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Paradox and Possibility: Movement Lawyering During the COVID-19 Housing Crisis

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PARADOX AND POSSIBILITY: MOVEMENT LAWYERING DURING THE COVID-19 HOUSING CRISIS

Marika Dias†

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INTRODUCTION

“Crises are moments of paradox and possibilities.”

David Harvey, World Social Forum 2010¹

In Spring 2020, New York City went into lockdown.² Against a backdrop of ambulance sirens and semi-deserted streets, I, like so many people, listened, watched, and read, trying to understand what times we were in. Arundhati Roy suggested that “the pandemic is a portal” and challenged us to walk through it, ready to imagine and fight for a new world.³ Naomi Klein warned of “coronavirus capitalism” and, citing

† Marika Dias is deeply grateful for the trust, inspiration, and solidarity of the many tenants, organizers, advocates, and fellow movement lawyers, with whom she has been privileged to work and fight alongside. While Dias is the author of this article, the ideas herein are the result of collective labor and struggle, both past and present. Dias also acknowledges the tremendous work of Sam Corman, Roni Druks, Zac Hale, Rajiv Jaswa, Christina Jones, Samantha Kocharov, Michael Leonard, Ryan MacDonald, and Stephanie Storke on the legal research to support the Rent and Mortgage Cancellation Bill, which the author has drawn from here in the footnotes relating to constitutional questions raised by the bill.

¹ David Harvey, *Organizing for the Anti-Capitalist Transition*, READING MARX’S CAP. WITH DAVID HARVEY (Dec. 16, 2009), <https://perma.cc/4PV8-TG8X>.

² See, e.g., Luis Ferré-Sadurní, *New York City Schools, Restaurants and Bars Are Shut Down Over Coronavirus*, N.Y. TIMES (Mar. 16, 2020), <https://perma.cc/D4MZ-5C6D>.

³ Arundhati Roy, Arundhati Roy: ‘The Pandemic Is a Portal,’ FIN. TIMES (Apr. 3, 2020), <https://perma.cc/7XEX-A5TM>.

Milton Friedman, urged us to ensure that “the ideas that are lying around” during the crisis be the ideas of the people and not of the wealthy elite.⁴ Meanwhile, movements reoriented themselves to the new (virtual) organizing landscape, crafting demands to address the emerging needs of communities facing physical and economic devastation.

But what of the movement lawyer in all of this? I walked into these COVID-times with a theory, a set of principles and practices of movement lawyering. And it wasn’t just theoretical: I also had many years of praxis under my belt—years spent grappling with the contradictions of trying to do work that fights oppressive systems while operating within the non-profit industrial complex, itself a bulwark of the status quo;⁵ years of being a faltering movement lawyer and then being a better movement lawyer; years of fighting alongside formidable people—the people who take care of their families, work tough, underpaid jobs, struggle with cruel bureaucracies, and still manage to be in the tenant meetings, at the immigrants’ rights protests, or on the picket line outside corporate headquarters.

The COVID-19 pandemic—as well as the massive Black Lives Matter uprisings against racist police violence—triggered bolder movement organizing and demands for radical, lasting solutions to our many social ills, including the ongoing housing crisis.⁶ But bolder, more energized movements need bolder, more energized movement lawyers. How would our movement lawyering theory stand up in such challenging times?

The principles and practices of movement lawyering have undergone a process of collective elaboration and refinement in recent years.⁷ As a

⁴ The Intercept, *Coronavirus Capitalism — and How to Beat It*, YOUTUBE, at 00:09 (Mar. 16, 2020), <https://youtu.be/niwNTI9Nqd8>.

⁵ See generally Andrea Smith, *Introduction to THE REVOLUTION WILL NOT BE FUNDED: BEYOND THE NON-PROFIT INDUSTRIAL COMPLEX 1*, 1-16 (INCITE! ed., 2017); Dylan Rodríguez, *The Political Logic of the Non-Profit Industrial Complex*, in *THE REVOLUTION WILL NOT BE FUNDED: BEYOND THE NON-PROFIT INDUSTRIAL COMPLEX 21* (INCITE! ed., 2017).

⁶ See, e.g., Amna A. Akbar, Opinion, *The Left Is Remaking the World*, N.Y. TIMES (July 11, 2020), <https://perma.cc/8DBD-8LTE>; Mariame Kaba, Opinion, *Yes, We Mean Literally Abolish the Police*, N.Y. TIMES (June 12, 2020), <https://perma.cc/8KY7-S4CX>; CELESTE HORNBAUGH ET AL., CMTY. SERV. SOC’Y, *CORPORATE WINDFALLS OR SOCIAL HOUSING CONVERSIONS?* (2020), https://smhttp-ssl-58547.nexcesscdn.net/nycss/images/uploads/pubs/Foreclosure_Report_V111.pdf; *Homes Guarantee*, PEOPLE’S ACTION, <https://perma.cc/K2U4-QP2B> (last visited Mar. 29, 2021); *Tax the Rich, #CancelRent, End Homelessness*, HOUS. JUST. FOR ALL: OUR PLATFORM, <https://perma.cc/3CPM-G7FL> (last visited Mar. 29, 2021); *Our Demands to Cancel Rent & Reclaim Our Homes*, RIGHT TO COUNS. NYC COAL., <https://perma.cc/9W76-AADU> (last visited Mar. 29, 2021).

⁷ The following articles and writings reflect the extent of practitioners’ thinking and practical exploration of the principles and methods of movement lawyering in the last three decades; see, e.g., Angelo N. Ancheta, *Community Lawyering*, 81 CAL. L. REV. 1363 (1993); William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of*

result, certain common understandings have crystallized. At its core, movement lawyering is about using one's legal skills to further grassroots movement building. Movement lawyers (many anti-capitalist, like me) have a deep-seated belief that our society is structured in a way that harms and exploits the vast majority of people for the benefit of a wealthy elite class; that this structuring is pervasively racist, sexist, ableist, homophobic, and ageist; and that this is something we must change.⁸ Movement

Community Organizations, 21 OHIO N.U.L. REV. 455 (1994); Peter M. Cicchino, *To Be a Political Lawyer*, 31 HARV. C.R.-C.L. L. REV. 311 (1996); Zenobia Lai et al., *The Lessons of the Parcel C Struggle: Reflections on Community Lawyering*, 6 ASIAN PAC. AM. L.J. 1 (2000); Scott L. Cummings & Ingrid V. Eagly, *A Critical Reflection on Law and Organizing*, 48 UCLA L. REV. 443 (2001); Shin Imai, *A Counter-Pedagogy for Social Justice: Core Skills for Community-Based Lawyering*, 9 CLINICAL L. REV. 195 (2002); Jennifer Gordon, *Law, Lawyers, and Labor: The United Farm Workers' Legal Strategy in the 1960s and 1970s and the Role of Law in Union Organizing Today*, 8 U. PA. J. LAB. & EMP. L. 1 (2005); William P. Quigley, *Revolutionary Lawyering: Addressing the Root Causes of Poverty and Wealth*, 20 WASH. U. J.L. & POL'Y 101 (2006); Jennifer Gordon, *Concluding Essay: The Lawyer Is Not the Protagonist: Community Campaigns, Law, and Social Change*, 95 CAL. L. REV. 2133 (2007); Angela Harris et al., *From "The Art of War" to "Being Peace": Mindfulness and Community Lawyering in a Neoliberal Age*, 95 CAL. L. REV. 2073 (2007); Betty Hung, *Essay—Law and Organizing from the Perspective of Organizers: Finding a Shared Theory of Social Change*, 1 L.A. PUB. INT. L.J. 4 (2009); Eduardo R.C. Capulong, *Client Activism in Progressive Lawyering Theory*, 16 CLINICAL L. REV. 109 (2009); E. Tammy Kim, *Lawyers as Resource Allies in Workers' Struggles for Social Change*, 13 N.Y.C. L. REV. 213 (2009); Purvi & Chuck: *Community Lawyering*, CMTY. JUST. PROJECT (June 15, 2010), <https://perma.cc/8AY8-CNVB>; Amy Kapczynski & Jonathan M. Berger, *The Story of the TAC Case: The Potential and Limits of Socio-Economic Rights Litigation in South Africa*, in HUMAN RIGHTS ADVOCACY STORIES (Deena R. Hurwitz & Margaret L. Satterthwaite eds., 2009); Andrew Friedman & Deborah Axt, *In Defense of Dignity*, 45 HARV. C.R.-C.L. L. REV. 577 (2010); Michael Grinthal, *Power with: Practice Models for Social Justice Lawyering*, 15 U. PA. J.L. & SOC. CHANGE 25 (2011); Douglas NeJaime, *Cause Lawyers Inside the State*, 81 FORDHAM L. REV. 649 (2012); José R. Padilla, *Lawyering Against Power: The Risks of Representing Vulnerable and Unpopular Communities*, 11 SEATTLE J. SOC. JUST. 173 (2012); Charles Elsesser, *Community Lawyering - The Role of Lawyers in the Social Justice Movement*, 14 LOY. J. PUB. INT. L. 375 (2013); Michael Diamond, *Community Lawyering: Introductory Thoughts on Theory and Practice*, 22 GEO. J. POVERTY L. & POL'Y 395 (2015); Marika Dias, *Stepping Aside, Standing Back, and Raising Up: Lawyering Within Grassroots Community Movements*, 22 GEO. J. POVERTY L. & POL'Y 405 (2015); Jim Freeman, *Supporting Social Movements: A Brief Guide for Lawyers and Law Students*, 12 HASTINGS RACE & POVERTY L.J. 191 (2015); Anthony V. Alfieri, *Rebellious Pedagogy and Practice*, 23 CLINICAL L. REV. 5 (2016); Sameer M. Ashar, *Movement Lawyers in the Fight for Immigrant Rights*, 64 UCLA L. REV. 1464 (2017); Stephen Carpenter, *Family Farm Advocacy and Rebellious Lawyering*, 24 CLINICAL L. REV. 79 (2017); Scott L. Cummings, *Movement Lawyering*, 2017 U. ILL. L. REV. 1645 (2017); Susan D. Carle & Scott L. Cummings, *A Reflection on the Ethics of Movement Lawyering*, 31 GEO. J. LEGAL ETHICS 447 (2018); Purvi Shah et al., *Love Letter: The Legal Community Gears up for Battles Ahead*, ORG. UPGRADE (Dec. 5, 2020), <https://perma.cc/T2MB-RYYN>.

⁸ See Cummings, *supra* note 7; see Purvi Shah et al., *supra* note 7.

lawyers believe this change will be achieved by organized social movements led by those who are most oppressed: low-wage workers, the unemployed, the homeless, tenants, criminalized people of color, migrants, Indigenous peoples, and so on.⁹ The movement lawyer's role is to contribute their legal skills to these efforts in ways that do not center the lawyer, that democratize legal knowledge, and that generally counteract the otherwise individualizing, disempowering, depoliticizing impacts of encounters with the law. While movements don't necessarily need lawyers, we can be very helpful to have around. The legal system is the very powerful glue that holds together our many intersecting systems of oppression.¹⁰ The law has colonized every aspect of social life and, by now, permeates the foundation, walls, roof, and the very air that we breathe, whether we are always aware of it. Grappling with power, whether one is fighting against it or trying to build it, almost always involves encounters with the legal system. And the legal system itself is a site of contestation and class struggle. Lawyers are a part of that legal system, no matter which side of the fight we are on. The role of movement lawyers is therefore extremely fraught, but also loaded with potential.

My approach to this work is premised on a set of understandings, many of which are commonly held in the housing movement, and are themselves the subject of a vast body of analysis and study. Here are some key points to help understand the work described below:

- (a) Land is a public good that has been (violently) appropriated by a small minority, with the State's backing, and used for their own enrichment, fully enabled by our laws and other political institutions;¹¹
- (b) Housing is a fundamental human need and should be freely available to all. This is incompatible with the privatization of land, the commodification of housing, and the use of housing for gen-

⁹ See Cummings, *supra* note 7; see Purvi Shah et al., *supra* note 7.

¹⁰ See generally JACKIE WANG, CARCERAL CAPITALISM 198 (2018); HUGH COLLINS, MARXISM AND LAW (1996); KATHARINA PISTOR, THE CODE OF CAPITAL: HOW THE LAW CREATES WEALTH AND INEQUALITY (2019); Wendy Brown & Janet Halley, *Introduction to LEFT LEGALISM/LEFT CRITIQUE* 1, 11-16 (Wendy Brown & Janet Halley eds., 2002); GIORGIO AGAMBEN, HOMO SACER: SOVEREIGN POWER AND BARE LIFE (1995); EVGENY B. PASHUKANIS, THE GENERAL THEORY OF LAW & MARXISM (Transaction Publishers, ed. 2003); MICHEL FOUCAULT, DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON 293-308 (Alan Sheridan trans., Vintage Books 1995).

¹¹ See PISTOR, *supra* note 10, at 23-46; DAVID MADDEN & PETER MARCUSE, IN DEFENSE OF HOUSING: THE POLITICS OF CRISIS 18-20 (2016); KARL MARX, CAPITAL 865, 875-76, 85 (1887).

erating maximum financial profits, which in turn necessarily limits access to housing and results in charging as much as possible for it;¹²

(c) The commodification of housing and land means landlords' relationship to housing and land is primarily exploitative—housing and land exist for them to extract and maximize profits. Landlords' relationship with tenants is similarly extractive;¹³ and

(d) Evictions are the violent removal of people for the enrichment of private (usually corporate) actors, enabled through state infrastructure and actors, such as the courts, marshals, and sheriffs.¹⁴ They are part of a social continuum of violent removals of people to further corporate and individual enrichment and political goals, such as arrests and incarceration, deportations, and sweeps of homeless encampments—a continuum which is global in scope.

These perspectives have informed the movement work I do and my approach to lawyering. The urgency and caliber of the organizing and movement work that happened during the COVID-19 pandemic called on movement lawyers like me to step up our own practice. This was a generative period of creativity, hard work, and many learnings.

I. THE HOUSING MOVEMENT RISING

Across the U.S., the COVID-19 pandemic has disproportionately impacted working class communities of color, causing mass unemployment and economic devastation.¹⁵ As a result, more than one million tenants in New York State have been unable to keep up with their rent payments; and, at the time of this piece's publication, the specter of widespread displacement and homelessness looms close on the horizon.¹⁶

¹² MADDEN & MARCUSE, *supra* note 11, at 15-52.

¹³ *Id.*; see also FRIEDRICH ENGELS, *THE HOUSING QUESTION*, 20, 43-44, 81-82 (1872).

¹⁴ See MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* (2017).

¹⁵ Heather Long, *Millions of Americans Are Heading into the Holidays Unemployed and Over \$5,000 Behind on Rent*, WASH. POST (Dec. 7, 2020, 2:27 PM), <https://perma.cc/3EE3-6GH5>; Karen Attiah, *Opinion, The Evictions Crisis Is Coming. We Have Barely Begun to Face It.*, WASH. POST (Dec. 19, 2020, 12:15 PM), <https://perma.cc/VXA4-3L47>; BRADLEY L. HARDY & TREVON D. LOGAN, *RACIAL ECONOMIC INEQUALITY AMID THE COVID-19 CRISIS*, HAMILTON PROJECT (2020), <https://perma.cc/53LS-TG7K>; *Risk for COVID-19 Infection, Hospitalization, and Death by Race/Ethnicity*, CTRS. FOR DISEASE CONTROL & PREVENTION (Apr. 23, 2021), <https://perma.cc/29SZ-TNQH>.

¹⁶ See Adam Liptak, *U.S. Supreme Court Leaves Federal Moratorium on Evictions Intact*, N.Y. TIMES (July 5, 2021), <https://perma.cc/U44E-WBAY>; see also *Table of Contents - Household Pulse Survey Results*, STOUT (July 15, 2020), <https://perma.cc/VWH5-3BZ7>; see also Will Parker, *Struggling Rental Market Could Usher in Next American Housing Crisis*,

Our history is one of struggles over ownership and access to land for basic needs like food, water, and housing, as well as for extraction of resources on a massive wealth-building scale. Here in the U.S.—though certainly not *only* in the U.S.—the history of land and housing is inextricably intertwined with racism and wealth-building. From the violent dispossession of land from Indigenous peoples who had long cultivated and taken care of it, to the enslavement of African peoples to work the land for the enrichment of an already wealthy White minority, both were enabled by the legal system.¹⁷ White control of land has involved the deliberate use of legal devices like exclusionary zoning and restrictive covenants to deny people of color, in particular Black folks, access to housing and homeownership.¹⁸ After World War II, affirmative action programs enabled White homeownership and, combined with cultural and political programs, cultivated the idea of the “American Dream” rooted in White-only homeownership in White-only suburbs.¹⁹ Urban renewal displaced over one million people across over 2,500 neighborhoods nationwide; and redlining orchestrated the exclusion of Black and Brown people from homeownership, ensuring ongoing disinvestment in neighborhoods of color.²⁰ Both programs were the other, much uglier, side of the widely lauded New Deal.

Our public housing also emanated from the New Deal, with segregation built into its foundation.²¹ Over decades, public housing increasingly

WALL ST. J. (Oct. 27, 2020, 7:15 PM), <https://perma.cc/FHH5-38FK>; Caroline Spivack, *Only 15,000 People Met New York’s Criteria for Rent Relief*, CURBED (Nov. 12, 2020), <https://www.curbed.com/2020/11/nyc-rent-relief-eviction-tenants-dont-qualify.html>; HOUS. JUST. FOR ALL & RIGHT TO COUNS.. NYC COAL., CENSUS DATA SHOWS: RENT MUST BE CANCELED!, <https://perma.cc/DF9X-BYF7> (last visited May 20, 2021).

¹⁷ See ROXANNE DUNBAR-ORTIZ, AN INDIGENOUS PEOPLES’ HISTORY OF THE UNITED STATES (2015); A. LEON HIGGINBOTHAM, JR., IN THE MATTER OF COLOR: RACE AND THE AMERICAN LEGAL PROCESS: THE COLONIAL PERIOD (1978); PISTOR, *supra* note 10, at 29-42.

¹⁸ RICHARD ROTHSTEIN, THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA 59-91 (2017); *NYC Tenant Movement History*, RIGHT TO COUNS. NYC COAL., <https://perma.cc/NC8B-YW5M> (last visited Apr. 22, 2021).

¹⁹ ROTHSTEIN, *supra* note 18, at 59-75; KEEANGA-YAMAHTTA TAYLOR, RACE FOR PROFIT: HOW BANKS AND THE REAL ESTATE INDUSTRY UNDERMINED BLACK HOMEOWNERSHIP 29-37 (2019); MADDEN & MARCUSE, *supra* note 11, at 25-26.

²⁰ ROTHSTEIN, *supra* note 18, at 64; MADDEN & MARCUSE, *supra* note 11, at 130-34; TAYLOR, *supra* note 19, at 17-18, 35, 40-42; BERYL SATTER, FAMILY PROPERTIES: HOW THE STRUGGLE OVER RACE AND REAL ESTATE TRANSFORMED CHICAGO AND URBAN AMERICA (2010); MINDY THOMPSON FULLILOVE, ROOT SHOCK: HOW TEARING UP CITY NEIGHBORHOODS HURTS AMERICA, AND WHAT WE CAN DO ABOUT IT 52-242 (New Vill Press ed. 2016) (2004); SAMUEL STEIN, CAPITAL CITY: GENTRIFICATION AND THE REAL ESTATE STATE 46 (2019); *NYC Tenant Movement History*, *supra* note 18.

²¹ MADDEN & MARCUSE, *supra* note 11, at 126-30; *NYC Tenant Movement History*, *supra* note 18.

became housing primarily for working class people of color and was, simultaneously, increasingly neglected, criminalized, demonized, and eventually turned over to new forms of urban renewal—such as the Hope VI demolition program that displaced so many public housing tenants in Chicago or the current nationwide Rental Assistance Demonstration (“RAD”) program.²² Urban neighborhoods of color saw years of disinvestment and willful destruction, including the literal burning of the South Bronx.²³ With the rise of neoliberalism and the active cultivation of real estate capital as a driving economic force, all those years of disinvestment and neglect paid off.²⁴ For real estate capital, super-depressed property values became opportunities to cash in big.²⁵ Starting in the 1980s and 90s, began a reversal of White flight as White professional classes returned to many urban centers.²⁶ Simultaneously, we saw the financialization of real estate—the rise of the corporate landlords, including multinational corporations, buying up our cities.²⁷ In recent decades, Black and Brown urban neighborhoods have experienced a disturbing array of predatory equity landlords with over-leveraged loans, whose speculative real estate transactions necessitate mass evictions, buyouts, harassment, unnecessary and dangerous construction, and the willful failure to make any repairs.²⁸ While the visible face of gentrification is yoga studios, fancy cafés, and doggie daycare, they are just the tip of a mammoth corporate and political iceberg, exacting a corporate takeover of our neighborhoods and cities.

Our history of land is also a history of movements, resistance, and class struggle: from the ongoing struggles against violent colonization by Indigenous peoples worldwide, to survival struggles by formerly enslaved

²² BEN AUSTEN, HIGH-RISERS: CABRINI-GREEN AND THE FATE OF AMERICAN PUBLIC HOUSING 222-23 (2018); Kyle Giller, *The Fight for NYCHA: RAD and the Erosion of Public Housing in New York*, 23 CUNY L. REV. 283 (2020); *NYC Tenant Movement History*, *supra* note 18. See also *Rental Assistance Demonstration (RAD)*, U.S. DEP’T HOUS. & URB. DEV., <https://perma.cc/A2VZ-B72R> (last visited Apr. 14, 2021).

²³ STEIN, *supra* note 20, at 47-48; *Decade of Fire* (Red Nut Films Nov. 4, 2019).

²⁴ STEIN, *supra* note 20, at 46-52; see also HORNBAUGH ET AL., *supra* note 6, at 8, 11.

²⁵ See HORNBAUGH ET AL., *supra* note 6, at 10, 13, 18.

²⁶ See *id.* at 8, 20 (explaining that foreclosure policy changes since the 80s and 90s impacted owners of color).

²⁷ STEIN, *supra* note 20, at 41-115.

²⁸ HORNBAUGH ET AL., *supra* note 6, at 3-4, 8-9, 16; THE LIFE CYCLE OF PREDATORY EQUITY: AFFORDABLE HOUSING UNDER ATTACK!, URBAN HOMESTEADING ASSISTANCE BD. 1, 1-2 (2012), <https://perma.cc/4CML-XRA2>; *What Is Predatory Equity?*, STABILIZING NYC, <https://perma.cc/JG8Y-JJDG> (last visited Apr. 14, 2021); STABILIZING NYC & URB. JUST. CTR., THE PREDATORY EQUITY STORY: TENANT PERSPECTIVES ON SPECULATIVE LANDLORDS, DISPLACEMENT, AND FIGHTING FOR JUSTICE 2 (2017), <https://perma.cc/Y63V-6KET>.

peoples for access to land and housing.²⁹ Tenants have always struggled against landlord exploitation: from the immigrant women of the Lower East Side engaging in New York City's first recorded rent strikes in 1904 against exorbitant rents,³⁰ to the 1975 rent strikes of the Bronx's Coop City, where 15,000 tenants were on strike for 13 months and withheld \$25 million in rent,³¹ and many massive and successful rent strikes in between, particularly in Harlem and the Bronx.³² Tenants fought campaigns against urban renewal—so-called “slum clearance”—and in New York City against “Master Builder” Robert Moses.³³ Organizer Jessie Grey and Harlem tenants fought back against deplorable housing conditions and higher rents paid by Black tenants.³⁴ The Chicago Contract Buyers League fought back against predatory deed sales that robbed them of their money and their homes, as well as the racist blockbusting used to enable this predation.³⁵ The Black Panthers, Young Lords, and Chinatown's I Wor Kuen took on terrible housing and health conditions.³⁶ In the 1980s, the sweat equity movement, squatters movements, and tenant takeovers combatted widespread disinvestment and abandonment by landlords.³⁷

After many defeats since the 1980s, the housing movement, having achieved some strong wins in recent years, is again rising. After many people told them it was impossible, New York City tenants in 2017 won a right to counsel in eviction cases.³⁸ Tenants fought for a right to counsel, not because they thought that lawyers could defeat gentrification, but to counteract landlords' acute weaponization of housing court and its use as a tool of gentrification; and furthermore, to enable tenants to fight to stay

²⁹ See DUNBAR-ORTIZ, *supra* note 17, at 10; W.E.B. DU BOIS, BLACK RECONSTRUCTION IN AMERICA 1860-1880, at 123, 600-04 (First Free Press ed.1998).

³⁰ NYC Tenant Movement History, *supra* note 18; MADDEN & MARCUSE, *supra* note 11, at 154-56, 162, 169.

³¹ See NYC Tenant Movement History, *supra* note 18.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ Natalie Moore, *Contract Buying Robbed Black Families in Chicago of Billions*, NPR (May 30, 2019), <https://perma.cc/7SC8-BZXD>; BERYL SATTER, FAMILY PROPERTIES: HOW THE STRUGGLE OVER RACE AND REAL ESTATE TRANSFORMED CHICAGO AND URBAN AMERICA 62, 75, 96, 340 (Picador ed. 2010).

³⁶ Eveline Chao, *How Asian-American Radicals Brought 'Yellow Power' to Chinatown*, GOTHAMIST (Oct. 28, 2016), <https://perma.cc/P8R8-VDR4>; NYC Tenant Movement History, *supra* note 18.

³⁷ NYC Tenant Movement History, *supra* note 18; MADDEN & MARCUSE, *supra* note 11, at 172-79.

³⁸ N.Y.C. ADMIN. CODE § 26-1302 (2017); Susanna Blankley, *Our Rights! Our Power! The Right to Counsel (RTC) Campaign to Fight Evictions in NYC!*, VIMEO (Sept. 11, 2020, 2:51 PM), at 17:00-17:35, 25:50-26:47, 44:50-48:14, <https://vimeo.com/457047852>.

in their homes and communities, on terrain that had long served only landlords' interests, functioning as an eviction mill.³⁹ This paved the way for right to counsel wins in other cities across the country.⁴⁰ In 2019, the Housing Safety and Tenant Protection Act,⁴¹ won by a statewide coalition of tenant organizing groups, reversed decades of erosion of New York's tenant rent laws by Albany politicians in the pockets of real estate interests.⁴² Tenants have also won anti-harassment protections,⁴³ laws against illegal construction,⁴⁴ and rent freezes⁴⁵ over successive years.⁴⁶

In 2020, while the COVID-19 pandemic raged on, the fight continued, with new campaigns and movement formations emerging across the country.⁴⁷ As a movement lawyer, my work has been predominantly located in the tenant movement. With the onset of the COVID-19 pandemic, the Right to Counsel NYC Coalition and statewide Housing Justice for All Coalition joined forces to embark on a powerful campaign to stop mass evictions and ensure that tenants' homes would not be lost due to the pandemic's economic devastation. Several key components of this

³⁹ See generally Blankley, *supra* note 38 *passim*.

⁴⁰ Sadeef Ali Kully, *City's 'Right to Counsel' Law Fosters National Movement in Housing Courts*, CITY LIMITS (Feb. 28, 2020), <https://perma.cc/FNN3-V7FW>; see also *Status Map*, NAT'L COAL. FOR A CIV. RIGHT TO COUNS., <https://perma.cc/4LW7-4FNW> (last visited Mar. 18, 2021).

⁴¹ S.B. S6458, 2019-2020 Legis. Sess. (N.Y. 2019).

⁴² John Leland, *Real Estate Thought It Was Invincible in New York. It Wasn't.*, N.Y. TIMES (Dec. 2, 2019), <https://perma.cc/4XQ2-LXCQ>; Victor Porcelli, *Campaign Donations from Real Estate Lobby Drop Dramatically as Democrats Decline Them*, GOTHAM GAZETTE (July 7, 2020), <https://perma.cc/C5UH-SUQB>; Will Parker et al., *Albany's Power Structure Resets*, REAL DEAL (Oct. 1, 2018, 10:00 AM), <https://perma.cc/NAN8-A2Y8>; see also *From the Field: New York State Legislators Pass 'Housing Stability and Tenant Protection Act of 2019'*, NAT'L LOW INCOME HOUS. COAL. (July 1, 2019), <https://perma.cc/JRV2-8CGL>; Vivian Wang, *How 3 Little Letters (I.D.C.) Are Riling up New York Progressives*, N.Y. TIMES (Sept. 11, 2018), <https://perma.cc/M5RS-NW2R>.

⁴³ N.Y.C. ADMIN. CODE § 27-2004(a)(48) (2021); see also *Certification of No Harassment*, N.Y.C. HOUS. PRESERVATION & DEV., <https://perma.cc/6HMG-8BQD> (last visited Mar. 31, 2021); Ameena Walker, *NYC Implements Anti-Tenant Harassment Pilot Program*, CURBED (Oct. 12, 2018, 2:31 PM), <https://perma.cc/DAA4-YXA3>.

⁴⁴ N.Y.C. ADMIN. CODE § 28-107.4 (2021).

⁴⁵ Kelly Mena, *New York City Passes Rent Freeze for Stabilized Apartments*, CNN: POLITICS (June 18, 2020, 1:03 PM), <https://perma.cc/M33X-FRJC>.

⁴⁶ N.Y.C. ADMIN. CODE § 28-104.8.4 (2017); Tanay Warerkar, *Tenants Will Get Vast New Protections Against Unscrupulous Landlords*, CURBED (Aug. 9, 2017, 4:08 PM), <https://ny.curbed.com/2017/8/9/16118032/tenant-protection-city-council-bill>; Stanley Fritz, *12 Bills to Comprehensively Reform the DOB and Put an End to Construction-as-Harassment (A Legislative Platform to Reform DOB)*, STAND FOR TENANT SAFETY (Sept. 30, 2015, 12:45 PM), <https://perma.cc/3TBB-UX2M>; RENT GUIDELINES BD. APARTMENT ORDS., N.Y.C. RENT GUIDELINES BOARD (2020), <https://perma.cc/V72Z-K699> (last visited Apr. 1, 2021).

⁴⁷ See, e.g., Eleanor J. Bader, *Activists Are Mobilizing to Create an Eviction-Free United States*, TRUTHOUT (Dec. 20, 2020), <https://perma.cc/4N2L-WK4E>.

campaign were to: (a) maintain eviction moratoria and keep eviction courts closed; (b) pass legislation to cancel rent; and (c) leverage a mass rent strike to advance the demand for rent cancellation. My role has involved drafting legislation, providing technical support for campaign strategies, providing legal support for direct action and civil disobedience, and helping coordinate the legal support for hundreds of rent-striking tenants. While this work is bold, invigorating, and deeply challenging, it also gave me much to reflect on regarding the praxis of movement lawyering and what lessons movement lawyers might draw from these experiences.

II. REALLY? YOU WANT TO EVICT PEOPLE DURING A PANDEMIC? KEEPING THE EVICTION MILLS CLOSED

Key Lessons:

- *Legal strategies should create space for the organizing to win.*
- *Be responsive, be able to keep pace.*
- *Democratize legal knowledge—practice simple communication.*
- *Learn to distinguish legal arguments from political arguments, then use both.*
- *Be able to imagine your own obsolescence and willing to work towards it.*
- *Develop litigation strategies that serve movement goals.*
- *Be willing to litigate on principle.*

By the time COVID-19 hit New York City, the Right to Counsel NYC Coalition had been building an anti-evictions movement for over six years.⁴⁸ The demand for a right to counsel in eviction cases recognized the violence inherent in all evictions and the trauma caused by the millions of evictions that take place across the U.S. every year, which disproportionately impact Black and Brown tenants, particularly women of color.⁴⁹ Courts across the country have long functioned as eviction mills.

⁴⁸ *Our Vision*, RIGHT TO COUNS. NYC COAL., <https://perma.cc/XP7V-9GUB> (last visited Apr. 1, 2021); see also Blankley, *supra* note 38, at 08:29, 09:25.

⁴⁹ *National Estimates: Eviction in America*, EVICTION LAB (May 11, 2018), <https://perma.cc/Z9EZ-WBWW>; Peter Hepburn et al., *Racial and Gender Disparities Among Evicted Americans*, EVICTION LAB (Dec. 16, 2020), <https://perma.cc/KMM3-CD46>; DESMOND, *supra* note 14, at 252; Emily Benfer et al., *The COVID-19 Eviction Crisis: An Estimated 30-40 Million People in America Are at Risk*, ASPEN INST. (Aug. 7, 2020), <https://perma.cc/7DG9-3U8Y>.

In many courts, tenants, whose homes are at stake are not given a meaningful chance to argue their cases, receive barely a shred of due process, and are, frequently, being evicted by a judge who has no legal training.⁵⁰

So of course, when a pandemic hit, the demand to close the courts and stop the eviction mills made sense. Evictions are always cruel and traumatizing, especially so in the middle of a pandemic. The demand to stop evictions made sense in the context of COVID-19, to avoid heightened virus transmission: in most cities, evictions cause tenants to double- or triple-up with others, or live in the streets or shelter system, all of which could increase the likelihood of transmitting or contracting the virus.⁵¹ Additionally, halting all evictions made sense because doing so would create breathing room for the movement to win more challenging demands, such as the demand for rent cancellation.⁵² It was also a strategy that had the potential to demonstrate to those who had never experienced it (including tenant lawyers) that an eviction-free society is possible.

In New York, after three months of zero new eviction cases and a halt on all evictions,⁵³ what followed was a dizzying array of maneuvers by the courts and Governor Cuomo to restore “business as usual,”⁵⁴

⁵⁰ See, e.g., William Glaberson, *In Tiny Courts of N.Y., Abuses of Law and Power*, N.Y. TIMES (Sept. 25, 2006), <https://perma.cc/L5LN-DCK6>.

⁵¹ Justin Sheen et al., *The Effect of Eviction Moratoriums on the Transmission of SARS-CoV-2* 1-2, 4 (Nov. 1, 2020) (unpublished study), <https://perma.cc/3KBM-8WSX>; see Kathryn M. Leifheit et al., *Expiring Eviction Moratoriums and Covid-19 Incidence and Mortality* 2, 5 (Nov. 30, 2020) (unpublished study), <https://perma.cc/6GLZ-4FM6>; Annie Nova, *Evictions Have Led to Hundreds of Thousands of Additional Covid-19 Cases, Research Finds*, CNBC (Dec. 15, 2020, 10:19 AM), <https://perma.cc/EJ8A-TJ6B>.

⁵² See *infra* Section III.

⁵³ N.Y. OFF. OF CHIEF ADMIN. JUDGE, AO/68/20 (Mar. 16, 2020), <https://perma.cc/GS88-X6D3> (stating (1) after March 16, 2020, only filings of essential applications were permitted and that all evictions proceedings and pending eviction orders were suspended statewide until further notice; and (2) effective March 13, 2020, residential evictions in New York City were stayed and New York City Housing Court was directed to not issue new eviction warrants on default); see also N.Y. EXEC. ORDER NO. 202.8 (Mar. 20, 2020), <https://perma.cc/FRN4-5C8W> (stating there shall be no residential evictions for a period of 90 days and limiting court proceedings to “essential matters” during the COVID-19 health crisis, tolling statute of limitations periods and other statutory deadlines).

⁵⁴ The following list of orders and laws illustrates the high volume of legal changes tenants and their lawyers needed to keep up with during this period; N.Y. Off. of Ct. Admin., Admin. Order AO/68/20 (Mar. 16, 2020), <https://perma.cc/GS88-X6D3> (providing, among other things, that only filing of essential applications will be permitted); N.Y. Exec. Order No. 202.8 (Mar. 20, 2020), <https://perma.cc/74KW-JS3D> (providing that there shall be no residential evictions for a period of 90 days effective immediately, limited court proceedings to “essential matters” during the COVID-19 health crisis, and tolled statute of limitations periods as well as other statutory deadlines); N.Y. Off. of Ct. Admin., Admin. Order AO/78/20 (Mar. 22, 2020), <https://perma.cc/FH4K-S8VN> (identifying a list of essential matters, which in the area of housing law included landlord lockouts, reductions in essential services; serious code violations; serious repair orders; and post eviction relief); Coronavirus Aid, Relief, and Economic

Security Act, Pub. L. No. 116-136, § 4024 (b), 134 Stat. 281, 493 (2020), <https://perma.cc/LKG7-US9D> (prohibiting landlords of buildings that participate in federal assistance programs or which have federally-backed mortgage loans from evicting tenants, initiating eviction proceedings, or charging fees, penalties or charges for non-payment of rent for a period of 120 days from March 27, 2020); N.Y. Off. of Ct. Admin., Admin. Order AO/85/20 (Apr. 8, 2020), <https://perma.cc/SX9Y-S3KC> (providing that filings in non-essential matters would be prohibited until further notice); N.Y. Exec. Order No. 202.28 (May 7, 2020), <https://perma.cc/DQA2-KF58> (providing, among other things, that landlords cannot evict or initiate an eviction proceeding against a tenant who has experienced COVID-19-related financial hardship or who is eligible for unemployment insurance for 60 days; landlords and tenants or licensees of residential properties may enter into a written agreement where the security deposit and accrued interest may be used to pay rent that is in arrears or will become due; this relief is available to tenants or licensees who request it and are facing financial hardship due to COVID-19 or are eligible for unemployment insurance or benefits; landlords cannot harass, threaten or engage in any harmful act to compel such an agreement; and no landlord, lessor, sub-lessor or grantor shall demand or be entitled to any fee or charge for late payment of rent occurring between March 20, 2020 and August 20, 2020); N.Y. Exec. Order No. 202.38 (June 6, 2020), <https://perma.cc/G5YY-GQL5>; N.Y. Off. of Ct. Admin., Admin. Order AO/121/20 (June 9, 2020), <https://perma.cc/8FD2-7UK8> (mandating electronic filing in housing court cases using Electronic Document Delivery System (EDDS) or mail); N.Y. Off. of Ct. Admin., Admin. Order AO/127/20 (June 18, 2020), <https://perma.cc/SXG8-ZL24> (providing that continuing the suspension of any eviction cases that were filed on or before March 16, 2020; ordering that new eviction cases filed after March 16, 2020 would be suspended upon filing; ordering that eviction matters where both parties had counsel could be calendared for virtual settlement conferences; requiring landlords to file new eviction cases to submit an affirmation/affidavit attesting to an understanding of the new orders and laws governing eviction proceedings during the COVID-19 pandemic); N.Y. Off. of Ct. Admin., Admin. Order AO/131/20 (June 23, 2020), <https://perma.cc/7SQK-KN8X> (amending the affirmation/affidavit required upon filing an eviction by prior AO 127/20); S.B. 8192-B, 2019-2020 Legis. Sess. (N.Y. 2020) (providing that no court shall issue an eviction order or warrant of eviction for non-payment of rent from March 7, 2020 through the commencement of Stage 4 restrictions (the “covered period”) where the tenant can demonstrate they suffered a financial hardship during the COVID-19 covered period); N.Y. Off. of Ct. Admin., Admin. Order AO/143/20 (July 7, 2020), <https://perma.cc/5H9T-RX47> (eliminating the affirmation/affidavit requirement that AO127/20 and AO/131/20 put in place); N.Y. Exec. Order No. 202.48 (July 6, 2020), <https://perma.cc/F7C6-J8KK> (discontinuing the prohibition on non-payment case filings and evictions with respect to residential tenants); N.Y. Exec. Order No. 202.49 (July 6, 2020), <https://perma.cc/RK76-Y3B8> (lifting among other things the suspension on notices to terminate tenancy pursuant to Real Property Law § 232-a and eviction proceedings pursuant to Real Property Actions and Proceedings Law § 711. Directives and Procedures, DRP 213 on Management of Pre-Pandemic Eviction Proceedings in the New York City Civil Court, Civil Court of the City of New York, August 12, 2020 providing, among other things, that in New York City only, landlords seeking to obtain or execute warrants of eviction are required to first file a motion on notice so that both parties could appear before a judge before any further action occurred with respect to the warrant of eviction; upon non-appearance of either party the presiding judge had discretion to address the absence, including by rescheduling with a “final” marking, issuing a decision or judgment in default, impose sanctions, or issue a judgment of contempt; no defaults would be taken against tenants for failure to answer in an eviction proceeding); N.Y. Off. of Ct. Admin., Admin. Order AO/160A/20 (Aug. 13, 2020), <https://perma.cc/24RT-GE7B> (providing that eviction matters filed prior to March 17, 2020 are permitted to proceed; creating a requirement for a status or settlement conference in

all case before any further proceedings could be initiated, at which the court would review the history of the matter, compliance with notice requirements, the impact of laws such as the CARES Act, the Tenant Safe Harbor Act and other protections, and would refer unrepresented tenants to counsel; allowing the court full discretion to make any orders after the initial conference, including orders of eviction, although no eviction could be scheduled before October 1, 2020; continued the notice requirements to tenants; continued suspension of eviction proceedings commenced after March 16, 2020; confirmed that New York City Proceedings would be subject to DRP 213 of the Civil Court of the City of New York; *Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19*, FEDERAL REGISTER (Sept. 4, 2020), <https://perma.cc/XW9F-VTXB> (providing that tenants who supply their landlord with a declaration of the following information cannot be evicted for non-payment of rent through January 1, 2021: the tenant tried everything they could to get government assistance to pay their rent; the tenant has income less than \$99,000, did not have to pay income tax in 2019, or received a stimulus check; the tenant cannot pay rent due to income loss or extraordinary out-of-pocket medical expenses; the tenant would become homeless or need to double-up if they're evicted; the tenant will pay their landlord as much as they can, taking into account their other essential expenses; the tenant recognizes that they are still obliged to pay their rent and comply with their lease. The Centers for Disease Control and Prevention ("CDC") order expressly exempted evictions for a number of holdover grounds, and later the CDC issued an FAQ confirming that the moratorium only applied to evictions for non-payment of rent, available at <https://perma.cc/X23U-NARM>); N.Y. Exec. Order No. 202.66 (Sept. 29, 2020), <https://perma.cc/X2LR-YKL9> (modifying the Safe Harbor Act to extend its applicability to all residential tenants, including those who were in eviction proceedings prior to March 7, 2020); N.Y. Off. of Ct. Admin., Admin. Order AO/231/20 (Oct. 9, 2020), <https://perma.cc/84FV-WVHA> (providing that permitting all eviction matters to move forward, including those filed during the pandemic; continuing the case conference requirement for cases filed prior to March 17, 2020; continuing the notice requirements to tenants; eviction proceedings should be conducted remotely wherever possible); N.Y. Exec. Order No. 202.72 (Nov. 3, 2020), <https://perma.cc/YX7Y-92JS> (modifying among other things sections 732 and 743 of the Real Property Actions and Proceedings Law to provide 60 additional days for tenants to answer (compared to the usual 10-day deadline), which applied to all tenants sued in an eviction proceeding prior to or on November 3, 2020); N.Y. Off. of Ct. Admin., Admin. Order AO/268//20 (Nov. 17, 2020), <https://perma.cc/4BTH-4GXB> (continuing the notice requirements for tenants in eviction cases but changed the content and the color of the notice); N.Y. Exec. Order No. 202.85 (Dec. 27, 2020), <https://perma.cc/DF99-TYUM> (extending the application of New York State Executive Order 202.66, which modified the Safe Harbor Act to extend its applicability to all residential tenants, including those who were in eviction proceedings prior to March 17, 2020, to January 26, 2021); S.B. 9114, 2019-2020 Legis. Sess. (N.Y. 2020), <https://perma.cc/DSW3-MKXK> (suspending, among other things, all pending eviction proceedings for 60 days; creating a prohibition against evictions, new eviction proceedings, and a stay on eviction proceedings until May 1, 2021 for tenants who submit a hardship declaration; and carving out an exception to the prohibition against evictions and new eviction proceedings for tenants who persistently engage in conduct disturbing the use and enjoyment of other tenants or who create substantial safety hazards); N.Y. Off. of Ct. Admin., Admin. Order AO/340/20 (Dec. 30, 2020), <https://perma.cc/F5RK-LRSW> (imposing rules to implement the COVID-19 Emergency Evictions and Foreclosure Prevention Act); S. 6362-A, 2021-2022 Reg. Sess. (N.Y. 2021), <https://perma.cc/N5X5-JXXR> (extending the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 to August 31, 2021).

eventually resuming evictions as of October 2020.⁵⁵ Movement lawyering came to the fore during this period, as the situation for tenants grew increasingly complicated with each new promulgated order or enacted statute.

Lawyers who want to do movement-building work need to be able to step up in those moments of rapid shifts, to quickly democratize legal knowledge so that tenants and organizers are updated on their legal position and can strategize accordingly. I spent much time creating and recreating know-your-rights (“KYR”) materials, trying to come up with new ways to simply explain a set of arrangements that had become unnecessarily perplexing for everyone, lawyers included. This work also demanded the ability to be quickly responsive; a foundational movement lawyering skill.

The ability to communicate legal concepts in everyday language takes work. Attorneys often need to practice simple communication. We need to practice it because, for most of us, it is the opposite of what we practice full-time in our day-to-day lawyering work; and usually we are not even aware of it. We are often unaware that we are speaking a different language. I saw attorneys pitching in on evictions-related KYR materials struggle to distill complicated legal concepts into a digestible and accessible format, oftentimes including so much nitty-gritty statutory detail that organizers were not able to use them for popular education. KYR materials do not help if people can’t comprehend them. To make them broadly accessible, we aim for a middle-school reading level, short sentences, and no legalese. Any legal jargon used should be explained. In this vein, KYR materials are strategic documents, used by organizers both to educate and to agitate for change. Movement lawyers must be ready to incorporate organizing strategy into their legal thinking, and sometimes this means letting go of technical details. Sure, one could explain all the technical nuances of a law, but it is more helpful to the organizing if we identify the key concepts that people need to know. Building up a muscle that can distinguish between important technical information and excessive technical details, and then being able to communicate the former with clarity and simplicity are skills all movement lawyers should cultivate.

Similarly, movement lawyers must distinguish between what we might argue in court and the political nature of the law. Throughout the pandemic, we saw a range of half measures from politicians and agencies

⁵⁵ N.Y. OFF. OF CHIEF ADMIN. JUDGE, AO/231/20 (Oct. 9, 2020), <https://perma.cc/KD5D-ASHF> (stating the following: (1) permitting all eviction matters to move forward, including those filed during the pandemic; (2) continuing the case conference requirement for cases filed before March 17, 2020; (3) continuing the notice requirements to tenants; and (4) recommending eviction proceedings be conducted remotely whenever possible).

who purported to be protecting tenants from evictions.⁵⁶ Most of these measures were written ambiguously and only clearly protected some tenants, leaving others in a dangerously grey area.⁵⁷ For example, of course we were always going to argue in court that our governor's various, ambiguous executive orders were intended to protect all tenants, not just tenants in certain types of cases or with certain factual situations. However, the ultimate consequence of these ambiguous orders was that not all tenants had clear protection from eviction, which was both dangerous and cruel. It was, therefore, politically important to elevate the lack of comprehensive protection in our responses immediately following each new order, while also informing people of the potential for creative legal arguments to advocate for expansive readings of the law. Yet, in these situations we repeatedly saw lawyers working with movements immediately "talk up" the degree of protection available to tenants, as they might do in court. Movement lawyers need to be able to distinguish between the novel legal arguments we might make and the political character of our laws; and then we need to be able to strategically deploy both as we support movement work.

While we worked on pushing the governor and court system to use their powers to ensure that evictions and eviction cases were paused, we also pushed for a legislative response that would provide a longer term, guaranteed halt to evictions until well after the pandemic ended. When a possible eviction moratorium bill came our way that provided a partial moratorium, we suggested a redraft that would ensure a comprehensive moratorium on evictions and a halt to all progress on eviction cases.⁵⁸ Movement lawyers should cultivate the skill of being able to identify the shortcomings and risks in proposed legislation, and be able to craft laws that match movement demands. With that work done, the organizers were able to do the political work of advocating with legislators to ensure that the tenant movement's version of the bill was the one that ended up on the table for consideration by the legislature.

⁵⁶ *Id.*

⁵⁷ For example, the Tenant Safe Harbor Act protected only tenants who could show financial hardship during the "COVID-19 covered period." S.B. S8192B, 2019-2020 Legis. Sess. (N.Y. 2020). The CDC moratorium protected only tenants in non-payment cases and potentially some types of holdover cases. Temporary Halt in Residential Evictions to Prevent the Further Spread of Covid-19, 85 Fed. Reg. 55,292 (Sept. 4, 2020). Governor Cuomo's grace period for filing an answer contained in E.O. 202.72 protected only tenants from default for failure to answer if they had been sued before November 3, 2020. N.Y. EXEC. ORDER NO. 202.72 (Nov. 3, 2020), <https://perma.cc/B3L4-8JSM>. The COVID-19 Emergency Eviction and Foreclosure Prevention Act only protected tenants who could file a hardship declaration. N.Y. S.B. S9114.

⁵⁸ *See generally* S.B. S8667, 2019-2020 Legis. Sess. (N.Y. 2020).

The eviction moratorium campaign was very tied up with the court system itself. And because of the right to counsel for evictions, New York City has a large cohort of eviction defense attorneys.⁵⁹ While we were still pushing to win moratoria at the political level, at some turns our strategies focused on trying to get this cohort of eviction defense lawyers to take a coordinated approach in their work. To me, those efforts were part success, part failure. When we tried to implement strategies commonly found within the toolbox legal services attorneys customarily draw from (e.g., reasonable accommodations strategies), we had more success. Attorneys were eager to create and attend trainings on these topics and appeared to readily embrace these tactics. When we tried to persuade our sector to collectively adopt more innovative strategies, however, we had less success. For example, in lieu of shutting down the eviction mill, we wanted to explore legal strategies that would slow it. This work highlighted the limits of strategic approaches that involve large numbers of legal services lawyers. In my experience, some of the problems with this approach were: housing lawyers are not a movement and they are not comprehensively organized as a sector (e.g., different legal organizations pursue different strategies and have different approaches to the work); most tenant-side legal services lawyers are not actively part of the housing movement; tenant lawyers have duties to their individual clients that can conflict with the tenant movement approach if their clients are not part of the organized tenant movement; and our legal services organizations have a corporate culture and are very hierarchical, so high-level buy-in is necessary (and higher level managers are often more conservative in their approaches and less likely to be part of the movement work). Simply put, we are not set up to move in formation. For more adventurous legal strategies to succeed, we would have needed to collectively organize our colleagues across the tenant lawyer sector so that they could all be advancing consistent goals using consistent approaches. We didn't have the resources for such a project in the context of this campaign; it serves as a helpful reminder of how far we have to go as a sector if we really want to serve movement work.

In non-profit work, we often hear folks talk about working themselves out of a job.⁶⁰ In this instance, however, our tenant lawyers were

⁵⁹ See OFF. CIV. JUST. N.Y.C. HUM. RES. ADMIN., UNIVERSAL ACCESS TO LEGAL SERVICES: A REPORT ON YEAR THREE OF IMPLEMENTATION IN NEW YORK CITY 15 (2020), <https://perma.cc/8484-PH4L>.

⁶⁰ In the non-profit legal, advocacy, and organizing sectors, a commonly held goal is that the work will effectuate positive systemic change to arrive at the point where the role of the sector—and therefore the jobs in it—are no longer needed. Often this goal is expressed as working to “eliminate poverty,” the implication of which would be that jobs providing free services to poor people would no longer be required.

not ready to be obsolete. The possibility that there would be no work for our hundreds of eviction defense lawyers, at least for a while, should have provoked overwhelming joy and relief, since it would mean no tenants were facing the cruelty of eviction. Instead, when that prospect loomed, elements of self-interest in attorney jobs and concerns over funding and deliverables bubbled to the surface. This self-interest impeded our sector's ability to get behind movement demands, with some attorneys overtly expressing concerns like, "What will we do if there are no evictions?" or, "How are we going to meet our grant deliverables if the courts stay closed?" In these moments, I learned that we always need to be able to see the forest for the trees. We must remain aware that we earn our wages and build our careers on the backs of other people's suffering; and we must be vigilant to never choose the former over the possibility of ending the latter.

Another challenge we faced during the fight for a comprehensive eviction moratorium was finding lawyers willing to pursue a systemic litigation strategy that would advance the organizing goals. As the courts started to reopen and evictions cases resumed, the movement started exploring litigation options. We were looking for a movement lawyering litigation strategy that would systematically disrupt the system to create space for the organizing—not just in one or two cases—but in all eviction cases. We quickly discovered that most organizations with the resources to bring such litigation do not want to surrender their choice of litigation strategy to movement organizing. That was partly based on overt claims that working with organizers would make developing litigation more complicated, or that they would be difficult to collaborate with throughout the litigation process because of the demands they would make of the litigation strategy and approaches.

These may have been well-founded concerns but not in the way they were intended. Sure, working with organizers to develop legal strategy can be more complicated because the lawyer cannot just think within the narrow parameters of the law. And if you are accustomed to working solely with other attorneys, it can be more difficult answering to organizers who often bring different goals and analytic frameworks to a litigation project. But the result of putting in the extra work is litigation that will serve a movement, advancing goals that are more transformative than the outcomes a room full of lawyers can envision. Another aspect of the hesitancy to work with organizers is based on differing ideas about the purpose of litigation. Most lawyers want to bring litigation that will win, and they will decline to bring a case (albeit a non-frivolous one) that may likely lose. However, if we recognize that our legal system is not just—as many public interest lawyers say they do—then bringing cases that are likely to lose becomes almost a moral imperative. We should be following

the example of the late Michael Ratner and litigating on principle.⁶¹ But when the movement went looking for legal organizations willing to do just that, in the tenant lawyers' sector, it was sadly difficult to find.

We forged ahead with the campaign to stop all evictions and progress on eviction cases during the pandemic. On December 28, 2020, the New York State legislature voted to pass the COVID-19 Emergency Eviction and Foreclosure Prevention Act ("CEEFPA").⁶² This legislation suspended almost all pending eviction proceedings for 60 days and created a stay on evictions, new eviction proceedings, and pending eviction proceedings until May 1, 2021, for all tenants who submit a "hardship declaration."⁶³ The CEEFPA also included a carve-out to permit evictions of tenants "persistently and unreasonably engaging" in objectionable behavior or who create a "substantial safety hazard."⁶⁴ This Act was undoubtedly a win for the tenant movement, and it was later extended through August 31, 2021.⁶⁵ For months, tenants and organizers in our coalitions had been relentlessly pushing state legislators to take action to protect tenants, through lobbying, media strategies, direct action, and more. This was not, however, the blanket moratorium the tenant movement had pushed for and was by no means a comprehensive victory.

The CEEFPA also directly perpetuated a logic we were fighting against in our campaign. That is, its premise was that halting evictions during a pandemic should depend on whether the tenant has suffered hardship, that tenants should be required to take some steps to secure the protection, and that this essential protection should not apply to some class of tenants deemed undeserving because of their alleged conduct. To the extent that the movement was fighting for a real moratorium on evictions and eviction proceedings, we needed to be careful about the language we used to claim this important victory—acknowledging the power of this movement win, quickly distributing legal information to tenants across the state, while also avoiding calling something that was not a real moratorium a "moratorium," as our politicians had been misleadingly doing for many months. By winning the strongest protections in the nation to date, tenants and organizers created space to push for their other demands while continuing the fight to bring the eviction machine to a halt.

⁶¹ Jules Lobal, *Remembering NLG & CCR Past President, Michael Ratner*, GUILD NOTES, Summer/Fall 2016, at 13-14; David Cole, *Michael Ratner*, NATION (May 11, 2016), <https://perma.cc/T75J-2QYP>.

⁶² Dana Rubinstein, *New York Bans Most Evictions as Tenants Struggle to Pay Rent*, N.Y. TIMES (May 4, 2021), <https://perma.cc/P8KP-8QCA>; see S.B. S9114 (N.Y. 2020).

⁶³ S.B. S9114 (N.Y. 2020).

⁶⁴ *Id.*

⁶⁵ S. 6362-A, 2020-2021 Reg. Sess. (N.Y. 2021).

III. CANCEL RENT – A TIME FOR BOLD DEMANDS

Key Lessons:

- *Expose the logic of the system and challenge it.*
- *Pursue legal strategies that provide real, material relief.*
- *Support the solutions proposed by those closest to the problem.*
- *Remember, what is legal isn't the same as what is just.*
- *Recognize and find joy in liberating moments.*
- *De-individualize issues whose nature is really social and political.*
- *Support bold demands, even if you think they won't win.*
- *Have a power analysis and be prepared to choose a side.*

By March 2021, we were one year into the COVID-19 pandemic. Across the U.S., over 22 million people had lost work,⁶⁶ and over 14 million tenant households were unable to keep up with their rent payments, with Black and Brown tenants disproportionately impacted.⁶⁷ In New York alone, the number of tenant households behind on rent was well over a million.⁶⁸ But even in our first month of the pandemic, the New York tenant movement could see the writing on the wall: the job losses and health impacts of COVID-19 were so dramatic and widespread, only a bold political solution would address the impact on tenants. The demand to completely cancel rent emerged early, and we worked on a bill that would cancel rent for all tenants who were behind on rent payments and

⁶⁶ See Paul Davidson, *Economy Loses 140,000 Jobs in December as Unemployment Holds at 6.7% amid Covid-19 Spikes*, USA TODAY (Jan. 8, 2021, 4:57 PM), <https://perma.cc/N5AE-MUY7>; Eli Rosenberg, *Jobless Claims Spiked in the U.S. Last Week, with 853,000 People Seeking New Benefits*, WASH. POST (Dec. 10, 2020, 10:33 AM), <https://perma.cc/Q8AP-T3L4>; see also Jonathan Ponciano, *It Could Take 4 Years to Recover 22 Million Jobs Lost During Covid-19 Pandemic, Moody's Warns*, FORBES (Nov. 30, 2020, 5:22 PM), <https://perma.cc/3789-F9VB>.

⁶⁷ See Heather Long, *Millions of Americans Are Heading into the Holidays Unemployed and Over \$5,000 Behind on Rent*, WASH. POST (Dec. 7, 2020, 2:27 PM), <https://perma.cc/2GCQ-ELMB>; Paul Davidson, *Economy Adds Disappointing 245,000 Jobs in November While COVID-19 Rages Across Country*, USA TODAY (Dec. 4, 2020, 5:02 PM), <https://perma.cc/28TM-L3Z2>; *Estimation of Households Experiencing Rental Shortfall and Potentially Facing Eviction*, STOUT (Nov. 23, 2020), <https://perma.cc/LK7S-2X58>; Katy O'Donnell, et al., *'The Most Lopsided Economic Event Imaginable': Wave of Evictions Threatens Black, Latino Tenants*, POLITICO (Dec. 15, 2020), <https://perma.cc/ZM73-XBCE>.

⁶⁸ See *Estimation of Households Experiencing Rental Shortfall and Potentially Facing Eviction*, STOUT (Nov. 23, 2020), <https://perma.cc/LK7S-2X58>; HOUS. JUST. FOR ALL & RIGHT TO COUNS. NYC COAL., *supra* note 18.

create a relief fund for landlords who could demonstrate they had experienced financial hardship because of the lost rental income.⁶⁹

The demand to cancel rent was predicated on several key understandings:

(a) The economic impact of COVID-19 was a social and political issue that demanded a social and political solution. No individual tenant was at fault for the circumstances that created their inability to pay rent.⁷⁰ Thus, there should be no category of tenants deemed unmeritorious and therefore not entitled to relief. All tenants deserve protection from eviction.

(b) Relief for renters always amounts to relief for landlords. The tenant functions as a passthrough for money that always wholly ends up in the hands of their landlord. Our system conceals corporate welfare in many ways, including sometimes calling it welfare for the poor.⁷¹

(c) Landlords buy buildings as an investment. They anticipate that returns on their investment will include a regular income from the rent rolls (i.e., rental income) and a profit when they sell the building. With respect to rental income, landlords' investment expectations were not fulfilled as a result of the COVID-19 pandemic. This was therefore a business risk that landlords should shoulder, or they could seek welfare if the outcome of their investment failures placed them in a situation of financial hardship.

⁶⁹ See S.B. 8802, 2019-2020 Legis. Sess. (N.Y. 2020).

⁷⁰ This is, arguably, almost always the case, but the COVID-19 context gave us greater traction to make this argument.

⁷¹ To the extent that some portion of the rent tenants pay is pure profit for their corporate landlord and all rent is investment income, rent relief is wholly conveyed to landlords and effectively bails them out of the failure of their investment. Hence, throughout the pandemic, landlords vigorously pushed for governmental rent relief programs for tenants. See, e.g., Will Parker, *New York City Renters Owe More Than \$1 Billion in Unpaid Rent, Survey Finds*, WALL ST. J. (Jan. 14, 2021, 6:00 AM), <https://perma.cc/YS84-AXMD>; see also Bennett Leckrone, *Tenants' Advocates and Landlords Push for Rental Assistance at Senate Briefing*, MD. MATTERS (Jan. 4, 2021), <https://perma.cc/6D3A-S2QV>; Annemarie Cuccia, *DC Uses Remaining CARES Act Funds to Help Some Landlords Cancel Back Rent*, STREET SENSE MEDIA (Dec. 4, 2020), <https://perma.cc/6BJZ-SU5W>; Alicia Adamczyk, *'It's a Start:' Stimulus Bill Includes \$25 Billion in Emergency Rental Relief, Extends Eviction Moratorium*, CNBC (Dec. 21, 2020, 11:45 AM), <https://perma.cc/VE82-QDBA>. Other examples include: first-home buyer grant programs, which benefit banks by enabling homeownership through which banks extract massive amounts of interest, in particular during the early years of a standard 30-year loan; and "one-shot deal" assistance to cover expenses such as utilities during financial setbacks, which ultimately funnels money to for-profit utility or other companies.

- (d) There are far fewer landlords than tenants, in particular because of the financialization of the real estate market and the rise of the corporate landlord.⁷² Today, our cities are owned by a collection of corporate actors that is small compared to the vast number of buildings and apartments. That is, the number of landlords is far fewer than the number of tenants. If the state created a relief program, it would be far more efficient to target it at the much smaller group of landlords than to make millions of already-struggling tenant households apply for it.
- (e) Landlords are in a better position to navigate an application process than most tenants, in part because they almost always have access to legal counsel, managing agents, and other supports.
- (f) The time it takes landlords to obtain relief—and resulting consequences—will not be as life-altering (or potentially life-ending) as what tenants would experience if evicted.

The cancel rent campaign is an example of how movement lawyering can be most effective. In our work, legal strategies primarily function as tools within organizing efforts that are movement-building and led by impacted people.⁷³ The legal strategy must be something that people can organize around, something that builds the power of the movement. Better still, the legal strategy should stand up as a challenge to the status quo, especially by revealing and challenging the system's logic. It must be a solution put forward by those closest to the problem and provide them with real, material relief from the challenges they are facing. Rent cancellation was never going to be an easy lift politically or legally speaking; nonetheless, it was the solution tenants wanted.

Any legal strategy a movement lawyer works on, legislative or otherwise, must be movement-building. Our laws that purport to address inequality, poverty, and disenfranchisement generally tend to create categories of deserving and non-deserving people, based on criteria that usually serve the powerful. We have rental subsidies that are unavailable to single people;⁷⁴ we have means tested legal services programs so that if one has just enough money to survive comfortably, they will need to go

⁷² See Yuliya Panfil & Tim Robustelli, Opinion, *There's a Rental Crisis Coming. Here's How to Avoid It*, POLITICO (May 8, 2020, 12:39 PM), <https://perma.cc/6BY7-FTDS>; see also DESIREE FIELDS, HOMES FOR ALL CAMPAIGN, THE RISE OF THE CORPORATE LANDLORD (2014), <https://perma.cc/A6RJ-XD3H>.

⁷³ See Elsesser, *supra* note 7, at 384-85.

⁷⁴ See N.Y.C. HUM. RES. ADMIN., DEP'T SOC. SERVS., FAMILY HOMELESSNESS & EVICTION PREVENTION SUPPLEMENT (FHEPS) FACT SHEET (2019), <https://perma.cc/3E6T-YJBA> ("To qualify for FHEPS your family must include a child under 18 years of age . . .").

into debt to pay for their own lawyer;⁷⁵ we have benefits and financial assistance that are wholly unavailable to undocumented migrants;⁷⁶ we have many tenant protections that are not available to tenants in private homes or tenants in new buildings;⁷⁷ we have homeowner foreclosure protections that exclude homeowners deemed undeserving;⁷⁸ and so on. Even in the COVID-19 context, New York's COVID-19 rent relief program initially provided aid to only 15,000 New Yorkers, a tiny fraction of the million-plus families who had fallen behind on rent, largely due to restrictive eligibility criteria.⁷⁹ Another COVID-19 legislative measure, the Tenant Safe Harbor Act, was supposed to protect tenants from eviction; but it covered neither the more than 200,000 tenants who were facing eviction before the pandemic began, nor any tenants in cases that weren't about non-payment of rent.⁸⁰

As illustrated above, our laws are rife with examples of supposed public policy that deem some class of people meritorious of aid and others not. In the movement context, we must be vigilant that we do not replicate this logic, but rather ensure that our legal solutions are not divisive of the movement. When writing the Rent and Mortgage Cancellation Bill,⁸¹ we knew we needed to include *all* tenants—tenants in public housing, supportive housing, private houses. Everyone. This required us to rigorously consider potential legal consequences and challenges for each housing type—but it was never a question that all tenants would be covered by this bill.

⁷⁵ New York City's Universal Access to Counsel Law, pursuant to NYC Local Law 136 of 2017, has an income cutoff of 200% of federal poverty guidelines. *See* N.Y.C. ADMIN. CODE § 26-1302 (2021).

⁷⁶ *See generally* DANIEL BROWNE ET AL., OFF. N.Y.C. PUB. ADVOC. & N.Y. IMMIGR. COAL., GUIDE TO PUBLIC BENEFITS FOR IMMIGRANTS (2008), <https://perma.cc/6PLF-44BW>.

⁷⁷ For example, New York's rent stabilization does not apply to most housing with fewer than six units or most housing constructed after 1974. *Rent Stabilization and Emergency Tenant Protection Act*, HOMES & COMMUNITY RENEWAL, <https://perma.cc/6VJR-JAMG> (last visited Apr. 1, 2021); New York City's harassment statute places a greater evidentiary burden on tenants in one- or two-family dwellings. *See* N.Y.C. ADMIN. CODE § 27-2004(a)(48) (2021).

⁷⁸ *See* Paul Kiel & Olga Pierce, *Dems: Obama Broke Pledge to Force Banks to Help Homeowners*, PROPUBLICA (Feb. 4, 2011, 8:48 AM), <https://perma.cc/Q39T-CM8U> (discussing the federal Home Affordable Modification Program).

⁷⁹ Spivack, *supra* note 16.

⁸⁰ The Tenant Safe Harbor Act provided protection only from eviction for tenants being sued for non-payment of rent. Tenants facing holdover cases (e.g., for nuisance, breach of lease, no-cause) are not protected from eviction by this law. *See also* Marika Dias & Pablo Estupiñan, *Opinion: NYers Are Getting Evicted During the Pandemic. Lawmakers Must Act Now.*, CITY LIMITS (Nov. 24, 2020), <https://perma.cc/EXK2-5CXJ>.

⁸¹ S.B. 8802, 2019-2020 Legis. Sess. (N.Y. 2020).

The most common legal objections to cancel rent were always constitutionality: Will it withstand a takings challenge?⁸² Doesn't it violate the Contract Clause?⁸³ Aren't there due process challenges?⁸⁴ A team of lawyers did really excellent work researching and analyzing all the legal vulnerabilities of our proposal, and we crafted a memorandum for elected officials that grappled with these concerns. Some of those same lawyers also did great work writing up the history of these same aspects of the Constitution so that we could ground our analysis and choices in an understanding of the Constitution's racist and wealth-building framework.

In addition to being the solution that tenants needed, the cancel rent bill challenged the prevailing logic of our system, which tells us: when poor people cannot pay their way, even when due to widespread societal crises, they must individually apply for welfare; some poor people are meritorious of aid and others are not; landlords should get their money, regardless of what that entails for others; evictions are a reasonable consequence of not paying rent; housing is an individual (and not social, systemic, or political) concern; and if you fail, it is because you, the individual, are a failure (or maybe, at our most generous, it is because some other individuals failed you). It is seldom alleged that our social systems fail the majority of people.

In moments of public crisis, the traditional political response has been to individualize the consequences of that crisis and then offer piecemeal—usually insufficient—aid to people who are suffering its consequences most severely (e.g., those who lose their jobs, homes, families, communities).⁸⁵ The much greater amounts of welfare that are routinely given to the most wealthy and powerful are doled out in conference

⁸² See U.S. CONST. amend. V. Here the concern was that canceling rent would amount to a regulatory taking, particularly as a categorical taking that “denies all economically beneficial or productive use of land,” *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1016 (1992), or as a partial taking based on its economic impact and potential interference with landlords’ investment-backed expectations, see *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104 (1978).

⁸³ U.S. CONST. art. I, § 10, cl. 2. Here the concern was that canceling rent would violate the Contract Clause by constituting a “substantial impairment” to existing lease agreements. See *Sveen v. Melin*, 138 S.Ct. 1815, 1822 (2018).

⁸⁴ U.S. CONST. amend. XIV, § 1. Here the concern was that cancelling rent would violate the Due Process Clause of the 14th Amendment due to the retroactivity of the rent cancellation sought (although this can be counteracted by clear legislative intent). See *Kaiser Aluminum & Chem. Corp. v. Bonjorno*, 494 U.S. 827, 833 (1990).

⁸⁵ For example, after Superstorm Sandy, FEMA relief required applicants to successfully navigate a complicated application process to receive even minimal aid. Most were not fully compensated for their losses, and many were denied assistance altogether. See, e.g., Greg B. Smith, *New Yorkers Hit Hard by Hurricane Sandy Denied Aid by FEMA Bureaucracy*, DAILY NEWS (Dec. 2, 2012, 3:00 AM), <https://www.nydailynews.com/new-york/new-yorkers-denied-aid-fema-bureaucracy-article-1.1211634>.

rooms, behind closed doors;⁸⁶ meanwhile, tenants and workers queue in the streets, waiting for welfare offices and food pantries to open.

With the cancel rent bill, we were flipping this logic on its head and saying: “Landlords, if you need relief from financial hardship because your investment expectations did not pan out, we will create a relief program to help you.” Tenants can’t pay rent because of a pandemic that is completely out of their control; and for that, the correct political solution is simply to cancel rent. We are much more accustomed to the issue being approached in the reverse, but nothing inherently requires it to be so.

By creating space to challenge the logic of the system, the cancel rent bill served as a powerful organizing tool, regardless of whether it ultimately passed. Pursuing a law to cancel rent allowed tenants space to think through what is really going on economically in landlord-tenant relationships, and in welfare that is supposedly for tenants but really ends up in the landlords’ hands. Being in tenant meetings where tenants grappled with the idea of rent cancellation was a rich experience for me. I learned that while the logic of individual contractual responsibility is so pervasive in our society, lots of tenants already believe that rent is inherently exploitative and extractive. On the other hand, these meetings also surfaced the extent to which we internalize the logic of systems that oppress us, reminding me of how much our unequal social order is maintained through a combination of coercion and consent (e.g., the law and coercive state power combined with our socially shared understandings, logic, and “common sense”).⁸⁷ Some tenants expressed beliefs that the obligation to pay rent is both a legal and moral responsibility. When we unpacked that and looked at the nature of property ownership, what their landlord did to merit the rent, and the extent to which their landlord kept up their end of the bargain, many tenants expressed feeling differently. To me, these felt like moments where the weight of that moral and legal responsibility (and all the shame and anxiety it brings) seemed to palpably lift. These were liberation moments, which seemed full of power and potential.

These moments of power and joy are one reason I always encourage movement lawyers to accept invitations to attend tenant meetings and be part of movement spaces, whether or not they have a lawyerly reason to

⁸⁶ See, e.g., WANG, *supra* note 10, at 117; Eamon Javers, *Inside Obama’s Bank CEOs Meeting*, POLITICO (Apr. 3, 2009, 1:00 PM), <https://perma.cc/QD93-SW77>; Leslie Josephs, *Airline CEOs Meet with White House in Last-Minute Plea for More Coronavirus Aid*, CNBC (Sep. 17, 2020, 4:49 PM), <https://perma.cc/7C68-BLCN>.

⁸⁷ See, e.g., ANTONIO GRAMSCI, *SELECTIONS FROM THE PRISON NOTEBOOKS* 5-23 (Int’l Publishers Co. ed. 1989); NICOS AR POULANTZAS, *POLITICAL POWER AND SOCIAL CLASSES* 137-41 (Verso Books 1975); Rodríguez, *supra* note 5, at 32.

be there. In addition to being educational and grounding for me as an attorney, being part of tenant meetings to discuss the cancel rent law fueled my commitment to the work, especially when my energies were otherwise lagging. As a legal services attorney, it is easy to remain ensconced in legal technicalities, bureaucracies, and our non-profit legal circles. For many movement lawyers I know, movement spaces are where we reinvigorate our work and get a much-needed reality check.

One really clarifying lesson emerged from the responses many of our legal services organizations had to the cancel rent demand. The overwhelming majority of New York City-based non-profit legal organizations did not come out in support of the demand to cancel rent.⁸⁸ Most of them are part of at least one, if not both, of the tenant coalitions making the demand.⁸⁹ Furthermore, some legal organizations notably did not agree with the demand to cancel rent or they actively advanced other legal solutions that undermined it.⁹⁰ It turns out that just because your organization is not-for-profit doesn't mean it is for the demands of the people.

Some lawyers thought rent cancellation just was not a realistic, winnable demand. Interestingly, many of the same folks also thought a right to counsel in eviction cases was not a realistic, winnable demand—until tenants won it.⁹¹ Among many lessons, working in the right to counsel campaign taught me that it is not strategically helpful to use legal services lawyers to determine what battles can be won and what goals movements should pursue (and I include myself in this schema). As lawyers, our work cultivates us in a way that is more likely to be conservative and resigned to limited wins, rather than as people inclined to see bold, transformative solutions as winnable in the here and now. Of course, it is understandable

⁸⁸ There are currently at least 21 non-profit legal services organizations providing tenants legal services in New York City. See NYC HUMAN RESOURCES ADMINISTRATION, *supra* note 59. As of the date of publication, only seven openly supported the cancel rent campaign and even fewer officially signed onto the campaign.

⁸⁹ See *Members*, HOUS. JUST. FOR ALL, <https://perma.cc/S74E-FR24> (last visited Apr. 3, 2021); *Who We Are*, RIGHT TO COUNS. NYC COAL., <https://perma.cc/9NDJ-MMY5> (last visited Apr. 3, 2021).

⁹⁰ One of the city's largest legal services organizations pursued the solution contained in the Tenant Safe Harbor Act and, regarding the demand to cancel rent, emailed all housing staff to indicate they were not signing onto that demand. Other legal services organizations held internal discussions pressed by (often rank and file) housing lawyers and advocates who wanted their organizations, which ultimately declined, to sign on. Later, at least one large legal services organization even combined forces with landlord lobby groups and other organizations to advance joint policy solutions. See Will Parker, *Landlord and Tenant Groups Join Forces to Stave Off Evictions*, WALL ST. J. (Jan. 27, 2021, 7:00 AM), <https://perma.cc/MST6-EEBC>; PROJECT PARACHUTE, PREVENTING EVICTION FOR NEW YORKERS AMID COVID-19: POLICY RECOMMENDATIONS OF THE NEW YORK CITY EVICTION PREVENTION ROUNDTABLE (2021), <https://perma.cc/PX53-477N>.

⁹¹ Blankley, *supra* note 38.

that some of us will have different views on the potential for social transformation, but when we wield our power as lawyers to withhold or advance support and resources to movements based on those perceptions, we undermine movement-building. This is something movement lawyers should avoid.

Other lawyers couldn't handle that cancelling all rent didn't feel legal—"But they signed a contract to pay the rent!"—despite the bills' relief provisions and all our constitutional arguments for why it was.⁹² To the lawyers who couldn't get past their purely legal analysis, we would say, "But it *is* legal. And even if it isn't legal, it's what is right." To support cancelling rent, lawyers must be able to distinguish between what is legal and what is just, and then choose to fight for the latter. Many legal services lawyers are not able to do that. Whether that is because they believe (despite all evidence to the contrary) that our legal system represents morality and justice; or because they have a commitment to the law, even while it actively harms so many. Movement lawyers must be able to defy what we often practice daily: pretending the law makes sense and can deliver fair outcomes if only we make the right legal arguments. The legal arguments we are willing to make should reflect our power analysis and our commitment to our people's fight for power. Movement lawyers need

⁹² We were able to address concerns that the law amounted to an unconstitutional taking, a violation of the Contract Clause, and a violation of the Due Process Clause. With respect to the takings concern, temporary rent cancellation would not constitute a categorical taking because it would not effectuate a physical occupation, transfer or imposition on the property, nor would it deprive the landlord of all economically beneficial or productive use of the property. See *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1016 (1992). While rent cancellation would potentially temporarily interfere with a landlord's investment backed expectations, see *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 104-05 (1978), the impact of the crisis conditions on investment expectations and the public policy rationale for the law would mitigate against a finding that this would be a regulatory taking. Plus, the compensatory remedy for landlords in the bill would protect the law from a takings challenge. In terms of the Contract Clause concern, our argument was twofold: first, residential real estate in New York is highly regulated in a way that frequently alters contractual relationships (as we saw further during the pandemic through the measures detailed in various New York Office of Court Administration Orders, *supra* note 54, and as such temporary rent cancellation does not represent a substantial impairment; and even if it were deemed a substantial impairment, it is justified as a reasonable and necessary measure to safeguard public health and avert economic disaster for millions of tenants, particularly given the financial compensation for landlords in the bill). See *Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 441 (1934). Second, with respect to the due process concerns, these were mostly related to the question of the bill's retroactive application, which was an essential feature of the law. Here, the argument is that the bill had both clearly articulated legislative intent to justify its retroactive application, see *Kaiser Aluminum & Chem. Corp. v. Bonjorno*, 494 U.S. 827, 833 (1990), and that it met the standards for due process because it pursued a legitimate government interest via rational means, see *Am. Econ. Ins. Co. v. New York*, 30 N.Y.3d 136, 157 (2017); *Pension Benefit Guar. Corp. v. R.A. Gray & Co.*, 467 U.S. 717, 730 (1984).

to be able to pick a side and stand with those who are oppressed—to stand for something even if it cuts against what the legal system defines as fair or lawful. Movement lawyers need to be prepared to be laughed out of court.

While almost all legal services organizations did not support cancelling rent,⁹³ some wanted to pursue alternative legislative strategies.⁹⁴ One example was a bill that was not a good solution for tenants, the Tenant Safe Harbor Act, also known as the Tenant Debt Collection Act in tenant movement spaces.⁹⁵ When movements are fighting for bold legislative solutions, lawyers who pursue inferior forms of legislative relief or who make lesser demands are actively undermining the movement. It is more helpful to remain silent. By collaborating with legislators to pass something largely unhelpful—but which can be publicly promoted as aid—it reduces their political will to achieve the bolder solution. It gives legislators an excuse to move on without contending with movement demands, like cancelling rent. They can check “help tenants” off their list and move onto “helping” whichever other interest groups they need to cross off their lists. There will always be times where lawyers working with movements have their own ideas about what a good legislative solution would be. Movement lawyers must be able to bring these ideas to movement spaces, and, if they are rejected, set them aside, and recognize that our privilege doesn’t prepare us to decide the best course of action on an issue that won’t directly impact us. Instead, we should redirect our energies in service of movement demands. In short, we need to be willing to be part of a movement and work democratically.

As of July 2021, the Rent and Mortgage Cancellation Bill had not passed. New York State had been allocated \$2.3 billion dollars in federal aid specifically for rent relief.⁹⁶ Some lawyers saw this as a death knell for the cancel rent demand because the federal laws allocating the funds mandated various requirements for the use and distribution of those funds,⁹⁷ and it was inconceivable that New York would decline the much-

⁹³ See *supra* note 88.

⁹⁴ See *supra* note 83.

⁹⁵ See *supra* note 80. S.B. S8192B, 2019-2020 Legis. Sess. (N.Y. 2020); see also Right to Counsel NYC, *Evictions Protections During COVID*, MET COUNCIL ON HOUS., <https://perma.cc/4VDJ-7TJP> (last updated May 4, 2021); RIGHT TO COUNS. NYC COAL. & HOUS. JUST. FOR ALL, NEW YORK: THE EVICTION MORATORIUM, NEW EVICTION CASES AND PRE-COVID LAWSUITS, <https://perma.cc/2YCR-TKSV> (last updated Nov. 9, 2020).

⁹⁶ Consolidated Appropriations Act, Pub. L. No. 116-260, 134 Stat. 1182 (2021); American Rescue Plan Act of 2021, Pub. L. No. 117-2, 134 Stat. 4; see also U.S. DEP’T OF THE TREASURY, EMERGENCY RENTAL ASSISTANCE PROGRAM 8-9 (2021), <https://perma.cc/ML5E-CVBN>.

⁹⁷ See 15 U.S.C. § 9058(c) (2021); see also U.S. DEP’T OF THE TREASURY, EMERGENCY RENTAL ASSISTANCE FREQUENTLY ASKED QUESTIONS (2021), <https://perma.cc/XYF8-MLPU>.

needed federal rent relief funds. I worked with tenant organizers to come up with legal options for using the available federal funds to cancel rent in a manner consistent with the federal requirements. Organizers and tenants chose the most strategic option to advance, and throughout March 2021, our fight to cancel rent escalated in the halls of power, the media, and the streets. In April 2021, New York passed a budget that included the Education, Labor, and Family Act (“ELFA”), which created the COVID-19 Emergency Rental Assistance Program to distribute federal funds to New York tenants.⁹⁸ While there were many agreed upon wins in the ELFA rental assistance program, including relief for undocumented tenants, the ability for tenants to submit attestations as proofs, along with one-year protections against rent increases and no-cause eviction for tenants whose landlords took the money, meant this was not rent cancellation. Rather than provide universal relief, the ELFA was still a means-tested rental assistance program requiring a showing of hardship by tenants who could get assistance only if they or their landlords applied for it. Tenants and organizers continued to grapple with the impact of ELFA on the battle to ensure that no tenant would face eviction due to the COVID-19 pandemic.

IV. NOT ONE CENT ON THE RENT: A MASS RENT STRIKE

Key Lessons:

- *Learn the history of struggles and movements.*
- *Follow the movement on strategy.*
- *Risk averse lawyers undermine organizing.*
- *Build in time and intentional structures for communication and collaboration.*
- *Use legal strategies that people can organize around and that build the collective.*
- *Be prepared to get creative—the legal strategy might not be what you imagined.*

Rent strikes have a long and successful history.⁹⁹ Like much of the history of people’s struggles against power, it is not a history that most tenant lawyers learn about in our educational institutions. With the rise of

⁹⁸ FY 2021 N.Y. STATE EXECUTIVE BUDGET EDUCATION, LABOR AND FAMILY ASSISTANCE ARTICLE VII LEGISLATION (2021) [hereinafter ELFA], <https://perma.cc/ZUB7-K4U7>.

⁹⁹ *NYC Tenant Movement History*, *supra* note 18; MADDEN & MARCUSE, *supra* note 11, at 106-09, 152-57, 186.

neo-liberalism, which brought with it the decline of certain tenant protections and erosion of the social safety net,¹⁰⁰ the legal context for rent strikes came to be entirely framed by questions of risk avoidance. For years (possibly decades), New York City lawyers routinely advised tenants that withholding rent was too risky and neglected to advise tenants of the power of collective action and all ways rent strikes had been successfully deployed by tenants on so many past occasions.¹⁰¹ Risk averse lawyers spent many years discouraging tenants from engaging in rent strikes—it was what I was taught, too, by those who knew much more about tenant lawyering than me when I first joined the tenant lawyering field; so for many years I didn't even question whether this legal advice was correct.

The role lawyers played in systematically discouraging millions of tenants from using the power of rent strikes is something we can learn from. Lawyers are risk averse by training. It is one of the key things we learn in law school as a core job skill—examine a given situation, identify all the things that can possibly go wrong, however remote, and plan for those worst-case scenarios. Problems arise, though, when lawyers carry this degree of risk aversion into movement spaces. For one, evaluation of risk depends on your vantage point. As paid professionals who largely enjoy a degree of material comfort and housing security, the way most lawyers perceive risk is different from the perceptions of low-income tenants who have no job, no housing security, and minimal material comfort. I have been in tenant meetings and characterized a strategy as potentially risky, only to be told by tenants: “Things are so bad. What have we got to lose?”

Secondly, lawyers' risk aversion and tendency toward pessimism are completely at odds with the boldness, creativity, and sense of empower-

¹⁰⁰ For example, in the New York City tenant rights context, this period saw the creation of various mechanisms through which landlords could deregulate rent stabilized units, such as through high-rent vacancy decontrol, 20% vacancy increases, and individual apartment improvements. This period also saw a reduction in social spending, tax reductions for the wealthy, the extension of market values to government institutions, and cutbacks to government programs, as well as proliferation of the stigmatizing, racist rhetoric of the “welfare queen.” This culminated in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, 110 Stat. 2105, through which the federal government effectively abrogated its responsibility for the welfare system and passed it along to the states, while also instituting harsh work requirements as a condition for time-limited welfare assistance. *See also* FRANCES FOX PIVEN & RICHARD A. CLOWARD, *REGULATING THE POOR: THE FUNCTIONS OF PUBLIC WELFARE* 359-62 (Vintage Books ed. 1993).

¹⁰¹ This is based on my own experience as a tenant lawyer in New York City for the past 11+ years, as well as what colleagues with many more years for experience have recounted to me.

ment organizers try to foster in movement work. That is how lawyers become an impediment to movement building. When it comes to rent strikes, I feel confident saying that most tenant-side lawyers, myself included, were impeding a potentially powerful movement strategy for many years.

In New York City, tenant organizers led the charge in putting rent strikes back into the toolbox, and lawyers followed. First, just in specific situations, and then more boldly.¹⁰² In recent years, our rent strikes have focused on bad conditions, although this is not the history of rent strikes *per se*.¹⁰³ In one sense, this reinforces the prevailing transactional logic of landlord–tenant relationships: if you give me bad living conditions, then I won’t pay; but otherwise, it is socially acceptable for you to extract rent money from me, on terms entirely set by you, based merely on property ownership. But in the context of a society that expects tenants to pay rent regardless of how bad their housing conditions become, a rent strike is subversive, assertive, and takes great courage.

In this instance, the mass rent strike was not focused on bad housing conditions; though many tenants on strike were also grappling with landlords who refused to make repairs, and we used the rent strike strategy to address their situation. Instead, the rent strike’s primary intention was to apply pressure to advance the cancel rent campaign. Dozens of buildings with target landlords (e.g., the city’s most negligent, worst evictors and greatest profiteers) were coordinated into a mass rent strike, with their core demand being rent cancellation. For some tenants, being part of the rent strike was an act of solidarity, engaging in it despite having the money to pay rent. For many others, it collectivized and politicized their existing individual challenge of simply not having enough money to pay rent, whether that was because of COVID-19-related job loss or some other financial challenges.

When the call went out for lawyers to represent rent strike buildings, a lot of lawyers were enthusiastic about getting involved. In fact, we initially had more lawyers than we had buildings needing representation.

¹⁰² In particular during the past five years, tenant group representation in New York City received more funding through the city’s Anti-Harassment and Tenant Protection (AHTP) Program, which led to cohorts of attorneys working with groups of tenants in buildings, including representing them in rent strike cases. As the director of one of the two largest AHTP legal teams in the city from 2015 through early 2020, I was able to directly observe trends in rent strike cases. In the early years of the AHTP, work rent strikes were indeed a strategy to address bad conditions, particularly in buildings where the landlord’s ownership was tenuous due to foreclosure. In later years, there was a shift to using rent strikes to address rent increases (such as Major Capital Improvement increases) and most recently to using a multi-building rent strike to advance a broad statewide political campaign.

¹⁰³ *NYC Tenant Movement History*, *supra* note 18.

Attorneys worked to develop novel legal approaches, consistent with the goals of the rent strike. We created a coordinating committee,¹⁰⁴ which provided support, coordination, and collaboration with the organizers; we organized trainings around movement lawyering principles, the ethics of group representation, and novel legal defenses; and we created a manual for lawyers working with rent-strikers. Rent strike lawyers attended tenant meetings, coordinated with organizers in the buildings, and strategized with the coordinating committee.

With the court closures and eviction case suspensions,¹⁰⁵ the usual legal trajectory of a rent strike did not begin for many months. This was challenging for everyone in different ways. For the tenants, this delay prolonged their anxieties anticipating the landlord's inevitable legal attack. They were on rent strike, but apart from not paying rent, there were few outward signs of that in terms of their collective activity, which in turn made it hard to feel the collective power of the action. For many of the lawyers, the delay left them at a loss for what to do in the meantime. For those lawyers with more experience working with organized tenant groups, these circumstances were less challenging. They were accustomed to creatively using their legal skills, litigation, and advocacy approaches to respond to landlord strategies and to build tenant power, even outside of the anticipated non-payment eviction cases that are the usual legal terrain on which a rent strike is fought. Those lawyers demanded and sued for repairs; advocated for tenants when landlords made threats over rent strike banners hung from buildings; concocted innovative, affirmative lawsuits to address landlord misconduct; defended tenants when landlords tried to retaliate against individual striking tenants; and developed legal strategies that tenants could organize around. Movement lawyering takes creativity and the ability to envision legal strategies that are outside our more familiar lanes, including non-litigation strategies.

We had a mixed group of lawyers working in the rent strike buildings. Some had political perspectives that matched the campaign demands, while others did not. Some were used to working with organizers and organized tenants, while others had no such experience. Similarly, some of the tenant organizers were less experienced working with lawyers, either due to being newer to tenant organizing in buildings or because their model for tenant organizing had not previously incorporated attorneys and litigation strategies. This made support for both the lawyers and organizers essential; and we were intentional about creating those

¹⁰⁴ Comprising the author, Michael Grinthal (from Take Root Justice), and Adam Meyers (from Communities Resist).

¹⁰⁵ *Our Vision*, *supra* note 48.

structures of support from more experienced movement lawyers and organizers.

I often hear tenant organizers bemoaning the very real challenges of working with lawyers: lawyers overstep and want to dominate the discussion; lawyers bring a lot of ego into the room; lawyers talk in ways that aren't comprehensible; lawyers overvalue their professional opinions, even on topics they're unfamiliar with; lawyers are risk averse and always scare people away from organizing strategies; lawyers do not see tenants as their equals; lawyers think their time is more valuable than other people's; lawyers do not respect or understand organizing; lawyers get defensive and are not good at receiving feedback; and so on. In my work on the rent strike, these exact issues were raised by organizers in meetings I attended to help troubleshoot lawyer-organizer relationships that were not functioning smoothly. Organizers spoke of lawyers who failed to maintain contact with the organizer and tenants and then, when the organizer tried to address the issue, became defensive and annoyed, claiming they were too busy due to their very demanding job. Organizers talked about lawyers who scared the tenants in tenant meetings about the rent strike by perpetually dwelling on all the risks, or who spoke in legalese that tenants could not understand. Organizers described attorneys who became perceptibly angry with tenants or organizers who took steps to timely address issues because the organizing needed a rapid response, but did so in ways the lawyers regarded as missteps. From the outset we had called on our rent strike lawyers to be mindful of and work on these challenges, because organizers had seen them surface frequently over the years. Yet these issues still arose (albeit likely a lot less frequently than if we had not done so much groundwork to preempt them).

Many of these critiques surfaced as challenges in the lawyer-organizer collaborations in these rent strike buildings. I am confident that all the lawyers who put their hands up to be involved in the rent strike legal defense entered the work with passion, enthusiasm, and a deep belief in the importance of our project. And yet, there are certain concrete skills movement lawyers need to cultivate to do legal representation in the organizing context. A lot boils down to questions of communication: how lawyers communicate, what they say, and how often (or not) they communicate.

Movement lawyers should learn to communicate simply, as discussed above;¹⁰⁶ they need to learn to communicate legal information in a way that does not scare folks away from organizing. It takes courage to organize against a landlord, a boss, the cops, ICE, or whoever has the power to harm you. The role of the movement lawyer is to honor and take

¹⁰⁶ See *supra* Section II.

care of that courage; to protect it, not to deflate it. This is no small skill. It involves being able to validate the experiences people have with those in power and with the legal system that is built for powerful people. It involves acknowledging the reality of these challenges, while simultaneously acknowledging the power of collective action. And it definitely involves making sure we don't elevate the worst-case scenario to the point where it becomes the only thing in the room. The way a lawyer communicates legal information in movement spaces is not a neutral act. It can be empowering or disempowering. It can make the lawyer feel like the most powerful person in the room or it can make *everyone* feel more powerful.

Movement lawyers must also be prepared to attend meetings and not have a speaking role. It is important that lawyers consistently show up and that they stay through to the end—to build trust, to respect others' time and commitment, and to be well informed about all aspects of the strategy, not just the legal side. But that attendance should not be conditioned on the lawyer having a speaking role or an item on the meeting agenda. Lawyers generally expect to have a speaking role: in court, if a lawyer participates in a hearing and says nothing, they probably have not done their job. But in movement spaces, we need to cultivate the skill of stepping back and only stepping in when needed. We need to be okay with being unnecessary. In fact, we need to consider it a success when we are.

Movement lawyers must also maintain a practice of consistent advance preparation and consultation with organizers. Working out the lawyer's role in a meeting, what the lawyer should communicate, and how they should communicate it requires advance planning. Many of the challenges organizers encountered while working with lawyers on the rent strike (e.g., scaring tenants, raising strategies that hadn't been agreed on, taking up too much space) could be prevented by incorporating regular, intentional meetings between organizers and lawyers where together they planned out meetings and actions. We encouraged all our rent strike lawyers to have regular check-ins with the organizers and tenant leaders in their buildings; and when that happened, the work was better for it.

Finally, a recurring lesson from my years of representing tenant groups resurfaced in the rent strike legal representation. Organizing engagement is critical to maintaining group cohesion and collective power. Participating in a legal case, even as a group of tenants on rent strike, is inherently individuating and disempowering. Even though all the tenants come together in meetings, united in their goals, each still have an individual circumstance they are grappling with: different family concerns, a specific individual rent debt that is mounting on the statements they receive from the landlord each month, their own job situation, and their own set of consequences that will follow if they are evicted. Of course, we

must do whatever it takes to collectivize the experience for people: simple things like consolidating cases, talking about the group case in meetings, making sure when one person needs to address something individual there is group accompaniment and solidarity, and so on. However, whatever we do as lawyers probably will not be enough to counteract the individualized fear and anxiety embedded in most people's encounters with the legal system. Fortunately, as movement lawyers, our legal cases are part of a broader organizing effort. So, the very thing that can help counter the disempowering effects of the legal system is right there when tenants need it. Organizers help folks stay involved and connected, linking their individual struggles with the bigger political context and broader movement goals.

I felt particularly deflated when, in the middle of these rent strike efforts, I tuned into a panel discussion held by Tenants and Neighbors, only to hear the renowned Frances Fox Piven say that legal rent strikes are "difficult and torturous."¹⁰⁷ She went on to say that tenants don't realize their actual power in legal rent strikes.¹⁰⁸ This was definitely food for thought and I could immediately see where a perspective like this might come from. When the legal dimension of a rent strike is the only dimension, it will likely just become another encounter with a disempowering legal system: protracted, stress-inducing, disrespectful, confusing, racist, demeaning, and depleting. Tenants will not gain a sense of their collective power; in fact, they might feel less powerful walking away from the experience. When the legal strategy of a rent strike is part of broader organizing, tenants will probably still experience many of these things. But those elements will not necessarily define and dominate the whole experience, and they will be less likely to undermine the collective sense of power. Potentially, even negative experiences of the legal system can become the fuel to fire a deeper commitment to fighting back and standing up for one's rights as part of a collective. For the legal strategy to be a movement-building one, it requires the organizing. This is a lesson I think we can and should generalize to many contexts when we are thinking about litigation strategies. For all its rhetoric, the legal system was not designed to build the power of groups of poor people. We see that in its history and in what our courts do every day. When we choose to go to the courts as movement lawyers representing those who least benefit from the status quo, we must be hyperconscious of the design of the tool we are using, and then go flanked by organized numbers.

¹⁰⁷ See Tenants & Neighbors, *Confronting the Real Estate State in the COVID Era*, FACEBOOK (Oct. 10, 2020), at 45:51, <https://perma.cc/C2F8-C8FF>.

¹⁰⁸ *Id.* at 46:00.

As of July 2021, many tenants are still on rent strike and their rent strike lawyers are standing with them. The passage of ELFA¹⁰⁹ in April 2021 certainly impacted both the demand to cancel rent and the legal strategies available to rent-strikers. Tenants and organizers changed their organizing strategies in rent strike buildings, and our cohort of rent strike lawyers had to evaluate how the legal ground that tenants were fighting on had shifted. Together, we developed a new set of legal strategies to match the changed terrain, while continuing the fight against COVID-related evictions and to expand tenant power and rights.

V. CLOSING OUT – BUILDING OUR POWER TO FIGHT AND WIN

For each of the above campaigns, direct action was also a component, though one that I have not delved into here. While the legal system itself may not hold many of the solutions to our social problems, our resistance to it is replete with possibility and power. Even the legal solutions that brought glimmers of justice in our lifetimes were not won just by lawyers in courtrooms or by lawyers drafting bills; it has taken direct action by people in the streets, whether that was pushing politicians to act or shifting the public discourse that influences judicial decision-makers.¹¹⁰ Movement lawyers supporting direct action and civil disobedience must be prepared to be scrappy and prepared to learn. You should know the basics of legal observation for protests; know the common protest offenses charged by your police department; know how the police approach protests and civil disobedience in your local area; understand the arrest process; be able to identify when a criminal-immigration lawyer is needed; and know how to identify whether a direct-action strategy is creating the risk of arrest or not. You need to have multi-disciplinary contacts for criminal defense, immigration, family defense, and so on. You should provide technical support so that organizers can execute the actions they want with minimal risk of adverse consequences. The legal support should be aimed at people being able to engage in whatever direct action they choose, rather than telling them to not do it. You should be in all the planning meetings, even if there is not a clear legal component—you can

¹⁰⁹ ELFA, *supra* note 98.

¹¹⁰ For example, the organizing and struggles of the Civil Rights Movement led to the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Fair Housing Act of 1968; *see generally* Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 241; Voting Rights Act of 1965, Pub. L. 89-110, 79 Stat. 437; Fair Housing Act of 1968, 42 U.S.C. §§ 3601-19; the Supreme Court decision *United States v. Windsor*, 570 U.S. 744 (2013), striking down the Defense of Marriage Act, came on the back of decades of organizing, struggle, and movement-building in the LGBTQ+ movement to shift societal attitudes and inequity; *see also* ADAM COHEN, *SUPREME INEQUALITY: THE SUPREME COURT'S FIFTY-YEAR BATTLE FOR A MORE UNJUST AMERICA*, at xxiii, 5, 14-15, 272-73 (2020).

provide much better legal support if you thoroughly understand the action plans—be flexible and prepared for plans to change, and then, be in the streets to provide legal support, to lend your voice to the cause—so that the power of people united can move you. It will feed you and keep you invigorated in the work like nothing else can.

In closing, one final challenge I believe we must turn our attention to is the structural tension between our corporatized non-profit legal services organizations and the exigencies of movement work. We know the system that creates structural inequality and the need for non-profit legal services is the same system that birthed and sustains the non-profit industrial complex, which we participate in, uphold, reproduce, and materially benefit from.¹¹¹ Historically, non-profit organizations have played a social role of quelling dissent, individualizing social and political issues, pathologizing and criminalizing poverty, and creating a façade of justice that results in excusing deep, systemic inequality.¹¹² On a practical level, the jobs of most public interest lawyers like myself are not usually structured in a way that is conducive to movement work. The “time is money” philosophy that comes with funding and corporate culture means that most legal services advocates’ time is always fully occupied, if not over-booked. But being responsive to social events and crisis moments in the way described above requires us to be comfortable with redundancy. To step up for movement work when required, our jobs must have some element of built-in redundancy and flexibility, so we have time to respond to the unexpected and time to do work that does not easily fit within funding deliverables. Similarly, the professionalization of movement lawyering has created certain expectations around the hours within which movement work will happen and an expectation of remuneration for all aspects of the work. From a labor perspective, both are completely fair and reasonable demands; and yet at times they are at odds with the reality of movement spaces where, for example, tenants and immigrant workers need to meet at night and on weekends or where the role of the lawyer is not always to perform tasks that fit within a traditional non-profit job description. And of course, they also implicate racial and class differences between movement lawyers and the movements they serve—movement lawyers get paid to engage in movement struggle, whereas for most working-class tenants of color, they have to work to pay the bills and then engage in movement work when the regular workday is done. There are also significant components of movement work that inevitably fall outside of what direct legal services funding usually covers—and the work of most legal services organizations has historically been constructed around

¹¹¹ Rodríguez, *supra* note 5.

¹¹² *Id.*; PIVEN & CLOWARD, *supra* note 100, at 8-22, 88-94, 197-98.

funding sources and grant deliverables.¹¹³ If we want to build solid movement lawyering institutions, we need to contend with these tensions and work out how we are going to navigate them.

A period of intense political activity demands intense movement lawyering. For many of us, the COVID-19 pandemic was a time when a spotlight was shone on many of the struggles we had been fighting for years—around housing,¹¹⁴ mass incarceration,¹¹⁵ racist policing,¹¹⁶ healthcare,¹¹⁷ homelessness,¹¹⁸ debt,¹¹⁹ workers' rights¹²⁰ . . . the list goes on. The paradoxes of our society were laid bare for all to see, as billionaires were able to amass greater wealth, stock values soared, and trillions of dollars of aid was pumped into the corporate sector, while ordinary peoples' lives were increasingly characterized by job losses, financial ruin, and the cruel realization that the nation's politicians expected a mere \$1,200 in aid to stretch across most of 2020.¹²¹ The pandemic shone a spotlight on so many aspects of our society's deep, structural violence and

¹¹³ See generally Rodríguez, *supra* note 5.

¹¹⁴ See, e.g., RIGHT TO COUNS. NYC COAL., <https://perma.cc/XUH3-5HUH> (last visited Mar. 7, 2021); *What is the Homes Guarantee*, HOMES GUARANTEE, <https://perma.cc/JKF2-KKSJ> (last visited Mar. 7, 2021); RIGHT TO THE CITY ALL., <https://perma.cc/U33A-CXH6> (last visited Mar. 7, 2021); HOUS. JUST. FOR ALL, <https://perma.cc/E22Z-EZPM> (last visited Mar. 7, 2021).

¹¹⁵ See, e.g., CRITICAL RESISTANCE, <https://perma.cc/SZT6-S8G6> (last visited Mar. 7, 2021); COMMS. UNITED FOR POLICE REFORM, <https://perma.cc/2LUG-L7EX> (last visited, Mar. 7, 2021); BLACK YOUTH PROJECT 100, <https://perma.cc/3C8Z-63NU> (last visited Mar. 7, 2021); MOVEMENT FOR BLACK LIVES, <https://perma.cc/XA9R-GR6V> (last visited Mar. 7, 2021); PROJECT NIA, <https://perma.cc/2GMN-HJ26> (last visited Mar. 7, 2021).

¹¹⁶ See *id.*

¹¹⁷ See, e.g., NAT'L NURSES UNITED, <https://perma.cc/AD7K-EZA4> (last visited June 5, 2021); DEMOCRATIC SOCIALISTS FOR MEDICARE FOR ALL, <https://perma.cc/N6JD-A8T5> (last visited Mar. 7, 2021); HEALTHCARE-NOW, <https://perma.cc/UC78-HU23> (last visited Mar. 7, 2021).

¹¹⁸ See, e.g., DENVER HOMELESS OUT LOUD, <https://perma.cc/9X2Q-7ACP> (last visited Mar. 7, 2021); NAT'L UNION OF THE HOMELESS, <https://perma.cc/5ANF-GMXQ> (last visited Mar. 7, 2021); W. REGIONAL ADVOC. PROJECT, <https://perma.cc/XP2B-WFA5> (last visited Mar. 7, 2021); PICTURE THE HOMELESS, <https://perma.cc/HKF7-C3KT> (last visited Mar. 7, 2021); #HOMELESSCANTSTAYHOME, <https://perma.cc/43DA-WWEU> (last visited Mar. 7, 2021).

¹¹⁹ See, e.g., DEBT COLLECTIVE, <https://perma.cc/QW5C-WJJ6>, (last visited Mar. 7, 2021).

¹²⁰ See, e.g., BRANDWORKERS, <https://perma.cc/H4KU-7HEM> (last visited Mar. 7, 2021); NAT'L DOMESTIC WORKERS ALL., <https://perma.cc/E5YG-YTZD> (last visited Mar. 7, 2021); N.Y. TAXI WORKERS ALL., <https://perma.cc/9SCT-CHK8> (last visited Mar. 7, 2021); NAT'L DAY LABORER ORG. NETWORK, <https://perma.cc/7J7C-3HEB> (last visited Mar. 7, 2021).

¹²¹ See Peter Whoriskey et al., 'Doomed to Fail': Why a \$4 Trillion Bailout Couldn't Revive the American Economy, WASH. POST (Oct. 5, 2020, 12:30 PM), <https://perma.cc/74UV-GQQV>; see also Aimee Picchi, *U.S. Billionaires Gained Almost \$1 Trillion in Wealth During the Pandemic*, CBS NEWS (Oct. 20, 2020, 1:18 PM), <https://perma.cc/Z728-87UB>; Chuck Collins, *Updates: Billionaire Wealth, U.S. Job Losses and Pandemic Profiteers*, INEQUALITY.ORG (Apr. 15, 2021), <https://perma.cc/Z5B8-AQHK>.

inequality, creating opportunities for grassroots social movements to rise up. As a movement lawyer, I learned that we have a much deeper bench than I had realized, both in terms of other movement lawyers and in terms of the foundational work we had done to cultivate our practice. Yet, so much more is still needed. We need to ready ourselves for a future of transformative struggles, which also means ensuring that lawyering is not our only mode of participation in social movements. And as lawyers, we must use our skills to fiercely support the people who are fighting for a better world, the people who are bringing the fire.

“For it is not light that is needed, but fire; it is not the gentle shower, but thunder. We need the storm, the whirlwind, and the earthquake.”

Frederick Douglass, Rochester, New York, 1852¹²²

¹²² Frederick Douglass, *Address at Corinthian Hall: The Meaning of July Fourth for the Negro* (July 4, 1852), <https://perma.cc/3BPE-3L7R>.