

# Investing in Justice: The Impact of Establishing Right to Counsel for Tenants Facing Eviction<sup>1</sup>

By CECIL J. THOMAS

“True peace is not merely the absence of tension; it is the presence of justice.”

—Rev. Dr. Martin Luther King, Jr.

**S**tate and federal eviction moratoria have created a significant, albeit temporary, change in the typical landscape of Connecticut’s eviction crisis. Although Connecticut continues to see a steady stream of evictions in the midst of this economic and public health crisis, the number of evictions brought since April of 2020 has been much lower than at any other time in the past several decades. This temporary reprieve provides us with an unprecedented opportunity to face Connecticut’s once and future eviction crisis head-on, rather than allowing an unmitigated eviction tsunami to flood our state. If we do not address this crisis proactively, the resumption of Connecticut’s eviction crisis, exponentially amplified by COVID-19, will cause devastating harms to Connecticut renter households, and tremendous economic costs that will be borne by all of us for years to come.

Traditionally, Connecticut landlords bring approximately 20,000 evictions a year.<sup>2</sup> These evictions are concentrated in Connecticut’s urban centers, making Waterbury, Hartford, Bridgeport, and New Haven among the top 100 cities with the highest eviction rates in the country.<sup>3</sup> Connecticut’s eviction moratorium, and various federal moratoriums, which are expected to expire sometime this year, have temporarily reduced these numbers, creating much-needed housing stability for hundreds of thousands of low-income renter households who have been devastated by the effects of the COVID-19 pandemic. By all accounts, when these

state and federal moratoria are lifted, the United States will see an “avalanche” of evictions.<sup>4</sup>

Lawyers are a significant part of the solution to this anticipated crisis. Ensuring access to legal counsel for tenants is an investment in justice, an investment in the principle that the rule of law and equal access to justice are not just empty promises. The City of Baltimore, MD recently enacted a right to counsel for tenants facing eviction, becoming the seventh jurisdiction in the country to adopt such a measure.<sup>5</sup> Other cities that have enacted a right to counsel in eviction cases include New York City, Philadelphia, San Francisco, and Cleveland. A number of other jurisdictions across the country have made significant investments to ensure greater access to justice for tenants facing evictions, or are currently exploring such proposals.<sup>6</sup> Here in Connecticut, a number of right to counsel bills have been introduced in this legislative session by members of the Connecticut General Assembly.<sup>7</sup> These are welcome signs of progress here in Connecticut. The stakes involved in these cases—the loss of home, and all of the attendant harms—are simply too high to allow the status quo to continue. Enacting a right to counsel in eviction cases will yield improved outcomes for Connecticut’s renter households, and result in significant governmental and societal cost savings.

Why is it so important to provide lawyers to tenants facing eviction? Connecticut’s eviction (summary process) laws

represent a balance between an extraordinarily speedy process for landlords, and strict adherence to due process protections for tenants. This intended balance is evidenced in well-settled principles of Connecticut summary process law. “Summary process is a special statutory procedure designed to provide an expeditious remedy.” *Young v. Young*, 249 Conn. 482, 487–88 (1999) “Because of the summary nature of this remedy, the statute granting it has been narrowly construed and strictly followed.” *Jefferson Garden Assocs. v. Greene*, 202 Conn. 128, 143 (1987). Preserving this balance requires the assistance of counsel. Unrepresented tenants, forced to litigate against represented landlords within this expedited framework, cannot be said to receive true justice. Under Connecticut’s summary process statutes, the pleadings advance every three days,<sup>8</sup> resulting in a median disposition time for all summary process cases of just 26 days.<sup>9</sup> A tenant who loses a summary process matter may receive a stay of execution of as little as five days.<sup>10</sup> With such high stakes, it is hard for an unrepresented tenant to assess the costs and benefits of settlement versus further litigation. Landlords are represented by counsel in over 80 percent of Connecticut summary process cases. Tenants are represented by counsel in only 7 percent of those cases.<sup>11</sup> The default rate for tenants failing to appear, currently 37 percent of summary process cases, is one reflection of this disparity in representation.<sup>12</sup> While these figures reflect a certain “absence of tension” in our

Connecticut eviction processes, they do not reflect the presence of justice.

Evictions cause devastating personal consequences, described in greater detail in my prior column in this series. Evictions cause affected households and families to experience homelessness, housing instability, and adverse health and education outcomes, often lasting many years after the eviction. The record of an eviction causes the loss of future housing opportunity, as that record causes prospective landlords to deny future rental applications. Evictions disproportionately impact low-income renters, who are often operating on razor-thin margins, meaning that even small economic setbacks, such as a reduction in hours of work, a towed vehicle, a family emergency, or short period of illness, can cause a chain reaction that rapidly leads to eviction. Evictions disproportionately affect racially and ethnically diverse communities, with women and children of color evicted at significantly higher rates throughout the country. Evictions, and the resulting housing instability, are a tragic reality for low-income children, with studies estimating that one in four low-income U.S. children experience an eviction by the age of 15 years old.<sup>13</sup> Given the scale and scope of our country's unaddressed eviction crisis, these personal harms result in societal and governmental costs reaching hundreds of millions of dollars in increased shelter, social service, healthcare, and child welfare costs.<sup>14</sup>

By examining jurisdictions that have enacted right to counsel measures, we can better understand the potential for positive impact in Connecticut from such an investment in justice. As a result of enacting an eviction right to counsel, tenant representation rates in evictions in New York City rose from 1 percent to 38 percent from 2013 to 2020. During that time, evictions dropped 41 percent overall, including a 15 percent drop in 2019 alone. Overall, 84 percent of tenants who were represented by counsel remained in their homes.<sup>15</sup> Evictions fell five times faster in zip codes where NYC's right-to-counsel law took effect in 2018 than in zip codes without right-to-counsel.<sup>16</sup> Analysis of civil legal aid representation of tenants

in Baltimore found that "when tenants are represented, they can avoid the high likelihood of disruptive displacement in 92 percent of cases."<sup>17</sup> A similar study in Philadelphia found that represented tenants avoided disruptive displacement in 95 percent of cases.<sup>18</sup>

Investment in access to justice for low-income tenants facing eviction also results in significant governmental and societal costs savings. Global advisory firm Stout Risius Ross has found that every dollar invested in providing legal representation to low-income tenants would yield estimated savings of \$12.74 to Philadelphia,<sup>19</sup> and \$6.24 to Baltimore and Maryland.<sup>20</sup> In Philadelphia, Stout found that \$3.5 million could provide legal assistance to all tenants unable to afford representation, avoiding \$45.2 million in costs to Philadelphia annually. In Baltimore, Stout found that the \$5.7 million cost to fully implement right to counsel for low-income tenants facing eviction would produce a total combined savings of \$35.6 million to Baltimore and Maryland. This is just a snapshot of the beneficial impact of right to counsel initiatives, revealing the profound potential of such an investment in justice here in Connecticut.

I urge you to get involved, and to take up this important cause in the advancement of access to justice. The Connecticut Bar Association is supporting eviction right to counsel proposals before the Connecticut General Assembly in the upcoming legislative session. The CBA has joined the American Bar Association COVID-19 Pro Bono Bar Network that is developing a nationwide pro bono eviction defense response to the impending eviction surge. Many of our Connecticut legal aid programs are working to marshal and train additional pro bono volunteers to help respond to Connecticut's eviction crisis, and would certainly welcome your assistance. The CBA is providing training support and case referral connections for pro bono attorneys interested in eviction defense through CBA Pro Bono Connect.<sup>21</sup> Please take some time to support the eviction right to counsel movement and to volunteer to provide pro bono representation to tenants facing eviction at this crucial time.

On every level, whether through the beneficial impact on a vulnerable family, or through the systems change that you help to create, your efforts will reflect the true measure of our profession's deep commitment to access to justice. ■

## NOTES

1. This is the third column in a series on Connecticut's eviction crisis. For the first in the series, please see "Connecticut's Eviction Crisis and the Right to Counsel Movement," *CT Lawyer* magazine, Vol. 30, No.6 (July / August 2020). For the second column in the series, highlighting the impact of evictions on Connecticut's low-income families and children, please see "The Devastating Impact of Evictions on Connecticut Families," *CT Lawyer* magazine, Vol. 31, No. 3 (January / February 2021).
2. Connecticut Advisory Council on Housing Matters, Report to the General Assembly (January 6, 2021), Appendix C-2
3. Eviction Lab, Top Evicting Large Cities in the United States, [evictionlab.org/rankings/#/evictions](https://evictionlab.org/rankings/#/evictions)
4. "Struggling Renters Face Avalanche of Evictions Without Federal Aid," *Washington Post*, December 25, 2020; "An Eviction Tsunami is on the Horizon, and with it Comes More COVID Cases," *CT Mirror*, December 16, 2020.
5. Bennett Leckrone, *Baltimore Tenants Now Have Legal Right to Lawyer in Eviction Cases*, Maryland Matters (Dec. 4, 2020), [www.maryland-matters.org/blog/baltimore-tenants-now-have-legal-right-to-lawyer-in-eviction-cases](https://www.maryland-matters.org/blog/baltimore-tenants-now-have-legal-right-to-lawyer-in-eviction-cases).
6. See Nat'l Coal. for a Civil Right to Counsel, *Major Developments* (last accessed Dec. 17, 2020), [www.civilrighttocounsel.org/major\\_developments](https://www.civilrighttocounsel.org/major_developments). See also Kriston Capps, *The Right to Eviction Counsel is Gaining Momentum*, Bloomberg CityLab (Dec. 13, 2019), [www.bloomberg.com/news/articles/2019-12-13/the-fight-to-boost-tenant-right-to-counsel-laws](https://www.bloomberg.com/news/articles/2019-12-13/the-fight-to-boost-tenant-right-to-counsel-laws).
7. See e.g., "Access to Counsel in Certain Summary Process Proceedings," Proposed House Bill 5359 (2021); "An Act Concerning Right

*Continued on page 40* →



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## Time To Go Pro Bono

Continued from page 33

- to Counsel in Summary Process Proceedings,” Proposed Senate Bill No. 531; “An Act Establishing a Pilot Program That Will Provide Legal Counsel to Tenants in Eviction Proceedings,” Proposed Senate Bill 523 (2021)
8. Conn. Gen. Stat. 47a-26c (“All pleadings, including motions, shall advance at least one step within each successive period of three days from the preceding pleading or motion.”)
  9. Connecticut Advisory Council on Housing Matters, Report to the General Assembly (January 6, 2021), Appendix C-3
  10. Conn. Gen. Stat. 47a-35 (“Execution shall be stayed for five days from the date judgment has been rendered....”)
  11. Connecticut Advisory Council on Housing Matters, *Report to the General Assembly* (January 6, 2021), Appendix C-8.
  12. *Id.* at Appendix C-6.
  13. “The Devastating Impact of Evictions on Connecticut Families,” *CT Lawyer* magazine, Vol. 31, No. 3 (January/February 2021).
  14. Nat’l Low Income Hous. Coal, *Costs of COVID-19 Evictions* (Nov. 19, 2020), [nlihc.org/sites/default/files/costs-of-covid-19-evictions.pdf](https://nlihc.org/sites/default/files/costs-of-covid-19-evictions.pdf). See also Children’s Health-Watch, *Behind Closed Doors: The Hidden Health Impacts of Being Behind on Rent* (2011), [childrenshealthwatch.org/wp-content/uploads/behindcloseddoors\\_report\\_jan11-.pdf](https://childrenshealthwatch.org/wp-content/uploads/behindcloseddoors_report_jan11-.pdf).
  15. NYC Office of Civil Justice, *Universal Access to Legal Services: A Report on Year Three of Implementation in New York City* (Fall 2020), [www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ\\_UA\\_Annual\\_Report\\_2020.pdf](https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ_UA_Annual_Report_2020.pdf).
  16. Oksana Mironova, *NYC Right to Counsel: First Year Results and Potential for Expansion*, Cmty. Serv. Soc’y (Mar. 25, 2019), [www.cssny.org/news/entry/nyc-right-to-counsel#\\_edn3](https://www.cssny.org/news/entry/nyc-right-to-counsel#_edn3).
  17. Stout Risius Ross, *The Economic Impact of an Eviction Right to Counsel in Baltimore City* (May 8, 2020), [cdn2.hubspot.net/hubfs/4408380/PDF/Eviction-Reports-Articles-Cities-States/baltimore-rtc-report-final-5-8-2020.pdf](https://cdn2.hubspot.net/hubfs/4408380/PDF/Eviction-Reports-Articles-Cities-States/baltimore-rtc-report-final-5-8-2020.pdf).
  18. Stout Risius Ross, *Economic Return on Investment of Providing Counsel in Philadelphia Eviction Cases for Low-Income Tenants* (Nov. 13, 2018), [cdn2.hubspot.net/hubfs/4408380/PDF/Cost-Benefit-Impact-Studies/Philadelphia%20Evictions%20Report\\_11-13-18.pdf](https://cdn2.hubspot.net/hubfs/4408380/PDF/Cost-Benefit-Impact-Studies/Philadelphia%20Evictions%20Report_11-13-18.pdf).
  19. See n. 18.
  20. See n. 17.
  21. [www.ctbar.org/members/volunteer-today/CBA-pro-bono-connect/for-attorneys](https://www.ctbar.org/members/volunteer-today/CBA-pro-bono-connect/for-attorneys). To learn more about how to navigate Pro Bono Connect, please see Time to Go Pro Bono Column. *CT Lawyer*, September/October 2020. [www.ctbar.org/docs/default-source/publications/connecticut-lawyer/ctl-vol-31/1-septoct-2020/ctl-sept-oct-20---column---time-to-go-pro-bono.pdf?sfvrsn=e06b274a\\_6](https://www.ctbar.org/docs/default-source/publications/connecticut-lawyer/ctl-vol-31/1-septoct-2020/ctl-sept-oct-20---column---time-to-go-pro-bono.pdf?sfvrsn=e06b274a_6)

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## Supreme Deliberations

Continued from page 35

discretionary tasks, but rather permitted juries to impose negligence liability where municipal employees had abused their discretion when carrying out a discretionary task. Indeed, in *Tetro*, a unanimous Court upheld a damages award based on negligent police conduct during a pursuit.

But what about the majority’s point that *Tetro* is irrelevant because the defendants had not raised the immunity issue in that case? Justice Ecker had “great difficulty believing” that the *Tetro* defendants “would have overlooked the most basic and common defense in the municipal playbook had it been viable.” Instead, the fact that the *Tetro* defendants had not raised the defense supported Justice Ecker’s conclusion that, prior to the judicial intervention of the past few decades, immunity was not available in such situations. Stated another way, “the fact that municipal immunity was a nonissue in *Tetro* almost certainly was a function of a failure to litigate the obvious [rather] than a failure to raise and decide the issue.”

Justice Ecker also criticized the majority’s determination that the identifiable person-imminent harm exception did not apply under the facts of *Borelli*. After conducting another historical review, Justice Ecker concluded that, among other things, the current understanding of the exception is far too narrow. For example, the “legally compelled presence” requirement, properly understood, is a sufficient condition for the exception to apply, not a necessary one.

On the issue of whether the contemporary understanding of this exception has strayed from its doctrinal underpinnings,

Justice Ecker may not be alone. Justice D’Auria, in his concurring opinion, expressed his willingness to reevaluate the contours of the exception in a future case. And Chief Justice Robinson, in his concurring opinion, observed that “[i]n a precedential vacuum ... no one would be more of an identifiable person subject to imminent harm than the occupant of a car being pursued by police....” Nevertheless, Chief Justice Robinson concluded that, as a policy matter, the exception should not apply to passenger “presumed to be in cahoots” with a fleeing lawbreaker.

So where does this leave us? After *Borelli*, a claim attacking an officer’s decision to start a chase is likely to fail. But given the separate opinions of Chief Justice Robinson and Justice D’Auria, as well as Justice Ecker’s dissent and the care that the majority took to limit the scope of its holding, we can’t say for sure that a suit challenging the manner in which an officer conducted a pursuit, or an officer’s conduct during a nonemergency situation, would meet the same fate. See also *Cole v. City of New Haven*, \_\_\_ Conn. \_\_\_ (Oct. 15, 2020) (reversing summary judgment order where, among other things, evidence indicated that city and police department policies may have imposed ministerial duty governing officer’s conduct during a pursuit). Perhaps the Court is primed for a dramatic reversal of its recent municipal immunity jurisprudence. We may not have to wait long to find out. See *Daley v. Kashmanian*, 335 Conn. 939 (2020) (granting certification to address whether § 52-557n confers governmental immunity from liability for damages arising from personal injuries caused by an officer’s negligent operation of a vehicle during on-duty surveillance). ■

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Continued from page 31

our story from a fuller, and perhaps less flattering perspective. It is up to us as to whether they will tell a story of fundamental transformation towards a more diverse, equitable, and inclusive legal profession for the future. ■

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## NOTES

1. Lawrence M. Friedman, *A History of American Law (4th Edition)* Oxford University Press (2019), p. 707-708.
2. American Bar Association, “ABA Timeline,” [https://www.americanbar.org/about\\_the\\_aba/timeline/](https://www.americanbar.org/about_the_aba/timeline/) (last retrieved on February 9, 2021)
3. *Id.*
4. *Id.*