alien Child Protection Act of 2007, S. 844, 110th Cong., (2007), available at <http://www.govtrack.us/congress/bill.xpd?bill=s110-844>.

²⁹ 8 U.S.C. §1101(a)(27)(j), amended by William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, 8 U.S.C. § 1232 (2009).

³⁰ *Id.* at § 1101(a)(27)(i).

³¹ *Id.* Unfortunately the current agency regulations do not reflect the statutory changes and must be used with care. See 8 C.F.R. § 204.11. For example, this regulation refers to a requirement of foster care or abandonment by both parents; that requirement has been superseded. As of this writing in December 2015, the new agency regulations have not been issued although they have been drafted. Notes based on public presentation by USCIS to NY County Bar Association (Nov. 18, 2013) (notes on file with authors).

³² 8 U.S.C. § 1101(a)(27)(J)(ii). This best interest finding is usually made in the state family court as part of the special immigrant juvenile status findings. See, e.g., New York Family Court General Form 42 (GF- 42) that provides a sample court order with all of the reference elements for the special immigrant juvenile findings.

If Miguel could find a way to access the state court responsible for matters concerning juveniles, such as the Family Court, he could seek these “special findings” and then file a petition with the USCIS qualifying him for a visa in this SIJS category. But how will he do this?

Unlike the immigration proceeding, where the young person was placed into the administrative court proceeding, the child has no direct way to access the family court. As we explained above, if the family court has jurisdiction over a child to make custody, guardianship, or other placement decisions such as foster care or juvenile delinquency, the child could seek the special immigrant juvenile findings that would later enable the child to seek permanent residence and a termination of the removal proceedings initiated by DHS. But how does the child access the family court? In most states, an adult or a state or local agency must initiate a proceeding and the child is the “subject” of the proceeding. For example, a parent might bring an action to gain custody over a child and would name the child’s other parent as a respondent. Custody proceedings do meet the immigration law requirement that the child is “dependent on the family court.”³³

V. Further Appearances in Immigration Court

In a few months, Miguel will have another hearing at the New York Immigration Court (EOIR). If Miguel has not secured *pro bono* assistance or private counsel, he will again have to appear *pro se* before an immigration judge. Miguel and his father might be unaware that there is immigration relief available to Miguel and even if they are aware, they may not know how to initiate either form of relief: asylum or special immigrant juvenile status. The immigration judge may be able to give some generalized directions about applying for asylum, but he or she is not qualified to explain the procedures for initiating a petition in a state family court. EOIR personnel are aware of these problems and in some cities, the Immigration Court has created special juvenile dockets and invited non-profits to participate as “Friends of the Court.” In this capacity, non-profit organizations attempt to screen the children arriving for their removal hearings and to quickly advise them about how and where they might pursue immigration remedies. The attorneys acting as “Friend of the Court” are not making formal appearances as attorneys in these children’s cases and as such, their role is limited to assisting the child to seek a continuance.³⁴

The availability of such special juvenile dockets is not guaranteed. In New York, there are currently five special dockets and those were not adequate to handle the increasing workload of juvenile cases. In the summer of 2014, the EOIR created special priority dockets for recently

³³ SAFE PASSAGE PROJECT, SPECIAL IMMIGRANT JUVENILE STATUS: A STEP-BY-STEP GUIDE FOR SAFE PASSAGE PROJECT VOLUNTEER ATTORNEYS 19-21, *available at* <http://www.safepassageproject.org/wp-content/uploads/2013/02/SIJS-Manual-11.24.2014-CT-FINAL-AMENDED.pdf>.

³⁴ Normally an attorney cannot speak on behalf of a person unless he or she has filed a Notice of Appearance (Form EOIR – 28) and is registered with the immigration court. Representation of Others, 8 C.F.R. § 1292.1 (2013) (current through June 4, 2015; 80 FR 31866). The Friend of the Court is an informal process currently conducted under local *ad hoc* rules but it may expand to a more formal process as the EOIR anticipates receiving an ever-growing number of children on its dockets. Friends of the Court can assist the child to seek a change of venue if he or she is going to reside in another district. Counsel for ICE usually cooperates with the Friend of the Court process in the interest of streamlining the court procedure. *See* 42 C.F.R. § 430.76(c) (current through June 4, 2015; 80 FR 31866); Memorandum from Brian M. O’Leary, Chief Immigration Judge of the U.S Dep’t of Justice, to All Immigration Judges on Friend of The Court Guidance (Sept. 10, 2015), *available at* <http://www.americanbar.org/content/dam/aba/administrative/immigration/UACFriendCtOct2014.authcheckdam.pdf>.

arriving children.³⁵ Until the creation of the new priority dockets for juveniles who arrived after May 1, 2014, children were sometimes scheduled on any immigration judge's docket and sometimes children arrived at the Immigration Court when no special volunteers or advocates are present. Further, the non-profit organizations covering the juvenile dockets are not able to directly represent all of the children in removal. A typical master calendar hearing day will have sixty to seventy cases before a single immigration judge. While many of the non-profits work valiantly to try to either directly represent or find *pro bono* counsel for all of the children, the need far exceeds existing resources.³⁶

After the creation of the priority dockets for recent arrivals of adults with children and unaccompanied children in the summer of 2014, many nonprofit organizations scrambled to try to expand the resources at the court.³⁷ In some cities, law school clinics mobilized to provide information tables. In California, the state legislature responded with unprecedented funds to support counsel for unrepresented children.³⁸ The City Councils of both San Francisco and New York City gave new funding to groups trying to meet the need. Private foundations also stepped forward in partnership with public funds to try to help the immigrant youth facing removal.³⁹

The immigration judges request that the ORR sponsor⁴⁰ or a parent is present with the child at the hearing. The median age of the children in immigration court is approximately fourteen years old, but even infants have been placed in removal hearings. The immigration judges usually make an inquiry about where the child is living and whether he is attending

³⁵ *Department of Justice Announces New Priorities to Address Surge of Migrants Crossing into the U.S.*, U.S. DEP'T OF JUST. (July 9, 2014), <http://www.justice.gov/opa/pr/department-justice-announces-new-priorities-address-surge-migrants-crossing-us>. This program also created priority dockets for Adults with Children who were admitted into the United States. The vast majority of women with very young children who were detained or released with ankle monitors to ensure they returned to immigration court. Because the children are traveling with a parent or legal guardian, their cases are consolidated with the adult. Many of these people are also unrepresented.

³⁶ In New York, the following non-profit organizations provide some coverage of the juvenile dockets: The Door, Legal Aid Society, the New York Chapter of the American Immigration Lawyers Association, Catholic Charities, Make The Road and Human Rights First, and Kids in Need of Defense (KIND). The Safe Passage Project at New York Law School was responsible for one docket a month and brings volunteer attorneys, law students and volunteer interpreters to the immigration court. In August of 2014 Safe Passage Project expanded to begin covering the docket once a week and currently covers three Fridays a month. The authors are both engaged in the work of Safe Passage Project. www.safeassageproject.org.

³⁷ Kirk Semple, *Advocates Scramble As New York Accelerates Child Deportation Cases*, N.Y. TIMES (June 5, 2014), <http://www.nytimes.com/2014/08/05/nyregion/advocates-scramble-as-new-york-accelerates-child-deportation-cases.html>.

³⁸ 2014 Cal. Legis. Serv. Ch. 685 (S.B. 873) (West 2014) (available at http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB873). Patrick McGreevy & Phil Willon, *Gov. Brown Signs Bills Aiding Immigrant Children, Troubled Students*, L.A. TIMES (Sept. 27, 2014), <http://www.latimes.com/local/politics/la-me-pol-brown-bills-20140928-story.html#page=1>.

³⁹ For more information, see <https://www.robinhood.org/news/nyc-council-speaker-melissa-mark-viverito-robinhood-foundation-and-new-york-community-trust>. The New York City funding provides support for approximately 880 children who are residents of the City and covers the costs of screening for the other children who reside in other parts of New York. Approximately fifty percent (50%) of the children reside in Long Island. The Long Island Health and Welfare Council and the New York Secretary of State's Office for New Americans provided some limited funding to help support access to counsel for Long Island children. The need outstrips the resources of these grants. Safe Passage Project receives calls weekly from youth who have been unable to afford private counsel and have been turned away from other nonprofits due to lack of capacity.

⁴⁰ The "ORR Sponsor" is the adult to whom the child is released from federal custody.

school.⁴¹ If the young person is working and not attending school, the judges usually encourage the child to find a general education development (GED) or other educational program, including English as a second language (ESL) programs.⁴² At times, children explain to the immigration judge that they have had difficulty enrolling in the public schools for a variety of reasons, including not having a legal guardian residing in the school district; the school district is asking for records from abroad; or the child and his or her sponsor are unable to overcome the bureaucratic barriers some school districts raise.

If the child is represented, the attorney can often help the child find a school and will help the child document school attendance. Further, the child's attorney may be able to guide the child to plea to the allegations in the Notice to Appear, the charging document in Immigration Court, and to identify the forms of relief the child will be seeking. In those cases, if the child is in school, the immigration judge is usually willing to waive the appearance of the child at further immigration hearings as long as counsel attends in order to avoid further school absences and stress for the child.⁴³ The child's attorney usually knows to request either a long continuance or an adjournment as the other applications for relief move forward. And in many cases, if the child is successful at the Asylum Office or in securing the family court Special Findings Order necessary to seek Special Immigrant Juvenile Status, the attorney may be able to terminate removal proceedings in Immigration Court. Further adjudications for the child's lawful permanent residence status, which are interview-based and non-adversarial by design, would then take place before the benefits agency of DHS, the U.S. Citizenship and Immigration Services (USCIS).⁴⁴ But what if the child is *pro se*?

VI. The Difference Representation Makes

To put it simply, if a child is detained and unrepresented, or if a child is released but unrepresented, it is extremely unlikely that he will be able to successfully navigate the many

⁴¹ In 1982 the Supreme Court ruled in *Plyer v. Doe* that children have the right to attend public school regardless of their immigration status. *Plyer v. Doe*, 457 U.S. 202, 230 (1982). Nevertheless, many local school districts are neither prepared nor welcoming of recent immigrant children. *NYCLU Survey: NY School Districts Illegally Denying Education to Immigrant Children*, N.Y. CIV. LIBERTIES UNION (Oct. 30, 2014), <http://www.nyclu.org/news/nyclu-survey-ny-school-districts-illegally-denying-education-immigrant-children>.

⁴² Children in removal proceedings do not automatically receive work authorization so any work may be in violation of both federal immigration laws and state labor laws that protect children depending on the nature and duration of the work. We have many times heard the children explain to the court that they have to work to support themselves and to "pay rent." Interview notes on file with authors. For children who later qualify for asylum or SIJS, the unauthorized work is not a barrier to their eligibility for adjustment of status. 8 U.S.C. § 1255(c)(2). Children who file for asylum and are over the age of eighteen may seek a work authorization document once the child's application has been pending more than 180 days at the Asylum Office or EOIR. EXEC. OFFICE FOR IMMIGRATION REVIEW, THE U.S. CITIZENSHIP AND IMMIGRATION SERVICES, THE 180-DAY ASYLUM EAD CLOCK NOTICE, *available at* https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Refugees%20%26%20Asylum/Asylum/Asylum_Clock_Joint_Notice.pdf.

⁴³ OFFICE OF THE CHIEF IMMIGRATION JUDGE, U.S. DEP'T OF JUSTICE EXEC. OFFICE OF IMMIGRATION REVIEW, IMMIGRATION OFFICE PRACTICE MANUAL (Aug. 2009), *available at* http://www.justice.gov/eoir/pages/attachments/2015/02/02/practice_manual_review.pdf.

⁴⁴ In some regions of the country, advocates prefer to complete the SIJS case before the immigration judge, if possible, because of delays before USCIS. *See* KIDS IN NEED OF DEFENSE, MANUAL FOR PRO BONO ATTORNEYS, CH. 4, SPECIAL IMMIGRANT JUVENILE STATUS, 22, *available at* <https://supportkind.org/wp-content/uploads/2015/04/Chapter-4-Special-Immigrant-Juvenile-Status-SIJS.pdf>.

agency and court jurisdictions. One study of case outcomes posited that when a child is represented he has more than an 80% chance of successfully ending the removal hearing and obtaining some form of status. On the contrary, an unrepresented child is ordered removed (deported) 90% of the time.⁴⁵ In November of 2015, the web magazine *Politico* published an analysis of the cases involving juveniles and found that out of the sample of 7,600 cases reviewed, 2,800 children were ordered removed after a single hearing and when they were not represented by counsel.⁴⁶ If these children had access to counsel it is very likely that they would have taken the steps necessary to pursue available legal remedies. But almost all of these remedies are found in adjudicatory bodies *outside* of the EOIR. In other words, just going to immigration court with or without counsel doesn't help the child. If the child is going to obtain asylum or other relief, he or she must navigate the complex jurisdictional barriers and successfully complete adjudications in other tribunals.

Pause for a moment. Do you feel you understand the legal path a child like eight-year-old Miguel must take? The choices he must make? To obtain SIJS, Miguel's father must first initiate proceedings in state court, likely to obtain an order of custody or guardianship over Miguel.⁴⁷ Then, Miguel must make a motion for the state court judge to make certain "special findings" enabling him to petition USCIS for SIJS. At the same time, Miguel would need to appear for his scheduled hearings in Immigration Court and could terminate his removal proceedings after USCIS has either accepted or approved his petition for SIJS. Finally, Miguel would file for adjustment of status before USCIS. Would you feel prepared and competent to prepare petitions, fee waiver requests and applications in so many different types of courts and agencies? Do you understand that this one application involves two different court systems and the participation of two different branches of the Department of Homeland Security?

For children who have been persecuted or who have a well-founded fear of persecution on an account of one of the protected grounds,⁴⁸ asylum law offers the possibility of immediate protection from removal from the United States and creates basic eligibility for many social welfare benefits. For non-citizen children who are accompanied in the United States by a parent who is seeking asylum, the children will usually appear as derivative beneficiaries on their parent's asylum application. In the alternative, non-citizen children are able to apply for asylum

⁴⁵ *Representation for Unaccompanied Children in Immigration Court*, TRAC IMMIGRATION, <http://trac.syr.edu/immigration/reports/371/> (last visited Feb. 21, 2016). Safe Passage Project has found that very few children are ultimately unsuccessful if they have counsel. We have found that the majority of children who have been ordered removed are those children who lose contact with counsel or cases in which the child never appeared in the Immigration Court and the child may have had no opportunity to be informed about his or her eligibility for relief.

⁴⁶ See Rogers, *supra* note 12. The article explains that the journalist received a 175 page excel spreadsheet with children's ages and outcomes in the cases. *Id.* The cases were filed between mid-July 2014 and August 31, 2015. *Id.*

⁴⁷ In New York a child cannot initiate a proceeding in family court until he or she is fourteen. NY SCPA § 1703. State law varies and that adds to the confusion and complexity.

⁴⁸ To be eligible for asylum, a person must show that: (1) she meets the statutory definition of a "refugee," as found in 8 U.S.C. § 1101(a)(42)(A)(2); (2) that she is not subject to any statutory bars from asylum found as found in [8 U.S.C. § 1101\(a\)\(42\)](#) (defining refugees to exclude "any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion"); and (3) merits a grant of asylum in the adjudicator's discretion as found in 8 C.F.R. § 208.13 (b)(1)(i). A person meeting these three criteria may be granted asylum under 8 U.S.C. § 1158.

individually, whether they are unaccompanied or accompanied by a parent or guardian in the United States.

Immigration law does not provide free counsel for children, even children seeking asylum. Although Congress has taken steps to make the asylum process less adversarial for unaccompanied minors under eighteen years of age, the complexities of the application process, the burden of document production, and the sophisticated legal advocacy to establish the *prima facie* case means that asylum protection may be more of a dream than a reality for many children.

In order to prioritize the growing number of children's claims, the U.S. government announced that adult claims would be delayed while the claims of children and recently arriving adults with small children would be processed first. This policy of prioritized adjudication is openly designed in part to deter false or weak asylum claims and is also utilized in the hope that it will deter future entrants seeking asylum.⁴⁹ With this change in asylum priorities, coupled with the prioritization in the immigration courts, the adjudication of children's claims has truly become the tail that wagged the dog. Whether in immigration detention or operating outside of it, unaccompanied or with their parents or guardians, children cannot be expected to navigate the complex web of immigration law without competent legal counsel.

We are committed to helping children who are in removal proceedings. New York Law School houses our *pro bono* clinic called The Safe Passage Project. The authors teach a course that prepares law students to stand with children in the courtroom and to assist them in securing a continuance until they can find *pro bono* counsel. We then train and mentor the counsel. Our Project has grown rapidly from 50 cases in 2006 to over 550 in 2015. The need outstrips our ability to find *pro bono* counsel to fill the gap. If we are serious about our commitment to justice and our obligations under both child welfare and international refugee protection, our government must do more to ensure that every child is represented. We cannot stand by and leave them lost in the web and vulnerable to deportation.⁵⁰

⁴⁹ David A. Martin, *Reforming Asylum Adjudication: On Navigating the Coast of Bohemia*, 138 U. Pa. L. Rev. 1247, 1290–91 (1990). Professor Martin helped design the current Asylum Adjudication System and the value of efficient processing of cases to avoid people using the asylum system for delay or to obtain work authorization are articulated in this seminal article.

⁵⁰ You can take action. Support the project by volunteering or donating. Visit www.safepassageproject.org.

INTERPRETERS IN FEDERAL AND NEW YORK STATE COURTS: RECOMMENDED BEST PRACTICES

ADVISORY GROUP TO THE NEW YORK STATE-FEDERAL JUDICIAL COUNCIL

(Report Approved on May 18, 2015 by the New York State-Federal Judicial Council)

Introduction

The United States has a diverse population with people speaking a great variety of languages. Such linguistic diversity has increased the need for interpreters in our court systems, both federal and state.¹ Interpretation deals with oral speech and interpreters convey meaning orally from one language to another. Interpreters are required for all stages of a criminal case, including bail hearings, probation interviews, plea negotiations, proffer sessions, meetings with counsel, and any court proceedings. Qualified interpreters also play an important role in civil proceedings.

Legal interpreting is very different from every day interpreting and requires familiarity with legal concepts and specialized terminology. An untrained interpreter who is not familiar with legal terms is not able necessarily to render precisely, accurately, and completely what is occurring during the proceeding. Accordingly, a party/witness may not accurately understand what is occurring during the proceeding. The inability to ensure that the translation is accurate and understood is of particular concern when the foreign language is less common or the person in need of the interpretation service speaks a colloquial dialect. The party/witness's attorney (or staff from that attorney's office), family member, or friend should not act as an interpreter for the party/witness, particularly in criminal cases, not only for the reasons already stated, but also to preserve the attorney-client privilege and prevent the possibility of unduly influencing the party/witness.

New York Federal Courts

In 1978, in order "to provide more effectively for the use of interpreters in courts of the United States," Congress passed the Court Interpreter's Act. 28 U.S.C. § 1827. Pursuant to the Court Interpreter's Act, each federal court is required to provide, at the judiciary's expense, a certified or otherwise qualified interpreter in judicial proceedings instituted by the United States for a party who speaks only or primarily a language other than English. In civil cases where the United States is a defendant and the plaintiff seeks the services of an interpreter, it is the responsibility of the plaintiff to hire and pay for the interpreter unless the plaintiff is indigent in

¹ This report focuses on oral linguistic translations and does not include a discussion of document translation or address sign language interpretation for the deaf and hearing impaired. We note, however, that in criminal and civil cases in federal court, sign language interpreters are required by law to be provided by the court.

which situation the court may appoint an interpreter who often provides interpretation services on a pro bono basis.

In compliance with the Court Interpreter's Act, the Administrative Office of the United States Courts (the "Administrative Office") instituted and administers a certification program for interpreters. This program includes taking a rigorous two-part exam, which, at present, is offered only to interpreters for the Spanish language.² An interpreter who successfully passes this certification exam is deemed competent by the Administrative Office to interpret between English and Spanish in court proceedings. In order to be deemed qualified by the Administrative Office, an interpreter must have passed the U.S. Department of State's seminar or conference level exam, passed the United Nation's interpreter test, or be a current member in good standing of the European Association Internationale of Conference Interpreters and its American equivalent, the American Association of Language Specialists. Interpreters working in the federal courts are bound by the Code of Professional Responsibility. (See, e.g., www.sdneyinterpreters.org/docs/ethics.) Other than staff interpreters, all interpreters in federal courts are sworn in on the record by the district judge or magistrate judge (or courtroom deputy) before the court proceeding begins, which reinforces the importance of accurate and truthful interpretation.³ After being sworn, all interpreters are considered officers of the court with the specific duty and responsibility to interpret accurately between English and the language specified. (See Standards for Performance and Professional Responsibility for Contract Court Interpreters for the Federal Courts, Admin. Office of the U.S. Courts, http://www.uscourts.gov/uscourts/FederalCourts/Interpreter/Sandards_For_Performance.pdf.)

In criminal cases where the defendant requires an interpreter, the need for an interpreter is brought to the attention of the district judge or magistrate judge (or courtroom deputy) by either the prosecutor or the defense counsel and then the court contacts the interpreter's office in that district to request an interpreter for the specified court proceeding. The United States Attorney's Office is responsible for securing the services of interpreters for government witnesses. In any civil or criminal proceeding, retained counsel may hire interpreters to facilitate out of court communication with a client or witness who speaks a language other than English.⁴ In civil cases, the party needing the interpreter typically supplies the interpreter, although, for out

² Certified programs exist for Spanish, Navajo, and Haitian Creole. For other languages, an interpreter must be otherwise qualified or court-approved. Certified and professionally qualified interpreters are paid a higher rate than language skilled/ad hoc interpreters, although the court may request a higher rate for language skilled/ad hoc interpreters when certified or otherwise qualified interpreters are unavailable. See, e.g., Rate and Information Sheet at www.uscourts.gov/uscourts/FederalCourts/Interpreter/RateInfoSheet.pdf.

³ All freelance interpreters in the Southern District of New York are sworn in by the Clerk's Office before appearing in court. The judge then may rely on that oath or choose to swear the interpreter in on the record at the start of the proceeding.

⁴ In criminal proceedings, attorneys appointed to represent a defendant pursuant to the Criminal Justice Act ("CJA") should apply to the court for leave to use an interpreter to facilitate out-of-court communications with the client or witnesses who speak a language other than English. After approval by the court, the interpreter is paid out of CJA funds.

of court depositions, the party taking the deposition supplies the interpreter upon request from the individual being deposed.

New York State Courts

Pursuant to the New York State Unified Court System Court Interpreter’s Manual and Code of Ethics, interpreters are either employed by the court on a full-time, part-time or hourly basis after passing certain examinations and being hired as court employees or hired under contract on a per diem basis after completing a written screening examination and oral assessment. In all civil and criminal cases, when a court determines that a party or witness, or an interested parent or guardian of a minor party in a family court proceeding (particularly in a custody or removal proceeding), is unable to understand and communicate in English to the extent that he or she cannot meaningfully participate in the court proceedings, the court shall appoint an interpreter. A person with limited English proficiency, other than a person testifying as a witness, may waive a court-appointed interpreter, with the consent of the court, if the person provides his or her own interpreter. State Court interpreters are bound by the New York State Unified Court System Court Interpreter’s Manual and Code of Ethics and an “Ethics hotline” is available for interpreters to call when they have an ethics question. (See www.nycourts.gov/COURTINTERPRETER/pdfs/CourtInterpreterManual.pdf). There is no uniformity with respect to the swearing-in of interpreters in State Courts for a particular proceeding, although interpreters are required to execute an oath of office, which is filed with the Clerk of Court and applies to the provision of interpretation services for all court engagements.

Methodology

In preparing this best practices document, we convened a committee composed of the lead interpreters from each federal district in New York, the interpreter coordinator from the Office of Court Administration of the New York State Unified Court System and the Honorable Dora L. Irizarry, United States District Judge for the Eastern District of New York. We also reviewed various publications and publicly available documents.

Best Practices/Hot Topics

1. Proper Role of Interpreter

- Interpreters must translate the actual words as they are spoken by the party/witness.
- Interpreters must translate everything that is said during court or other proceedings without omission or additions.
- Interpreters never should explain or simplify or add words in an attempt to explain the actual words spoken by the party/witness.

- Interpreters should not give legal advice or act as an advisor to the party/witness.
- The court should instruct the jury regarding the function of interpreters, i.e., that they work for the court and not for a particular party to the case. The court also should instruct the jury that they must rely on the interpretation provided by the interpreter and not on their own understanding of the language spoken by the party/witness.

2. Tips for Working With Interpreters

As an interpreter is required to translate only the words spoken by the witness/attorney/judge, it is helpful if the interpreter is provided in advance with the general context or subject matter of a case. The attorney should summarize the matter for the interpreter and allow the interpreter to speak briefly with the party/witness about country of origin and education so that the interpreter has a sense of the dialect the person speaks and level of understanding. Relatedly, it is preferable, although sometimes impractical, to work with the same interpreter for all stages of a matter so that, if the party/witness testifies in court, the interpreter will be alert to and familiar with the party/witness's speech patterns, accent, and any idiosyncratic speech patterns.

Set forth below is a list of means through which an attorney working with an interpreter can provide the interpreter with an appropriate amount of information about the case that requires the services of the interpreter:

- Inform the interpreter about the subject matter of the case, including names and roles of the individuals involved in the case, places that frequently will be mentioned, and relevant time frames.
- Supply the interpreter with a copy of the civil complaint or charging document in a criminal case.
- Educate the interpreter about the party/witness, including national origin, how many years the party/witness has lived in the United States in order to, among other things, help the interpreter anticipate Anglicisms or mixed-language responses, educational level, speech defects, or emotional or mental health issues.
- Alert the interpreter to possible use of code or slang words or industry terminology so that the interpreter can ask the party/witness to clarify the meanings of certain words.

In addition, the attorney should prepare the party/witness regarding working with an interpreter. Set forth below is a list of means through which an attorney with a party/witness who requires an interpreter properly can prepare that party/witness:

- Instruct the party/witness to wait for the question to be translated fully before answering it and to answer the question in his/her native language.
- Advise the party/witness to listen to the translation of the question, even if the party/witness understands the original question posed in English. Tell the party/witness to answer briefly, slowly, and to pause regularly so that the interpreter has sufficient time to repeat the answer in English.
- Instruct the party/witness that if he/she hears the word “objection,” the party/witness should wait for the judge to rule before speaking again, and then answer the question (or continue answering the question) only if the objection is overruled.
- Explain that the party/witness should not direct any comments or questions to the interpreter, but should pretend that the interpreter is not present. In the courtroom, it is improper for the interpreter and party/witness to have any private conversation. In addition, the party/witness should be told not to fraternize with the interpreter or ask the interpreter for advice about the case.
- Advise the party/witness to direct answers to the examiner (or the jury or judge) and not to the interpreter. Explain that testimony is judged not only by words but by the party/witness’s demeanor, manner, and body language. (Bear in mind that body language varies from culture to culture: in some cultures it is considered polite to answer questions with the eyes downcast, so a party/witness may have to be instructed to look up when answering questions.)

Lastly, the attorney him/herself should remember that working with an interpreter requires patience and skill. Set forth below are some general tips for attorneys:

- Construct questions with extra care. If possible, refrain from questions with double negatives or ambiguous references. When using the word “you,” clarify if you intend the singular or plural (“you yourself” or “yourself and others”). Questions should be simple and not convoluted. Speak clearly, concisely, and slowly, and pause where necessary to allow the interpreter to translate contemporaneously.
- Remember to wait for the translation of the question and of the answer: even if you yourself can understand the foreign language response; the judge and jury need to hear it from the interpreter.

- Some legal concepts do not exist in certain countries, such as orders of protection, custody orders, constructive possession of drugs, and conspiracy, or the party/witness may not understand a concept that is familiar to a native English speaker. Accordingly, provide clear explanations of various legal terms for the interpreter to translate to the party/witness.
- Proper planning is key. Advise the court if your case requires an interpreter who speaks an uncommon language. The court may need time to locate a qualified interpreter and, therefore, advance notice is critical to ensure that the proceeding can go forward.

3. Tips for Proceedings with Interpreters

- Remind parties and witnesses to speak slowly and clearly into the microphones.
- Assure interpreters that, if they cannot understand something the party/witness says, they should ask the court to instruct the party/witness to repeat exactly what he/she said.
- Ask the Government/plaintiff or defense counsel to provide the interpreter with a copy of the charging instrument or complaint and/or other relevant documents at the beginning of the proceeding. In federal court and some state courts, interpreters can review relevant documents on the electronic case filing system.
- Inform the parties that, if they have a challenge to an interpretation, they should bring it to the court's attention immediately and that such challenges will be heard at sidebar outside the presence of the witness (and the jury, if during a jury trial). The court should decide in advance, and inform the parties, whether the interpreter shall be present during any challenge to the interpretation, but the interpreter shall be given the opportunity to be heard prior to the court's decision regarding the challenge to the interpretation. The party challenging the interpretation has the burden to show it was mistaken or in error.

4. Conflict of Interest Issues

In general, interpreters should disclose any real or perceived conflict of interest, including any prior involvement with the case, parties, witnesses, attorneys, or judges and shall not serve in any matter in which they have a conflict of interest. Such disclosure is required for interpreters

working in federal courts. (See Standards for Performance and Professional Responsibility at 1-2.)

- Interpreting for Co-Defendants in Criminal Cases

There is no federal rule against the same interpreter interpreting for co-defendants. Caution must be exercised where there is a possibility that a co-defendant will cooperate in the case or the case possibly will be severed.

- Interpreting for the Government and the Defense in the Same Criminal Case

While it might be perceived to be a conflict of interest for an interpreter to interpret for both defense and prosecution witnesses, there are circumstances in which it does happen, either by inadvertence or because there are no other qualified interpreters in a particular language. It also typically can occur during a trial when multiple witnesses speak the same foreign language. Interpreters are sworn to interpret accurately, fairly and impartially, no matter for whom they are interpreting. Thus, once under oath, an interpreter may work for either or for both sides at the direction of the court.

The lack of any rule prohibiting shared interpreters may cause confidential information to be shared inadvertently. Interpreters should be trained specifically to safeguard against inadvertent disclosure. The interpreters should be instructed not to divulge to the adverse party the content of the matter translated. If an issue arises, the court should speak to the interpreter *ex parte* to determine if confidential information in fact has been disclosed and, if so, then proceed on a case-by-case basis, with notice and disclosure to all parties, to determine how to remedy such disclosure.

5. Errors in Interpretation

The interpreter who discovers that he/she made an error in interpretation during a court proceeding, should immediately inform the judge, even if the error is perceived after the proceeding has been completed. The judge then should decide if a correction is necessary on a case-by-case basis after disclosure to both parties with an opportunity to be heard on how to proceed. If the interpreter discovers an error after a witness meeting or a deposition in a civil case, the interpreter should inform the attorney who was present at that meeting or deposition of the error.

It is not unusual for a bilingual attorney who believes an interpreter has made an error to inform the court of perceived interpretation errors and they may have an ethical obligation to do so.

The court should make interpreters aware that they should bring these matters to the court's attention in open court, on the record, and before the parties.

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* Members of the Council and Advisory Group (and the Advisory Group's Interpreter's Project Committee) who drafted this report. The Interpreter's Project Committee, co-chaired by Carrie H. Cohen and Marjorie Peerce, thanks the following District Court staff for their invaluable assistance researching and drafting this report: Rosa Olivera, Eastern District of New York; Penny Price, Northern District of New York; Paula Gold and the late Nancy Festinger, Southern District of New York; and Mary E. Labuzzetta and Molly Schaus, Western District of New York.

**REPORT OF
STOUT RISIUS ROSS, INC.**

March 16, 2016

Presented for:

**Pro Bono and Legal Services Committee
of the
New York City Bar Association**

**The Financial Cost and Benefits of Establishing a
Right to Counsel in Eviction Proceedings Under Intro 214-A**



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At a Glance



Who We Are

Stout Risius Ross (SRR) is one of the largest independent, privately owned global advisory firms in the industry.

What We Do

We specialize in three main services: **Investment Banking, Valuation & Financial Opinions, and Dispute Advisory & Forensic Services.**

Who We Serve

We serve a range of clients from Fortune 500 Corporations to privately held companies in numerous industries around the world. Our clients and their advisors rely on our premier expertise, deep industry knowledge, and unparalleled responsiveness on complex financial matters.

Our clients include:

- Audit & Tax Advisory Professionals
- Boards of Directors
- Corporate Attorneys
- Distressed Companies
- ESOP Companies & Advisors
- Family Law Attorneys
- Financial Sponsors
- General Counsel
- Intellectual Property Professionals
- Litigators
- Middle Market Companies
- Public & Large Private Companies
- Public Sector

Industry Expertise:

- Business Services
- Consumer Staples
- Financials
- Industrials
- Materials
- Telecommunications
- Consumer Discretionary
- Energy & Utilities
- Healthcare
- Information Technology
- Media, Sports & Entertainment

Quick Facts:

12 OFFICES

ACROSS THE U.S. WITH A NETWORK OF STRATEGIC GLOBAL ALLIANCES.

U.S. Locations

Atlanta	Dallas	Los Angeles
Baltimore	Denver	New York
Chicago	Detroit	Tysons Corner
Cleveland	Houston	Washington, DC

350 EMPLOYEES

AND GROWING AT A RAPID PACE.

25 YEARS

OF DELIVERING CLIENT SUCCESS.

\$102 million
2015 Revenue

Chief Executive Officer:
Craig L. Stout



1991

Founded in Detroit



1997

Investment Banking Group Started



1998

Dispute Group Started



2000

Cleveland Office Opened



2001

Chicago Office Opened



2004

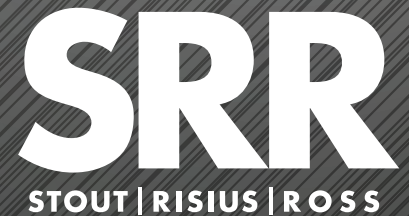
Tysons Corner Office Opened; ESOP Advisory Group Expansion



2007

New York Office Opened; Headquarters moved to Chicago

At a Glance



Recognition



- With a firm record of 48 fairness opinions rendered in 2015, **SRR was once again ranked as one of the top fairness opinion advisors in the United States according to the Thomson Reuters 2015 Mergers & Acquisitions Review** (Financial Advisors). In addition, SRR ranks as the top U.S. fairness opinion advisor for the past five years, based on the total number of deals reported in Thomson Reuters' Mergers & Acquisitions Review (2011-2015).
- **SRR was named winner of two deal of the year awards by The M&A Advisor in 2015.** SRR won M&A Deal of the Year for transactions over \$250MM to \$500MM for its role as a financial advisor in the employee acquisition of Nation of Safe Drivers. SRR also won the Financial Services Deal of the Year category for transactions between \$10MM to \$100M for serving as a financial advisor in the acquisition of NCB Management Services, Inc. by NCB Employee Stock Ownership Trust. This was SRR's third consecutive year winning an award from The M&A Advisor.
- **SRR Managing Directors John R. Bone, CPA, CFF; Edward A. Gold, Ph.D., ASA; David A. Haas, CLP; and Michele M. Riley, CPA/CFF, CFE were recognized as world leading patent professionals by Intellectual Asset Management (IAM) Magazine Patent 1000 for 2015.** The IAM Patent 1000 publication identifies individual and firm expertise in all major areas of patent law and practice. Through an extensive research process conducted by a team of highly qualified, full-time analysts, the publication identifies the top patent practitioners, as well as leading patent law and attorney firms, in 41 of the world's most important jurisdictions and 18 US states. Only those individuals identified by market sources for their exceptional skill sets and profound insights into patent matters feature in the IAM Patent 1000.
- **SRR's Dispute Advisory & Forensic Services group was recognized as an industry leader in multiple categories for the Best of the National Law Journal Legal Times DC-market awards in 2015.** SRR was selected based on the votes of members of the Washington, D.C. area law community, including attorneys, paralegals, legal assistants, and law school students. SRR ranked in the following categories:
 - 1st Place: Forensic Accounting Provider
 - 2nd Place: Expert Witness Provider
 - 3rd Place: End-to-End Litigation Consulting Firm
- **SRR earned kCura's Relativity Best in Service designation in 2015,** which recognizes Relativity Premium Hosting Partners who provide an exceptional Relativity experience for end users. kCura evaluates partners' individual data centers in three areas: technical infrastructure, customer service, and product expertise. Additionally, Best in Service partners meet a set of requirements for their duration as a hosting partner, size of Relativity installations, and core Relativity certifications.
- **SRR was named one of the Nation's 2015 Best and Brightest Companies to Work For.** The Best and Brightest Companies to Work For© competition identifies and honors organizations that display a commitment to excellence in their human resource practices and employee enrichment. The winning organizations for 2015 were assessed based on categories such as communication and shared vision, diversity, employee education, and employee achievement and recognition.

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2011

Los Angeles Office Opened



2012

HFBE, Inc. Merger; Dallas and Houston Offices Opened



2012

Washington, DC and Atlanta Offices Opened



2013

Creation of SRR-Asia; SRR-Europe, and SRR-South America



2014

Baltimore and Denver Offices Opened



2015

Firm Revenue Exceeds \$100M



2016

Natoma Partners Acquisition. Firm 25-Year Anniversary



The Financial Cost and Benefits of Establishing a Right to Counsel in Eviction Proceedings Under Intro 214-A

Report of Stout Risius Ross

March 16, 2016

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The Financial Cost and Benefits of Establishing a Right to Counsel in Eviction Proceedings Under Intro 214-A

Report of Stout Risius Ross

March 16, 2016

I. Scope of Work

1. Stout Risius Ross, Inc. (“SRR”) has been asked by the Pro Bono and Legal Services Committee of the New York City Bar Association to undertake on a pro bono basis, a cost / benefit analyses regarding the cost of City Council Intro 214-A (“Intro 214-A”), and to review cost/benefit reports on City Council Intro 214 conducted by the Independent Budget Office (“IBO”) and the Finance Department (“Finance”) of the City of New York (“City”). It is SRR’s understanding that from a cost benefit analysis the major difference between the original (“Intro 214”) and amended version (“Intro 214-A”) is the increase in poverty threshold of eligible cases from 125%-200%. However, in this report SRR refers to both versions of the report as “Intro 214-A”. In reviewing these reports, key inputs of each report’s analysis have been identified, compared, and evaluated.¹
2. Additionally, SRR has identified certain benefits / cost savings the City would likely realize through funding right to counsel in eviction matters that are not quantified in either the IBO or Finance reports. SRR is also in receipt of cost surveys of current providers of indigent defense in eviction matters which have been incorporated into our analysis.
3. Based on our review of the information presented above and consideration of other relevant information, SRR has prepared this independent opinion regarding the cost and benefit to the City of Intro 214-A. It should be noted that SRR employed a conservative method of analysis and quantified only items where data was available to support these conclusions.

¹ Although Intro 214-A would provide for a right to counsel in foreclosure as well as in eviction cases, this report focuses exclusively on the costs and benefits of eviction, as did both the IBO and Finance Reports.





II. Executive Summary

4. SRR has reviewed and analyzed cost benefit analyses of Intro 214-A as prepared by the IBO and Finance, including source information used in their preparation where available. The IBO report concluded that the net annual cost to the City for Intro 214-A would be between \$100 million and \$203 million while Finance concluded this cost would be \$66 million.
5. SRR reviewed information that was published subsequent to the issuance of these reports as well as additional benefits of Intro 214-A not fully explored by IBO and Finance. In consideration of these items, SRR has determined that Intro 214-A should provide net cost savings to the City.
6. It is SRR's opinion that the IBO and Finance reports have underestimated or not considered benefits to the City from Intro 214-A. As such, SRR performed an independent analysis of the costs and benefits to the City under Intro 214-A and has concluded that implementation of Intro 214-A would provide a net cost savings to the city of \$320 million. A summary of SRR's analysis is presented below.

Cost of Providing Counsel

7. In determining the cost of providing counsel under Intro 214-A, SRR employed a similar methodology to that utilized by both IBO and Finance. This methodology considers the number of cases heard in housing court and the determination of eligible cases under Intro 214-A. In making the determination of eligible cases, both the IBO and Finance Reports utilized the then current threshold in Intro 214-A of 125% of the poverty line. It is SRR's understanding that this threshold has now been increased to 200% which was incorporated into SRR's analysis.
8. Incorporating the revised income threshold of 200% of the poverty line, SRR has estimated that approximately 82% of cases heard in housing court would qualify under Intro 214-A; this is estimated at 128,692 cases. Using survey responses from providers of anti-eviction legal counseling it was determined that the average cost per case is approximately \$2,000. In addition, the cost of a case coordinator was added at approximately \$144,000 and the reduction for the City's currently projected \$60 million in spending on anti-eviction legal services was subtracted as an offset to the costs under Intro 214-A because NYC currently plans to spend that amount whether or not Intro 214-A is adopted.
9. From the consideration of these inputs, SRR has estimated the annual cost of Intro 214-A to be approximately \$199 million.

Benefit of Reduced Homeless Shelter Costs

10. SRR calculated the benefit of reduced shelter costs by employing a methodology similar to that employed in the IBO report. SRR estimated this benefit by identifying that 14,472 families entered shelter during 2014.² It is estimated that

² Coalition for the Homeless. State of the Homeless 2015.





47% of the families in homeless shelter are homeless due to eviction.³ Further, it has been estimated that the number of warrants for eviction decrease by 77% when legal counsel defends the eviction suit.⁴ Therefore, SRR has estimated that 5,237 families annually could avoid shelter entry from anti-eviction legal services.

11. The total cost of sheltering a family was estimated to be \$43,222 in 2014,⁵ which results in annual cost savings of approximately \$226 million. In addition, SRR has accepted the IBO reports' estimation that an additional \$25 million of shelter costs for individuals could be avoided under Intro 214-A. Thus, the total annual estimated shelter savings are estimated at \$251 million.
12. The IBO and Finance reports both reduce the benefit of shelter savings for the portion of shelter funding from the federal and state governments, as they assume these savings would result in a lower future allocation of federal/state funds. However, from review of supplemental guidance issued by the IBO which notes the existing permissions to redirect federal and state funds it is likely that the City could realize the entire benefit of shelter savings.

Benefit of Affordable Housing Cost Savings

13. It is estimated that 3,414 units of rent-regulated, affordable housing will be preserved from providing legal counsel in eviction defense. Under Mayor Bill de Blasio's housing plan, preserving these units results in savings of over \$1.3 billion annually in replacement costs, of which \$259 million will be saved directly by the City through the term of the Housing Plan.⁶

Benefit of Unsheltered Homeless Cost Savings

14. The total unsheltered population for the City is estimated at 3,000,⁷ although some estimates are as high as 12,000.⁸ It is estimated that 12% of these unsheltered homeless are homeless due to eviction and cost the City \$31,000 each annually in medical and law enforcement costs.^{9,10} As anti-eviction legal services has been estimated to reduce warrants of eviction by 77%,¹¹ SRR has estimated the savings

³ Housing Help Program; Homelessness Prevention Pilot Final Report. June 2010.

⁴ The IBO Report cited a program conducted by the Legal Aid Society and the Bar of the City of New York that tracked the success rate of tenants that were represented by legal counsel in eviction proceedings and those who were not. This program resulted in a warrant of eviction in 10% of the cases where legal counsel was present and 44% of the time when legal counsel was not, representing a decline of 77%.

⁵ Coalition for the Homeless. State of the Homeless 2015.

⁶ Calculated from costs included in "Housing New York: A Five Borough, Ten-Year Plan."

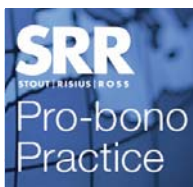
⁷ Hu, Winnie. "New York City Reaches Out to Homeless People Who Are Wary of Traditional Shelters" New York Times. 8 Feb 2015.

⁸ Prakash, Nidhi. "It's Cold Out There: Homeless People in New York City Won't Be Allowed to Sleep on the Subway This Winter" Fusion.net. 21 Oct 2015.

⁹ New Jersey's 2015 Point-In-Time Count of the Homeless.

¹⁰ Yglesias, Mattew. "Giving Housing to the Homeless is Three Times Cheaper Than Leaving Them on the Streets" www.vox.com. 4 Feb 2015.

¹¹ The IBO Report cited a program conducted by the Legal Aid Society and the Bar of the City of New York that tracked the success rate of tenants that were represented by legal counsel in eviction proceedings and those who were not. This program resulted in a warrant of eviction in





from Intro 214-A to the City from unsheltered homeless cost savings at approximately \$9 million annually.

SRR Conclusion

15. SRR has concluded that even with the income eligibility threshold raised to 200% of the poverty level (as opposed to the 125% level utilized by the IBO and City Council), the City would realize a benefit from Intro 214-A of \$320 million, annually.¹² Moreover, even if the City were to realize a loss of revenue equivalent to 70% of the shelter savings (\$176 million), as calculated in the Finance report, from the loss of federal and state funds, SRR estimates that the City would still realize an annual benefit of approximately \$144 million annually from Intro 214-A. A summary of the key components of SRR’s analysis as well as those conducted in the IBO and Finance reports is presented below.

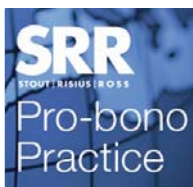
Comparison of SRR’s findings with those of the IBO and Finance			
Description	IBO	Finance	SRR
Cost of Providing Counsel	(\$153 - \$256 Million)	(\$117 Million)	(\$199 Million)
Gross Homeless Shelter Cost Savings	\$143 Million	\$171 Million	\$251 Million
Reduction for Non-City Shelter Funding	(\$90 Million)	(\$120 Million)	n/a
Annual Cost of Affordable Housing	n/a	n/a	\$259 Million
Savings From Unsheltered Homeless	n/a	n/a	\$9 Million
Total (Cost) / Benefit of City Council Intro 214-A	(\$100 - \$203 Million)	(\$66 Million)	\$320 Million

16. In addition to the aforementioned benefits to the City from Intro 214-A, SRR also considered additional benefits to the City, but lacked information to further quantify. These include, but would not be limited to:

- a. The cost associated with homeless children as a result of eviction manifested through education costs, juvenile justice costs, and welfare costs;
- b. The cost of providing welfare when jobs are lost due to eviction;
- c. Enforcement of rent law and regulations; and
- d. A likely reduction over time in the numbers of eviction cases needing counsel because landlords would bring fewer cases knowing that tenants will have legal counsel and because cases will be resolved with greater finality and less repeat filings when both sides have counsel.

10% of the cases where legal counsel was present and 44% of the time when legal counsel was not, representing a decline of 77%.

¹² SRR has not conducted an analysis to match the benefits received from Intro 214-A to the costs of providing counsel. It is believed that some of the cost savings estimated in this report would be in periods subsequent to the initial outlay of costs for providing council as not all eviction shelter entries are immediate.



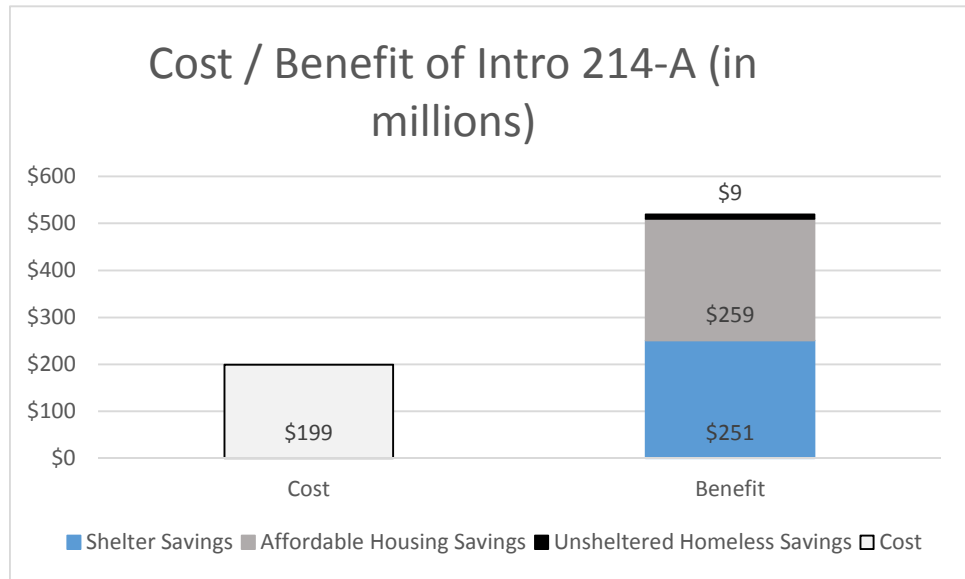


The Financial Cost and Benefits of Establishing a Right to Counsel in Eviction Proceedings Under Intro 214-A

Report of Stout Risius Ross

March 16, 2016

17. Based on the considerations as presented above, and throughout this report, SRR has concluded that the City would realize a benefit from Intro 214-A of \$320 million, annually, which is visually presented below.¹³



¹³ Ibid.



III. Key Inputs and Conclusions of IBO Report

18. The IBO report conducted its analysis by calculating the cost to provide counsel for indigent defense in eviction matters and the benefit to the City of providing such defense through homeless shelter savings. Each of the inputs used in this analysis will be explained below, as well as the conclusions reached by the IBO.

Cost to Provide Counsel

19. The IBO started its analysis by identifying the pool of households facing eviction. This was determined by identifying the number of housing court cases heard in 2013: 156,941. The IBO then determined that 55% of the total cases heard in housing court would meet the income thresholds in Intro 214-A by utilizing a study named “Housing Court, Evictions and Homelessness: the Costs and Benefits of Establishing a Right to Counsel.” This study included a survey of the income levels of households in eviction defenses and reported the percentage of cases heard by income level.
20. From the application of the 55% housing court cases meeting the, then current, income qualifications, the IBO report concluded that 86,318 housing court cases would be eligible to receive counsel. Next, the IBO determined that the cost of counsel per case would be between \$2,000 and \$3,200 per case resulting in costs of providing counsel between \$173 million and \$276 million. The IBO report also added an additional \$125,000 for the salary of a case coordinator and an offset of \$20 million for current anti-eviction legal services contracts. The IBO report concluded that the total cost of providing counsel under Intro 214-A was between \$153 million and \$256 million.

Benefit of Reduced Homeless Shelter Costs

21. The IBO report noted differentiating factors between sheltering homeless families and homeless individuals such as the intake process, costs of shelter, and source of funds. As such, the cost of sheltering families and individuals is discussed separately.

Cost of Sheltering Families

22. The IBO report noted that the intake process for families entering homeless shelters includes information on why housing is needed. This intake process, as of 2012, resulted in 36% of families reporting their need for shelter was the result of an eviction. Additionally, the IBO Report also noted that 11% of families entering homeless shelter was the result of over-crowded living situations. Therefore, the IBO Report added an additional 1% to the 36% of shelter needs as a result of eviction theorizing that many families likely move in with a friend or relative after being evicted before going into a homeless shelter.
23. The IBO Report then applied this 37% of family shelter entries as a result of eviction to 10,500 shelter entries in 2012 to estimate that 3,885 families entered a housing shelter in 2012 as a result of an eviction. However, in order to determine the costs of sheltering evicted families, the IBO report examined the observed



decrease in evictions from defenses that were aided by counsel and those that were not.

Eviction Reductions from Legal Counsel Defense

- 24. The IBO report concluded that there is a 77% reduction in evictions when legal counsel assists in the defense compared to those without legal counsel. This reduction of evictions was obtained from a randomized experiment operated by the Legal Aid Society and the Association of the Bar of New York City. In this experiment, it was found that when legal counsel assisted in the defense of evictions, warrants of evictions were issued in 10% of the cases compared to 44% without legal counsel.
- 25. Thus, the IBO report applied the 77% observed reduction in issued warrants of eviction to the 3,885 family shelter entries as a result of eviction to conclude that 2,991 of the 3,885 families would have likely avoided eviction if the defense included legal counsel. The IBO report further stated that the cost of sheltering these families was approximately \$118 million.
- 26. However, the IBO report noted that the City's shelter system is funded by Federal and State funds in addition to funds provided by the City. The federal government provides 60% of the funding for the family shelter while the City and state governments provide 30% and 10%, respectively. Therefore, the IBO report concludes that the City's benefit of reduced shelter costs from anti-eviction legal counsel would be limited to its share of funding, 30%, which is calculated at \$35 million.

Cost of Sheltering Individuals

- 27. The IBO report noted that the shelter intake process for single adults is different than the intake process for families where the reason for shelter entry, e.g. eviction, is not captured. However, 10% of single adults reported renting a home in the same year prior to shelter entry. The IBO Report utilized half of this figure, 5%, as a representation for single adult evictions. Additionally, 35% of single adults lived with friends or family prior to eviction and the IBO utilized 10% of this amount, 3.5%, as an additional representation for single adult eviction. The IBO report then combines the 5% of entrances who had previously rented a home with the 3.5% of single adult shelter entrances who had previously lived with friends or family to conclude that 9% of single adult shelter entrances are the result of an eviction.
- 28. The 9% of single adult shelter entrances is then applied to 16,448 single adult shelter entrances to conclude that 1,480 of these entrances were the result of eviction. The same methodology for the estimated decrease in these entrances as family entrances was applied which reduced the 1,480 entrances by 77% to 1,140.
- 29. The IBO report then estimates that the cost of sheltering these 1,140 single adults is \$25 million with funding provided by federal, state, and City governments at 4%, 23%, and 73% respectively.





The Financial Cost and Benefits of Establishing a Right to Counsel in Eviction Proceedings Under Intro 214-A

Report of Stout Risius Ross

March 16, 2016

Eviction Reductions from Legal Counsel Defense

30. The IBO Report concludes that the City’s savings from single adult shelter entry through providing legal counsel in eviction defense is \$18 million.

Total Eviction Reductions from Legal Counsel Defense

31. The IBO report estimated that total shelter savings from Intro 214-A was \$143 million, although only \$53 million would be realized by the City, due to the source of shelter funding.

Conclusion of IBO Report

32. The IBO report concluded that the cost of Intro 214-A to the City would be between \$100 million and \$203 million. This is derived from estimated cost of legal counsel of between \$153 million and \$256 million with shelter savings of \$53 million after reduction for non-City shelter funding.

Total (Cost) / Benefit of City Council Intro 214-A	
Description	IBO
Cost of Providing Counsel	(\$153 - \$256 Million)
Gross Homeless Shelter Cost Savings	\$143 Million
Reduction for Non-City Shelter Funding	(\$90 Million)
Annual Cost of Affordable Housing	n/a
Savings From Unsheltered Homeless	n/a
Total (Cost) / Benefit of City Council Intro 214	(\$100 - \$203 Million)



IV. Key Inputs and Conclusions of Finance Report

33. The Finance report structured its analysis similarly to the IBO report where the cost to provide counsel for eviction legal defense was presented along with the benefit to the City for providing such defense through homeless shelter savings. Each of the inputs used in this analysis will be explained below, as well as the conclusions reached by Finance.

Cost to Provide Counsel

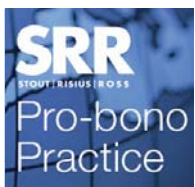
34. The Finance report calculated the cost of providing counsel for eviction legal defense similarly to that of the IBO report where the number of cases heard in housing court was multiplied by an estimated cost per case. However, the Finance report varied in the way some of these inputs were calculated.
- a. **Number of Cases Heard:** the Finance report took a three year average of the cases heard in housing court from 2011 through 2013 (156,310), whereas the IBO report utilized the number of cases heard in 2013 (156,940).
 - b. **Income Threshold:** the Finance report estimated that 50% of the cases heard would qualify for legal services under Intro 214-A. This was calculated using the same study as the IBO report, “Housing Court, Evictions and Homelessness: the Costs and Benefits of Establishing a Right to Counsel”. However, the Finance report utilized the low end of the income range (50%) whereas the IBO Report utilized the midpoint of the range (55%).
 - c. **Cost per Case:** The Finance report utilized \$1,500 as cost per case opposed to between \$2,000 and \$3,200 utilized in the IBO Report. The Finance report’s cost per case was determined through information provided by the New York City Human Resources Administration and various New York City Legal service providers. It was noted however, that these costs were based upon payment by the City and not necessarily the entire cost of each provider.
 - d. **Case Coordinator:** the Finance report estimated the cost of a case coordinator would be \$143,893 annually, which is commensurate with the \$125,000 estimated in the IBO Report plus approximately 15% for benefits.
 - e. **Current Anti-Eviction Spending:** not considered in Finance report.
35. Based on these inputs, the Finance Report concluded that eviction legal defense would cost the City \$117 million, annually.



Benefit of Reduced Homeless Shelter Costs

36. The Finance report did not differentiate between family and individual shelter costs as presented in the IBO report. Alternatively, the Finance report only presented an analysis for the costs of sheltering families.¹⁴ In addition, the methodology utilized by the Finance report is materially different than that presented in the IBO Report.
37. The Finance report did not analyze homeless shelter entries and the reason for those entries as presented in the IBO Report. Instead, the reductions in family homeless shelter entries is calculated by utilizing a study titled “Housing Help Program” conducted between the Department of Homeless Services, United Way, and Legal Aid Society. In this study, it is concluded that 5% of families avoid homeless shelter with the assistance of legal counsel in an eviction defense. This rate is then applied to the 78,155 housing court cases for which legal assistance is contemplated. This results in the conclusion that 3,836 families would avoid homeless shelter if legal counsel assisted in the eviction defense.
38. The Mayor’s Management Report is then cited to present the average length of stay per family at 440 days and a \$101.50 cost per day for fiscal year 2014. This results in a cost of \$44,672 per family for a total of \$171 million for the 3,836 families estimated to avoid homeless shelter.
39. Therefore, the Finance report concluded that the City would save \$54 million by providing legal counsel in eviction matters. This is calculated by realization of \$171 million in homeless shelter cost savings less the cost of providing legal services of \$117 million.
40. However, the Finance report notes that approximately 70% of shelter costs are reimbursed by federal and state funds. Thus, it is estimated that the City would realize a loss in revenue of \$120 million due to reduced reimbursements.

¹⁴ Although not expressly stated, the Finance report inherently includes individual shelter entrants in its conclusion through including the total number of cases heard in housing court in its calculations which included both families and individuals.





The Financial Cost and Benefits of Establishing a Right to Counsel in Eviction Proceedings Under Intro 214-A

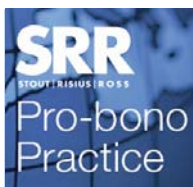
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Conclusion of Finance Report

41. The Finance report concluded the net impact of Intro 214-A to be a cost to the City of \$66 million. This is derived from estimated cost of legal counsel of \$117 million with shelter savings of \$171 million to realize a cost savings of \$54 million, which is then offset by a loss of revenue of approximately \$120 million.

Total (Cost) / Benefit of City Council Intro 214-A	
Description	Finance
Cost of Providing Counsel	(117 Mill\$ion)
Gross Homeless Shelter Cost Savings	\$171 Million
Reduction for Non-City Shelter Funding	(\$120 Million)+071
Annual Cost of Affordable Housing	n/a
Savings From Unsheltered Homeless	n/a
Total (Cost) / Benefit of City Council Intro 214	(\$66 Million)





The Financial Cost and Benefits of Establishing a Right to Counsel in Eviction Proceedings Under Intro 214-A

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V. Comparison of IBO and Finance Reports

42. Presented below is comparison of the key inputs of the IBO and Finance reports for providing counsel under Intro 214-A.

Cost of Providing Counsel		
Description	IBO	Finance
Pool of Households Facing Eviction	156,941	156,310
Share of Cases Meeting Poverty Threshold	55%	50%
Cost per Case	\$2,000 - \$3,200	\$1,500
Cost of Case Coordinator	\$125,000	\$143,893
Current Spend	\$20 Million	n/a
Total Cost of Providing Counsel	\$153 - \$256 Million	\$117 Million

43. Presented below is comparison of the key inputs of the IBO and Finance reports for the homeless shelter cost savings from providing counsel under Intro 214-A.

Homeless Shelter Cost Savings		
Description	IBO	Finance
Families Entering Shelter as a Result of Eviction	2,991	3,836
Cost of Providing Shelter per Family	\$39,452	\$44,672
Singles Entering Shelter as a Result of Eviction	1,140	n/a
Cost of Providing Shelter per Single	\$21,930	n/a
Subtotal Gross Homeless Shelter Cost Savings	\$143,000,000	\$171,361,792
Less: Non-City Funding Family	(\$82,600,000)	(\$119,953,254)
Less: Non-City Funding Individual	(\$6,750,000)	n/a
Total Net Homeless Shelter Cost Savings	\$53,650,000	\$51,408,538

44. Presented below is comparison of the conclusions of the IBO and Finance reports for providing counsel under Intro 214-A.

Total (Cost) / Benefit of City Council Intro 214-A (\$ in millions)		
Description	IBO	Finance
Cost of Providing Counsel	\$153 - \$256 Million	\$117
Net Homeless Shelter Cost Savings	\$54	\$51
Total (Cost) / Benefit of City Council Intro 214-A	(\$100 - \$203)	(\$66)





VI. SRR Analysis

45. SRR considered the information and methodologies utilized in the IBO and Finance reports as well as additional information to conduct its own independent analysis of the costs and benefits of Intro 214-A. Presented below is a discussion of this analysis.

Cost of Providing Counsel

46. As presented in the previous section, the IBO and Finance reports utilized similar methodologies in computing the cost to provide counsel for indigent legal defense in eviction matters. Both reports estimated the number of cases which would qualify for defense, estimated the cost per case, and considered the cost of a case coordinator.¹⁵ SRR believes this methodology is reasonable and an appropriate measure of costs of Intro 214-A.
47. However, the IBO Report concluded the cost of indigent eviction legal defense would cost the City between \$153 and \$256 million whereas the Finance estimated this cost closer to \$117 million. The difference between these calculations is the result of utilizing different inputs within the same calculation. Each of these inputs, including SRR's analysis, will be discussed below.

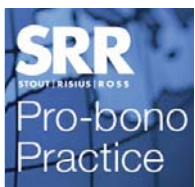
Eligible Cases

48. In determining the number of eviction cases that would be eligible for legal counsel, SRR began with the number of cases heard in housing court as presented in the IBO report. Although, the number of cases utilized in each report was not materially different (IBO 156,941 v. Finance 156,310), SRR accepted the IBO input. This selection was made as the IBO report utilized the more current period available and material annual fluctuations are not expected.
49. Next, in determining the number of cases eligible for counsel, SRR noted the difference between IBO and Finance reports was 5% (55% v. 50%, respectively). However, these percentages were selected based on the then-current version of Intro 214-A, which set the income threshold for qualifying cases at 125% of the poverty line. SRR has since learned that this threshold is now at 200% of the poverty line and thus conducted an analysis to determine the number of cases that would be eligible.
50. In conducting this analysis, SRR first identified the poverty line at \$24,830 for a family of four.¹⁶ SRR then utilized the same study cited by both the IBO and Finance reports, to determine the income levels of tenants in housing court.¹⁷ However, this study was conducted in 1990 and SRR inflation adjusted the income levels reported in this study by 3% per year for 25 years to bring this data current

¹⁵ The IBO Report also used the current indigent legal defense spending by the City as an offset to these costs.

¹⁶ 2014 US Census.

¹⁷ Study utilized in each report was "Housing Court, Evictions and Homelessness: the Costs and Benefits of Establishing a Right to Counsel".





to 2014. This study, inflation adjusted, suggested that 82% of the tenants in housing court have incomes below \$50,000 (200% of \$24,830 poverty threshold is \$48,460).

51. Thus, SRR estimated that 82% of the 156,941 cases heard in housing court would be eligible to receive legal counsel. If all of those who are eligible to receive legal counsel elected to do so, SRR estimates that 128,692 cases would need to be funded.

Cost per Case

52. The IBO and Finance reports differed in the estimation of the cost per case with the IBO utilizing between \$2,000 and \$3,200 and Finance selecting \$1,500. Therefore, SRR conducted an independent analysis utilizing survey results of seven different providers of eviction legal defense. Survey respondents were asked to complete responses in relation to salary & benefits, support costs, operating expenses, paid time off, and billable hours per case.
53. SRR used this information to determine the average cost per case of all seven providers was approximately \$1,400 per case which increased to approximately \$1,900 per case when paid time off was considered. The costs per case were consistent between six of the seven providers with only one provider reporting a materially different cost per case of \$700 and \$961 with the consideration of paid time off. Therefore, SRR removed the data from this provider and calculated the average cost per case at approximately \$1,500, and increasing to approximately \$2,000 per case when including paid time off.
54. SRR selected \$2,000 as a cost per case for purposes of computing the total cost of providing legal counsel under Intro 214-A.

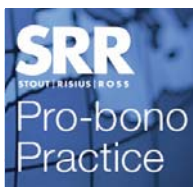
Case Coordinator

55. The costs of a case coordinator were estimated at \$125,000 and \$144,000 by the IBO and Finance reports, respectively. The difference between these figures is the result of the Finance report including benefits in its estimation. As such, SRR has accepted the salary and benefits figure provided by the Finance report as an estimation of the cost of a case coordinator.

Current Legal Spending

56. The IBO Report stated that the City currently spends approximately \$20 million on anti-eviction legal services that would be replaced by Intro 214-A. This was not considered in the Finance report. SRR has not conducted a full review of all the anti-eviction legal services offered by the City but understands that all or nearly all of the anti-eviction legal services are offered for low-income tenants.
57. However, SRR's research into the funding for eviction attorneys in housing court has revealed that the City's anticipated funding in this area is \$60 million.¹⁸ As

¹⁸ Levine, Mark and Broshnahan, Mary. "How to Fight Homelessness" The New York Times, 19 Oct. 2015.





such, SRR accepts the premise that the current spending on anti-eviction legal services is likely to continue and is thus duplicative of what would be required to implement Intro 214-A and should be included as an offset in the amount of \$60 million.

Cost of Providing Counsel - Conclusion

58. Based on the inputs as described above, SRR has concluded that the costs of providing counsel under Intro 214-A are approximately \$199 million.

Benefit of Reduced Homeless Shelter Costs

59. The IBO and Finance reports utilize different methodologies in computing the cost savings of reduced homelessness from anti-eviction legal spending. In review of these two methodologies, SRR mirrored its analysis to that contained in the IBO report. The methodology contained in the IBO report was more easily tested and verifiable of its representation of homeless eviction populations. In addition, this methodology more clearly articulated the decrease in evictions from the assistance of legal counsel in the defense.

60. While the same basic methodology utilized by the IBO was utilized, SRR found updates to certain inputs to more accurately reflect current homeless populations as a result of eviction. The updates made to the IBO reports calculation of evicted homeless populations are discussed below.

Number of Families Entering Shelter

61. In determining family shelter entrances, The IBO report utilized the number of entrances as of 2012: 10,500. However, by January 2015, the Coalition for the Homeless (“CFTH”) reported that, on average, 14,524 families were sheltered by the City.¹⁹

62. This difference may be related to several factors, including, but not limited to:

- a. growth in homelessness over time; and
- b. the use of “entrances” compared to “average families sheltered”.

63. SRR believes that utilizing the number of “average families sheltered” compared to shelter entrances better matches the cost of providing counsel to the benefit received over an annual period. This is the result of two factors:

- a. the average shelter stay exceeds one year; and
- b. not all shelter entrances will be in the same year as the counsel.

64. Therefore, it is SRR’s opinion that the number of average families sheltered as of January 2015, 14,524, is a reasonable starting point in determining the number of families sheltered as a result of eviction.

¹⁹ Coalition for the Homeless. State of the Homeless 2015.





Calculation of Family Entries as a Result of Eviction

65. As previously stated, the IBO Report determined that 37% of family shelter entries were the result of an eviction. However, SRR believes that the IBO's inclusion of only 1% for families who have experienced an informal eviction is understated.²⁰
66. Information cited in the HHP study revealed that at the time of the study (2007), 23% of families entering shelter listed eviction as the direct cause of their shelter entry. However, when surveyed specifically about evictions, 38% of families responded that they had experienced a formal eviction and an additional 9% of families reported an informal eviction within the last five years.²¹
67. The difference in survey results is likely explained by the fact that in order to be determined eligible for shelter entry due to eviction, tenants must show documentation of the eviction;²² it is likely that not all tenants maintain this information while seeking alternative living arrangements. In addition, this survey is representative over a five year period, thus capturing evicted tenants that did not go directly to shelter.
68. As such, it is SRR's opinion that 47% of sheltered families, 6,802, entered shelters as a result of eviction.

Cost of Sheltering Evicted Families

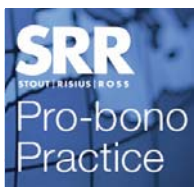
69. The IBO report estimated the cost of sheltering the 2,991 families that would avoid eviction with counsel was \$118 million. However, the IBO report does not state how this figure was derived and if it is for an annual period or longer length of time. Data provided by the Community Coalition for the Homeless released information stating the average annual cost for sheltering a homeless family in 2014 was \$37,047.²³ In addition, this report also noted that the average length of stay for families with children was more than 14 months, which results in a total cost per stay of \$43,222.
70. Based on SRR's calculation that 6,802 families enter shelter due to eviction along with the \$43,222/family cost, it is estimated that the City spends approximately \$294 million annually sheltering homeless families as a result of eviction. It has also been shown that providing legal counsel in eviction proceedings results in a

²⁰ New York City Independent Budget Office. "The Rising Number of Homeless Families in NYC, 2002 – 2012: A Look at Why Families Were Granted Shelter, the Housing They Had Lived in & Where They Came From." November 2014.

²¹ Informal evictions are situations where a tenant leaves housing voluntarily before or after an order of eviction, without forcibly being evicted by a Marshall. If SRR were to utilize the 37% annual figure as noted in the IBO Report, projected costs savings would be reduced by approximately \$48 million.

²² New York City Independent Budget Office. "The Rising Number of Homeless Families in NYC, 2002 – 2012: A Look at Why Families Were Granted Shelter, the Housing They Had Lived in & Where They Came From." November 2014.

²³ Coalition for the Homeless. State of the Homeless 2015.





77% decrease in the number of warrants of evictions.²⁴ Thus, it is estimated that approximately \$226 million of the cost to shelter evicted families can be saved by providing legal counsel in eviction defense.

Cost of Sheltering Individuals

71. In addition to the costs of sheltering evicted families, the IBO report also concludes that the City could avoid \$25 million of costs related to sheltering individual adult men and women if legal counsel assisted in an eviction defense. The data relied on to conclude this figure was not available to SRR; however, SRR agrees with the overall methodology utilized in this calculation. In addition, as noted above, SRR found the calculations for cost of sheltering families conservative. Therefore, SRR accepts the \$25 million in cost savings concluded by the IBO report from sheltering individual men and women.

Family and Individual Cost Savings

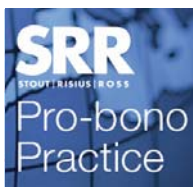
72. The total combined cost savings from family and individual shelter entry from legal counsel eviction defense is therefore estimated at \$251 million.

Source of Homeless Shelter Funds

73. Both the IBO and Finance reports note that the City receives federal and state funds to support its homeless shelters. The IBO report notes that the primary source of funding for family shelters is from federal funds through the Temporary Assistance to Needy Families (“TANF”) block grant at 60%. It is also noted that the state contributes 10% towards the funding of family sheltering and the City receives 23% and 4% from state and federal governments of the costs for individual men and women shelters. As such, both the IBO and Finance reports reduce the cost savings from preventing shelter entries due to evictions by the portion of funding not directly covered by the City.
74. The IBO released additional guidance on the sources of funds for sheltering the homeless almost a year after the release of the IBO Report. In this Fiscal Brief, the IBO notes “Family Shelter costs are calculated through a per diem rate established for each shelter facility, multiplied by the number of days care was provided... then applied to public assistance program...”²⁵ Thus, if the number of families in shelter were to decline, the TANF funds for shelter costs would decline as well.
75. However, the state of New York has already given the City the ability to redirect family shelter savings to other purposes. “If the City is able to realize family

²⁴ The IBO Report cited a program conducted by the Legal Aid Society and the Bar of the City of New York that tracked the success rate of tenants that were represented by legal counsel in eviction proceedings and those who were not. This program resulted in a warrant of eviction in 10% of the cases where legal counsel was present and 44% of the time when legal counsel was not, representing a decline of 77%.

²⁵ “Albany Shifts the Burden: As the As the Cost for Sheltering the Homeless Rises, Federal & City Funds Are Increasingly Tapped.” New York City Independent Budget Office Fiscal Brief. October 2015.





shelter savings, New York State has already granted the City permission to redirect the savings, including federal TANF funds and state Safety Net funds, towards a rental assistance program that serves repeat and long-term shelter users (LINC II). The state has also allowed the city to use federal TANF funds to help pay for a rental assistance program targeting homeless domestic violence survivors (LINC III). Although there are federal restrictions on the use of TANF funds, it is possible that the state could permit the city to expand its use of these funds to pay for other programs targeting welfare eligible families with minor children. Alternatively, the state could choose to use TANF savings to raise the overall cash assistance grant, which would benefit low-income households more generally.²⁶

76. Thus, while the City’s receipt of federal and state funds is under the overall discretion of the State of New York, however, the state has already granted permission to redirect family cost savings for other purposes. It is also possible that the State could permit the City to use these funds to pay for other programs within TANF’s permissible uses which would alleviate City funding in other programs. As such, it is SRR’s opinion that the City could realize the full cost savings of shelter avoidance from its investment in Intro 214-A.²⁷

Other Benefits Not Quantified in IBO and Finance Reports

77. Both the IBO and Finance reports measure the benefits to the City of Intro 214-A through homeless shelter cost savings. However, SRR has analyzed additional costs of evictions. These costs relate to the loss of affordable housing and costs of unsheltered homelessness. A discussion of these costs and SRR’s analysis is presented below.

Cost of Affordable Housing

78. It has been argued that “New York Law currently provides landlords with numerous incentives to evict tenants and raise rents.”²⁸ One of these incentives is to evict tenants in rent regulated units and replace the tenant with one that pays market prices. Thus, when this situation occurs, the City loses a unit of affordable housing which is costly to replace.
79. Under Mayor Bill de Blasio’s Housing Plan (“Housing Plan”) the City intends to build or preserve 200,000 units of affordable housing.²⁹ The allocation of preservation to new construction is represented at 60:40, respectively.³⁰ Thus, under this plan, the City expects to build 80,000 new units of affordable housing. The projected cost for this new construction is estimated at \$30.6 billion, which

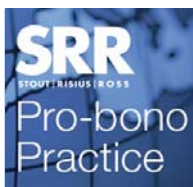
²⁶ Ibid.

²⁷ The source of state and federal funds utilized in individual men and women sheltering are unknown. However, given the permissions given by the state to redirect family shelter savings and the fact that individual shelters are almost completely funded by the City already, SRR opines that materially all of these shelter savings would also likely be realized by the City.

²⁸ Klein, Jeffrey. “Senator Klein Calls on New York City & State to Investigate Unscrupulous Bronx Landlords” The New York State Senate. 22 June 2015.

²⁹ The City of New York Mayor Bill de Blasio. “Housing New York: A Five Borough, Ten-Year Plan.”

³⁰ Ibid.





equates to \$383,000 per unit.³¹ The City’s portion of funding this program is 20%, which results in City funds of approximately \$76,000 per unit.

80. From 2002 through 2012, it was found that 43% (32,166 entries) of shelter entries were from rent-regulated private housing.³² Of these shelter entries, 32% were the result of eviction.³³ This equates to 10,293 units of affordable housing lost over that period.³⁴ As detailed previously, if legal counsel had assisted in the defense of these evictions, it is estimated that 77% of these evictions, 7,925 units, could have been avoided. The cost to replace these units under the Housing Plan is estimated to be \$3 billion in total, where \$608 million will be funded directly by the City.
81. In 2013 and 2014, there were 29,910 and 32,226 shelter entries, respectively.³⁵ If the same percentages and methodology of rent-regulated units lost as a result of eviction are applied to these shelter entries it is estimated that 8,550 units of affordable housing were lost to eviction. Applying the 77% expected decrease in eviction from legal counsel defense, it is estimated that 6,583 of these lost units could have been avoided. The cost to replace these units under the Housing Plan are estimated \$2.5 billion in total, where over \$500 million will be funded directly by the City.
82. Therefore, it is estimated that 18,842 units of affordable housing were lost from 2002 through 2014, nearly a quarter of what the Housing Plan intends to build. If legal counsel had been available for eviction defense over this period, it is estimated that the loss of 14,508 of these units, could have been avoided. The cost to replace these units under the Housing Plan is estimated at \$5.5 billion in total, where over \$1.1 billion will be funded directly by the City.
83. Going forward, it is estimated that 3,414 units of affordable housing will be preserved from providing legal counsel in eviction defense. This is calculated by utilizing the number of evictions from 2014 and applying the percentages for rent-regulated units lost due to eviction and the decrease in eviction from legal counsel defense.
84. Preserving these units results in savings of over \$1.3 billion annually in costs to replace these units under the Housing Plan, of which \$259 million will be saved directly by the City annually through the term of the Housing Plan.

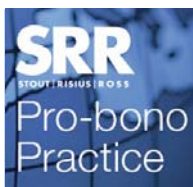
³¹ Ibid.

³² New York City Independent Budget Office. “The Rising Number of Homeless Families in NYC, 2002 – 2012: A Look at Why Families Were Granted Shelter, the Housing They Had Lived in & Where They Came From.” November 2014.

³³ Ibid. As stated in earlier sections of this report this figure is likely understated.

³⁴ This figure includes the assumption that the evicted tenant was replaced with a tenant paying market rates.

³⁵ Department of Homeless Services, Preliminary Mayor’s Management Report, Page 105.





Costs of Unsheltered Homelessness

85. There are many studies that reflect additional costs of homelessness beyond direct sheltering costs. Most notably, it has been observed that homeless populations incur costs to society for medical care and law enforcement.
86. In a study published in the *New England Journal of Medicine* (“NEJM”), it was found that homeless patients stayed 4.1 days longer per admission in the City’s public general hospitals than other low-income patients.³⁶ It was also found that “many of these patients were spending long periods in hospitals awaiting placement in public housing or community-treatment programs.”³⁷ The average costs per day for all these patients was \$2,414 per day at the time of the study.³⁸ In addition, homeless patients had higher readmission rates than other public hospital patients.
87. Another study completed in Florida found that each homeless person costs society \$31,000 annually.³⁹ These costs were comprised of the salaries of law enforcement officers to arrest and transport homeless individuals for crimes such as trespassing, public-intoxication, and sleeping in parks. As the City plans on “cracking down” on homeless people trying to take shelter in the subway shelter this winter⁴⁰ it is likely the City will incur law enforcement costs related to homelessness.
88. However, while not directly stated, the medical costs and law enforcement costs noted in these studies appear to be more closely related to unsheltered homelessness than sheltered homeless. The study noted in the NEJM correlated the longer stays to waiting for placement in public housing. The law enforcement noted in the central Florida study of trespassing and sleeping in parks are also associated with an unsheltered population. Thus, determining the number of unsheltered homeless individuals as a result of eviction is necessary before any of the costs associated in these studies can be applied as potential savings to the City.
89. The total unsheltered population for the City is estimated at 3,000,⁴¹ although some estimates are as high as 12,000.⁴² In a survey of unsheltered homeless populations in New Jersey, it was found that 12% of those surveyed listed eviction as the reason for their homelessness.⁴³ An additional 12% of respondents stated they were asked to leave a shared residence and an additional 27% cited loss or reduction in job

³⁶ Salit, Sharon A.; Kuhn, Evelyn M.; Hartz, Arthur J.; Vu, Jade M. “Hospitalization Costs Associated with Homelessness in New York City” *New England Journal of Medicine*. Vol 338 No 24. 11 June 1998.

³⁷ Ibid.

³⁸ Ibid.

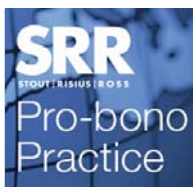
³⁹ Yglesias, Matthew. “Giving Housing to the Homeless is Three Times Cheaper Than Leaving Them on the Streets” www.vox.com. 4 Feb 2015.

⁴⁰ Prakash, Nidhi. “It’s Cold Out There: Homeless People in New York City Won’t Be Allowed to Sleep on the Subway This Winter” *Fusion.net*. 21 Oct 2015.

⁴¹ Hu, Winnie. “New York City Reaches Out to Homeless People Who Are Wary of Traditional Shelters” *New York Times*. 8 Feb 2015.

⁴² Prakash, Nidhi. “It’s Cold Out There: Homeless People in New York City Won’t Be Allowed to Sleep on the Subway This Winter” *Fusion.net*. 21 Oct 2015.

⁴³ New Jersey’s 2015 Point-In-Time Count of the Homeless.





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income / benefits. Therefore, it is likely that a higher percentage of the unsheltered homeless experienced eviction than what was recorded directly in the survey.

90. Nonetheless, SRR applied the 12% as directly cited in the survey as the cause of homelessness to the 3,000 unsheltered homeless population. This results in 360 unsheltered homeless as a result of eviction. With legal counsel reducing evictions by 77%, it is estimated that 277 individuals experiencing unsheltered homelessness could be avoided. At a cost of \$31,000 per unsheltered homeless individual, a cost savings of nearly \$9 million is estimated.



VII. Consideration of Other Unquantifiable Benefits of Eviction Prevention

91. Included above are benefits of eviction prevention that are quantifiable with available data and information. However, there are many benefits to society of a population that enjoys stable housing that are not easily quantifiable and therefore are not included in SRR's calculations. Below, are other consideration of benefits to the City from providing legal counsel in eviction matters.
92. As previously stated, SRR has estimated that 6,802 families have entered homeless shelters as a result of an eviction. Many more have likely moved into overcrowded living situations. Both sheltered and over-crowding living situations are certainly not ideal and can possibly interfere with the development of children. A wealth of research has documented the difficulties homeless children face, from school disruption to emotional trauma and health problem.^{44, 45} The impact of homelessness to these children can manifest through education costs, criminal justice costs, and welfare costs, among others.⁴⁶ These costs are estimated at over \$40,000 per child who spent at least one night homeless; however, some of these costs might not be directly funded by the City.⁴⁷
93. The loss of a home can also be impactful to the wage earning adults of a household who may lose their employment following the loss of their home. Eviction can set off a cascade of problems "including depression and subsequent job loss, material hardship, and future residential instability",⁴⁸ which can increase the likelihood of the receipt of welfare assistance programs.
94. When tenants are represented by an attorney in housing court, rent laws and regulations are more likely to be enforced. For example, when unscrupulous landlords fail to make necessary repairs, tenants can withhold rent accordingly with less fear of being evicted as a result.

⁴⁴ Routhier, Giselle. "Voiceless Victims: The Impact of Record Homelessness on Children" Coalition for the Homeless. 25 Sept 2012.

⁴⁵ Sandel, Megan; Sheward, Richard; and Sturtevant, Lisa. "Compounding Stress: The Timing and Duration Effects of Homelessness on Children's Health" Insights From Housing Policy Research. June 2015.

⁴⁶ "Estimated Cost of Child Homelessness in Pennsylvania: \$363 Million" People's Emergency Center. June 2012.

⁴⁷ Ibid.

⁴⁸ Weise, Karen. "Spiraling Effects of Being Evicted" Businessweek. 13 Dec 2013.



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95. Finally, when low-income tenants have a right to counsel it is likely that, over time, the number of eviction proceedings will diminish because some number of eviction proceedings will not be brought because landlords will be aware that tenants have the right to representation and because, with representation, cases are more likely to be resolved with finality thus averting multiple proceedings. This should result in fewer cases needing representation and diminishing cost to the city.
96. While all of these items represent real costs paid by taxpayers, SRR lacks reliable data in which to estimate these items.





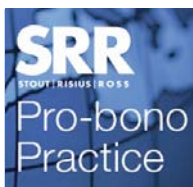
VIII. Conclusion

97. SRR has reviewed and analyzed cost benefit analyses of Intro 214-A as prepared by the IBO and Finance. The IBO report concluded that the net annual cost to the City for Intro 214-A would be between \$100 million and \$203 million while Finance concluded this cost would be \$66 million.
98. From its review and analysis of these reports, it is SRR’s opinion that the IBO and Finance reports have underestimated the reductions in shelter costs from providing legal counsel in eviction defenses by approximately \$108 million and \$80 million, respectively. The IBO and Finance reports both further reduce the benefit of shelter savings for the portion of shelter funding from the federal and state governments. However, from review of supplemental guidance issued by the IBO which notes the existing permissions to redirect federal and state funds it is reasonable to expect that the City could realize the entire benefit of shelter savings.
99. In addition, neither the IBO or Finance reports consider the cost to replace affordable housing lost to eviction or the costs of unsheltered homeless. SRR has estimated these benefits to the City at \$259 million annually and \$9 million annually, respectively. However, even if these costs are not considered, SRR estimates that the City would still realize a cost savings of approximately \$52 million.

Comparison of SRR’s findings with those of the IBO and Finance			
Description	IBO	Finance	SRR
Cost of Providing Counsel	(\$153 - \$256 Million)	(\$117 Million)	(\$199 Million)
Gross Homeless Shelter Cost Savings	\$143 Million	\$171 Million	\$251 Million
Reduction for Non-City Shelter Funding	(\$90 Million)	(\$120 Million)	n/a
Annual Cost of Affordable Housing	n/a	n/a	\$259 Million
Savings From Unsheltered Homeless	n/a	n/a	\$9 Million
Total (Cost) / Benefit of City Council Intro 214-A	(\$100 - \$203 Million)	(\$66 Million)	\$320 Million

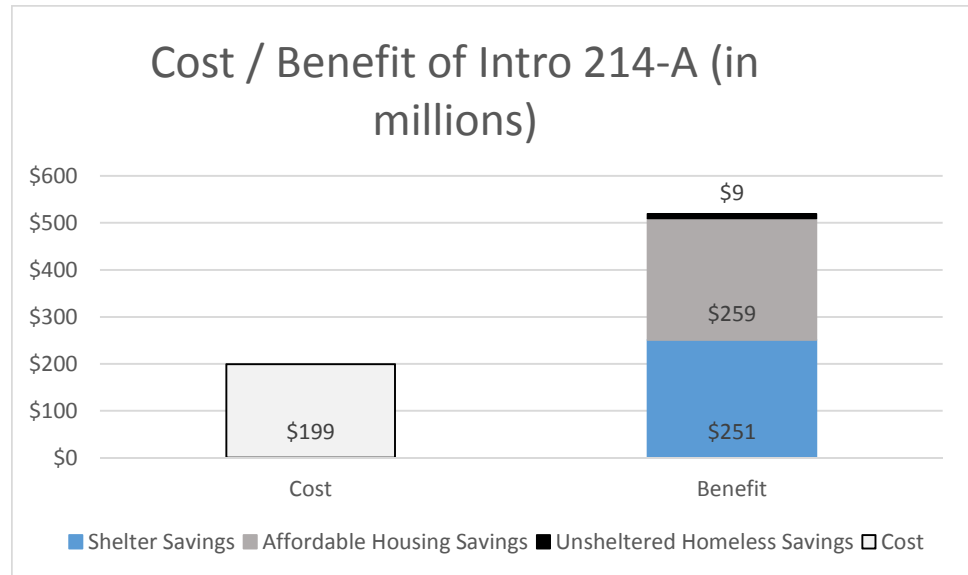
100. Therefore, SRR has concluded that the City would realize a benefit from Intro 214-A of \$320 million, annually.⁴⁹
101. The IBO report offsets the cost of providing counsel under Intro 214-A by \$20 million because the city already budgeted that amount for provision of eviction-prevention legal services to low-income tenants at the time the report was issued. The city now intends to spend \$60 million annually for eviction prevention services. Therefore, SRR is offsetting \$60 million from the cost of providing counsel pursuant to Intro 214-A. However, even if that amount were not

⁴⁹ SRR has not conducted an analysis to match the benefits received from Intro 214-A to the costs of providing counsel. It is believed that some of the cost savings estimated in this report would be in periods subsequent to the initial outlay of costs for providing counsel as not all eviction shelter entries are immediate.



considered an offset, the annual benefit to the city from implementing Intro 214-A would still be \$260 million.

102. In addition to the aforementioned benefits to the City from Intro 214-A, SRR has also considered additional financial benefits to the City that are not easily quantifiable that are incurred from evictions. These include:
- a. The cost of homeless children as a result of eviction manifested through education costs, juvenile justice costs, and welfare costs;
 - b. The cost of providing welfare when jobs are lost due to eviction;
 - c. Enforcement of rent law and regulations; and
 - d. A reduction, over time, of the number of eviction cases brought as a result of implementing the right to counsel.
103. Based on the considerations as presented above, and throughout this report, SRR has concluded that the City would realize a benefit from Intro 214-A of \$320 million, annually, which is visually presented below.⁵⁰



⁵⁰ Ibid.



The Financial Cost and Benefits of Establishing a Right to Counsel in Eviction Proceedings Under Intro 214-A

Report of Stout Risius Ross

March 16, 2016

IX. Assumptions and Limiting Conditions

104. SRR's conclusions are based on the information received to date. SRR reserves the right to change those conclusions should additional information be provided.
105. SRR's review, research and analysis was conducted on an independent basis - no one that worked on this engagement has any known material interest in the outcome of the analysis. Further, SRR has performed this analysis on a pro bono basis and therefore without compensation

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Impact Center for Public Interest Law Access to Justice for Vulnerable Populations Panel Bios

Sheila Abdus-Salaam

The first African-American woman to serve on the New York State Court of Appeals, Sheila Abdus-Salaam has dedicated her entire career to public service.

Born Sheila Turner on March 14, 1952, in Washington, D.C., to working-class parents, she grew up with six siblings. She has said that she became interested in the law after watching TV shows like "East Side, West Side" and "Perry Mason." In the late 1960s, lawyer and civil rights activist Frankie Muse Freeman visited Abdus-Salaam's high school and made quite an impression on the young girl. Years later, Abdus-Salaam said of Freeman, "She was riveting . . . she was doing what I wanted to do: using the law to help people." (Sheila Abdus-Salaam '77: Strong Foundations, Columbia Law School Magazine, Spring 2012.)

Judge Abdus-Salaam graduated from Barnard College in 1974 with a bachelor's degree in economics and received her law degree in 1977 from Columbia University School of Law, where she was a Charles Evans Hughes Fellow. She began her legal career in 1977 as a staff attorney at East Brooklyn Legal Services Corporation. Three years later she joined the New York State Department of Law as an assistant attorney general in the Civil Rights and Real Estate Financing bureaus, where she remained until 1988. During that year, she became general counsel for the New York City Office of Labor Services, serving until 1991, the year of her election to the New York City Civil Court bench and the beginning of her distinguished judicial career.

Judge Abdus-Salaam spent two years as a Civil Court judge, until 1993, when she was elected to the Supreme Court of the State of New York for New York County. As a Supreme Court justice, she first sat on the Criminal Term during 1994 and 1995. In 1996, she was assigned to the Civil Term, where she remained until March of 2009, at which time Governor David A. Patterson appointed her to the Appellate Division, First Department.

In April of 2013, Governor Andrew Cuomo nominated Judge Abdus-Salaam to the New York State Court of Appeals to fill a vacancy created by the untimely death of Judge Theodore Jones Jr. in November 2012. Cuomo said in a statement: " ... Rising from working class roots to serve for decades on the bench of the New York State Supreme Court, Justice Abdus-Salaam has a deep understanding of the everyday issues facing New Yorkers, as well as the complex legal issues that come before the state's highest court." (Governor Cuomo Announces Nomination for Court of Appeals, Press Release, April 5, 2013, available at: <http://www.governor.ny.gov>.)

Judge Abdus-Salaam has served on the boards of Contemporary Guidance Services Inc. and Women's Housing Education and Development Corporation. She also serves as a vice chair of the Columbia Law School Board of Visitors. A former member of the Pattern Jury Instructions Committee, the judge has also chaired the Board of Directors of Harlem Legal Services. Judge Abdus-Salaam resides in Manhattan.

Lenni Benson

Professor Lenni B. Benson has been teaching and writing in the field of immigration law since 1994. She is a professor at New York Law School and serves as the director of the NYLS Safe Passage Project. Visit: www.safepassageproject.org to learn more. The Project recruits, trains and mentors lawyers and student volunteers who are willing to represent immigrant youth and has won state and national awards for its promotion and support of pro bono work. She also teaches a clinic of advanced students who join other Safe Passage volunteers to screen immigrant youth at the New York Immigration Court each week. She is a national and international speaker on immigration topics.

She serves on several city, state and national taskforces devoted to expand resources for immigrants, especially unaccompanied migrant children. From 2012 to 2015 she was the Chair of the Immigration and Nationality Law Committee for the Association of the Bar of the City of New York. In 2011-2012 she served as a consultant/researcher for the Administrative Conference of the United States (ACUS). With Russell Wheeler of the Brookings Institution, she prepared a comprehensive report on ways to improve removal adjudication and that report resulted in a formal adoption of over thirty-eight recommendations by ACUS. She is the past chair of the AALS Immigration Law Section and past immigration committee chair for the ABA Section on Administrative Law and Regulatory Practice. Prior to joining academia, she practiced immigration law as a partner in the Los Angeles office of Bryan Cave, LLP. She is a native Arizonan and earned her law degree at the Arizona State College of Law in 1983. She has been an adjunct professor at Columbia teaching both immigration law and a seminar on refugee law.

Professor Benson is an emeritus trustee of the American Immigration Law Foundation (now the American Immigration Council) and is a fellow of the American Bar Foundation. Until 2012, she was a member of the LexisNexis Faculty Advisory Board. For many years she has served on the Board of the Center for Human Rights and Constitutional Law. In June of 2013 she published: "Immigration and Nationality Law: Problems and Strategies." (Coauthors include Veronica Jeffers, Lindsay Curcio and Stephen Yale-Loehr). She has served as an expert witness on immigration law topics in administrative, civil, and criminal litigation.

Professor Benson lives in New York with her husband John Wellington and their two children, Max and Lily.

Seymour W. James, Jr.

Seymour W. James, Jr., is the Attorney-in-Chief of The Legal Aid Society in New York City. He previously served as Attorney-in-Charge of the Criminal Defense Practice of The Legal Aid Society.

James served a one-year term as the President of the New York State Bar Association from June 1, 2012 to June 1, 2013. In June 2011, he was named president-elect of the 77,000-member organization. Active in the State Bar since 1978, James served as treasurer from 2008 until June, 2011. He is a member of the House of Delegates, the Finance Committee, the Membership Committee, the President's Committee on Access to Justice and the Special Committee on Strategic Planning. Within the Criminal Justice Section, James serves as a member-at-large of its Executive Committee. He is a fellow of the New York Bar Foundation and a member of the board of directors of the New York State Defenders Association.

James is a past president of the Queens County Bar Association, and has served on a number of that Association's committees, including its Judiciary Committee. He is also a member of the Macon B Allen Black Bar Association and a former member of the Board of Directors of the Metropolitan Black Bar Association.

In addition to his bar association activities, James has served as a member of Chief Judge Lippman's Justice Task Force, the New York State Permanent Sentencing Commission, the Departmental Disciplinary Committee for the First Judicial Department, the Committee on Character and Fitness for the Second Judicial Department and the Independent Judicial Election Qualification Commission for the Second Judicial Department. He has also served as the secretary of the Correctional Association.

James received his undergraduate degree from Brown University and earned his law degree from Boston University School of Law. He has served as an Adjunct Professor of Law at CUNY Law School and on the faculty of the Benjamin N. Cardozo School of Law Intensive Trial Advocacy Program.

Maria Mottola

Maria Mottola has been the executive director of the New York Foundation since 2003. She served as a program officer from 1994 to 2002. Prior to joining the foundation, from 1989 to 1994 she was executive director of the City Wide Task Force on Housing Court, a housing advocacy organization that promotes the reform of New York City's Housing Court. As the Task Force's founding director, Ms. Mottola managed the group's transition from a volunteer activist campaign to a fully staffed and funded organization. From 1984 to 1989, Ms. Mottola was the director of neighborhood programs and a community organizer at Lenox Hill Neighborhood House, a settlement house on the Eastside of Manhattan.

From March 2010 through May 2011, Ms. Mottola acted as an executive-on-loan to Gladys Carrión, the commissioner of the New York State Office of Children and Families, working closely with the commissioner and her senior staff on a variety of projects. Ms. Mottola has taught community organizing at New York University School of Social Work, and has been an adjunct instructor at Hunter College Graduate School of Urban Affairs and Planning since 1996.

Ms. Mottola was co-chair of the Neighborhood Funders Group, a national affinity group from 2003 to 2006. She currently serves on the boards of the New American Leaders Project and Red Hook Initiative. Ms. Mottola is also a freelance illustrator, and studies at the Art Students League. She received her undergraduate degree in liberal arts at the University of Toronto and a master's degree in social work from Fordham University.

Andrew Scherer

Andrew Scherer is the Policy Director of the Impact Center for Public Interest Law at New York Law School and a Distinguished Adjunct Professor at the law school, where he teaches Land Use Regulation. He also directs the Impact Center's Right to Counsel Project.

Professor Scherer is the author of the treatise, *Residential Landlord-Tenant Law in New York* (Thomson Reuters), originally published in 1994 and updated annually, and of numerous law review articles and other published works.

For many years, Professor Scherer has played a prominent role in access to justice, housing policy and other public interest issues, locally, nationally and internationally. Professor Scherer has been an advocate for the right to counsel in civil matters, particularly eviction proceedings, for over thirty years. He has written law review articles on the topic for the Harvard Civil Liberties Civil Rights Law Review, NYU Review of Law and Social Change and Cardozo Public Law, Policy and Ethics Journal, among others. He was lead counsel in *Donaldson v. State of New York*, a class action that sought to establish a right to counsel for low-income tenants facing eviction. (While the case was ultimately dismissed by an appellate court, it led to significant funding for eviction-prevention legal services by New York City.) Under Professor Scherer's direction, the Impact Center's Right to Counsel Project currently focuses on working with the NYC Coalition for a Right to Counsel in Housing Court and others advocating for NYC legislation establishing a right to counsel in housing cases.

In 2010, Professor Scherer stepped down after nine years as Executive Director of Legal Services NYC, the largest nonprofit exclusively devoted to civil legal services in the United States, where he had worked in a variety of capacities since 1978. At the time he stepped down, LS-NYC served approximately 25,000 low-income clients annually with legal matters involving housing, government benefits, family law, employment, education, immigration, community development, consumer and civil rights. As Executive Director, Professor Scherer had overall responsibility for all aspects of the organization, including implementation of Board policy; management, administration and legal work supervision; fundraising; maintenance of positive relations with external entities; strategic planning; and program development. Accomplishments during his tenure as Executive Director included: significantly improved quality and impact of legal work; significantly increased funding, staffing and participation of *pro bono* attorneys; new offices and many new service programs. Prior to becoming Executive Director of LS-NYC, Professor Scherer had been a staff attorney, the Coordinating Attorney for Housing Law and the Director of the Legal Support Unit at the organization.

Among his many affiliations, Professor Scherer is an active member of the New York City Bar Association and a former chair of its Executive Committee, an active member of the New York State Bar Association and the current chair of the Civil Gideon subcommittee of the President's Committee on Access to Justice, a founding member of the National Coalition for a Civil Right to Counsel, and a former co-chair of the NYS Legal Services Project Director Association.

Professor Scherer is also a consultant to nonprofit, governmental and private clients around matters of access to justice and the rule of law; delivery of legal aid services; housing, property and land rights; social, economic and civil rights; and poverty law. Recent clients have included the New York Immigration Coalition, the Open Society Foundations, the Pennsylvania Civil Legal Justice Coalition, the Massachusetts Legal Assistance Corporation, the Legal Services Corporation, the Yangon (Myanmar) Heritage Trust and the African Center for International Legal and Policy Research.

Professor Scherer is also an Adjunct Professor at the Columbia University Graduate School of Architecture, Planning and Preservation and has taught at CUNY Law School, NYU Law School (in the Root-Tilden public interest scholars program), Yangon University in Myanmar, and Bennington College. He has lectured widely in the U.S. and in Latin America, Africa and Asia. He received his B.A. from the University of Pennsylvania and his J.D. from NYU Law School. He is fluent in Spanish.