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Making Change Together:

The Multi-Pronged, Systems Theory Approach to Law and Organizing That Fueled a Housing Justice Movement for Three-Quarter House Tenants in New York City

Matthew P. Main*

The overlapping consequences of mass incarceration, a sweeping opioid epidemic, and an unprecedented homelessness crisis culminated in the birth of an exploitative underground industry of unlicensed, unregulated housing—known as "three-quarter housing"—in New York City. Three-quarter houses are generally small buildings that hold themselves out as transitional housing "programs" even though they are not licensed or regulated by any government agency. In the aftermath of a government effort to reduce reliance on homeless shelters, three-quarter houses emerged as a new benchmark for housing of last resort for people with histories of incarceration, substance use, homelessness, and/or personal crisis. For people on parole and those transitioning out of residential substance use programs, three-quarter houses were often the only housing option available to them. A desperate need for housing sowed the seeds for a relentless enterprise of exploitation fueled by Medicaid fraud and systematic illegal evictions. The Article discusses how tenants, lawyers, and organizers used law and community organizing to attack that enterprise.

The Article provides a background of what three-quarter houses are; the social, economic, and political context that gave rise to them; and the web of legal and practical problems caused by the systems that allowed them to flourish despite overt profiteering and a routine disregard of fundamental tenant rights. The central focus of the article is how tenants, lawyers, and

*Law Instructor at CUNY School of Law. The author would like to thank the editors of the Georgetown Journal on Poverty Law & Policy for their tireless work and professionalism during the editing process. Many thanks also to Andrea McArdle, Arlene Rodriguez, and John Whitlow for your invaluable support, encouragement, and contribution to this Article. Thank you to Mobilization for Justice for supporting the vision of the Three-Quarter House Project and for giving me the privilege and opportunity to work with such a special team of relentless advocates. Thank you to JohnAugust Bridgeford, Amy Blumsack, Sandra Gresl, Michael Grinthal, Tanya Kessler, Raquel Namuche, Chris Schwartz, Paulette Soltani, and to everyone who collaborated in the TQH Project experiment over the years. I learned so much from each one of you. Most importantly, thank you to the fierce tenant activists and organizers of the Three-Quarter House Tenant Organizing Project. You continue to inspire me to do better, fight harder, and to believe in a better tomorrow.

organizers adopted the flexibility of a multi-pronged, utilitarian approach to law and organizing to demand accountability and build a tenant-driven movement for reform. The Article chronicles the trajectory of that law and organizing endeavor through the prism of Lucie E. White's "three visions" of activist lawyering to analyze its challenges, triumphs, and shortcomings. Ultimately, the goal of the Article is to historicize the little-known struggle of three-quarter house tenants in New York City, to offer that experience as a tool for community-based lawyering, and to posit that a collaborative, systems theory approach grounded in utility and versatility—rather than a particular "model" of law and organizing—should be the paradigm for fusing the work of lawyers, organizers and affected people into a movement for transformative change.

I. INTRODUCTION

It's 10:18 p.m. You come home and you find all of your belongings packed up in big black trash bags thrown on the curb. You don't have a lot—you lost your apartment a couple years ago—but everything you have is now packed up and thrown on the street like trash. You try to move your things back into the building, but you are confronted at the door by Mike, the "house manager." Mike tells you that you are "discharged," because you missed the 10:00 p.m. curfew. You've lived there for six months and don't have anywhere else to stay. You ask him where you are supposed to go. He tells you it's not his problem and closes the door in your face.

Your history of addiction wreaked havoc on most of your family and personal relationships, so you really don't have anywhere to go. You don't have any money saved. You call the police.

After forty minutes, the police finally arrive. Two cops get out of the car. You notice they are both white. They look annoyed. You're a little nervous because you're Black, and your experience with the police over the years has been turbulent given your drug history. But you have been sober for over eight months, and you haven't done anything illegal. You hope you can just explain the situation, get back into your room, and go to bed.

You start to explain. You don't use drugs anymore. You aren't causing problems. You pay rent. The house manager locked you out, because you were late for curfew. They say, "Curfew? House manager? What is this, a halfway house or something?" You aren't really sure what the house is. You heard that it's a "three-

quarter house," but you don't really know what that means. There are no supportive services at the building. You pay rent, and you live there. You were sent to the house by the inpatient rehab program where you were living and in recovery for a few months. You assumed the house where they were sending you would be safe and stable since it was a state-licensed rehab program that referred you there.

When you left the rehab program you were homeless. You went to the three-quarter house from rehab and met a guy named Chuck who told you that he ran a "program" at the house. He asked if you were on Medicaid. You said you were. He told you that if you signed some papers and went to an outpatient drug treatment program five days a week you could live there. You had already started going to a different program, but Chuck told you that everyone who lives there has to go to the program he has a relationship with. (You learned after that even people who never had a drug problem had to go to that same program. It was common knowledge in the house that Chuck was working some kind of Medicaid kickback scam with the outpatient program.) You signed the papers. You didn't really know what they said, but you were desperate for a place to stay. And you were tired. You've been homeless before. You would have signed just about anything at that point if it meant a roof over your head.

Mike has lived at the building a little longer than you have. He told you that he was sent to the house by parole—he's lived there since he came back to Brooklyn after serving a few years upstate for a drug conviction. Until recently, Mike was just a regular tenant like you—and most of the other thirty-seven guys who were crammed in the three-family brownstone—just trying to find a little stability in his life. But a couple months back Chuck said he would give Mike his own room if he would help keep an eye on the guys who lived at the house and enforce the "house rules." Mike agreed. Since then you have seen Mike kick several guys out of the house onto the street. Until now you never had a problem with him so you didn't see any reason it would happen to you.

The cops go to the door to talk to Mike. Mike shows the officers a document labeled "Waiver of Tenant Rights." The police look at it and ask you if you signed it. You couldn't remember but it looked like your signature. The officers talk to each other about what they think it means. They ask you if you still go to the outpatient program. You tell them you do, but you miss it sometimes because you're looking for work. The cops talk to each other again. Mike tells the police that you have been "discharged," whatever that means. The cops say that they think the "waiver" means that the house manager has the right to keep you out since they discharged you from the "program." "What program?" you ask. They shrug. They can't do anything about it. They tell you to go to court tomorrow if you want to get back in but grumble that they don't understand why you would even try to go back to that "shithole." It's overcrowded, dirty and has bedbugs. "It's filled with addicts and convicts." They don't understand that you don't have another option. You try to explain, but they tell you that they are going to arrest you if you don't leave. It's that simple.

You sleep on the train that night. If you make it until morning without being arrested, maybe you'll go to housing court. But you don't have extra money for the train. You don't have a lawyer. And you don't even know if what happened to you is illegal. You know other guys who tried to go to court when they got kicked out.

None of them ever came back. The cops are probably right. It's not worth fighting it. You see the writing on the wall.

Relapse. Homelessness. Jail.

Repeat.

This scenario highlights the all-too-common moment of crisis in the lives of thousands of very low-income New Yorkers who rely on so-called "three-quarter houses," the underground network of unlicensed, unregulated housing in New York City. For many three-quarter house tenants, this type of eviction without court process looms as an almost inevitable collapse of stability in their lives. While illegal eviction is perhaps the most egregious and destabilizing component of the three-quarter house tenant experience, it is just one thread in the complex knot that is the three-quarter house problem.

The three-quarter house industry surfaced at the convergence of the era of mass incarceration, an unprecedented homelessness crisis, and a relentless opioid epidemic.[1] By the early 2000s, three-quarter houses had become the de facto housing of last resort for a diverse population of individuals whose lives are touched by any combination of those systems. The vast majority of three-quarter house tenants are poor people of color who are among the most in need of safe, stable housing in New York City.[2]

The root of the problem is hard to pinpoint. Does it stem from the criminal legal system and prison reentry? Is it a symptom of substance use disorders? Is it merely due to a dearth of safe, stable housing for poor people? Can it be explained as yet another outgrowth of institutional racism and a market-based economy? Or

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1. This article describes the "opioid epidemic," "homelessness crisis," and "mass incarceration" among the major systems that fueled the birth of the three-quarter house industry. The author recognizes and would like to clarify that those are broad generalizations. People who live in three-quarter houses have diverse backgrounds. Some people were "unhoused" before entering a three-quarter house but would not self-identify as "homeless." Some tenants have substance use histories entirely disconnected from the opioid crisis and some have no substance use history at all. Many tenants are formerly incarcerated, but some have had no contact at all with police or the criminal legal system. That diversity of background and experience speaks to the role of three-quarter housing as a one-size-fits-all shelter of last resort.

2. It is with some apprehension that the author elects to use the phrase "poor people" to describe the individual human beings who were targeted by the three-quarter house industry. The author considered "low-income" or "low-wealth" individuals or "people experiencing poverty" among other descriptors. Reluctance to adopt any one of those alternatives stems from a concern that such terms may have the unintended consequence of sanitizing what the author views as a form of oppression inflicted by social norms, racism, bias and systemic inequality. Being "poor" is not merely a result of one's income or net worth. *See generally* SASHA ABRAMSKY, THE AMERICAN WAY OF POVERTY (2013). Poverty is what a market-based economy grounded in racism and systemic oppression *does* to the have-nots. *See id.* at 10–12, 87–90 (asserting that poverty is a "scandal" perpetrated by politically-enabled, market-driven inequality "stoked [by] bigotries and stereotypes," rather than a mere "tragedy" of happenstance). The author's use of the term "poor people" does not portend to appropriate that term on behalf of a community to which the author does not belong. Instead, it reflects an effort to align with the movement-building principles articulated by those such as The Poor People's Campaign. *See Fundamental Principles*, POOR PEOPLE'S CAMPAIGN, https://www.poorpeoplescampaign.org/fundamental-principles/ (last visited Nov. 17, 2019). Specifically, it is grounded in the spirit of lifting up "those most affected by systemic racism, poverty, the war economy, and ecological devastation and to building unity across lines of division." *Id.* Consistent with those principles, the author recognizes that "poverty and economic inequality cannot be understood apart from a society built on white supremacy" and that "[b]laming the poor" for the systemic oppression they experience "perpetuate[s] economic exploitation, exclusion, and deep inequality." *Id.*

are housing laws and the courts that interpret them to blame? Perhaps it is a lack of public awareness or political will?

With so many questions, a clear, logical path to a "solution" is similarly elusive. What do tenants want? How can their voices be amplified? What kind of collective action can tenants take? Can "justice" be achieved in the courts? Is there a need for legislative and policy reform? Can media attention help? Might it hurt? A small group of tenants, lawyers, and organizers grappled with these questions for nearly ten years. And in the course of a messy, unscripted collaboration marked by victory and defeat, those tenants, lawyers and organizers embarked on a journey to answer them.

This Article is about movement lawyering. It is a memoir of the tensions, challenges, triumphs, and shortcomings of a law-and-organizing model that evolved to confront the three-quarter house industry and demand justice for tenants in New York City.

Part II of this Article defines three-quarter houses and explains the social, economic, and political context that gave rise to the three-quarter housing model. It then looks to Lucie E. White's "Three Levels of Subordination" to contextualize the human experience of three-quarter house tenants and frame the maze of interlocking problems that emerge from the three-quarter house industry.[3] Part III uses the framework of White's "Three Visions of Activist Lawyering" to analyze the multipronged approach to law and organizing employed by tenants, organizers, and lawyers to attack that industry."[4] Part IV chronicles the trajectory of that law-and-organizing endeavor through the prism of Lucie E. White's Three Visions to analyze its challenges, triumphs, and shortcomings. It posits that a collaborative, systems theory approach grounded in utility and versatility—rather than a particular "model" of law and organizing—should be the paradigm for fusing the work of lawyers, organizers, and affected people into a movement for transformative change. Finally, Part V offers concluding thoughts and charges lawyers to think outside of the confines of the legal canon to invigorate new movements for social, racial, and economic justice.

II. BACKGROUND: HOW MASS INCARCERATION, A HOMELESSNESS CRISIS, AND THE OPIOID EPIDEMIC GAVE RISE TO THE EXPLOITATIVE THREE-QUARTER HOUSE INDUSTRY

"When people are stably housed, it provides them a springboard from which they can reach their next goals, be it education, employment, physical and

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3. *See generally* Lucie E. White, *To Learn and Teach: Lessons from Driefontein on Lawyering and Power*, 1988 WIS. L. REV. 699, 748 (1988). White describes those "Three Levels of Subordination" as (1) limits on the ability of a particular group to prevail within established channels for dispute resolution, (2) how "social values and institutional practices" exclude certain groups, and (3) a psychological process "triggered by the experience of subordination itself" that may lead to alienation among certain communities. *Id.* at 746–53.

4. *See id.* at 754. Under White's first vision of activist lawyering, the lawyer adheres to a role of transforming client grievances into winning legal claims. *Id.* The "second-dimension" lawyer broadens her goals to stimulate "discourse about social justice" and "expand public consciousness" to mobilize for broader change. *Id.* at 759. Under the third vision, the lawyer's objective is to develop political consciousness among the subordinated community in furtherance of autonomous collective resistance. *Id.* at 765.

emotional wellness, or financial self-sufficiency. Without stable housing, everything else is at risk."[5]

A. What Are Three-Quarter Houses? Why Do They Exist?

In the early 2000s, the overlapping consequences of mass incarceration, a sweeping opioid epidemic, and an unprecedented homelessness crisis culminated in the birth of an exploitative underground industry of unlicensed, unregulated housing, known as "three-quarter housing," in New York City.[6] Three-quarter houses are generally small buildings that hold themselves out as transitional housing "programs" even though they are not licensed or regulated by any government agency.[7] The landlords who operate three-quarter houses prey on people's desperate need for housing to lure potential tenants.[8] They make deceitful, false promises to provide supportive services, such as job training or assistance obtaining alternative housing, and market themselves with motivational names like "Miracle House," "Steps to Better Living," and "House of Hope."[9] Under the false pretense of "program," and with no legal authority, three-quarter house operators impose so-called "house rules" such as curfews, limitations on visitors, or restrictions on conduct to micromanage the everyday lives of

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5 . Luther Mack, *Who We Are*, THREE-QUARTER HOUSE TENANT ORGANIZING PROJECT, http://www.topnyc.org/who-we-are (last visited Nov. 17, 2019).

6. JOHN JAY COLL. OF CRIMINAL JUSTICE PRISONER REENTRY INST., THREE-QUARTER HOUSES: THE VIEW FROM THE INSIDE 5–6 (2013), http://johnjaypri.org/wp-content/uploads/2016/04/PRI-TQH-Report.pdf; Kim Barker, *A Choice for Recovering Addicts: Relapse of Homelessness*, N.Y. TIMES (May 30, 2015), https://www.nytimes.com/2015/05/31/nyregion/three-quarter-housing-a-choice-for-recovering-addicts-or-homelessness.html ("Virtually unnoticed and effectively unregulated, the homes have multiplied over the past decade, driven by a push to reduce shelter rolls, a lack of affordable housing and unscrupulous operators."). For background on policies that fed the growth of three-quarter houses, *see Warehousing the Homeless: The Rising Use of Illegal Boarding Houses to Shelter Homeless New Yorkers* [hereinafter Warehousing the Homeless], COALITION FOR THE HOMELESS, https://www.coalitionforthehomeless.org/press/warehousing-the-homeless-the-rising-use-of-illegal-boarding-houses-to-shelter-homeless-new-yorkers-2/ (last visited Nov. 17, 2019).

7. *See* JOHN JAY COLL. OF CRIMINAL JUSTICE, *supra* note 6, at 5; United States v. Narco Freedom, Inc., 95 F. Supp. 3d 747, 749 (S.D.N.Y. 2015) ("These three-quarter houses do not provide in-house services to tenants, are not licensed or regulated, and have no formal arrangement with any government agency."). On June 2, 2015, Mayor De Blasio declared the three-quarter house industry a citywide problem and instituted a City Task Force on Three-Quarter Housing, saying, "We will not accept the use of illegally subdivided and overcrowded apartments to house vulnerable people in need of critical services." Kim Barker, *New York City Task Force to Investigate 'Three Quarter' Homes*, N.Y. TIMES (June 1, 2015), https://www.nytimes.com/2015/06/01/nyregion/new-york-city-task-force-to-investigate-three-quarter-homes.html (last visited Nov. 17, 2019).

8. *See, e.g.*, Transcript of Plaintiffs' Openings at 3, Webster v. #1 Mktg. Serv. Inc., No. 30238/2010 (N.Y. Sup. Ct. 2017) ("Three-quarter houses are overcrowd[ed] buildings that are operated by individuals on a for-profit basis. They recruit their tenants from the homeless population and incentivize them to come to the houses by offering false promises of decent living conditions and the provision of social services once individuals move into the houses. The operators of these houses also promise prospective tenants that they will help them find assistance in obtaining permanent independent housing after they've moved in.").

9. *See* Barker, *supra* note 7 (referring to the "aspirational names [of three-quarter houses] like Freedom House and Miracle House"); Jodine Mayberry, *New York '3-Quarter House' Operators Admit to Medicaid Fraud Scam*, 23 WESTLAW J. HEALTH CARE FRAUD 8 (2018) (noting "Steps to Better Living Inc." among the corporations controlled by three-quarter house operator convicted of larceny stemming from Medicaid fraud); Davidson v. House of Hope, 19600/12, N.Y. L.J. 1202579307267 (Civ. Ct. 2012).

occupants.[10] Most three-quarter houses are segregated by gender, and hierarchy or favoritism based on race or ethnicity is commonplace.[11] The houses tend to be dangerously overcrowded and are often tagged with numerous housing code violations.[12] Instead of a stable and supportive environment, residents routinely battle exploitation by oppressive house operators who seek to profit on the backs of tenants' dire need for housing.[13] Tenants are frequently required to attend an outpatient substance use treatment program chosen by the house operator, even when that tenant many not need or want treatment, or when attending such a program conflicts with employment, education, or family obligations.[14] Almost uniformly, three-quarter house tenants are taunted by the specter of illegal eviction.[15]

Three-quarter house tenants are among the most systemically marginalized in New York City. The vast majority have been arrested, and many have spent months or years of their lives in jail or prison.[16] Like the population of incarcerated persons in New York State and around the nation, three-quarter house tenants are

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10. *See, e.g.*, Cooper v. Back on Track Grp., Inc., 994 N.Y.S.2d 251, 254–56 (Civ. Ct. 2014) (incorporating extensive excerpt of "rules" from the "program" purportedly operated by landlord); Wright v. Lewis, No. 12376/08, 2008 WL 4681929, at *7–8 (N.Y. Sup. Ct. Oct. 23, 2008) (same).

11. *Wright*, 2008 WL 4681929 at *1 (noting that the occupants were "indigent and disabled female tenants").

12. *See* JOHN JAY COLL. OF CRIMINAL JUSTICE, *supra* note 6, at 6–7 (citing an analysis by the Furman Center for Real Estate and Urban Policy, finding that of 317 known three-quarter house addresses, eighty-eight percent had a building code complaint between 2005 and 2012 that resulted in at least one violation or stop-work order by the New York City Department of Buildings).

13. *See* United States v. Narco Freedom, Inc., 95 F. Supp. 3d at 760 (noting that Narco Freedom does not dispute that it conditions housing on the resident's participation in outpatient drug treatment program); Press Release, N.Y. State Office of the Attorney Gen., Attorney Gen. James Announces Conviction of "Three-Quarter House" Dir. Charged With Defrauding Medicaid Through A Kickback Scheme (Jan. 8, 2019), https://ag.ny.gov/press-release/attorney-general-james-announces-conviction-three-quarter-house-director-charged ("The defendants exploited individuals struggling with homelessness and substance abuse in order to pad their bottom line."); Press Release, N.Y. State Office of the Attorney Gen., A.G. Schneiderman Announces Guilty Pleas Of "Three-Quarter" Housing Operators Yury Baumblit & Rimma Baumblit (Feb. 15, 2018), https://ag.ny.gov/press-release/ag-schneiderman-announces-guilty-pleas-three-quarter-housing-operators-yury-baumblit ("Yury Baumblit and Rimma Baumblit lined their pockets by preying on our most vulnerable New Yorkers.").

14. Maura Ewing, *The Dangerous Zone Between a Halfway House and Freedom*, AL JAZEERA AMERICA (Feb. 23, 2014), http://america.aljazeera.com/articles/2014/2/23/the-dangerous-zonebetweenahalfwayhouseandfreedom.html (describing a resident's choice between unnecessary house-mandated treatment and paid employment and classes); JOHN JAY COLL. OF CRIMINAL JUSTICE, *supra* note 6, at 23–24; Jonathan Burke & Brian J. Sullivan, *Single-Room Occupancy Housing in New York City: The Origins and Dimensions of a Crisis*, 17 CUNY L. REV. 113, 132 (2013) ("Medicaid fraud may be rampant in Three-Quarter House operations. Many operators require Three-Quarter House residents to participate in substance abuse or other so-called rehabilitative programs in order to maintain residency in a facility . . . Each time that the resident visits the program, Medicaid makes a payment on her behalf. If a resident refuses to attend the program, she risks being evicted.").

15. For the purposes of this article, "illegal eviction" refers to the use of self-help, including threats or use of force, removal of personal belongings, changing door locks or any other of a series of unlawful means a landlord or agent of the landlord may employ to remove an occupant from possession without resort to court process. *See* N.Y.C. ADMIN. CODE § 26–521 (McKinney 2019); N.Y. REAL PROP. ACTS. LAW §§ 711, 768, 853 (McKinney 2019).

16. *See* JOHN JAY COLL. OF CRIMINAL JUSTICE, *supra* note 6, at 6–9 (noting that seventy-two percent of respondents in Prison Reentry Institute (PRI) study were previously incarcerated and nineteen percent were currently on parole).

disproportionately men of color.[17] Many tenants have histories that include substance use, homelessness, mental health disabilities, personal crises, and abject poverty.[18] Moreover, three-quarter houses are located in some of the poorest and most policed neighborhoods in New York City.[19] In 2012, John Jay College of Criminal Justice Prisoner Reentry Institute estimated that there were some 300 three-quarter houses providing shelter for upwards of 10,000 tenants in New York City. Since then, advocates have documented over 400 addresses known to operate as three-quarter houses.[20] However, because there is no legal definition of a so-called "three-quarter house" and no government oversight of them, the precise number of tenants who live in the houses remains unknown.[21]

Three-quarter houses are the outgrowth of a sprawling housing crisis and a lack of truly affordable housing for very low-income people in New York City.[22] Brian Sullivan and Jonathan Burke posit that "devastating" policies designed to

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17. *See* Motion of Temporary Receiver for Authorization to Implement Stabilization Plan at 22, United States v. Narco Freedom, Inc., 95 F. Supp. 3d 747 (S.D.N.Y. 2015) (No. 14 Civ. 8593), ECF. No. 185-1 (indicating that of 461 three-quarter house tenants surveyed, 50% identified as Hispanic, 33% as Black, and 12% as white); N.Y. DEP'T OF CORR. & CMTY. SUPERVISION, UNDER CUSTODY REPORT: PROFILE OF INMATE POPULATION ii (Jan. 1, 2013), http://www.doccs.ny.gov/Research/Reports/2013/UnderCustody_Report_2013.pdf (indicating that 95.9% of New York State inmates are male and that 73.7% are African-American or Hispanic); *Quick Facts: New York,* U.S. CENSUS BUREAU, http://www.census.gov/quickfacts/table/PST045215/36 (last visited Nov. 17, 2019) (indicating that 51.4% of the New York State population is female; 70.1% is white, 18.8% is Hispanic or Latinx, and 17.6% is Black or African American).

18. *See* JOHN JAY COLL. OF CRIMINAL JUSTICE, *supra* note 6, at 8 (noting that seventy-two percent of tenant-respondents were formally incarcerated, sixty percent formally resided in a homeless shelter, 51 percent previously participated in residential substance use treatment, and ninety-five percent received Medicaid and food stamps); *see* Motion of Temporary Receiver for Authorization to Implement Stabilization Plan, *supra* note 17 (indicating that 95 percent of surveyed tenants received public assistance or other fixed income, seventy-six percent had history of homelessness, sixty-two percent had a mental health disability, and forty-five percent had a history of addiction).

19. JOHN JAY COLL. OF CRIMINAL JUSTICE, *supra* note 6, at 10–12 (pointing to data from the Furman Center for Real Estate and Urban Policy to conclude that "the vast majority [of three-quarter houses] are concentrated in some of the poorest and most marginalized communities"); George Joseph, *Has 'Gang Policing' Replaced Stop-and-Frisk?*, CITYLAB (Feb. 28, 2017), https://www.citylab.com/equity/2017/02/has-gang-policing-replaced-stop-and-frisk/517572/ ("As the map makes clear, police identifications of crews concentrate in Harlem in Manhattan, across the Bronx, and in low-income Brooklyn neighborhoods, like East New York, East Flatbush, and Bedford-Stuyvesant—all of which experienced some of the highest concentrations of stop-and-frisks.").

20. To track expansion of the three-quarter house industry, advocates at MFY Legal Services, Inc., now known as Mobilization for Justice, maintained an internal database to record known three-quarter houses in New York City. A copy of that confidential database is on file with Mobilization for Justice. *See* Patrick Tyrell, Staff Attorney for Mobilization for Justice Inc., Testimony Regarding Three-Quarter House Task Force Presented Before N.Y.C. Council (Apr. 29, 2019), http://mobilizationforjustice.org/wp-content/uploads/Testimony-2019-04-29-Intro-153-A-TQH-Task-Force.pdf (indicating that there are an estimated 600 three-quarter houses in Brooklyn alone).

21. Barker, *supra* note 7 (reporting that "[n]o one knows exactly how many of these homes exist" and that they are "difficult to track because 'they pop up and go away,'" but one state official estimated that there might be 600 in Brooklyn alone); *see* N.Y.C. HUMAN RES. ADMIN., THREE-QUARTER HOUSING QUARTERLY REPORT 2 (Dec. 31, 2017) (on file with author) (indicating that city agencies have independently identified 114 buildings operating as three-quarter houses as of June 30, 2018).

22. COAL. FOR WOMEN PRISONERS, A PLACE TO CALL MY OWN: WOMEN AND THE SEARCH FOR HOUSING AFTER INCARCERATION 3 (2013) ("In New York City specifically, the dearth of transitional and permanent housing options for people home from incarceration has led to the rise of a "three-quarter" housing market.").

eliminate single-room occupancy (SRO) housing, which comprised "more than ten percent of the City's rental stock" in the post-World War II era, "must be viewed in the context of—and as a cause of—[New York City's] ongoing housing crisis."[23] Burke and Sullivan describe the irony that the City has looked to three-quarter houses "as a means to reduce [city] shelter population," even though three-quarter houses are increasingly created by taking over SRO buildings to "falsely hold themselves out as supportive housing to draw tenants from prisons [and] homeless shelters … [while denying] even basic tenancy rights."[24] While "SROs remain an integral part" of the low-income housing market, "the number of units affordable to low-income residents is fully one-third lower than it would have been had SRO housing been preserved."[25] As a result, upwards of 500,000 poor New Yorkers are relegated to "[i]llegally subdivided apartments and other SRO-type units," including three-quarter houses.[26]

Notwithstanding the precarity of their housing situation, three-quarter house tenants are not considered "homeless" under New York State law.[27] In an ostensible effort to reduce the optics of an increasing shelter population, city and state agencies turned to three-quarter houses as an alternative. Despite acknowledging that they, or their contractors, regularly made referrals to three-quarter housing, state agencies like the Office of Alcoholism and Substance Abuse Services (OASAS)[28] and the Department of Corrections and Community Supervision (DOCCS)[29] repeatedly sought to minimize their connection to the industry.[30] By virtue of a massive stream of referrals from government agencies

23. Burke & Sullivan, *supra* note 14, at 120, 132.

24. *Id.* at 131.

25. *Id.* at 137.

26. *Id.*

27. *See* N.Y. SOC. SERV. LAW § 42 (McKinney 2019) ("'Homeless person' shall mean an undomiciled person who is unable to secure permanent and stable housing without special assistance, as determined by the commissioner."). N.Y.C. has adopted the federal definition located at 24 CFR § 91.5(1)(iii) (2019) (indicating that the federal definition of "homeless" includes "[a]n individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution").

28. OASAS is the state agency charged to oversee inpatient residential and outpatient substance abuse treatment programs in New York *See* N.Y. MENTAL HYG. LAW § 19.07 (McKinney 2019). In 2016, the average daily enrollment in OASAS-licensed substance use treatment programs was 97,184. *People Served for Opioids from 2010–2017*, OFF. OF ALCOHOLISM & SUBSTANCE ABUSE SERVS., https://webapps.oasas.ny.gov/ODR/CD/PplAdmOpioids.cfm (last visited Nov. 17, 2019). Opioids were the primary substance for fifty-five percent of those in OASAS programs. *Id.*

29. DOCCS is the state agency that oversees post-release supervision and parole in New York State. According to the DOCCS website, the goal of parole supervision for the agency is to "improve public safety by providing continuity of appropriate treatment services" and "support services." *The Departmental Mission*, DEP'T OF CORRECTIONS & COMMUNITY SUPERVISION, http://www.doccs.ny.gov/mission.html (last visited Oct. 27, 2019). Under the New York Correction Law, DOCCS has a duty to assist people subject to parole supervision "to secure employment, educational or vocational training, and housing." N.Y. CORRECT. LAW § 201 (McKinney 2019).

30. *See, e.g.*, Lisa Riordan Seville & Graham Kates, *The Narco Freedom Case: Who's Watching the Caregivers?*, THE CRIME REP. (Jan. 5, 2015), https://thecrimereport.org/2015/01/05/2015-01-the-narco-freedom-case-whos-watching-the-caregivers/ (discussing inconsistency of DOCCS official who testified that "parole regularly directed those leaving prison to [a three-quarter house]" but that they do so as a "last resort," even though it is a "sub-optimal" placement); Barker, *supra* note 7 (noting that OASAS "does not approve three-quarter houses, because they do not provide any services… [and according to OASAS general counsel, Robert Kent] "[t]hese houses are not something that we [OASAS] regulate or certify").

like OASAS and DOCCS, the three-quarter house industry quietly became the de facto housing stock for people with substance use histories and involvement in the criminal justice system, as well as others in critical need of housing in New York City.[31]

1. Housing for Formerly Incarcerated Tenants

Three-quarter houses have been touted by DOCCS as filling a gap in the dearth of affordable housing options for people under parole supervision. Securing public housing from the New York City Housing Authority (NYCHA), the agency that oversees the city's subsidized public housing, is legally impossible for many formerly incarcerated persons. Even if a tenant on parole is able to locate a NYCHA unit—an extremely unlikely occurrence in light of the backlog of over 160,000 applications on the waiting list[32]—many individuals are systematically excluded and ineligible to reside in public housing, even with family members, because of exclusion policies that bar individuals who have criminal justice involvement.[33]

In addition to filling a void of affordable housing options, three-quarter houses also promote a façade of enhanced supervision for people on parole. Parole officers and DOCCS officials readily acknowledge a false belief that three-quarter houses offer structure or programming that facilitates a transition to the community for people under parole supervision.[34] DOCCS has a list of "approved" addresses where parolees are "mandated" to reside, which manifests as a pipeline from incarceration into the network of three-quarter houses.[35] Not insignificantly, parole

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31. Riordan Seville & Kates, *supra* note 30 ("Nearly 60,000 people are now homeless each night in New York City, more than double the number in 2001. Moreover, a dramatic drop in New York State's prison population, and heavy marketing by [one large house operator], helped to make parole increasingly reliant on the homes.").

32 . *See NYCHA Application – Frequently Asked Questions,* N.Y.C. HOUSING AUTHORITY, https://www1.nyc.gov/assets/nycha/downloads/pdf/applicant-faq.pdf (last visited Nov. 17, 2019).

33. People convicted of Class A, B, or C felonies are ineligible to reside in NYCHA housing until six years after completing their sentence, and people convicted of Class D or E felonies are ineligible until five years after completing their sentence. Even misdemeanor convictions can render an applicant ineligible for up to four years. *See* N.Y.C. HOUS. AUTH., TENANT SELECTION AND ASSIGNMENT PLAN (2016), https://www1.nyc.gov/assets/nycha/downloads/pdf/TSAPlan.pdf. NYCHA also has the authority to evict an entire family based on the alleged criminal activity or related grounds of "non-desirability." Indeed, in 2017 alone, of 1502 cases commenced on "non-desirability" grounds, 464 resulted in the permanent exclusion. *See* N.Y.C. HOUS. AUTH., SAFETY AND SECURITY AT NYCHA: 2017 REPORT ON OUTCOMES OF ADMINISTRATIVE ACTIONS RELATING TO PERMANENT EXCLUSION AND TERMINATION OF TENANCY FOR NON-DESIRABILITY (2017), https://www1.nyc.gov/assets/nycha/downloads/pdf/2017-permanent-exclusion-report.pdf.

34. *See* Lisa Riordan Seville & Graham Kates, *A Home of Their Own*, THE CRIME REP. (July 8, 2013) https://thecrimereport.org/2013/07/08/2013-07-a-home-of-their-own/ ("'They're another set of eyes for us, just to make sure that someone's reentry into the community is going the way it should,' said DOCCS spokesman [Thomas] Mailey.").

35. *Id*. ("DOCCS said that while it refers parolees to treatment programs, and must approve any residence in which parolees live, it does not refer directly to housing, nor does it certify or oversee the housing."); *see* Patrick Arden, *Three-Quarter Houses Mix Problems with Positives*, CITY LIMITS (Mar. 7, 2012), https://citylimits.org/2012/03/07/three-quarter-houses-mix-problems-with-positives/ (quoting three-quarter house tenant, "Parole mandated I go there . . . I wasn't addicted to no drugs, but I had to go to treatment for a year. First, I was in a room with eight people. After two weeks, I was moved to a two-man room, and that's where I stayed, even after I finished the program."); *see also* Devine v. Annucci, 150

officers often see three-quarter houses as a way to lessen the agency's burden. Instead of tracking multiple residences, three-quarter houses give DOCCS an option to supervise scores of people on parole at a single address, even if that is at the expense of tenants' rights.[36]

DOCCS has a compromising history of collaboration with the three-quarter house industry. The most infamous example is Narco Freedom, Inc. (Narco Freedom), the now-defunct non-profit organization.[37] At its peak, Narco Freedom operated at least twenty-one three-quarter houses that were conservatively estimated to house more than 1200 very low-income tenants, including many individuals on parole.[38] According to reports, in 2013, 425 tenants on parole lived in Narco Freedom three-quarter houses.[39] In October 2014, the United States Attorney for the Southern District of New York filed a complaint against Narco Freedom alleging, *inter alia*, fraud, Medicaid kickbacks, and abuses against the residents of the Narco Freedom three-quarter houses.[40]

In March 2015, the New York State Attorney General announced the indictment of Narco Freedom executives for Medicaid fraud and kickbacks, operating an unlicensed treatment facility, and violating patients' rights.[41] The charges included allegations that Narco Freedom's unlicensed three-quarter houses required tenants to attend Narco Freedom's state-licensed outpatient substance use treatment programs as a condition of residency.[42] According to the New York State Attorney General, "Narco Freedom stole at least twenty-seven million dollars from the Medicaid program" by violating patients' rights, submitting claims for excessive services, and by operating an unregulated residential treatment

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A.D.3d 1104, 1105 (N.Y. App. Div. 2017) (noting that "the petitioner was ordered by his parole officer to report to a three-quarter house.").

36. *See* COALITION FOR WOMEN PRISONERS, *supra* note 22 ("[Three-quarter houses] are particularly dangerous environments for women who need support to address substance abuse and domestic violence issues and mental and physical health needs. Nevertheless, parole officers, prison personnel, and service providers regularly refer women to three-quarter houses because they have nowhere else to send them.").

37. *See* Complaint, United States v. Narco Freedom Inc., 95 F. Supp. 3d 747 (S.D.N.Y. 2015) (No. 14 Civ. 8593), ECF No.1; *see also Important Information About Narco Freedom, Inc.,* NARCO FREEDOM, INC., http://www.narcofreedom.com (last visited Nov. 17, 2019) (indicating that pursuant to a an order of the United States District Court for the Southern District of New York, Narco Freedom no longer operates clinical and housing programs).

38. *See* Complaint, United States v. Narco Freedom Inc., 95 F. Supp. 3d 747 (S.D.N.Y. 2015) (No. 14 Civ. 8593), ECF No.1.

39. Lisa Riordan Seville & Graham Kates, *Bleak Housing Options for Parolees and Recovering Addicts*, SALON (July 10, 2013), http://www.salon.com/2013/07/09/for_parolees_and_recovering_addicts_housing_options_are_bleak_partner (noting that DOCCS placed 425 parolees in three-quarter houses run by a single operator).

40. *See* Complaint, United States v. Narco Freedom Inc., 95 F. Supp. 3d 747 (S.D.N.Y. 2015) (No. 14 Civ. 8593), ECF No.1.

41. *See* Press Release, N.Y. State Office of the Attorney Gen., A.G. Schneiderman Announces Indictment of Nonprofit Narco Freedom and Its Top Executives for Participating in an Organized Crime Ring (Mar. 18, 2015) (on file with author).

42. *Id.* In fact, Narco Freedom, like many other three-quarter houses, allegedly required outpatient substance use treatment regardless of whether the occupant had a history of substance use. United States v. Narco Freedom, 95 F. Supp. 3d 747, 752 (S.D.N.Y. 2015) ("Current and former Freedom House residents submitted declarations stating that they had no history of substance abuse. But they nonetheless attended Narco Freedom treatment programs in order to live at a Freedom House.").

program.[43] After an outcry from former residents and the community at large, Narco Freedom and its executives accepted a plea deal. They acknowledged that they had engaged in theft, exploitation, and a violation of the tenants' and patients' rights.[44]

2. Housing for People in Recovery

The opioid crisis and lack of safe, stable housing for people with histories of substance abuse are also tied to the three-quarter house industry. Drug overdose is currently a leading cause of death for Americans under age fifty.[45] In New York, drug overdoses take more lives than homicides, traffic accidents, and suicides combined.[46] Eighty percent of those overdoses involve opioids.[47] In addition to that crisis, New York City is experiencing record levels of homelessness, with a city shelter population averaging more than 60,000 people each night.[48] The devastating confluence of those crises has rendered drug overdose a leading cause of death for people experiencing homelessness year after year.[49]

Access to safe, stable housing reduces harm. Housing security promotes community safety and reduces the likelihood of death from overdose.[50] It prioritizes human dignity. The so-called "housing first" philosophy is the "polar opposite of a one-size-fits-all approach."[51] This philosophy embraces the principle

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43. Press Release, *supra* note 41.

44. *Id.*

45. *See* Josh Katz, *The First Count of Fentanyl Deaths in 2016: Up 540% in Three Years*, N.Y. TIMES (Sept. 2, 2017), https://www.nytimes.com/interactive/2017/09/02/upshot/fentanyl-drug-overdose-deaths.html.

46. N.Y.C. DEP'T OF HEALTH AND MENTAL HYGIENE, UNINTENTIONAL DRUG POISONING (OVERDOSE) DEATHS QUARTERS 1 - 4, 2017, NEW YORK CITY (2018), https://www1.nyc.gov/assets/doh/downloads/pdf/basas/provisional-overdose-report-fourth-quarter.pdf.

47. *Id.*

48. *See* COAL. FOR THE HOMELESS, NEW YORK CITY HOMELESSNESS: THE BASIC FACTS, (2018), http://www.coalitionforthehomeless.org/wp-content/uploads/2018/12/NYCHomelessnessFactSheet_10-2018_citations.pdf ("The number of homeless New Yorkers sleeping each night in municipal shelters is now 75 percent higher than it was ten years ago.").

49. Giselle Routhier & Josh Goldfein, *Oversight: Opioid Overdoses Among NYC's Homeless Population,* Testimony Before the New York City Council, (Feb. 27, 2018) at 3, https://www.coalitionforthehomeless.org/wp-content/uploads/2018/02/OpioidHearingTestimony_2.27.18.pdf ("Drug-related deaths ranked as the leading cause of death among homeless men for the past three fiscal years, and among homeless women for the past five fiscal years.").

50. *See Opioid Abuse and Homelessness*, NAT'L ALL. TO END HOMELESSNESS (Apr. 5, 2016), https://endhomelessness.org/resource/opioid-abuse-and-homelessness ("[D]ata clearly shows that substance abuse and overdose disproportionately impact homeless people."); Megan Stuart, *Housing Is Harm Reduction: The Case for the Creation of Harm Reduction Based Termination of Tenancy Procedures for the New York City Housing Authority*, 13 N.Y.C. L. REV. 73, 74 (2009) (arguing that "[p]reventing evictions and homelessness for drug users is not simply an issue of balancing the need to protect a community from crime on one hand and an individual's due process rights on the other," and explaining instead, "[c]ommunity safety is fundamentally linked to the health of individuals, which is linked to their housing status"). Consequently, policies that ensure safe, stable housing for people regardless of whether they may be drug users provide a common-sense method to reduce deaths resulting from overdose.

51. *What Housing First Really Means,* NAT'L ALL. TO END HOMELESSNESS (Mar. 18, 2019), https://endhomelessness.org/what-housing-first-really-means.

that housing is a human right.[52] It rejects the notion that people must conform to certain standards to be housed.[53] By maintaining housing stability, stakeholders can promote health, safety, and wellbeing that is mutually beneficial to at-risk individuals and to the communities in which they live.[54]

There are many reasons why housing options are particularly limited for poor people with substance use disorders. Individuals with histories of substance use often report other destabilizing life circumstances. Many have experienced unemployment or financial crisis, eviction, health problems, as well as the crumbling of personal and family relationships or other support networks.[55] OASAS does not license or regulate three-quarter houses.[56] Yet despite a long history of complaints related to illegal eviction and poor conditions, OASAS-licensed providers continued to make referrals to three-quarter houses.[57] However, since many three-quarter house operators required treatment as a condition of residence, those referrals fed an underbelly of unlicensed residential treatment programs in violation of the New York Mental Hygiene Law.[58]

The opioid crisis has given rise to a "treatment industrial complex."[59] Substance use treatment and rehabilitation have been "increasingly attracting for-profit companies . . . [whose] success depends not on being effective, but on keeping as many people as possible under supervision for as long as possible. The lengthier, deeper, and more expansive the treatment, the greater the profit."[60] A network of unregulated three-quarter houses exists to fill unmet housing needs for an unprecedented population of people with substance use histories. And it consolidates broad swaths of opportunity for illicit profiteering. Just as the housing shortage resulted in exploitation of people with mental health disabilities who were

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52. *See* Julia Haskins, *'Housing first' model making inroads on homelessness: Caring for people who are homeless*, THE NATION'S HEALTH (2018), http://thenationshealth.aphapublications.org/content/48/1/1.3 ("Housing first is based on the premise that housing is necessary for health, security and wellness, and that people need not meet a long list of prerequisites to access permanent housing.").

53. *Id.* The solution to homelessness is permanent housing for everyone. *See What Housing First Really Means, supra* note 51 ("Whether you follow the rules or not. Whether you are "compliant" with treatment or not. Whether you have a criminal record or not. Whether you have been on the streets for one day or ten years.").

54. Stuart, *supra* note 50.

55. *See* JOHN JAY COLL. OF CRIMINAL JUSTICE, *supra* note 6, at 7–8.

56. *See* N.Y. MENTAL HYG. LAW § 22.07(b) (McKinney 2019).

57. *See* Coalition for the Homeless, Testimony on Referral Criteria for Single Adult Permanent Housing before the N.Y.C. Dep't of Homeless Servs. (Mar. 18, 2013), https://www.coalitionforthehomeless.org/wp-content/uploads/2014/07/TestimonyProposedTitle31ChangesMarch182013.pdf [hereinafter Testimony on Referral Criteria] ("Although the 2010 [Department of Homeless Services] rule successfully and significantly reduced referrals to unsafe three-quarter houses by city shelters, the three-quarter house industry has continued to flourish, in part because other programs and entities-most notably the NYS Office Alcoholism and Substance Abuse Services (OASAS) and the NYS Department of Corrections and Community Supervision (DOCCS)-are not similarly constrained.").

58. Press Release, N.Y. State Office of the Attorney Gen., Attorney General James Announces Conviction of "Three-Quarter House" Director Charged With Defrauding Medicaid Through A Kickback Scheme (Jan. 8, 2019) https://ag.ny.gov/press-release/2019/attorney-general-james-announces-conviction-three-quarter-house-director-charged.

59. *See* Arjun Sethi & Cate Granziani, *Stop the Treatment Industrial Complex*, POLITICO (Mar. 9, 2016), https://www.politico.com/agenda/story/2016/03/stop-the-treatment-industrial-complex-000061.

60. *Id.*

discharged from city jails, it has also laid the foundation for the mistreatment of people exiting substance use treatment programs.[61]

3. Housing of Last Resort

Three-quarter houses serve as a last resort for people who might otherwise be discarded to the streets. The industry, however, has been notoriously rife with scandal, fraud, and exploitation.[62] In 2008, the New York City Department of Homeless Services promulgated a regulation that prohibited referrals to three-quarter houses.[63] Although the Department of Homeless Services regulation may have curbed the number of referrals from New York City's shelter system, it did not eliminate the reliance on the three-quarter house industry. This reliance results from poor New Yorkers still having nowhere else to live.[64]

This reliance left at-risk tenants in the crosshairs of widespread abuses. With rents as low as $215.00 per month, three-quarter housing was perhaps the only affordable option for people receiving public assistance.[65] In exchange, tenants

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61. *See* Heather Barr, *Connecting Litigation to A Grass Roots Movement: Monitoring, Organizing, and* Brad H. v. City of New York, 24 PACE L. REV. 721, 729 (2004) (discussing movement lawyering and organizing related to discharge planning for people with mental health disabilities).

> I had become more and more convinced that in New York City at least, "criminalization of mental illness" was largely a housing shortage problem. People need housing or supportive housing. They can't get it. Without a stable living situation and supportive services, their illness goes untreated. They self-medicate their illness with illegal drugs or commit other criminal acts as a result of poverty, desperation, or psychiatric symptoms. They get arrested. They go to jail. Sure, they need discharge planning to give them a chance at staying out of jail, but discharge planning for people who have no housing in a city with a dire housing shortage raises the same questions again--discharge to where?

62. *See, e.g.*, Press Release, N.Y. State Office of the Attorney Gen., A.G. Schneiderman Announces Guilty Pleas Of "Three-Quarter" Housing Operators Yury Baumblit & Rimma Baumblit (Feb. 15, 2018) (on file with author) ("Yury Baumblit and Rimma Baumblit lined their pockets by preying on our most vulnerable New Yorkers."); Press Release, N.Y. State Office of the Attorney Gen., A.G. Schneiderman Announces Criminal Guilty Plea And Multi-Million Dollar Civil Settlement With Narco Freedom (May 31, 2017) (on file with author) (acknowledging Narco Freedom violated the rights of its residents and illegally conditioned residency on attendance at its own substance abuse treatment program.").

63. *See* N.Y. COMP. CODES R. & REGS. tit. 31, § 2-01 (2019).

64. *See* Testimony on Referral Criteria*, supra* note 57. In contrast to the NYC Department of Homeless Services, OASAS declined to promulgate a rule to formally prohibit unsafe referrals. Instead, the agency issued a Local Services Bulletin that included a "policy" that OASAS providers "should review" housing placements to determine whether there are matters that call into question the safety of the particular housing placement. *See also* Local Services Bulletin No. 2011-01: Housing Referrals, Office of Alcoholism and Substance Abuse Servs. (July 15, 2011).

65. *See* Steven Banks, Comm'r of The N.Y.C. Dep't of Social Servs., Human Res. Admin., Mindy Tarlow, Dir. of the Mayor's Office of Operations, and Anne-Marie Hendrickson, Comm'r of Asset & Prop. Mgmt. at the N.Y.C. Dep't of Hous. Pres. & Dev. at the N.Y.C. Council's Gen. Welfare & Hous. & Bldgs. Comms. on the Oversight of Three-Quarter Hous., Testimony on Three-Quarter Housing (Oct. 6, 2016) ("The state-set monthly shelter allowance of $215 for single adults has not been raised in decades, which has limited the ability of low-income individuals to find suitable and affordable housing."); Lylla Younes, *What Happens When The 'Necessary Evil' Preventing Homelessness Falls Apart?* GOTHAMIST (May 2, 2018), https://gothamist.com/news/what-happens-when-the-necessary-evil-preventing-homelessness-falls-apart ("Most three-quarter house tenants pay rent with their $215 monthly shelter allowance from the state—an amount that has not changed since 1988.").

lived in squalid, overcrowded conditions.[66] Operators routinely evicted tenants without court process in violation of city and state laws that prohibit self-help evictions.[67] This created a revolving door of housing instability that targeted New York's most marginalized tenants. Despite the abhorrent conditions and demoralizing abuses by house operators, three-quarter houses remained one of the few options available for very low-income, single adults. Systemic racism and biases toward people in poverty project stigma on three-quarter house tenants. That stigma rendered the plight of three-quarter house tenants invisible and permitted the three-quarter house industry to reign unchecked by law enforcement or political stakeholders for years.

B. The Three-Quarter House Problem through the Prism of Lucie E. White's "Three Levels of Subordination"

In her article *To Learn and Teach: Lessons from Driefontein on Lawyering and Power*, Lucie E. White explored collaboration among lawyers, organizers, and affected people.[68] The lawyer and organizer were "outsiders" who collaborated with a subordinated Black village community in South Africa targeted for "removal" by the apartheid regime.[69] White argued that the villagers' experience should be viewed through a lens of "three mechanisms through which political power is exercised and maintained." First is the extent to which a community has the ability to prevail within established channels for dispute resolution.[70] Second is how "social values and institutional practices" overtly or more subtly exclude certain groups.[71] The third mechanism is what White refers to as a psychological process "triggered by the experience of subordination itself" characterized by the "repeated experience of domination and defeat" that may lead to alienation and withdrawal of particular populations.[72]

White's tiers of subordination offer a framework to understand the three-quarter house issue. To illustrate, the following Section places the experience of three-quarter house tenants in the context of White's three levels of subordination.

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66. Excessive overcrowding was part and parcel of the business model. According to one owner of several three-quarter house buildings, there are "two sides to it, and one side is you can't control your clients if you don't know where they are. And number two, it's just a mathematical formula that if you're at the end of the day, after you look at all your income, and you look at your expenses, and there will be a profit, then it makes sense. So the more you house, the more income you bring in for the organization." *See* United States v. Narco Freedom, Inc., 95 F. Supp. 3d 747, 750 (S.D.N.Y. 2015) (quoting testimony of building owner Jay Deutchman).

67. Jake Bernstein, *Inside a New York Drug Clinic, Allegations of Kickbacks and Shoddy Care*, PROPUBLICA, (Sept. 9, 2013), https://www.propublica.org/article/inside-a-new-york-drug-clinic-allegations-of-kickbacks-and-shoddy-care (detailing complaints by former staff at an outpatient program of payments to a three-quarter house operator); JOHN JAY COLL. OF CRIMINAL JUSTICE, *supra* note 6, at 25–26; Davidson v. House of Hope, N.Y.L.J., Nov. 28, 2012 (N.Y. Civ. Ct. Nov. 15, 2012); Gregory v. Crespo, N.Y.L.J., Mar. 20, 2012 (N.Y. Civ. Ct.. Mar. 6, 2012).

68. *See generally* White, *supra* note 3.

69. *Id.* at 700.

70. *Id.* at 747–48.

71. *Id.* at 748–52.

72. *Id.* at 752–54.

1. Limited Access to Relief within Established Channels under New York Law

"[T]he Court doubts the legality of the situation that [the three-quarter house operator] has created. Laws regarding occupancy of residential space are clearly being ignored. Laws regarding rent regulation are most likely being violated."[73]

a. *New York's Legal Prohibition of Self-Help Evictions*

New York has a long-standing policy prohibiting the use of self-help evictions to oust lawful occupants from the buildings in which they reside. According to the New York State Court of Appeals, "[t]he law is clear and well-established that a landlord may not oust an occupant of an apartment from those premises without resorting to proper legal process and providing legal notice."[74] Under state law, a "tenant" cannot be removed from possession except through court process.[75] At the city level, the protection against self-help is even stronger. In an effort to expand the class of individuals who are protected from eviction without court process, the New York City Council enacted the "Unlawful Eviction Law." This law makes it a misdemeanor to evict or attempt to evict an occupant who has lawfully occupied a dwelling unit[76] for thirty consecutive days or longer by, among other things, using or threatening to use force or engaging in a course of conduct that is intended to induce the occupant to vacate.[77] Despite the "clear and well-established" right to court process codified in the law, three-quarter house tenants continued to face routine eviction without any due process.[78] For several reasons—

73. McIntosh v. Baumblit, Index No. 18194/10, 9–10 (N.Y. Civ. Ct. Nov. 10, 2010) ("[T]he Court was greatly concerned by the role that [the three-quarter house operator] played herein and in general. It was a great surprise to find that this type of housing/rehabilitation exists and with no regulation or oversight by the City or an appropriate agency.").

74. Romanello v. Hirschfeld, 470 N.Y.S.2d 328, 328 (App. Div. 1983) (Fein & Milonas, JJ., dissenting), *aff'd as modified*, 63 N.Y.2d 613 (1984) (adopting reasoning of dissent in 98 A.D.2d 657). The extremely limited circumstances under which a squatter—a person who enters into possession without permission or acquiescence—can be removed by self-help "clearly reflects the premise that self-help is not available when a landlord gives [an occupant] permission, whether implicit or express, to occupy his property." *See* Walls v. Giuliani, 916 F. Supp. 214, 218 (E.D.N.Y. 1996).

75. N.Y. REAL PROP. ACTS. LAW § 711 (McKinney 2019). The legislature amended the statute and broadened protections in June 2019. The statute now reads, "No tenant or lawful occupant of a dwelling or housing accommodation shall be removed from possession except in a special proceeding." *See id.* (as amended by N.Y. HOUSING STABILITY AND TENANT PROTECTION ACT (McKinney 2019)).

76. The issue of what constitutes a "dwelling unit" for the purposes of the Illegal Eviction Law became a key component to the legal strategy implemented by advocates in housing court, discussed *infra* Section IV.A.2.ii. Pursuant to the Multiple Dwelling Law § 4(4), a "dwelling" is any building or structure or portion thereof which is occupied in whole or in part as the home, residence or sleeping place of one or more human beings. N.Y. MULT. DWELL. LAW § 4(4) (McKinney 2011). A "multiple dwelling" shall not be deemed to include a hospital, convent, monastery, asylum or public institution, or a fireproof building used wholly for commercial purposes. *Id.* § 4(8). Under New York City's Housing Maintenance Code "[a] dwelling is any building or structure or portion thereof which is occupied in whole or in part as the home, residence or sleeping place of one or more human beings. N.Y.C. ADMIN. CODE § 27-2004(a)(3) (McKinney 2019). A "[d]welling unit shall mean any residential accommodation in a multiple dwelling or private dwelling." *Id.* § 27-2004(a)(13).

77. *See* N.Y.C. ADMIN. CODE. § 26-521. In June 2019, the state legislature codified the City's Illegal Eviction Law into state law. N.Y. REAL PROP. ACTS. LAW. § 768 (McKinney 2019) (as amended by N.Y. HOUSING STABILITY AND TENANT PROTECTION ACT (McKinney 2019)).

78. *See, e.g.*, JOHN JAY COLL. OF CRIMINAL JUSTICE., *supra* note 6, at 22.

legal, practical, and social—New York City Housing Court often failed to offer a legal remedy when those illegal evictions occurred. Due to the apparent ability of landlords to flout the law with impunity, eviction without court process became a hallmark of the three-quarter house business model and a seemingly unshakable reality for tenants across New York City.

b. *Not So "Clear and Well-Established" for Three-Quarter House Tenants*

Structural impediments in terms of access and substantive relief limited the tenants' ability to obtain relief through established channels in court. In theory, the formal process through which a person may obtain relief following an unlawful eviction—an "illegal lockout" proceeding—is meant to be straightforward.[79] Generally, an occupant who is evicted may seek restoration of possession where (1) the respondent-landlord evicted the petitioner-tenant by unlawful means; and (2) the petitioner was peaceably in actual possession of the subject premises for at least thirty days.[80]

For three-quarter house tenants, this seemingly simple process is littered with obstacles. Failure of the excluded *pro se* tenant to have the legal wherewithal to name the proper respondent, to adequately identify the precise unit where they reside, or to name "John Doe" in the petition are all bases for dismissal of the proceeding before a court even considers the merits.[81] Due to the nature of three-quarter housing, *pro se* tenants are particularly susceptible to procedural flaws in court.

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79. For a general overview of the process for a *pro se* litigant to commence an "illegal lockout" in housing court, see https://www.metcouncilonhousing.org/knowledgebase/illegal-evictions-illegal-lockouts (last visited Nov. 21, 2019). So-called "illegal lockout" cases are summary proceedings commenced pursuant to New York's Real Property Actions and Proceedings Law (RPAPL) § 713(10) that allow an excluded occupant of the premises to seek restoration. *See, e.g.,* Truglio v. VNO 11 E. 68th St. LLC, 35 Misc. 3d 1227(A), at *7 (N.Y. Civ. Ct. 2012) ("It is well settled that where the [h]ousing [c]ourt finds that an unlawful eviction has occurred, restoration is an appropriate remedy and well within the Court's authority to order."). That remedy was established pursuant to the longstanding policy to preserve the public peace by preventing landlords from taking the law into their own hands and breaching the peace through self-help evictions. *See* Fults v. Munro, 202 N.Y. 34 (1911); Town of Oyster Bay v. Jacob, 96 N.Y.S. 620 (App. Div. 1905); *Romanello*, 98 A.D.2d at 658; Hawkins v. City of New York, N.Y.L.J., Oct. 23, 1993 (N.Y. Civ. Ct.) ("A chief goal was to prevent landlords from taking the law into their own hands.").

80. *See* N.Y. REAL PROP. ACTS. LAW § 713(10); Saccheri v. Cathedral Prop. Corp., 708 N.Y.S.2d 805, 806 (App. Term 2000).

81. "John Doe" refers to the individual who may have entered into possession of the unit after an eviction without court process. The requirement that "John Doe" be made party to the proceeding gives rise to a tension between the person who was wrongfully ousted and the new occupant who enters into possession unaware of the pending dispute for occupancy of that unit. The "John Doe" occupant becomes a collateral scapegoat in the three-quarter house business model. Without knowledge or warning, that occupant is swept into a dispute that necessarily requires that one person be entitled to a dwelling and the other person ousted from it. *See, e.g.*, Shearin v. Back on Track Grp., Inc., 997 N.Y.S.2d 227, 232 (Civ. Ct. 2014) (noting that the "John Doe" occupant "is an innocent third party" who did not play a role in the illegal eviction of the petitioner-tenant); Ross v. Baumblit, 995 N.Y.S.2d 488, 490 (Civ. Ct. 2014) (noting that the "John Doe" "is an innocent bystander" but since he "has been at the premises for a relatively brief period of time" and "knew, or reasonably ought to have known . . . that his claim to the bunk was in jeopardy," the equities favored the petitioner-tenant).

Many three-quarter house tenants do not know, or do not have any way to know, the name of the "landlord" they should identify to commence an illegal lockout proceeding in court. In the typical three-quarter house scenario, the operator of the house is the net lessee,[82] not the owner of the building.[83] That net lessee is often a corporate entity entirely unknown to the occupant.[84] Given the informality of the three-quarter house business model, occupants may only know individuals by first names or nicknames that are wholly inadequate to commence formal court proceedings.[85]

The occupant's obligation to describe the demised premises is similarly fraught. Three-quarter house tenants do not generally occupy an entire apartment or even an entire room but are instead assigned a particular bunk in a room.[86] Rooms and bunks are generally not clearly marked by numbers or letters.[87] Given the often overcrowded, makeshift layout of the buildings, it is difficult to describe the specific space that a person "possesses" in a three-quarter house. Three-quarter house operators almost never provide written leases or anything in writing that clearly identifies the particular unit the tenant occupies.[88] In some cases, the paperwork provided to the tenant falsely provides an address entirely distinct from the actual place of residence.[89]

The law also presents substantive challenges for three-quarter house tenants. Before advancing to the merits of an alleged illegal eviction, residents of three-quarter houses are forced to litigate their occupancy status. They must demonstrate that they are "tenants" as opposed to mere "licensees."[90] That distinction, though

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82. Under N.Y.C. Admin. Code § 27-2004(a)(45), "owner" includes a "lessee, agent, or any other person, firm or corporation, directly or indirectly in control of a dwelling." For the purposes of that definition, "lessee" refers to "a lessee in control of property, i.e., a net lessee." Robinson v. Taube, 63 Misc. 3d 1224(A) (N.Y. Civ. Ct. 2019) (indicating that "net lessee" is a "lessee in control of property").

83. *See* JOHN JAY COLL. OF CRIMINAL JUSTICE, *supra* note 6, at 13.

84. *See, e.g.*, McIntosh v. Baumblit, Index No. 18194/10, at 6–7 (N.Y. Civ. Ct. Nov. 10, 2010) (admonishing the occupant who "was not sure" of the house operator's official title "or even if there was one" and who was unable to establish the particular relationships among the individual operator, the corporate entity, and the premises where he resided).

85. *See, e.g.,* Cooper v. Back on Track Grp., Inc.*,* 994 N.Y.S.2d 251, 252 (Civ. Ct. 2014) (implying that the tenant did not know her landlord but that "she considered 'Mr. Yury' her landlord . . . [because] he collected rent and monitored her activities.").

86. *See, e.g.*, *Shearin,* 997 N.Y.S.2d at 229 (noting that the occupant was "assigned" a specific bunk bed and closet space in a three-quarter house).

87. This assertion is based on the author's personal observation in three-quarter houses and corroborated by years of practice where clients routinely grappled with how to describe the precise location of the bunk they occupied in a building that did not identify bunks or even rooms with numbers or letters.

88. *See, e.g.,* Tanya Kessler, MFY Legal Servs., Three-Quarter Houses Hearing on Intros 1164, 1166, 1167, 1168, 1171 and Res. 1035 before the N.Y.C. Council Comm. on General Welfare and Comm. on Hous. & Bldgs. (Oct. 6, 2016) ("MFY has never had a three-quarter house client who was able to meet [the requirement to furnish a lease to the city agency]. Three-quarter house tenants rarely have leases.").

89. Confidential documents obtained in the course of representation on file with author.

90. Until June 2019, when the legislature amended the RPAPL, the law was unsettled on the issue of whether a licensee could maintain an "illegal lockout" proceeding in housing court. Prior to the amendment, the statute defined a "tenant" to "include an occupant of one or more rooms in a rooming house . . . who has been in possession for thirty consecutive days or longer." N.Y. REAL PROP. ACTS. LAW § 711 (McKinney 1985). The law provided that a "[tenant] shall [not] be removed from possession except in a special proceeding." *Id.* Based on the ambiguity of the occupancy status of three-quarter house tenants, landlords were able to successfully circumvent court process, arguing that the RPAPL did not require a special proceeding to evict a "licensee" as opposed to "tenant." *See, e.g.*, Coppa v. LaSpina, 839 N.Y.S.2d

meaningless under New York City's Unlawful Eviction Law, can result in delay or preclusion of relief altogether under state law.[91] Even if that sometimes-insurmountable hurdle is overcome, the tenant must litigate whether relief may be barred because she signed a purported "waiver of tenant rights."[92] Because of the stigma imposed by systemic racism and othering that scapegoats three-quarter house tenants, tenants are often required to defend their criminal or substance use history, matters wholly irrelevant to an illegal lockout proceeding.[93] The bias by some judges has been so explicit that the legal questions at issue are never reached by the court.[94]

780, 782 (App. Div. 2007) (permitting self-help eviction because occupant was "a mere licensee" who also validly waived her right to due process). The result was that a person who was evicted from her home without court process was forced to litigate the status of her occupancy before the court would even reach the issue of whether the landlord unlawfully engaged in self-help to evict. Landlords argued that because the language in RPAPL § 713, the statute governing proceedings in which no landlord-tenant relationship exists, was permissive—i.e., "a special proceeding *may* be maintained under this article . . ."—they were not required to use the court process to evict licensees. *See* N.Y. REAL PROP. ACTS. LAW § 713 (McKinney 2010) (emphasis added); Andrews v. Acacia Network, 70 N.Y.S.3d 744, 746 (App. Term 2018) ("[T]he unlawful eviction provisions of Administrative Code of the City of NY § 26–521 do not operate to change a license or other nonpossessory interest into a possessory interest. While these provisions may 'subject a violator to criminal liability and civil penalties, [they] do not provide an avenue through which [an occupant] can be restored to possession of an apartment[.]'"). For years, that litigation created a procedural quagmire that wasted time and squandered scarce judicial resources—all while the occupant remained homeless, barred from reentering her home. Tenant activists and advocates successfully lobbied to modify the statute, which now clearly provides a right to court process for all "lawful occupants." The statute now reads, "No tenant or lawful occupant of a dwelling or housing accommodation shall be removed from possession except in a special proceeding." N.Y. REAL PROP. ACTS. LAW § 711 (McKinney 2019) (as amended by 2019 N.Y. Sess. Laws Ch. 36 (S. 6458) (McKinney)).

91. *See*, *e.g., Andrews*, 70 N.Y.S.3d at 745–46. Importantly, the legislative amendments to the RPAPL also codified the language from New York City's Unlawful Eviction Law into state law. *See* N.Y. REAL PROP. ACTS. LAW § 768(1)(a) (McKinney 2019) (as amended by 2019 N.Y. Sess. Laws Ch. 36 (S. 6458) (McKinney)).

92. *See* Cooper v. Back on Track Grp., Inc., 994 N.Y.S.2d 251, 256 (Civ. Ct. 2014*)* (finding that a "License Agreement," comprised of "terms that are at best, formidable and oppressive," coupled with the occupant's credible testimony about the circumstances under which she signed the purported agreement, was an unconscionable contract of adhesion that "is unenforceable as a waiver of the statutory protections afforded the petitioner by the RPAPL and the NYC Administrative Code"); Shearin v. Back on Track Group, Inc., 997 N.Y.S.2d 227, 231 (Civ. Ct. 2014) ("[T]he waiver claimed by [the three-quarter house operator] is so broad and all-encompassing as to be tantamount to a waiver not of specific tenant's rights but of the status of being a tenant. Such a waiver, as discussed below, is trumped by controlling statute."); Davidson v. House of Hope*,* N.Y.L.J., Nov. 28, 2012, at *3 (N.Y. Civ. Ct. Nov. 15, 2012) (finding purported waiver of tenant rights unenforceable).

93. In practice, the author regularly observed judges and landlords' attorneys interrogate tenants about substance use, criminal history, employment status, whether the tenants comply with arbitrary "house rules," as well as other perceived "choices" a tenant may have made to end up in a three-quarter house. One court's discussion of an occupant's substance use in dismissing his illegal eviction claim is illustrative. In *McIntosh v. Baumblit*, the court first questioned why the occupant would fear being accused of trespass by the landlord because he was no longer on parole. Index No. 18194/10, at 8 (N.Y. Civ. Ct. Nov. 10, 2010). It went on to admonish that the occupant "felt comfortable enough, upon completion of his parole, to partake in alcohol and narcotics. . . . [and] saw no problem with engaging in or admitting to these activities [even though] [o]ne would think that being caught engaging in these activities . . . would be more worrisome than mere trespass. Yet, according to the testimony and certainly [occupant's] demeanor on the stand, he was not concerned about being arrested for narcotics use." *Id*. Thus, the court concluded, "it was unlikely that he would be concerned about being arrested for trespass." *Id.*

94. For instance, in *DiGiorgio v. 1109–1113 Manhattan Ave. Partners, LLC*, the Appellate Division remanded the matter to a different Justice "in light of repeated statements made by the Supreme Court

The law built in an additional barrier to relief in the courts for three-quarter house tenants. Under the so-called "futility of restoration" doctrine, courts decline to restore an ousted occupant to possession where it is clear that the landlord could prevail were it to commence a summary proceeding to evict that occupant.[95] Even though a tenant may demonstrate that he has been rendered homeless by the landlord's violation of the law, the futility doctrine limits and sometimes eliminates the tenant's legal right to return to the residence.[96] The occupant may commence a plenary action to seek damages for the wrongful eviction, but those damages are generally limited to pecuniary loss.[97] The demoralizing violence of being plunged into homelessness is not pecuniary loss. The perverse outcome of the futility doctrine, and all of these obstacles, is that landlords can rely on the law and institutions to flout laws with impunity.

2. Barriers Stemming from "Social Values and Institutional Practices" that Exclude Three-Quarter House Tenants

"When I was on parole in the Three-Quarter Houses, they were monitoring me. Parole would call the houses on a daily basis and, like, do a run-down of what I was doing. Did he go to his program? Did he sign in and out? It was like they had an ankle bracelet on my body. I felt like a little adolescent at home being punished. You know what I'm saying? I found it totally intolerable to be there, so I ended up leaving the Three-Quarter House and getting violated from parole. You know, under conditions like that, it was intolerable, and I felt that it was wrong."[98]

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during oral argument, which exhibited bias against the plaintiffs." 958 N.Y.S.2d 417, 422–23 (App. Div. 2013). The transcripts from the Supreme Court illustrate some of that bias: "You know, I believe that the richest country in the world, there should be facilities for men like your clients. I believe we should have maybe Ellis Island." Transcript of Record at 49:2-5, *DiGiorgio*, 958 N.Y.S.2d 417. Then the court speculated that legal questions at issue—concerning rights to shelter and protection against illegal eviction—were secondary to whether the tenants receive treatment (an issue not before the court): "If you are evicted, whether it's legally or illegally, at least you are not found dead. If you don't go for your treatment, your alcoholic treatment, you mental treatment or any other treatment, you either going to be found dead or back to prison or back to the mental institution. . . . Give me an alternative plan. I have been thinking of a plan, and I was thinking of to get the Habitat for Humanity, get them involved . . . you should be doing that, Counsel, if you care." *Id*. at 75:6-11.

95. *See*, *e.g.*, In re 110-45 Queens Blvd. Garage, Inc. v. Park Briar Owners, Inc., 265 A.D.2d 415, 416 (N.Y. App. Div. 1999); SITC Inc. v. Riverplace I Holdings LLC, 870 N.Y.S.2d 879 (Civ. Ct. 2008).

96. *See, e.g.*, Bernstein v. Rozenbaum, 2008 WL 2832169 (N.Y. App. Div. July 10, 2008) (declining to restore tenants to possession despite apparent eviction without due process); Humphrey v. Green, Index No. L&T 13801/2012, at *6 (N.Y. Civ. Ct. Aug. 7, 2012) ("The Court notes that even if [the occupant] had established that he was a tenant rather than a licensee, the court would find restoration futile, as [the occupant] would be subject to eviction.").

97. *See* N.Y. REAL PROP. ACTS. LAW § 853 (McKinney 1981); S. Nicolia & Sons Realty Corp. v. AJA Concrete Ready Mix, Inc., No. 001794/08, 2011 WL 499204, at *6 (N.Y. App. Div. Jan. 25, 2011) ("A tenant who is unlawfully removed from possession of real property within the meaning of RPAPL 853 can recover the value of items of personal property lost during the unlawful eviction. There must be sufficient evidence to establish the value of the property, at the time of loss.") (internal citations omitted).

98. JOHN JAY COLL. OF CRIMINAL JUSTICE, *supra* note 6, at 33.

Protecting three-quarter house tenants is not a priority for the noblesse. Political elites view three-quarter housing as a fringe issue.[99] Misinformation about three-quarter housing creates a public dialogue that hovers between willful blindness and blame-the-victim NIMBY-ism.[100] Access to counsel is systemically limited. Legal services organizations historically declined to dedicate resources to cases where an occupant may not have a right to long-term occupancy of the premises.[101] Ironically, tenants' housing instability is also a structural barrier to accessing legal counsel. While tenants are, of course, permitted to pursue legal remedies *pro se*, judges are notoriously unsympathetic, and even hostile, toward the perceived underclass of people who live in three-quarter houses.[102]

A history of fraught relations between police and poor people of color renders reliance on law enforcement futile. The risks of seeking police assistance may outweigh the potential benefit.[103] The NYPD Patrol Guide expressly instructs officers "[t]o protect the rights of a person who is being or has been unlawfully evicted from his dwelling unit" and authorizes officers to issue a summons or effect an arrest of the person alleged to have violated the law.[104] Calling the police may

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99. Despite years of outcry from tenants, political stakeholders were largely unmoved to take any action to end abuses in three-quarter housing. Not coincidentally, that changed one day after the *New York Times* launched an explosive exposé and Mayor Bill de Blasio announced an interagency taskforce to tackle the three-quarter house problem. *See* Press Release, N.Y.C. Office of the Mayor, Mayor de Blasio Orders Immediate Actions to End the Use of Substandard Three-quarter Houses in N.Y.C. (June 1, 2015), https://www1.nyc.gov/assets/dhs/downloads/pdf/press-releases/three-quarter-houses.pdf; Barker, *supra* note 7.

100. *See* THE FORTUNE SOCIETY & JOHN JAY COLLEGE OF JUSTICE, IN OUR BACKYARD: OVERCOMING RESISTANCE TO REENTRY HOUSING (A NIMBY TOOLKIT) 5 (2009), https://fortunesociety.org/wp-content/uploads/2017/05/Community.pdf ("Research demonstrates that NIMBY [i.e., Not In My Back Yard] reactions are greater when the local stakeholders lack participation in the proposed project, lack accurate information about the clients and/or the problems they face, and fear for their safety.").

101. *See, e.g.*, NYC OFFICE OF CIVIL JUSTICE, ANNUAL REPORT 52 (June 2016) ("Legal service providers identified the type of housing stock or subsidy as key considerations in determining which cases have the most merit and thus strategically allocating limited resources. One legal service provider commented that their top priority is to protect tenants in rent-stabilized apartments."). Notably, in 2013, a Task Force to Expand Access to Civil Legal Services found that just 1 percent of tenants as opposed to 95 percent of landlords had legal counsel. *See* THE TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK, REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 600, 609 (2014) (Statement and exhibits of Hon. A. Gail Prudenti, Chief Administrative Judge, New York State Unified Court System, at the Chief Judge's Hearing on Civil Legal Services, Third Dep't (Oct. 6, 2014)). *See also* Stuart, *supra* note 50, at 93 ("Organizations that receive federal legal services funding are prohibited from defending against eviction proceedings based upon a drug charge or drug behavior. Thus, the vast majority of legal service providers in New York are barred from taking the case and tenants must go to their hearings unrepresented.").

102. *See* Audio Recording: Rivera v. Peter Young Residence, Inc. et al., L&T 011201/16 (N.Y. Civ. Ct. 2016) at 13:57 (on file with author) (Judge, prior to formally commencing a hearing or taking any testimony from *pro se* tenant: "Sir, based on this agreement that you signed . . . I don't know that this court has any jurisdiction . . . so do you want to withdraw the case or do you want me to dismiss it?").

103. Lucie E. White urges scholars and activists to consider the "practices of survival and resistance that underlie what may appear to be silent assent." White, *supra* note 3 at 752. She argues that the seeming acquiescence to the "agendas of the more powerful group" must be viewed through the lens of a "double" consciousness of the subordinated group, whose particular situation, calculus and consciousness may not be immediately apparent from the perspective of privileged outsiders. *Id.* at 752–54.

104. NYPD PATROL GUIDE, UNLAWFUL EVICTIONS, Procedure No. 214-12. According to the New York City Civilian Complaint Review Board (CCRB), "The NYPD's Patrol Guide contains the rules that

be a fairly unremarkable, but effective, tool for affluent tenants in white communities.[105] Not so for communities of color, where most three-quarter houses are located.[106] House operators are experts at marshaling tenants' stigma as "addicts" or "convicts" to frame a narrative that curries favor with officers.[107] Perhaps clouded by that stigma, officers fail to help tenants who seek assistance after an illegal eviction.[108] Contrary to the mandates of the Patrol Guide, officers refer tenants to housing court to settle the dispute.[109] Tenants regularly report that, in response to their attempts to solicit police assistance, officers threaten arrest, effectuate arrest, or issue criminal citations against the tenant rather than the house operator.[110] Tenants effectively face an ultimatum: pack up and go to the city shelter or spend the night in jail.[111]

Even effective police intervention fails to foster housing stability in the three-quarter house context. For instance, tenants under parole supervision report apprehension about calling the police for assistance for fear that the police contact could trigger a parole violation.[112] In addition to the risk posed by the police themselves, a 911 call for help also carries the risk of a parole violation and reincarceration.[113] Even absent a violation, parole officers regularly require tenants

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NYC police officers must follow in carrying out their official duties. When the CCRB investigates a complaint of police misconduct, it focuses on the details of the encounter and determines whether or not the officer's actions were improper based on the Patrol Guide, New York State law and the United States Constitution." *NYPD Patrol Guide*, CIVILIAN COMPLAINT REV. BOARD, https://www1.nyc.gov/site/ccrb/investigations/nypd-patrol-guide.page (last visited Nov. 17, 2019).

105. *See, e.g.*, Shawn E. Fields, *Weaponized Racial Fear*, 93 TUL. L. REV. 931, 970 (2019) (explaining how "over-enforcement"—excessive, unwarranted action—simultaneous with "under-enforcement"—inadequate police responses to communities of color that need police protection—makes people of color far less inclined than white people to call the police for help).

106. *See id.* at 970.

107. *See, e.g.*, Patrick Arden, *Lawsuits Target Three-Quarter House Operators*, CITY LIMITS (Mar. 7, 2012), https://citylimits.org/2012/03/07/lawsuits-target-three-quarter-operators (quoting landlord attorney's characterization of who lives in three-quarter houses: "[they] are drug addicts, and [they] are ex-convicts, and [they] are the dregs of the earth that have no place to live.").

108. *See* Riordan Seville & Kates, *supra* note 34, at 4 ("But every time the police came, they'd be on the side of [the landlord.]").

109. *See*, *e.g.*, Christine Simmons, *Parolee in Drug Treatment Program Is Granted Rights of a Tenant,* 247 N.Y.L.J. 1, (Mar. 20, 2012) ("Fearful of being arrested, Mr. Gregory left the residence and went to the police, who contacted Roberto Crespo, the facility's director. Mr. Crespo responded that Mr. Gregory had graduated and had refused to enter another facility. Mr. Gregory was advised [by the police] to start a [h]ousing [c]ourt proceeding.").

110. *See, e.g.,* Powell v. Uplifting Men, Inc., Index No. 18498/10 (N.Y. Civ. Ct. 2010) (noting that the occupant, not the landlord, was arrested when the landlord failed to restore occupant to possession despite court order to do so); N.Y. MULT. DWELL. LAW § 4 (McKinney 2011) ("owner" includes "lessee, agent, or any other person, firm or corporation, directly or indirectly in control of a dwelling.").

111. *See*, *e.g.*, Shearin v. Back on Track Grp., Inc., 997 N.Y.S.2d 227, 229 (Civ. Ct. 2014) (noting that the tenant "feared, quite reasonably, that if he did not leave, he would be arrested, and so he left.").

112. *See* JOHN JAY COLL. OF CRIMINAL JUSTICE, *supra* note 6, at 16 (One "35-year-old female tenant stated, "Ultimately, the house manager started calling my parole officer for every little thing. So it got unbearable for me, and I moved. I said let me move, because before you get me violated, I'll leave. And I packed my stuff and I left."). The authors of the report find that "[H]ouse operators sometimes exert control and settle scores by contacting or threatening to contact parole or probation officers with often-fabricated allegations of misconduct. This puts the tenant at risk of violation or re-incarceration." *Id.* at viii.

113. *See id.* at viii ("Additionally, illegal evictions derail recovery and reintegration and can lead to relapse, street homelessness, unemployment, and violations of parole mandates that can result in re-

to relocate to a city shelter instead of supporting tenants in challenging landlord abuses.[114] That relocation entirely undermines the tenant's effort to assert her right to due process by effectively executing the self-help eviction on behalf of the landlord.[115] If those risks are insufficient to deter legal challenges to self-help evictions, tenants share a near-universal fear that calling the police (or code enforcement authorities) will ensure retaliation—sometimes including physical violence—by the house operator.[116]

For tenants faced with the prospect of losing housing, the stakes are extremely high. Capitalizing on tenants' need for housing is a central pillar of the three-quarter house business model.[117] As the gatekeepers to the only housing most tenants can afford, landlords extort silence, or even complicity, in a housing model that profits from systematic illegal evictions and Medicaid fraud.[118] Landlords condition residence in a three-quarter house on the occupant's "agreement" to attend a Medicaid-reimbursable substance use treatment program five or more times per week.[119] Logically, when a tenant completes the program, Medicaid reimbursements are no longer available. For the landlord, that means no more kickbacks from the program provider. For the tenant, that translates into an illegal eviction. It is a conveyor belt of injustice that thrives on tenant turnover. Illegally evict. Bring in a new Medicaid-eligible tenant. Milk profits until exhaustion. Repeat.[120] The choice for tenants is perverse. Relapse or be evicted.

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incarceration."); Matthew Main, Referral Criteria for Single Adult Permanent Housing, Testimony Before the N.Y.C. Dep't of Housing Pres. & Dev., Jan. 16, 2015, at 6.

114. *See* Tyrell, *supra* note 20, at 5 (explaining that but for advocates' intervention challenging an unlawful eviction, parole authorities would have moved some twenty-five tenants from their three-quarter house into the shelter system).

115. *See* JOHN JAY COLL. OF CRIMINAL JUSTICE, *supra* note 6, at 16.

116. *See* Patrick Arden, *Deep Concerns about Three-Quarter Housing*, CITY LIMITS (Mar. 7, 2012), https://citylimits.org/series/three-quarter-homes/ ("Other common complaints included rampant overcrowding, with bunk beds occupying even kitchens and living rooms; a lack of heat and hot water; and threats of violence.").

117. *See* Tyrell, *supra* note 20, at 2 ("Landlords often falsely pose as social service providers, luring desperate homeless people into dangerous, overcrowded buildings where they are exploited for their government benefits.").

118. *See* JOHN JAY COLL. OF CRIMINAL JUSTICE, *supra* note 6, at 26 (discussing the role of house managers to collect "fees" from tenants and "slips" documenting that tenants attended outpatient substance use treatment). Landlords routinely enlisted so-called "house managers" to enforce "house rules," such as curfew, and verify that tenants attended landlord-selected outpatient treatment programs. *See id.* at 32. Based on the author's observations in practice, the house managers were charged to effectuate illegal, self-help evictions on the landlord's order if a tenant failed to attend the outpatient program every day or did not abide by any of the arbitrarily-imposed house rules. Tenants' reluctance to challenge the landlord abuses was thus two-fold. On one hand, tenants could not risk losing the housing. If complying with rules and attending an outpatient program meant keeping a roof over their heads, many tenants saw no option but to do so. On the other, because the scheme required tenants to use their Medicaid cards to attend the outpatient treatment, tenants feared that law enforcement might target them for being complicit in the landlord's fraud.

119. *See, e.g.*, United States v. Narco Freedom, Inc., 95 F. Supp. 3d 747, 760 (S.D.N.Y. 2015) (noting that Narco Freedom does not dispute that it conditions housing on the resident's participation in an outpatient drug treatment program).

120. *See, e.g.*, Corey Bates, Three-Quarter House Tenant Organizing Project, Testimony in Support of Intros 1164, 1166, 1167, 1168, 1171 and Res. 1035 (Oct. 6, 2016) (on file with author) ("Even when my housemates attended regularly and did everything Yury asked, once they ran through their billable Medicaid treatment, they were discharged. Let me be clear that 'discharge' is simply another way to say

3. Alienation and Subordination Triggered by Systemic "Domination and Defeat" of Three-Quarter House Tenants

"This is what happens when they illegally put you out: you go backwards. You get depressed. You start using. When you start using, you commit crimes."[121]

Three-quarter house tenants are no strangers to the systems of oppression that collude to quiet their voices, quash their grievances, and ignore their plight. In 2015, a survey of some 461 three-quarter house tenants offered a demographic snapshot of the three-quarter house tenant population.[122] According to the survey results, ninety-five percent of residents survived on public assistance or other government-sourced fixed income.[123] Seventy-six percent reported a history of homelessness.[124] Sixty-two percent reported that they had a mental health disability, while fifty-five percent reported a physical disability.[125] Forty-five percent moved to a three-quarter house because of addiction, twenty-two percent because of mental illness, and twenty-two percent because they were mandated to do so (presumably by the criminal legal system).[126] Eighty-eight percent identified as male, and eighty-nine percent identified as non-white.[127] A staggering eighty-nine percent reported that they had no alternative housing option besides the three-quarter house.[128]

The three-quarter house problem may be viewed through the lens of "social death" and "rightlessness" experienced by so many three-quarter house tenants. "Social death," according to D. Marvin Jones, is where "[p]owerlessness, rightlessness, and invisibility" merge to create a perception "by society and the law [that the person is] a non-being."[129] Consistent with the notion of "social death," three-quarter house tenants' histories of multi-system involvement[130] place them within a "'criminally stigmatized underclass' that is screened by law, policy, and common practice out of legitimate opportunities to rejoin society as 'regular' citizens."[131] That experience manifests in a litany of

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illegal eviction. As soon as the old tenant was out on the street, Yury would bring in someone new whose Medicaid was still accessible. Yury even encouraged his tenants to relapse in order to keep the Medicaid money flowing.").

121. Riordan Seville & Kates, *supra* note 34, at 4.

122. *See* Motion of Temporary Receiver for Authorization to Implement Stabilization Plan, United States v. Narco Freedom Inc., No. 14-cv-8593 (S.D.N.Y. June 25, 2014), ECF No. 185-1.

123. *Id.* at 22.

124. *Id.* at 23.

125. *Id.* at 22.

126. *Id.* at 23.

127. *Id.* at 22.

128. *Id.* at 23.

129. D. Marvin Jones, *A Bronx Tale: Disposable People, the Legacy of Slavery, and the Social Death of Kalief Browder*, 6 U. MIAMI RACE & SOC. JUST. L. REV. 31, 38 (2016).

130. By multi-systems involvement, the author refers to the entrenched histories of many three-quarter house tenants with social systems related to mental and physical health, public benefits, child welfare, criminal justice, and any number of related social services that permeate their lives.

131. *See* Kathryne M. Young & Joan Petersilia, *Keeping Track: Surveillance, Control, and the Expansion of the Carceral State,* 129 HARV. L. REV. 1318, 1342–43 (2016) (reviewing CHARLES R. EPP ET AL., PULLED OVER: HOW POLICE STOPS DEFINE RACE AND CITIZENSHIP (2014)) (discussing the collateral consequences of criminal records).

barriers to legal remedies and to the basic dignity of autonomy that is commonplace for the privileged class.

Institutional settings strip human beings of individual autonomy and indoctrinate obedience to authority.[132] Subordinated communities "are taught to perceive, remember, imagine the world as though things cannot—and should not—change."[133] When a landlord imposes a rule or illegally evicts a tenant, the tenant may decline to resist, believing, perhaps correctly, that resistance is unlikely to result in any material improvement of his circumstances.[134] Against that backdrop, the collective desperation for housing gives rise to a survivalist mentality. Avoid confrontation to preserve housing. Remain invisible.[135] Rather than object to an illegal eviction, the rational and calculated response may be to remain silent and accept the injustice as yet another manifestation of status as rightless persons.[136]

One tenant's testimony about his wrenching experience crystalizes the manifestation of this process of alienation. The tenant recounted that he once told the landlord that the cold in the three-quarter house was "getting intolerable."[137] In response, the landlord told the tenant, a Black man, "If you want some warmth, you could go back to Africa."[138] Shaken by the landlord's words, the tenant testified that he "never felt so humiliated as a person."[139] "I was belittled. I was treated like I was – I meant nothing. I felt like I was living in an inhumane place."[140] "I felt less than a person for a long time."[141]

Some tenants' tendency to convey apathy, cynicism, or even fear about movement-building as an engine for change is a challenge confronted by lawyers and organizers alike. To engage in legal battles, potential litigants must first adopt at least some minimal trust in the efficacy of legal institutions. Because many three-quarter house tenants were so intimately familiar with those systems, efforts

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132. *See, e.g.*, Madeline Porta, *Not Guilty by Reason of Gender Transgression: The Ethics of Gender Identity Disorder As Criminal Defense and the Case of P.F.C. Chelsea Manning*, 16 CUNY L. REV. 319, 341 (2013) ("Prisons discipline the bodies of those locked up within them by manipulating, classifying, examining, and constantly surveilling them; this discipline 'make[s] them more useful for mass production and at the same time easier to control.'").

133. White, *supra* note 3, at 751–52.

134. *See, e.g.*, Cindy Rodriguez, *Drug Rehab for Housing: Alleged Scheme Targets City's Most Vulnerable*, WNYC (Dec. 15, 2010), https://www.wnyc.org/story/104149-jerome-david (noting that tenants who are able to stand up to three-quarter house landlords are "definitely the exception, not the rule" because many tenants are "just struggling for survival . . . [so] [g]oing to court is something of a luxury").

135. *See id.* It is worth noting here that this is one example, among many, as to why organizing three-quarter house tenants was particularly challenging. Similarly to how certain immigrant populations may be reluctant to engage in organizing because their involvement could bring them to the attention of immigration authorities and subject them to deportation, some three-quarter house tenants were deterred from community organizing because of risk that their involvement could jeopardize their housing. *See* Scott L. Cummings & Ingrid V. Eagly, *A Critical Reflection on Law and Organizing*, 48 UCLA L. REV. 443, 498 (2001).

136. *See* White, *supra* note 3, at 752 (1988) (discussing how the psychological process of subordination engenders "feelings of fatalism, self-depreciation, and apathy" that can cause alienation from community that manifests as "passivity and silence").

137. Transcript of Record at 58, Webster v. #1 Mktg. Serv., Inc., No. 30238/2010 (N.Y. Sup. Ct. 2017).

138. *Id.*

139. *Id.*

140. *Id.* at 60.

141. *Id.* at 64.

to engage tenants might be met with skepticism. For those relegated to three-quarter houses, engaging in a law-and-organizing campaign could carry substantial risk.[142] The likelihood of reward would be entirely uncertain. The attorneys and organizers, paid to advocate, stand to lose nothing in a fight against the three-quarter house industry. But everything is at stake for tenants. A failed campaign could mean homelessness, relapse, incarceration, or worse.[143]

B. A Case Example of the Problem

Tony Ross was born and raised in Long Island.[144] He has mental health and cognitive disabilities. He cannot read. Since childhood, he was the target of violence and abuse. He turned to drugs and alcohol to self-medicate. The drug use led to criminal activity. As a young adult, Tony spent over five years in and out of prison or jail. Safety, security, and stability were all foreign concepts to Tony. Nonetheless, despite the abuse he survived and the violence he experienced, he remained relentlessly positive, earnest, and trusting. Appearing undaunted by his traumatic history, he also made it his mission to stand unabashedly for his rights even in the face of the most unforgiving circumstances and most frustrating of setbacks.

In or around 2014, after years cycling within systems marked by incarceration, homelessness, and substance use treatment programs, Tony once again found himself in need of stable housing. He was disgusted with the chaos and insecurity of the city shelter system. Because Tony had nowhere else to live, Tony's parole officer directed him to a state-licensed inpatient drug treatment program. When Tony finished the program, staff referred him to a three-quarter house called "Back on Track."[145] He didn't know what three-quarter houses were and had never heard of Back on Track. The staff reassured him that it was a "program" that would provide him safe, stable housing. When he arrived at the Back on Track facility, the landlord handed him a stack of papers to sign. Tony explained that he didn't

142. *See* discussion *supra* Section II.B.2 (noting some of the most pressing risks include retaliation, arrest, parole violation, relapse, or homelessness).

143. As noted by Aaron Samsel, perhaps some of these considerations help explain why some law-and-organizing projects lack "a clear path to continued membership or participation" when immediate legal issues are resolved. *See* Aaron Samsel, *Toward a Synthesis: Law as Organizing*, 18 CUNY L. REV. 375, 398 (2015).

144. The information in this section is based on multiple interviews with Mr. Ross. Mr. Ross has given permission to the author to use his name and to share his story for the purposes of this article. He was the petitioner in Ross v. Baumblit, 46 Misc. 3d 637, 638–39 (N.Y. Civ. Ct. 2014).

145. Back on Track Group was one of several three-quarter houses operated by Yury Baumblit. Mr. Baumblit was a notorious three-quarter house operator in New York City. Over the course of more than ten years, Mr. Baumblit operated some 30 buildings as three-quarter houses. In 2015, Mr. Baumblit was the focus of a multi-story exposé by the *New York Times* on the three-quarter house industry. *See* Barker, *supra* note 6. In April 2016, Mr. Baumblit was arrested and indicted on felony charges of grand larceny, money laundering, illegal eviction, and violations of the Social Services Law prohibiting Medicaid kickbacks. Kim Barker, *Flophouse Operator Is Arrested in a Scheme to Defraud Medicaid*, N.Y. TIMES (Apr. 13, 2016) [hereinafter Barker Apr. 13], https://www.nytimes.com/2016/04/14/nyregion/flophouse-operator-is-arrested-in-a-scheme-to-defraud-medicaid.html; Press Release, N.Y. State Att'y Gen., A.G. Schneiderman Announces the Indictment and Arraignment of Three-Quarter Housing Operators Yury Baumblit and Rimma Baumblit on Charges of Medicaid Fraud and Money Laundering (May 18, 2016) (on file with author) [hereinafter Schneiderman]. In February 2018, Baumblit pleaded guilty to a number of charges and was sentenced to 2.5 to 4 years in state prison. *See* Barker Apr. 13; *see* Schneiderman.

know how to read, but the landlord said Tony could not move in unless he signed. Recognizing that homelessness was his only alternative, Tony signed the papers.[146]

Tony moved in and began to pay rent in April 2014.[147] Tony and the landlord had a rental dispute and, beginning in October 2014, the landlord began a series of attempts to evict him without court process.[148] In the course of just three days, Tony called the police at least four times to help him when the landlord attempted to engage in self-help to evict.[149] On October 11, 2014, Tony was arrested for selling loose cigarettes.[150] He spent the night in jail and did not return to the three-quarter house until the next day.[151] When Tony returned, he found that the landlord had assigned a new occupant in Tony's bunk.[152] For nearly the next month, the landlord forced Tony to sleep on the floor in the living room.[153]

Tony won that case in housing court. But his formal triumph—while exciting for the lawyers who would be contemplating the utility of the court's decision in future cases—was a pyrrhic victory for Tony. Rendered homeless, Tony had to wait nearly a month before the court issued an order restoring him to possession. But the wait did not end there. The landlord refused to comply with the order, successfully pitting the new tenant against Tony (that tenant was also desperate for housing and, according to the court, was an "innocent bystander").[154] The police declined to intervene further and referred Tony back to court. Despite standing up for his rights, calling the police, securing legal counsel, testifying in court, and obtaining an order restoring him to possession, very little changed for Tony. To the contrary, the landlord flouted the court order, dismantled the in-house stove to collectively punish the tenants for Tony's activism, and forced him to sleep on the cold, hard floor in the three-quarter house for the next six months.[155]

While Tony's harrowing ordeal in the three-quarter house demonstrates some of the most egregious abuses inflicted on tenants, the key components of the story—homelessness, incarceration, substance use, illegal eviction, and futility of legal remedies—are the hallmarks of the three-quarter house tenant experience. With that backdrop, the next Part chronicles how the Three-Quarter House Project (TQH Project) fought back.

146. *See Ross*, 46 Misc. 3d at 638.
147. *Id.*
148. *Id.* at 638–39.
149. *Id.*
150. *Id.* at 639.
151. *Id.*
152. *Id.*
153. *Id.*
154. *Id.* at 639–40.
155. *See* Mona El-Naggar et al., *Profiting From the Desperate* (video), N.Y. TIMES (May 30, 2015) at 2:29, https://www.nytimes.com/video/nyregion/100000003711706/profiting-from-the-desperate.html (capturing Tony's landlord, Yury Baumblit, dismantling the stove that occupants used to heat the three-quarter house); Benjamin Mueller & Tatiana Schlossberg, *New York Today: Inside an Investigation*, N.Y. TIMES (June 1, 2015), https://cityroom.blogs.nytimes.com/2015/06/01/new-york-today-inside-an-investigation ("[Tony Ross] slept on the floor of a house run by Yury Baumblit.").

III. TENANTS AND ADVOCATES EMBARK ON AN UNCHARTED COLLABORATION OF LAWYERS, TENANTS AND ORGANIZERS TO BUILD A MOVEMENT AND FIGHT BACK[156]

In 2009, one lawyer at MFY Legal Services, Inc. (MFY)[157] commenced an endeavor to undertake a multi-pronged, multi-year strategy to work *with*, not merely *on behalf of*, tenants.[158] The ambitious goals were to improve housing conditions, protect tenant rights, and hold unscrupulous three-quarter house operators accountable for deceptive, exploitative, and abusive practices.[159] Central to that endeavor would be a collaboration with tenants and organizers, which came to be known as the TQH Project.[160] The strategy of the TQH Project would encompass direct legal services, impact litigation, and policy reform, together and entwined with grassroots community organizing.[161]

The TQH Project sought to situate its lawyering practice in the context of the intersectionality of systems that fueled the three-quarter house problem.[162] The TQH Project set aside the notion that its goals could be achieved by adherence to any single approach to advocacy. Instead, it adopted an approach that was necessarily flexible to respond to the needs of individual tenants, the demands of the collective tenant movement, the inadequacies of court-based "rights" advocacy, and the confines of the non-profit funding apparatus.[163] The result was what this Article refers to as a "utilitarian" approach to law and organizing—a

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156. The author is one of the attorneys who was part of the law-and-organizing endeavor that is the focus of this article. The author has made every effort to support each factual assertion with sources independent from the author's personal experiences and observations. In the absence of available external sources, however, the author relies on those personal experiences and observations to provide context and support as necessary.

157. In 2017, MFY Legal Services, Inc. became Mobilization for Justice. *Our Mission and History,* MOBILIZATION FOR JUSTICE, http://mobilizationforjustice.org/about/about-mfy (last visited Nov. 17, 2019).

158. *See Seeking Justice for Three-Quarter House Residents,* MOBILIZATION FOR YOUTH FYI (MFY Legal Services, Inc., New York, N.Y.), Summer 2016*,* at 1, http://mobilizationforjustice.org/wp-content/uploads/September-2016-MFY-FYI_opt.pdf ("When MFY Legal Services launched the Three-Quarter House Project (TQH) in September 2009, few people in New York had heard of this type of unregulated and abusive housing. But Staff Attorney Tanya Kessler, who came to MFY as a Skadden Fellow, worked to defend the basic tenancy rights of these residents, address poor conditions, and empower them to advocate for themselves.").

159. *See id.*

160. Transforming a group of advocates interested in supporting three-quarter house tenants from a generic direct legal services provider to a multi-layered and collaborative law-and-organizing project was rooted in a partnership MFY Legal Services, Inc. ("MFY"), a legal services provider, developed with Neighbors Together, a community-based organization and soup kitchen in Brooklyn. *See id.* ("[Lawyers and organizers from MFY] partner with Neighbors Together, a social service organization in Brownsville, Brooklyn, the epicenter of the three-quarter house problem. They counsel TQH tenants, hold weekly intake sessions and, with Neighbors Together, organize the Three-Quarter House Tenant Organizing Project (TOP), which provides a vehicle for residents to reach out to others, and engage in a wide range of advocacy activities.").

161. *See generally* Part IV, *infra*.

162. For the purposes of this article, I adopt the concept of "intersectionality" as coined by Kimberlé Crenshaw some thirty years ago. *See generally* Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. L. FORUM 139 (1989).

163. *See* Section IV.C.5, *infra*.

venture to calibrate lawyering with grassroots, client-driven movement-building in light of the institutional systems that created and maintained the three-quarter house problem.[164] The section that follows endeavors to define the utilitarian approach to law and organizing. Then, I return to White's three dimensions of power and subordination to locate the law-and-organizing model practiced by the TQH Project within that framework for social change.

A. A Utilitarian, Systems Theory Approach to Law and Organizing

Law-and-organizing approaches have become an established paradigm for advocacy and social change.[165] There are, however, a range of approaches.[166] Whether the lawyer maintains a supportive role that is "quarantined from the organizing process"[167] or fully assumes the roles of both lawyer and organizer,[168] a unifying thread among the approaches is measuring success "by asking whether legal advocacy has empowered client communities."[169] Any approach must confront the inherent disparities in power among lawyers, constituents, and organizers.[170] Harmonizing this discord is a Herculean task.

The TQH Project endeavored to anticipate and respond to the intersectionality of systems that impact not just individual clients, but the diverse group of individuals who reside in three-quarter houses.[171] Because of the dearth of safe,

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164. *See* Section III.A, *infra*.

165. *See generally* Cummings & Eagly, *supra* note 135 (chronicling the history of the law-and-organizing movement).

166. *Id.* at 479.

167. Michael Grinthal, *Power With: Practice Models for Social Justice Lawyering*, 15 U. PA. J. L. & SOC. CHANGE 25, 45 (2011) (describing the "Corporate Model" where the lawyer represents the "interests [of an organization] rather than the legal needs of the individual group members").

168. *See id.* at 58 ("Increasingly, lawyers are caught in the conflict between the ideals of legal services provision—equal justice and individual rights—and its frustrating reality—pyrrhic victories, resource shortages, and political restrictions attached to funding."). Grinthal introduces the "Lawyer as Organizer" as the starting point—or perhaps ending place—for a lawyer who is frustrated with the "pressure and limitations" of the law as a means for social change. *Id.* Grinthal argues that the Lawyer as Organizer should be employed as a provisional remedy that is "not a static structure, but transitions from pure legal services to one of the [other Grinthal models]." *Id.* That objective is consistent with an ethos that permeates each of Grinthal's models: a deliberate and principled effort to combat the disparate power dynamics between lawyers and organizers. Indeed, he warns that "in practice [the Lawyer as Organizer model] often aggrandizes and foregrounds the lawyer" and may result in unintended dependency on the lawyer as the "central figure" or "visionary" in the movement. *Id.* at 59. As such, when employing that model, lawyers "should work toward differentiating the roles of lawyer and organizing as soon as possible." *Id.*

169. Cummings & Eagly, *supra* note 135, at 489.

170. For instance, E. Tammy Kim endorses the "resource-ally model" that "sees lawyers as 'facilitators' who should perform 'work that is supportive of, but not directly involved in, the work the client is seeking to accomplish." E. Tammy Kim, *Lawyers As Resource Allies in Workers' Struggles for Social Change*, 13 N.Y.C. L. REV. 213, 220 (2009). Kim argues that the separation of law and organizing maintains lawyers as "resource allies" to "avoid role confusion [so they] are able to focus on what they do best." *See id.; see also* White, *supra* note 3, at 740 (noting that "the power relation between the lawyer and the community was of central concern . . . . [and] one way to equalize[e] the relationships [is] by ensuring that the client has more power").

171. This type of systems theory approach may help the lawyer to "more fully understand the complex interaction of race, place, economy, and opportunity" by considering "the cumulative effects of discrimination within multiple dynamic and interacting systems such as residential segregation and concomitant discrepancies in property values, bank lending practices, and design of transportation networks; racial disparities in educational investment and attainment; concentration of law enforcement in

stable housing for poor people in New York, three-quarter houses emerged as a one-size-fits-all model of housing of last resort—a hotbed for exploitation rooted in systems of institutionalized power and oppression.[172] Consistent with the aims of social work and movement lawyering, the TQH Project adopted practices that sought to fuse equity and social justice for the entire three-quarter house community into each individual case.[173] The following Sections will discuss the mechanics of collaboration among the players in the TQH Project. First, I attempt to distill the sources of tension between the lawyers and organizers. I then discuss the respective roles of the organizers and lawyers in the TQH Project, and their mutual reliance in a movement for three-quarter house tenant justice.

1. The Clashing Roles of the Lawyer and Organizer

The law is inherently and deliberately conservative. Its goals and visions are developed from the perspective of very powerful elites.[174] The law excludes. It vests disinterested professional actors with power to make decisions and develop strategy to attack discrete legal issues.[175] Conversely, the essence of community organizing is to demand inclusion of affected people in a decision-making process that can sow seeds for transformative change.[176] It puts power in the hands of the excluded—workers, tenants, students, and communities—so the people who are affected by laws, policies, rules, procedures, and practices are the driving force behind the development and implementation of the legal frameworks that influence their lives. Therein lies the constant tension—deploy direct services to support individuals in crisis or allocate limited resources to mobilize for transformative change?

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communities of color and disparate levels of incarceration; and other institutional and cultural systems that lead to racial disadvantage." Rachel A. Spector, "*Dignified Jobs at Decent Wages": Reviving an Economic Equity Model of Employment Discrimination Law*, 36 BERKELEY J. EMP. & LAB. L. 123, 144 (2015).

172. The author by no means intends to suggest that he has developed some kind of particular expertise to navigate the complex intersectionality of systems, experiences, and stigmas that color the experiences of three-quarter house tenants' daily realities. The author readily acknowledges that this is a process and challenge informed by his own privilege and relative position of power. Thus, while the author is of the belief that legal representation should always be informed in consideration of the particular experiences manifest by the systems of oppression that affect clients' lives, the effort to do so in this particular law-and-organizing model is highlighted here because the author believes it was a critical and ever-challenging component of the Three-Quarter House Project's practice.

173. For instance, the attorneys made it common practice to introduce and explain the dynamics of the three-quarter house industry in each case. Whether that meant a brief introduction to that context in a case conference or oral argument in court, or a more detailed overview in written submissions, the attorneys incorporated that history and context as a necessary element of their advocacy.

174. *See* William P. Quigley, *Letter to A Law Student Interested in Social Justice*, 1 DEPAUL J. FOR SOC. JUST. 7, 17 (2007) ("All laws are made by those with power. There are not many renters or low-wage workers in Congress or sitting on the bench. The powerless, by definition, are not involved in the lobbying, drafting, deliberating and compromising that are essential parts of all legislation. Our laws, by and large, are what those with power think should apply to those without power.").

175. *See* Grinthal, *supra* note 167, at 34, 36.

176. *See* Jeannie Oakes et al., *Grassroots Organizing, Social Movements, and the Right to High-Quality Education*, 4 STAN. J. CIV. RTS. & CIV. LIBERTIES 339, 361 (2008).

Ethical rules obligated the TQH lawyers to adhere to the needs and interests of their individual clients.[177] Yet in the context of movement-building, identifying those needs and interests was not always so clear. Should the lawyers select cases and adopt strategies most likely to further the movement-building agenda? Did it matter that clients might feel compelled to act consistently with collective movement goals because of a perceived belief that they "owed" the lawyers for the legal services rendered?[178] A particular client's experience might resonate with other tenants, make a compelling story for the press, or offer a tangible example to elected officials. Yet many tenants had no interest in becoming a public face of the three-quarter house community. Not every tenant is an activist. Few desired to be associated with three-quarter housing.[179] For scores of tenants, the houses were meant to be nothing more than a temporary place to lay their heads. The goal was to move on. Righting the wrongs of the three-quarter house industry was not every tenant's cause célèbre.

Yet many clients and former clients were actively involved. Because of the interconnectedness between legal strategies and grassroots organizing, the lawyers were required to be extremely diligent and cautious when inquiring as to whether a client or former client wished to allow the movement to "use" his story in furtherance of movement goals. Was it the lawyer's duty to discern the reason why a tenant opted to engage in a certain legal strategy or become involved in a particular organizing campaign? Did the lawyering need to be entirely disaggregated from the organizing? These questions were complicated. The TQH Project did not want tenants engaging in campaigns because they believed they "owed" it to the lawyers as a quid pro quo for the legal services rendered.[180]

The paralegal-organizers grappled with a similar tension.[181] By declining to serve the person in crisis, the paralegal-organizer would have more bandwidth to mobilize actions, lead trainings, meet elected officials, and conduct outreach in the field. But what is the effect on organizing when members in crisis are not able to

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177. *See, e.g.*, 7 C.J.S. Attorney & Client § 80 (2019) ("An attorney must represent a client to the best of the attorney's abilities under the circumstances, devoting the attorney's entire energies to the client's interests. An attorney's duty to the client must be absolute and uncompromised."); L. Ray Patterson, *Legal Ethics and the Lawyer's Duty of Loyalty*, 29 EMORY L.J. 909, 918 (1980) ("The prevailing notion among lawyers seems to be that the lawyer's duty of loyalty to the client is the first, the foremost, and, on occasion, the only duty of the lawyer."); Kim, *supra* note 170, at 227–28 (arguing that the "resource-ally" model of law and organizing minimizes the risk that a lawyer working with organizers may breach ethical duties).

178. For a discussion of this tension in the context of "participatory" criminal defense model, *see* Cynthia Godsoe, *Participatory Defense: Humanizing the Accused and Ceding Control to the Client*, 69 MERCER L. REV. 715, 728 (2018) ("The client's wishes may be subsumed by the needs of his community or the movement.").

179. Perhaps colored by the stigma of what it felt like to be associated with three-quarter housing, multiple tenants confided in the author that close friends, family, and/or employers had no idea that they lived in a three-quarter house. They kept the conditions, experiences, and stresses of life in the houses to themselves.

180. *See* Cummings & Eagly, *supra* note 135, at 496 ("The imposition of an organizing model on clients who are seeking legal services raises questions about lawyer domination and paternalism. Are these clients really interested in being organized, or are they agreeing to do so only because they have no other means of obtaining needed legal services?").

181. As discussed further in Section III.A.3, *infra*, institutional resources for organizers at MFY were limited. Thus, for much of the Project's existence, the organizers were charged to occupy a dual role of both paralegal *and* organizer.

obtain support to address their most immediate and fundamental needs? How is it possible to mobilize for more transformative change when the base is consumed by personal crisis? Navigating these situations was complicated. Because the base was plagued by crisis, efforts to mobilize action was a continuous challenge. A seemingly constant need to respond to individual emergencies often meant that the movement had to wait.[182]

2. The Lawyers

These challenges remained ever-present for the TQH Project. The role of the lawyer was not as straightforward as it is in more traditional lawyering,[183] but the lawyers did not stray so far from traditional lawyering methods so as to become organizers themselves.[184] Instead, as explained in detail *infra*, the TQH Project adopted a blend of systems theory—consistent with social work and community organizing[185]—with an individual client approach consistent with traditional delivery of legal services and the "resource-ally" model in which "lawyers support community organizing through legal representation of members of external grassroots organizations."[186]

Unlike the "individualistic professional role of [traditional] lawyers" for which "[p]ursuing social justice is not an explicit goal,"[187] the TQH Project lawyers emphasized "group work, community organizing, and social reform"[188] consistent with the stated norms for social work.[189] The result was an approach through which the lawyers, together with organizers and affected people, considered "not only the immediate problem faced by a client (as a lawyer might do) but also the 'system' within which the client exists."[190] Inherent in the Project's model was a tension between the call to respond to individual crises, the ethical obligation to zealously

182. *See* Grinthal, *supra* note 167, at 49–50 (discussing the "seductive immediate payoff of traditional legal service delivery [that] competes with the long-term power-building of organizing").

183. By "traditional lawyering," the author refers to attorney-client relationships that exist within the context of a closed universe determined by the particular facts of the case. *See id.* at 31–32 (discussing traditional models of lawyering that promote the "concentration of power in the hands of lawyers," including representation of corporations, and the use of impact litigation class action litigation, as means through which lawyers "advocate on behalf of unorganized constituencies" without clear mechanisms for accountability by the individuals within those groups).

184. Indeed, as discussed by Cummings and Eagly, the lawyers were cautious that "a shift toward an [exclusively] organizing-centered approach would result in a reduction of basic services to [their] clients." *See* Cummings & Eagly, *supra* note 135, at 492.

185. *See* Jane Aiken & Stephen Wizner, *Law as Social Work*, 11 WASH. U. J.L. & POL'Y 63, 72 (2003) ("Social workers and lawyers, at their best, not only provide caring support and advocacy for the poor and powerless but contribute their professional knowledge and skills to the struggle against social injustice and economic exploitation. In function, they work for social change.").

186. Kim, *supra* note 170, at 220.

187. Aiken & Wizner, *supra* note 185, at 64–66 (noting that while the Rules of Professional Conduct refer to "the ideals of public service," they impose no ethical obligation on lawyers to pursue them).

188. *Id.* at 65 (noting that the role of the social worker focuses not just on "the individual client, but also on the client's family and community, including the social, economic, racial, ethnic, and religious factors affecting the client's life.").

189. The author does not intend to suggest that all social workers view their work through a social justice lens but to instead draw contrast between the stated professional norms in that profession as opposed to those in the law.

190. Aiken & Wizner, *supra* note 185, at 66.

address discrete legal problems, and the demand to attack the underlying systems at the root of those distinct individual issues.[191] To navigate that tension, the utilitarian model proposes that advocates collaborate with directly affected people to employ a multitude of tactics, inside the courtroom and out, to disrupt the status quo and cultivate a framework for transformative change.

Substantively, the attorneys' work encompassed three general areas: (1) housing and homelessness;[192] (2) reentry, parole, and policing;[193] and (3) substance use and other disabilities.[194] In each of those areas, the attorneys employed distinct but often overlapping approaches to advocacy including direct legal services, affirmative litigation, policy and legislative advocacy, and grassroots community education and organizing.

As a practical matter, that meant the lawyers would take on individual client cases in housing court while also engaging in affirmative class action litigation in New York State Supreme Court or federal court. Individual client representation offered "legal first aid" to respond to the immediate crises caused by illegal self-help evictions, discontinuance of essential services, or building-wide evictions in

191. It would be naïve to assert any unitary "root cause," but the carceral state, the criminalization of poverty and disability, predatory capitalism, and racial injustice were among the many entrenched in the three-quarter house tenant experience.

192. The overall mission of this component of the attorney's role was to serve very low-income people who live in, formerly lived in, or may one day live in a three-quarter house. The attorneys represented three-quarter house tenants in "illegal lockout" proceedings in housing court when tenants were evicted without court process. They also maintained a docket of cases representing tenants in lawful evictions—holdover or non-payment proceedings. In addition, the attorneys carried an affirmative litigation docket: cases in housing court where the tenant sued for repairs or to restore essential services, or cases in New York State Supreme Court or federal court to litigate claims related to deceptive business practices, violations of the New York State Mental Hygiene Law (e.g., forced medical care or substance use treatment services), source of income discrimination, unpaid wages and overtime, among other claims. Brief service was a critical and weighty part of the day-to-day work: fielding calls or walk-in intakes from TQH tenants seeking counsel, advice, or general information related to issues faced by and the rights of TQH tenants. Attorneys engaged in policy reform efforts, including drafting and lobbying for legislative reforms through formal channels and also engaging with administrative agency stakeholders to seek support with individual building issues and broader city-wide reforms. Attorneys maintained rolling communication with media outlets regarding current issues faced by clients and/or current events related to TQH industry. Those formal advocacy efforts are complemented by on-the-ground education and community engagement in the form of know-your-rights trainings with tenants and community-based organizations as well as informational presentations at police precincts, government agency offices, and miscellaneous conferences.

193. The goal of this component of the attorneys' role was to serve people with criminal justice involvement, address barriers to reentry and dignified housing, and combat discrimination. The attorneys advocated with DOCCS to ensure that tenants who were under parole supervision were able to exercise their right to safe, stable housing, obtain repairs, and challenge discriminatory and/or unlawful treatment by landlords. The attorneys also engaged in legislative and policy reform, advocating to remove barriers to decent housing for people with histories of criminal justice involvement. Attorneys also interfaced with DOCCS administration and parole officers as well as NYPD leadership and patrol officers on issues related to housing stability (e.g., right to court process prior to eviction).

194. In this area, the attorneys' role was to serve people who use drugs or formerly used drugs, combat discrimination and stigma, and advocate for widespread adoption of harm reduction models. The attorneys focused on the intersection of the opioid epidemic and the homelessness crisis, providing legal representation and advocacy to combat discrimination based on substance use disability, engaging in legislative reform, and providing advice and counsel to people living in or exiting from residential substance use treatment programs in New York State.

housing court.[195] Far slower moving, the affirmative class action litigation took aim at some of the larger three-quarter house operators with broader goals of obtaining relief for class members, raising awareness about the three-quarter house problem, holding accountable the operators whose profits derived from exploitation of tenants, and igniting political will for reform. In both forums, the litigation created a hook for organizers to rally other tenants, educate them about their rights, and engage them in the legal and political processes for change.[196]

To successfully engage as movement lawyers with three-quarter house tenants, the role of the attorneys was broader than the traditional notion of "lawyer." The role oscillated from social worker, activist, teacher, and—to the dismay of many legal ethicists—friend.[197] The attorneys adopted a role akin to Charles Fried's "limited-purpose friend."[198] "A lawyer," says Fried, "is a friend in regard to the legal system. He is someone who enters into a personal relation with you—not an abstract relation as under the concept of justice. That means that like a friend he acts in your interests, not his own; or rather he adopts your interests as his own."[199] That relationship, he posits, even if "sharply limited" to the lawyer's "range of concern," is consistent with the "classic definition of friendship," because the lawyer's "intensity of identification with the client's interest is the same [as the traditional friend]."[200]

Acutely aware of their role as "limited-purpose friend," the attorneys balanced use of traditional lawyers' tools of formal negotiation, legal argumentation, and litigation, with the capacity to deliver non-legal aid more attributable to the privilege of their *status* as lawyers—particularly white lawyers—and less their substantive legal prowess.[201] For example, upon receipt of a call that a tenant was illegally evicted, the lawyer and organizer would deploy immediately to the site of

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195. This role mirrors what Grinthal calls the "Legal M*A*S*H Unit," where the lawyer "handles short-term legal 'first aid' to keep the leaders up and organizing." Grinthal, *supra* note 167, at 48. While the Legal M*A*S*H lawyer must appreciate the organizing objectives of the constituency, she remains tethered to the delivery of legal services as a principal engine for change. Indeed, Grinthal cautions that the delivery of legal services may "creep into the core struggles" of the movement such that those legal battles "eclipse[] organizing" as the primary means through which members experience power. *Id.* at 49–50.

196. *See id.* at 53–54 (discussing the "Scaffold of Litigation" model under which lawyers use litigation as a hook to promote a shared identity among constituents and galvanize engagement in organizing campaigns).

197. *See* Robert J. Condlin, *"What's Love Got to Do with It?" "It's Not Like They're Your Friends for Christ's Sake": The Complicated Relationship Between Lawyer and Client*, 82 NEB. L. REV. 211, 306–07 (2003) (discussing the lawyer's one-sided role as "a friendly fiduciary"—an agent who may have a "duty of sociability" but who is not a friend of the client in the true sense of the word); *see* Kim, *supra* note 168, at 220 (critiquing the "unbounded lawyering model comprising the roles of organizer, counselor, and friend").

198. Charles Fried, *The Lawyer as Friend: The Moral Foundations of the Lawyer-Client Relation*, 85 YALE L. J. 1060, 1071 (1976).

199. *Id.*

200. *Id.* at 1071–72.

201. For example, on multiple occasions, tenants contacted lawyers to report that police failed to assist them when they called police to report that a landlord evicted them without court process. Before commencing a proceeding in housing court, the lawyers—both white—would often go to the site of the alleged illegal eviction and call the police again with the tenant. Almost without exception, the presence of the lawyers resulted in action by the officers to follow the NYPD Patrol Guide and enforce the city's illegal eviction law.

the illegal eviction.[202] By showing up on a moment's notice, the lawyer and organizer embodied their roles as "limited purpose friend[s]," standing with the tenant and sending a message to the landlord and other building residents that the tenant was not alone.[203] Rather than leave the tenant to seek police assistance alone, the lawyer could make the 911 call and be the point of contact when law enforcement arrived. Thus, the mere physical presence of the lawyer mitigated the risk of a negative encounter between the police and the tenant and made it more likely that the tenant would be permitted reentry into the building without having to rely on a protracted process to obtain relief from a court.

Consciously or not, the lawyers wielded race and class privilege to support tenants. Unlike the vast majority of three-quarter house tenants, the attorneys were white, stably employed, healthy, and sheltered from the destabilization, institutional racism, and oppression that led many to three-quarter houses.[204] Although those differences could be marshalled as assets with police, parole officers, lawyers, or judges, they could also provoke division or disconnect between the lawyers and tenants.[205] To promote a model of law and organizing that would attempt to bridge the gaps in experience, the lawyers leaned heavily on the relationship building undertaken by the TQH Project organizers.

3. The Organizers

Organizing is the backbone to movement lawyering. Organizing has been defined as "the processes by which people build and exercise power by collecting and activating relationships"—organizing people to develop "relational power."[206] In contrast to the sometimes rigid, outcome-driven focus of lawyering, organizing

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202. For just one example, on March 16, 2015, a tenant called MFY Legal Services, Inc. to report that he was illegally evicted. The tenant reported that he called the police but that the police declined to assist him. The author along with TQH Project organizer, Paulette Soltani, then went to the building to interface with the police, explained what three-quarter houses are, and reminded officers of the mandates of the NYPD Patrol Guide to enforce the city's illegal eviction law. With the physical presence of advocates at the scene, the police informed the landlord that the tenant had a right to court process. With pressure from the police, the landlord ultimately relented and the tenant was restored to possession. *See* Video Recording Documenting Encounter with Police (Mar. 16, 2015) (on file with author).

203. *See* Fried, *supra* note 198, at 1071.

204. *See* Motion of Temporary Receiver for Authorization to Implement Stabilization Plan, United States v. Narco Freedom Inc., 95 F. Supp. 3d 747 (S.D.N.Y. 2015) (No. 14 Civ. 8593), ECF No. 185-1 (indicating that of 461 three-quarter house tenants surveyed, fifty percent identified as Hispanic, thirty-three percent as Black, and twelve percent as white).

205. While it is perhaps impossible to quantify the precise impact that the lawyers' race may have played in these various contexts, it is the author's opinion that race and gender always contributed to the dynamics of the particular situation. For just one example, in contrast to multiple tenants who reported threats of arrest when they called for police assistance, the author did not once believe that his advocacy with the police put him at risk for arrest. Perhaps it is too much of a leap to attribute the entirety of that disparate treatment to the author's race, gender, or professional status alone. However, it would strain credulity to assume that those layers of privilege did not contribute to the vastly different treatment experienced by the author as compared the poor people of color the author represented.

206. Grinthal, *supra* note 167, at 34, 36; *see also* Nina Farnia, *Sitting Silently at Home: A Critique of "The Revolution Will Not Be Funded: Beyond the Non-Profit Industrial Complex*," 17 UCLA WOMEN'S L.J. 269, 296 (2008) (explaining that community organizing is made up of the grassroots work that is necessary to build a movement, which includes "the creation of public, open spaces, the development of participatory organizational structures, recruitment, and popular education").

encompasses a "slow, circular process of mutual education between [the organizer] and community members."[207] The goal of that process is to politicize knowledge and harness that power to effect social change.[208]

The organizer is a disruptor of the hierarchical capitalist status quo. But in the context of a non-profit industrial complex that disproportionately prioritizes and glorifies the value of lawyers as a solution to compound social problems, the role of the organizer is routinely marginalized or ignored.[209] As explained by Nina Farnia, non-profit organizations need funding to operate.[210] To obtain that funding, organizations must meet the expectations of private, government, or corporate funders.[211] The non-profit industrial complex becomes an arm of the state that hamstrings the ability to challenge state authority when the organization must also be accountable to that authority to remain solvent.[212] The result, Farnia argues, is that non-profit organizations are commandeered "to quell dissent and social resistance, thereby maintaining the white supremacist, capitalist, and patriarchal status quo."[213]

Systemic marginalization of organizers from the delivery of legal services is entirely consistent with Farnia's critique. For instance, the Legal Services Corporation, the largest funder of civil legal aid for low-income people in the United States,[214] categorically prohibits organizing by organizations that it funds.[215] More recently, the groundbreaking Universal Access to Counsel legislation that provides a right to counsel for low-income tenants facing eviction in New York City notably stopped short of including funding to community-based organizations to promote grassroots tenant organizing campaigns.[216] That practice perpetuates an elitist, top-down approach that paints lawyers as the heroic saviors

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207. White, *supra* note 3, at 743.

208. *See* Oakes et al., *supra* note 176, at 361 (discussing the exercise of power by way of public actions, rallies, petitions, letter writing, or social media campaigns).

209. For example, the New York City Universal Access to Housing Law, which made New York City the first jurisdiction in the United States to guarantee a right to legal representation for low-income tenants who face eviction, does not include funding of community organizing to support the legal services organizations that provide that legal representation. *See* N.Y.C. ADMIN. CODE § 26-1302 (2017). The statute entitles tenants at or below 200 percent of federal poverty guidelines to "brief legal assistance, which is defined as "individualized legal assistance provided in a single consultation by a designated [non-profit legal services] organization . . ." *Id.*

210. *See* Farnia, *supra* note 206, at 279–80.

211. *Id., see also* Kim, *supra* note 170, at 226 ("Due to the relatively higher salaries of lawyers and the considerable costs of litigation, organizations may tend to provide more resources to in-house lawyering than organizing.").

212. *See* Farnia, *supra* note 206, at 280.

213. *Id.*

214. *See Who We Are*, LEGAL SERVS. CORP., https://www.lsc.gov/about-lsc/who-we-are (last visited Nov. 17 2019).

215. "Recipients [of Legal Services Corporation funds] may not use funds provided by the Corporation or by private entities to initiate the formation, or to act as an organizer, of any association, federation, labor union, coalition, network, alliance, or any similar entity." 45 C.F.R. § 1612.9 (2018).

216. Organizers and activists with the Right to Counsel Coalition have kept funding for community organizing on the forefront, however. Indeed, New York City Council Intro 1104 would require the city to fund the organizing work that is essential to spread the word about the right to counsel in New York City and support tenants who are working with one another to combat landlord abuses. *See "Right to Counsel, Power to Organize" Campaign*, RIGHT TO COUNSEL NYC COALITION, https://www.righttocounselnyc.org/
right_to_counsel_power_to_organize_campaign (last visited Nov. 17, 2019).

who will swoop in to relieve the powerless from their plight.[217] That model suppresses radical, grassroots organizing with directly affected people in favor of more politically palatable reformist objectives determined by elites.[218]

Community organizers collaborate with affected people to build movements. They embed themselves in communities to understand the problem, identify the structural obstacles to solutions, and then engage the expertise of the constituency to develop leadership and collective strategy to demand change.[219] A purely law-based approach to social problems does not contemplate collaborative dialogue—a relational exchange of skills and experiences—between affected people and lawyers employed to serve them. Those exchanges take time and are more difficult to measure than the outcomes of formal legal representation that can be tallied and packaged neatly for funders. Unlike legal services providers, organizers must manage the nuance of less concrete indicators for leadership development, movement-building, and the progress of campaign strategy.[220]

The purpose of organizing is to build nurturing relationships that create power.[221] Traditional legal services models are grounded in "an insistent view of poor or marginalized clients as bundles of weakness and need" who must rely on lawyers to contribute power and resources.[222] Grinthal critiques the "pure charity of the traditional legal services model" as "a pose of benevolent giving . . . [that] also enforces the client's powerlessness and dependency."[223] Organizers disrupt that narrative and "counter the 'expertise' of the lawyers and the mystique of the law"[224] by holding both the lawyers and the client-activists accountable to one another and to their shared objectives for meaningful victories inside the courtroom and out.[225]

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217. *See, e.g.*, Barr, *supra* note 61, at 735 (cautioning against the tendencies of public interest lawyers to work for and not *with* the communities that they seek to serve); Godsoe, *supra* note 178, at 729 (referring to Gerald Lopez's warnings that "public interest or 'progressive' lawyers are constrained by their privilege and the elitist norms of the profession that cast them as 'heroes' to their helpless and incapable clients").

218. *See* Rikke Mananzala & Dean Spade, *The Nonprofit Industrial Complex and Trans Resistance*, 5 SEXUALITY RES. AND SOC. POL'Y 53, 57 (2008) ("Some have argued that because social justice nonprofits are funded through philanthropy—frequently directly by wealthy individuals and corporations—the strategies of this work have become more conservative to better fit those funders' capitalism maintenance and reformist goals than the base-building, visionary organizing goals that might emerge more directly from communities facing oppression.").

219. *See* Oakes et al., *supra* note 176, at 358.

220. *See* Mananzala & Spade, *supra* note 218, at 58 ("Base-building work that involves less tangible returns like the growth of shared political analysis within a community or relationship building is undervalued. This model encourages organizations to identify goals that can be achieved quickly, not to envision the long-term strategies necessary for more radical changes to politics and culture.").

221. *See* Grinthal, *supra* note 167, at 49.

222. *Id.*

223. *See id.*; *see also* Kim, *supra* note 170, at 218 (discussing the image of the stereotypical public interest attorney who "saw an acceptance of the primacy of law in enacting social change" hardening with "authoritative, domineering . . . [and] single-minded . . . adherence to legal solutions" to complex social problems).

224. White, *supra* note 3, at 745.

225. For further discussion of the roadblocks to transformative change when social justice lawyers fail to anchor legal battles for policy reform in community-based movement-building see Rikke Mananzala et al., *Law Reform and Transformative Change: A Panel at CUNY Law*, 14 CUNY L. REV. 21, 46 (2010) ("However, we were doing this policy work like typical lawyers–meeting in closed rooms with bureaucrats, not connecting the work to direct community organizing strategies. SRLP was working on making our organization accountable and governed by the people who come to us to seek services, but we didn't yet

Because of the disproportionate resources allocated to legal services and lawyers, the TQH Project organizers were saddled with a disproportionate burden.[226] The organizers conducted on-the-ground outreach at community-based organizations, substance use treatment program sites, hospitals, fast-food restaurants, or any other location they identified as one frequented by three-quarter house tenants. They met hundreds of tenants and built relationships.[227] They planned and coordinated meetings, developing agendas that balanced member education with goal identification, campaign strategy, and leadership development. With all those responsibilities on their shoulders, the organizers also pushed lawyers to fight harder and to do better.

B. Lucie E. White's Three Visions for How a Lawyer Promotes Change as a Framework

It would be wholly disingenuous to suggest that the TQH Project developed what I now refer to as the "utilitarian" approach to law and organizing within the confines of a clear, scripted agenda. What I outline *infra* draws heavily from the models articulated by E. Tammy Kim,[228] Heather Barr,[229] Michael Grinthal,[230]

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have a strategy around how to make this kind of work, which is mired in expertise and deeply undemocratic, actually become a site of community organizing, leadership development, and mobilization. There were so many policy reform efforts being undertaken by SRLP and a few others without a deep community organizing strategy. Not surprisingly, these policy efforts ran into a lot of problems and were very hard to get implemented because the only real way to win meaningful victories is to have an organized community behind the demands.");White, *supra* note 3, at 744 (discussing the role of the organizer to create space where constituents are "culturally 'at home' [and where] [t]hey did not have to be 'good clients' to get help . . . [and] [t]hey did not have to listen to what lawyers tell them 'what the law said' about their problems").

226. The organizers were also paid much less. For example, in 2015, in contrast to a lawyer with five years of experience who earned $76,643.27, an organizer with comparable experience was paid just $52,490.08. *See* Collective Bargaining Agreement between the Legal Servs. Staff Ass'n Nat'l Org. of Legal Servs. Workers Int'l Union UAW, Local 2320, AFL-CIO and MFY Legal Servs., Inc. Jan. 1, 2015 to Dec. 31, 2017, 70, 73, https://lssa2320.org/wp-content/uploads/2015/01/MFY-CBA-2015-to-2017-1.pdf.

227. *See, e.g.*, Paulette Soltani, Letter to the Editor, *Parolees Locked Out of Housing*, N.Y. DAILY NEWS (Mar. 8, 2018), https://www.nydailynews.com/opinion/Mar.-8-homeless-parolees-dangerous-drivers-power-outages-article-1.3861587 (noting the activist met "hundreds of people . . . while organizing three-quarter house tenants across New York City").

228. *See* Kim, *supra* note 170, at 218.

229. Heather Barr warns public interest lawyers who are motivated by a desire to "right wrongs" to be ever-vigilant to reject the ease of falling into a role of fighting *for* people who are oppressed, rather than *with* them. *See* Barr, *supra* note 61, at 735 ("As people with advanced (and expensive) education, often from comfortable class and privileged racial backgrounds, it is easy for [lawyers] to fall into a role of fighting *for* people who are oppressed, rather than *with* them.").

230. Grinthal advances a series of services-plus-organizing models that endorse a role of legal services to support organizing. *See* Grinthal, *supra* note 167, at 49–58. Each model confronts the inherent disparities in power between lawyers and organizers and to varying degrees endeavors to harmonize that discord. *See id.*

Alizabeth Newman,[231] Karen Gargamelli and Jay Kim,[232] Aaron Samsel,[233] Jane Aiken and Stephen Wizner,[234] Sameer Ashar,[235] and others. Central to the approach adopted by the TQH Project is open-minded willingness and flexibility to adapt the focus, roles, and strategies according to the particular needs of tenants at the particular moment in the movement. In essence, the model was every model, and it was no model. As discussed *infra*, it was a utilitarian approach to law and organizing informed by a systems-based, intersectional perspective that continually sought to meet tenants where they were, based on their history and their experience. In an attempt to give meaning to that ever-changing approach, I now turn to the framing established by Lucie E. White.[236]

Grounded in the three "levels of subordination," discussed in Section II.B, *supra*, White advanced three "ideal types," or "visions," of social-change lawyering.[237] Under each "type," the lawyer must employ strategies that recognize and ultimately evolve to accommodate the dimensions of power that color the experiences of subordinated populations.[238] The first is the "straightforward and familiar" prototype wherein the lawyer translates client grievances into winning legal claims.[239] The "second-dimension" lawyer views the utility of litigation more comprehensively. She engages in litigation not only to "win" but to stimulate "discourse about social justice" and "expand public consciousness about justice and mobilize direct action for change."[240] She uses advocacy to "produce public happenings" that resonate with the "audience"—the subordinated group and the wider public—and defines success not only by legal victories but also the extent to which the advocacy moves that audience to action.[241]

Finally, under the third type, the lawyer steps away from her professional norms, opening a "dialogic process of reflection and action" to develop political

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231. *See* Alizabeth Newman, *Bridging the Justice Gap: Building Community by Responding to Individual Need*, 17 CLINICAL L. REV. 615, 616 (2011).

232. *See* Karen Gargamelli & Jay Kim, *Common Law's Lawyering Model: Transforming Individual Cases into Opportunities for Community Organizing*, 16 CUNY L. REV. 201, 205 (2012) (laying out the principles upon which Common Law was established, co-founders Karen Gargamelli and Jay Kim state expressly that "lawyers should take a backseat in movement building; lawyers should do legal work, not organize; and organizers know best so they should lead the way").

233. *See* Samsel, *supra* note 143, at 392–93 (advocating for a "Law *as* Organizing" approach).

234. Aiken and Wizner posit that the "lawyer as social worker" should identify root problems and solutions to provide a holistic service to their clients. *See* Aiken & Wizner, *supra* note 185, at 64. In that vein, "[the lawyer] considers the impact of the law . . . and the client's community when determining what might be a good legal outcome." *Id.* at 75. The lawyer as social worker values client empowerment and client investment in solving problems and avails herself as "merely a resource, not the director of activity." *Id.* at 76.

235. *See, e.g.*, Sameer M. Ashar, *Movement Lawyers in the Fight for Immigrant Rights*, 64 UCLA L. Rev. 1464, 1495 (2017) (discussing the role of movement lawyers in deploying both "conventional legal tools" while also "nurturing critical visions by which to alter law and social discourse"). Ashar posits that there is a common thread between "establishment" lawyers and "a recessive strand" of lawyers who "challenge the superstructure" by supporting activists and using "more critical discursive frames" to use the "full repertoire of lawyering tactics that included litigation and non-litigation advocacy" to achieve social change. *Id.* at 1496.

236. *See* White, *supra* note 3, at 748.

237. *See id.* at 754–55.

238. *See id.*

239. *Id*. at 755.

240. *Id.* at 758, 760.

241. *Id.* at 758–59.

consciousness among the subordinated community that informs how the community may "interpret moments of domination as opportunities for resistance."[242] The lawyer does not "dictate to the group what actions they must take" but instead engages in an exchange with "those who know the landscape [of the problem] and will suffer the risks" of a particular action.[243] Unlike an organizer who may be more directive, "leading clients to engage in pre-scripted actions," the third dimensional image of the social justice lawyer seeks to enable clients to speak for themselves as "critics and . . . strategists."[244] As such, "[t]hey must act more like teachers, turning every moment into an occasion for clients to practice skills and build connections that will enable them to make change."[245]

White's discussion of the Driefontein village illustrates the potential for successful and effective collaboration among lawyers, organizers, and the community. While recognizing the "distinct tasks" undertaken by the lawyer and organizer, respectively, she heralds their capacity to complement one another in "a single advocacy strategy" to reinforce efforts of a subordinated community to reclaim its own power.[246] Part IV will discuss the interplay among each of White's three images of the lawyer in the context of the TQH Project's collective efforts to reclaim tenant power.

IV. APPLYING WHITE'S FRAMEWORK TO THE THREE-QUARTER HOUSE PROJECT: LEGAL SERVICES + EDUCATION + GRASSROOTS ACTIVISM + VISION FOR CHANGE

Developing a workable law-and-organizing practice was a constant work-in-progress. Given the complex and deeply entrenched problems, the TQH Project did not have a clear strategic blueprint for a solution. Contrary to the implication from White's three dimensions of social justice lawyering, the process was not linear. And it was not without substantial setbacks. No single "dimension" of lawyering captures the fluidity of approaches employed by the TQH Project to collaborate with three-quarter house tenants in their movement for housing justice. At each stage of the Project's recursive process, lawyers, organizers, and directly impacted individuals engaged in an ongoing relational exchange of power to develop a shared vision for transformative change. Tactics and strategies were determined based on their utility at a particular time in light of the particular context of that moment, not by adherence to any particular approach or ideology. By locating the work of the TQH Project within each of White's three evolving visions of lawyering, this Section will attempt to demonstrate that a collaborative systems theory approach grounded in utility and versatility—rather than a particular "model" of law and organizing—should be the paradigm for fusing the work of lawyers, organizers, and affected people into a movement for transformative change.

242. *Id.* at 761–63.
243. *Id.* at 763–64.
244. *Id.* at 764.
245. *Id.* at 765.
246. *Id.* at 766.

A. First Dimension: Translating Three-Quarter House Tenant Grievances into Winning Legal Claims

"Without the help of a lawyer, I don't know where I would have ended up – probably in the street or the homeless shelter, but maybe even jail. I was scared to go to housing court on my own and I knew the odds would be against me without an attorney. I also knew that my landlord would have an attorney even if I didn't . . . With [the lawyer's] help, I was able to file a case in housing court, fight for my rights, and get back into my house."[247]

The TQH Project employed a series of strategies to translate the range of tenant grievances into winning claims and defenses in court. This Section will discuss some of those strategies and how the Project endeavored to use them as fodder for strengthening the movement to improve the lives of three-quarter house tenants.

1. Community-Based Legal Clinics

The lawyers and paralegal-organizers held a weekly legal clinic specifically for three-quarter house tenants at Neighbors Together, a community-based organization and "community café" located in the heart of a community peppered with three-quarter houses.[248] By locating a weekly clinic within the heart of the community, the Project provided tenants with reliable access to lawyers on an ongoing basis. The clinic offered a convenient location for tenants to obtain brief legal advice and counsel as well as space where the legal team could schedule client intake appointments or meetings to prepare court documents or testimony for litigation.

From a practical standpoint, the clinic was also a resource through which the legal team met new clients for individual representation as well as numerous class members for what became two class action lawsuits filed by three-quarter house tenants against two large three-quarter house operators.[249] Tenants' faces became familiar to the lawyers, and vice versa. Over time, the lawyers met more three-quarter house tenants and learned from tenants' firsthand experiences. Tenants, not lawyers, identified concerns and goals.

The lawyers' continuous presence in the community legal clinic helped them understand the issues confronted by directly affected people. Connecting to the community meant the lawyers could more effectively assess the propriety of litigation as a meaningful tool to seek remedy.[250] Visibility of the lawyers in the legal clinics also helped forge closely tethered relationships with grassroots campaigns taking shape at Neighbors Together. The community connection furthered a practice of client-centered lawyering and became a resource for

247. Felix Plaza Hernandez, Leader in the Three-Quarter House Tenant Organizing Project, Testimony in Support of Intro 214-A (Sept. 23, 2016) (on file with author).

248. *See* NEIGHBORS TOGETHER, https://neighborstogether.org (last visited Nov. 17, 2019); JOHN JAY COLL. OF CRIMINAL JUSTICE, *supra* note 6, at 11–12 (indicating that three-quarter houses are disproportionately located in New York City's poorest communities).

249. *See* David v. #1 Mktg. Serv., Inc., 979 N.Y.S.2d 375 (App. Div. 2014); DiGiorgio v. 1109–1113 Manhattan Ave. Partners, LLC, 958 N.Y.S.2d 417 (App. Div. 2013).

250. *See* Barr, *supra* note 61, at 735.

litigation strategy. The clinic was a place to hear stories, identify potential witness, understand the perspective of affected people, and gauge the level of outrage in the community.[251]

While the primary goal in each case derived from the legal clinic was to obtain the best result for the individual client, the fruits of the litigation were more comprehensive. Litigation offered a formal channel through which tenants could resist, assert power, and prevail against landlords. For the lawyers, the nuances of individual cases unearthed the mechanics of the three-quarter model, the tactics of house operators, and the barriers to court-based remedies.[252] Not insignificantly, the individual cases also hauled three-quarter house operators into the courthouse to confront the mobilization of collective tenant resistance.

2. Education, Language and Fact Development: Employing Legal Theories in Individual Cases to Change the Narrative and Win in Court

Because of a fundamental lack of knowledge about the three-quarter house industry, tenants, organizers, and lawyers each took on a role as translator. Tenants translated the three-quarter house world to lawyers, lawyers translated that world to the courts, and organizers helped to translate the world of lawyers and courts to the tenants. Together, tenants and lawyers developed a vocabulary to explain three-quarter houses to other advocates, adversaries, judges, and elected officials. That education was essential to the litigation strategy.

Rebutting the pubic narrative of three-quarter house tenants as undesirables was also central to work in and outside the courtroom. In court, three-quarter house tenants' claims were met with uncertainty, confusion, or outright bias by landlords' attorneys, court personnel, and even judges. Assumptions about who lived in three-quarter house derailed focus from narrow legal questions; merely litigating the merits was not an option. The Project recrafted the narrative. It defined three-quarter houses, explained the business model, and humanized the occupants. Unpacking the personal story that led a particular individual to a bunk in a three-quarter house was at the center of each case.

i. Disambiguation of the Three-Quarter House Model

There is no legal definition of "three-quarter house." The popular belief is that the term "three-quarter house" was coined as a ploy to lend legitimacy to the underground housing model by tacitly suggesting that the houses were one step closer—three-quarters as opposed to halfway—to fully independent living for people exiting incarceration or substance use treatment.[253] Three-quarter housing as a supportive bridge toward self-sufficiency was a myth. With that myth, and a glossary of deceptive language to legitimize it, landlords became expert at skirting accountability.

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251. *See id.*

252. *See* Godsoe, *supra* note 178, at 722 (proposing a "redefinition of expertise" that recognizes the knowledge and "community intelligence" of people "who have gone through the system").

253. *See* WAREHOUSING THE HOMELESS, *supra* note 6, at 5 (noting that illegal boarding houses "[c]ommonly called 'three-quarter houses' [is] a name borrowed from the old term 'halfway house'").

Three-quarter house landlords did not refer to themselves as "landlords" or "owners." Instead, they were "operators" of housing "programs."[254] Landlords distributed literature to propagate a myth that people who lived in three-quarter houses were not "tenants." Instead, they were "participants," "clients," "licensees," or "patients."[255] Many landlords required the occupants to sign purported "waivers of tenant rights," which put in writing a fabricated assertion that the occupants of three-quarter houses had no right to court process prior to eviction.[256] According to landlords, three-quarter house tenants were something different from and "less than" other residential occupants.[257] There were no leases. Instead, there were "occupancy agreements" and "house rules" that the landlords relied on as bases to evict without court process.[258] They did not lease rooms, apartments, or "dwellings."[259] They offered the privilege of using "bunks" in shared rooms. Landlords claimed that payments were not "rent" but rather "program fees," although the occupants paid for the space they occupied in the building. To reinforce the narrative that occupants had no property interest in a particular space—and to keep occupants in a constant state of flux—some landlords required occupants to change bunks every twenty-eight days.[260]

According to landlords, there were not even "evictions" at three-quarter houses. Instead, when an occupant was removed from the three-quarter house without court process, landlords called it a "discharge" from the "program."[261] Landlords did not have "employees" at the three-quarter houses, they had so-called "house managers." In exchange for a coveted private room—instead of the typical

254. *See, e.g.*, Cooper v. Back on Track Grp., Inc., 994 N.Y.S.2d 251, 253–54 (Civ. Ct. 2014).

255. *See, e.g.*, Riordan Seville & Kates, *supra* note 34 (explaining the landlord's argument that they could lawfully engage in self-help to evict because "those who sleep in the bunks are not tenants but 'licensees'").

256. *See, e.g.*, *Cooper*, 994 N.Y.S.2d at 254–56; Davidson v. House of Hope, No. 19600/12, N.Y. L.J. 1202579307267, at *1–2 (N.Y. Civ. Ct. Nov. 15, 2012).

257. *See, e.g.*, Bernstein v. Rozenbaum, No. 2007-1021, 2008 WL 2832169 (N.Y. App. Term July 10, 2008) (declining to restore tenants to possession despite apparent eviction without due process); Humphrey v. Green, Index No. L&T 13801/2012 (N.Y. Civ. Ct. Aug. 7, 2012) ("The Court notes that even if [the occupant] had established that he was a tenant rather than a licensee, the court would find restoration futile, as [the occupant] would be subject to eviction.").

258. *See, e.g.*, *Cooper*, 994 N.Y.S.2d at 254–56; NRI Group LLC v. Crawford, No. 159274/2014, 2016 WL 526623, at *1 (N.Y. Sup. Ct. Jan. 22, 2016).

259. *See, e.g.*, *Cooper*, 994 N.Y.S.2d at 254 (quoting language of purported waiver of tenant rights, namely, "At the 'program' the *'Participant' is not a tenant of a room/apartment/hotel/dwelling*, i.e. al., but is in fact a '*Participant*' of sober/Recovery/facility/Institution and as such is therefore excluded from Landlord-Tenants Rights and Landlord-Tenant law") (emphasis in original); Wright v. Lewis, No. 12376/08, 2008 WL 4681929, at *8 (N.Y. Sup. Ct. Oct. 23, 2008) ("At the 'program,' the 'client' is not a tenant of a room/Apartment/SRO/house/dwelling/hotel, et al., but is, in fact, a 'client' of a sober/recovery/residence/program/institution, and as therefore excluded from Landlord–Tenants' rights and Landlord–Tenant Law . . . Therefore, the resident must leave if asked per the rules and regulations of said 'program.'").

260. *See, e.g.*, *NRI Group LLC*, 2016 WL 526623, at *1 ("Residents are allowed to live in the buildings for a period of six months and, during that time, they are required to change apartments every 28 days."); United States v. Narco Freedom, Inc., 95 F. Supp. 3d 747, 751 (S.D.N.Y. 2015) (noting that a requirement that occupants move every twenty-eight days "appears intended to skirt [the New York City Illegal Eviction Law]").

261. *See, e.g.*, JOHN JAY COLL. OF CRIMINAL JUSTICE, *supra* note 6, at 22 ([Three-quarter houses "They use the term "discharge" and hold themselves out as "programs," rather than private-sector residences, to assert authority to evict tenants at will, without regard to tenancy laws.").

cramped shared spaces—the house manager was charged to enforce the landlord's "house rules."[262] By artificially deputizing one tenant with a cloak of authority, the landlord could induce the house manager to carry out illegal self-help evictions. If police were inclined to issue a summons or make an arrest, it would be the house manager who would take the fall. By pitting tenants against one another, the landlord remained comfortably in the shadows, insulated from accountability.[263]

ii. Re-Defining Three-Quarter Houses

To change the narrative, the Project first adopted a shared vocabulary. To comport with the tenants' understanding of—and experience in—the houses, the very name of the Project shifted.[264] Three-quarter house occupants were "tenants."[265] Operators were "owners."[266] The tenants occupied "dwellings."[267] The purported "waivers of tenant rights" were unconscionable contracts of adhesion.[268] Program fees were "rent."[269] The house managers were agents and/or employees of the owner.[270] So-called "discharges" were unlawful self-help

262. *See* JOHN JAY COLL. OF CRIMINAL JUSTICE, *supra* note 6, at 32. However, three-quarter house operators nonetheless generally declined to pay wages to the so-called "house managers." *See, e.g.*, Garcia v. Interline Emp. Assistance Program Inc., No. 15 Civ. 6731, 2017 WL 9855848 (E.D.N.Y. June 27, 2017) ("[w]hereas, Plaintiffs were House Managers at ¾-houses operated by [three-quarter house operator] and were not paid any monetary wages"); Moreno v. Interline Emp. Assistance Program Inc., No. 1:15-cv-04608 (E.D.N.Y. Aug. 6, 2015) (alleging that Plaintiff was not paid for work as house manager in three-quarter house); *see supra* note 156 (the author learned from the tenants he worked with that residents received private rooms in exchange for working as house managers.).

263. *See* JOHN JAY COLL. OF CRIMINAL JUSTICE, *supra* note 6, at 26, 32–33 (discussing general role of "house managers" vis-à-vis other tenants). This dynamic contributed to the complicated feelings tenants and advocates had about enlisting police assistance. Because the landlords did not reside at the houses, the day-to-day enforcement of "house rules" often fell on unpaid house managers. Given the absence of those often affluent, often white landlords at the buildings, a call to the police could also lead to the unintended consequence of law enforcement targeting the house manager—often another low-income, formerly incarcerated Black or Brown person—for fines or arrest, leaving those ultimately responsible for, and profiting from, exploitation at the houses unscathed; *see supra* note 156 (in his work, the author observed landlords creating this dynamic between tenants).

264. In 2009, MFY Legal Services, Inc. launched the "Illegal Boarding House Project" to support people who lived in what are now commonly referred to as three-quarter houses. *See Housing: Three-Quarter House Tenants*, MOBILIZATION FOR JUSTICE, http://mobilizationforjustice.org/projects/illegal-boarding-house-project/ (last visited Oct. 27, 2019). At the time, advocates referred to the unlicensed, unregulated houses as "illegal boarding houses." But tenants described their housing by a different name. To match the vocabulary of the community who lived in the houses, the Project rebranded itself as the "Three-Quarter House Project" soon thereafter.

265. *See* Smith v. Donovan, 878 N.Y.S.2d 675, 680 (App. Div. 2009) (holding that three-quarter house occupants "are tenants under [RPAPL § 711] since they paid rent and were entitled to possess or use rooms in the housing accommodation").

266. *See* N.Y. MULT. DWELL. LAW § 4 (McKinney 2011).

267. *See id.*

268. *See, e.g.*, Cooper v. Back on Track Grp., Inc., 994 N.Y.S.2d 251, 256 (Civ. Ct. 2014).

269. *See* JOHN JAY COLL. OF CRIMINAL JUSTICE, *supra* note 6, at 13, 26 (discussing "fees" three-quarter house operators charge occupants to supplement city-paid shelter allowance for rent.)

270. *See* Moreno v. Interline Emp. Assistance Program Inc., No. 1:15-cv-04608 (E.D.N.Y. Aug. 6, 2015) (including allegations by house manager that he was an employee under state and federal law).

evictions that could subject the owners and the house managers to criminal and civil penalties. [271]

The Project needed to reeducate the judiciary if tenants were to obtain relief in court. That started by reframing the meaning of "dwelling" under state law.[272] Courts conceptualized "dwellings" as apartments or even particular rooms occupied by tenants. Renting a bunk was not something that the law appeared to contemplate. Consistent with that uncertainty, three-quarter house operators asserted that occupants were participants, clients, patients, squatters, licensees—anything but tenants—to argue that the peculiarities of three-quarter house tenancy were beyond the protection of New York's landlord-tenant laws. Dismantling the operators' position required a multi-step analysis.[273]

Clearly establishing that occupants of three-quarter houses were "tenants" was essential to the shift in narrative. Under state law, "[a] tenant shall include an occupant of one or more rooms in a rooming house . . . who has been in possession for thirty consecutive days or longer."[274] Some courts relied on the plain language of that statute to grant tenants relief without grappling with the nuances of three-quarter housing.[275] But the counternarrative advanced by many landlords—that the occupants were merely "licensees"—offered two major advantages for landlords. First, the narrative translated to victory in the courtroom.[276] Second, landlords were able to use the notion of licensee status to instill in the tenants that they were "less than" individuals for whom legal protections do apply.[277]

The Project's litigation strategy aimed to undo that narrative. Tenants gave personal, humanizing testimony that contextualized how they landed in the three-quarter houses. It may not have been anyone's goal to remain in a three-quarter

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271. *See, e.g.*, Memorandum from the N.Y.P.D. on Enforcement of Unlawful Evictions to All Commands (Aug. 23, 2014), http://mobilizationforjustice.org/wp-content/uploads/NYPD-FINEST-Message.pdf (indicating that three-quarter houses are not exempt from New York City's Unlawful Eviction Law and clarifying that occupants cannot be "discharged" without a court order).

272. *See* N.Y. MULT. DWELL. LAW § 4.

273. Because of gaps or antiquity of state law, lawyers relied on more inclusive standards established in New York City's Unlawful Eviction Law to demonstrate the expanse of the prohibition against self-help evictions in New York State. *See, e.g.*, Truglio v. VNO 11 E. 68th St. LLC, No. 57103/12, 2012 WL 1849659, at *8 (N.Y. Civ. Ct. May 21, 2012) (noting that "provisions of the [N.Y.C.] Administrative Code are intended to expand the available remedies in the case of unlawful eviction, not to restrict the class of individuals who can bring a proceeding under RPAPL 713(10)").

274. N.Y. REAL PROP. ACTS. LAW § 711 (McKinney 2019).

275. *See* Gregory v. Crespo, No. 801290/2012, 2012 N.Y.L.J. 1202545578195, at *3 (N.Y. Civ. Ct. Mar. 6, 2012) (holding that self-help not permitted and landlord-tenant relationship existed where bunk "occupied
. . . for thirty or more consecutive days and rent was paid on [occupant's] behalf on a monthly basis."); Simmons, *supra* note 108, at 2 (recognizing that "[the *Gregory I*] decision is one of the first to reject the common defense of three-quarter houses—that such occupants are only 'licensees' of the programs").

276. *See, e.g.*, David v. #1 Mktg. Serv., Inc., 979 N.Y.S.2d 375, 378 (App. Div. 2014) (holding that plaintiff-occupants of three-quarter houses were "licensees, rather than tenants, and as such . . . not entitled to the protections [under state rent regulation laws]").

277. For example, one purported "Waiver of Participant Rights" provided, "At the 'program' the 'Participant' is not a tenant of a room/apartment/hotel/dwelling, i.e. al., but is in fact a 'Participant' of sober/Recovery/facility/ Institution and as such is therefore excluded from Landlord–Tenants Rights and Landlord–Tenant law as per uniform Landlord–Tenant Act: Set part II, sec 1.202(1) resident [at] an institution. Therefore the 'Participant' must leave as asked per the rules and regulations of the 'program.'" *See* Cooper v. Back on Track Grp., Inc., 994 N.Y.S.2d 251, 254 (Civ. Ct. 2014). Notably, the provision of law cited in the purported waiver is wholly inapplicable—indeed nonexistent—under New York law.

house long term. But until something better came along, the identifiable bunking space in the corner of the house was the tenant's home.[278] Due to showing that occupants maintained "exclusive possession" of a certain, even if "relatively speaking, small" part of the three-quarter house, courts began to acknowledge that the non-traditional housing arrangement was consistent with a landlord-tenant relationship, as opposed to a mere license.[279] One court held expressly that a tenant's bunk in a three-quarter house "was a 'residential accommodation.'"[280] By evicting the tenant without court process, the court concluded that the landlord "wrongly deprived [the occupant] of his tenancy."[281] By reconceiving the notion of a bunk as a dwelling, tenants established that three-quarter house tenants have a right to court process prior to eviction.[282] The principle that the rooms or bunks in three-quarter houses were "dwellings" laid the foundation for a series of other procedural and substantive defenses in housing court, including the right to a permanent rent-stabilized lease.[283]

Next, tenants collectively dismantled the characterization of three-quarter houses as "program" housing. Like tenants, courts assumed that three-quarter housing was a legitimate housing model subject to some kind of oversight.[284] By eliciting the most basic evidence to the contrary—that three-quarter houses were unlicensed and unregulated—tenants and lawyers demystified the mechanics of the three-quarter house model and challenged the institutional subjugation of the people who lived in three-quarter houses.[285]

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278. Numerous affidavits on file with author.

279. Shearin v. Back on Track Grp., Inc., 997 N.Y.S.2d 227, 232 (Civ. Ct. 2014); *Cooper*, 994 N.Y.S.2d at 255–56 (holding that occupant of a bunk bed for more than thirty days cannot be evicted without court process even where landlord alleged that occupant waived her rights); *Gregory*, No. 801290/2012, N.Y. L.J. 1202545578195, at *3 (holding that self-help not permitted and landlord-tenant relationship existed where bunk "occupied . . . for thirty or more consecutive days and rent was paid on [occupant's] behalf on a monthly basis").

280. Ross v. Baumblit, 995 N.Y.S.2d 488, 488 (Civ. Ct. 2014). *See also* N.Y. MULT. DWELL. LAW § 4(4) (defining a "dwelling" as "any building or structure or portion thereof which is occupied in whole or in part as the home, residence or sleeping place of one or more human beings"); N.Y.C. ADMIN. CODE § 27-2004(a)(3) ("A dwelling is any building or structure or portion thereof which is occupied in whole or in part as the home, residence or sleeping place of one or more human beings*."); Id.* § 27-2004(a)(13) (A "[d]welling unit shall mean any residential accommodation in a multiple dwelling or private dwelling.").

281. *Ross*, 995 N.Y.S.2d at 488.

282. *Shearin*, 997 N.Y.S.2d at 232 (finding eviction without court process illegal where petitioner resided in bunk for over thirty days even though the petitioner was "discharged" for allegedly violating house rules).

283. *See, e.g.*, Corrado v. Parker, Index No. 89390/17, N.Y. L.J. (N.Y. Civ. Ct. Dec. 10, 2018) (explaining occupants of three-quarter houses are entitled to rent-stabilized lease because the building contains more than six units and was built before 1974); Souffrant v. Kidd, Index No. 97224/17, N.Y. L.J. (N.Y. Civ. Ct. Apr. 18, 2018); Corrado v. DeGracia, Index No. 54153/16 (N.Y. Civ. Ct. 2016) (dismissing holdover proceeding to evict three-quarter house tenant, noting that a legally sufficient petition must include the particular bunk occupied); RYB Realty LLC v. Daniels, Index No. 73433/10 (N.Y. Civ. Ct. 2010) (dismissing petition where landlord sought to remove occupants of "all rooms" in a three-quarter house without providing a description of the particular rooms or apartments occupied by residents).

284. *See, e.g.*, McIntosh v. Baumblit, et al., Index No. 18194/10, at 9–10 (N.Y. Civ. Ct. 2010) (denying relief despite being "greatly concerned" about the role played by three-quarter houses, "surprise" that such housing "exists with no regulation or oversight, and "doubts [about] the legality" of the houses where residential occupancy laws are "clearly being ignored").

285. *See, e.g.*, Davidson v. House of Hope, Index No. 19600/12, N.Y. L.J. 1202579307267, at *3 (N.Y. Civ. Ct. 2012) ("House of Hope [three-quarter house] is not licensed by the State of New York or

Finally, tenants and lawyers contextualized the so-called "waiver of tenant rights" to demonstrate that they amounted to unconscionable contracts of adhesion that should not be enforced.[286] Tenants testified about circumstances, such as substance use or homelessness, that created a power imbalance, effectively stripping tenants of the capacity to knowingly and voluntarily consent to the terms.[287] The substance of the purported waivers included terms that were objectively and unreasonably favorable to the landlord.[288] Apparently recognizing the precarity of housing options for three-quarter house tenants, and declining to sanction efforts by three-quarter house operators to capitalize on it, several courts held the agreements unenforceable.[289]

These litigation strategies translated into tangible relief for three-quarter house tenants. Courts restored tenants to possession following illegal evictions.[290] They deemed purported waivers of tenants' rights unenforceable.[291] They dismissed cases due to procedural flaws in how landlords described three-quarter houses.[292] They ordered necessary repairs.[293] Some courts even began to recognize the right

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governmental agency and has not cited any authority that would provide it with an exemption from complying with the RPAPL or New York City Administrative Code.").

286. Indigent and disabled women were solicited from homeless shelters and substance abuse programs to live in a two-family building in Brooklyn. Wright v. Lewis, No. 12376/08, 2008 WL 4681929, at *1 (N.Y. App. Div. Oct. 23, 2008). The operator of the house required the women to sign a document stating that: "At the 'program,' the 'client' is not a tenant of a room/Apartment/SRO/house/dwelling/hotel, et al., but is, in fact, a 'client' of a sober/recovery/residence/program/institution and as therefore excluded from Landlord-Tenants' rights and Landlord-Tenant Law . . ." *Id.* at *8. The document provided that the residents could be evicted without court process. *Id.* In a decision granting the tenants' preliminary injunction in a declaratory judgment action, the court held that the agreement in question was an unenforceable contract of adhesion. *Id.* at *13. *See also Davidson,* Index No. 19600/12, N.Y.L.J. 1202579307267, at *3 (holding a Waiver of Tenants' Rights in a three-quarter house was unenforceable); David v. #1 Mktg. Serv., Inc., 979 N.Y.S.2d 375, 378 (App. Div. 2014) (reinstating unconscionable contracts of adhesion claim by three-quarter resident plaintiffs).

287. The occupant's desperate need for housing was also central to the court's finding that a purported waiver of rights in *Cooper* was unenforceable. *See* Cooper v. Back on Track Grp., Inc.*,*994 N.Y.S.2d 251, 256 (Civ. Ct. 2014). There, the occupant spent four to five months homeless before moving to a three-quarter house and testified that she accepted poor conditions because she "had nowhere else to go." *Id.* at 625. The occupant did not read the seventeen-page "license agreement" because "she did not have glasses and the print appeared very small to her." *Id.* The landlord also did not discuss "the manner in which she might be removed from that housing" before the occupant signed. *Id.* Apparently engaging in similar reasoning, the court in *Shearin* "decline[d] to infer . . . that [the occupant] relinquished known rights" where the landlord presented the occupant—"who . . . was known to have a substances abuse issue"—with a dozen or more forms, which the occupant signed without reading. *Shearin*, 997 N.Y.S.2d at 231.

288. Holding that a license agreement was an unconscionable, the court in *Cooper* admonished that a plain reading "reveal[ed] terms that are, at best, formidable and oppressive." *Cooper*, 994 N.Y.S.2d at 256.

289. *Shearin*, 997 N.Y.S.2d at 232; *Cooper*, 994 N.Y.S.2d at 256; *Davidson*, Index No. 19600/12, N.Y.L.J. 1202579307267, at *3.

290. *See Shearin*, 997 N.Y.S.2d at 232; *Ross v. Baumblit*, 995 N.Y.S.2d 488, 489–90 (N.Y. Civ. Ct. 2014); Gregory v. Crespo, Index No. 801290/12, N.Y.L.J. 1202545578195 (N.Y. Civ. Ct. Mar. 6, 2012).

291. *See Shearin*, 997 N.Y.S.2d at 231; *Cooper*, 994 N.Y.S.2d at 256; *Davidson*, Index No. 19600/12, N.Y.L.J. 1202579307267, at *3.

292. Corrado v. DeGracia, Index No. 54153/16 (N.Y. Civ. Ct. May 5, 2016) (dismissing holdover proceeding to evict three-quarter house tenant, noting that a legally sufficient petition must include the particular bunk occupied); RYB Realty LLC v. Daniels, Index No. 73433/10 (N.Y. Civ. Ct. 2010) (dismissing petition where landlord sought to remove occupants of "all rooms" in a three-quarter house without providing a description of the particular rooms or apartments occupied by residents).

293. *See, e.g.*, Kidd v. Souffrant, Index No. 2945/17 (N.Y. Civ. Ct. 2017) (issuing order and notice of violations for repairs).

of tenants to remain in possession as long-term tenants.[294] Several landlords have been prosecuted and convicted for criminal conduct.[295] Although it is unlikely tenants will see a payout, the court in one class action lawsuit issued a judgment in favor of the tenants for more than four million dollars in damages.[296] That litigation, of course, provided concrete outcomes for the individual litigants. But it was the expansion of public consciousness that really altered the landscape of three-quarter housing in New York City.

B. Second Dimension: Expanding Public Consciousness about Three-Quarter House Justice

"It's a beat-up door like on any other house around. If you didn't know it and ask questions, you wouldn't know it's a Three-Quarter House 'cause it doesn't look like it. It's really hidden into the community 'cause that's the way they like it. They want to keep it that way. Like, the community doesn't really want us there."[297]

As noted, individual client representation generated a number of direct and ancillary benefits. But that alone was insufficient. According to Lucie White's charge for effective "second dimension" lawyering, "[t]he client will 'win,' ultimately, only if the lawyer moves the audience to action."[298] To do so, she argues, the lawyer must support community mobilization without "confining its own demands to the legally feasible remedies" and "expand public consciousness about justice and mobilize direct action for change."[299] Moving the "audience" of allies, government officials, legislators, and activists to action was an ongoing task and goal of the TQH Project.

In 2012, in a *New York Times* op-ed, Michelle Alexander posited that criminal defendants could potentially "crash the system" by exercising their right to a trial and refusing to plea out.[300] Exercising those rights, she suggested, could lead to

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294. Corrado v. Parker, Index No. 89390/17 (N.Y. Civ. Ct. Dec. 10, 2018) (holding occupants of three-quarter house entitled to rent-stabilized lease because the building contains more than six units and was built before 1974); Souffrant v. Kidd, Index No. 97224/17 (N.Y. Civ. Ct. Apr. 18, 2018) (same).

295. *See, e.g.*, Press Release, N.Y. State Office of the Attorney Gen., Attorney Gen. James Announces Conviction of "Three-Quarter House" Director Charged With Defrauding Medicaid Through A Kickback Scheme (Jan. 8, 2019), https://ag.ny.gov/press-release/2019/attorney-general-james-announces-conviction-three-quarter-house-director-charged (conviction of three-quarter house operator for kickback scheme resulting in over $2 million in fraudulent claims to Medicaid); Press Release, N.Y. State Office of the Attorney Gen., A.G. Schneiderman Announces Guilty Pleas Of "Three-Quarter" Housing Operators Yury Baumblit And Rimma Baumblit (Feb. 15, 2018) (on file with author) ("Yury Baumblit and Rimma Baumblit lined their pockets by preying on our most vulnerable New Yorkers."); Press Release, N.Y. State Office of the Attorney Gen., A.G. Schneiderman Announces Criminal Guilty Plea & Multi-Million Dollar Civil Settlement With Narco Freedom (May 31, 2017) (on file with author) ("Narco Freedom acknowledged that it violated the rights of its residents and illegally conditioned residency on attendance at its own substance abuse treatment program.").

296. *See* Webster v. #1 Mktg. Serv., Inc., No. 30238/2010 (N.Y. Sup. Ct. June 1, 2017) (issuing judgment in favor of tenants in the amount of $4,082,096.25).

297. JOHN JAY COLL. OF CRIMINAL JUSTICE, *supra* note 6, at 5.

298. White, *supra* note 3, at 759.

299. *Id.* at 759–60.

300. Michelle Alexander, *Go to Trial: Crash the Justice System*, N.Y. TIMES (Mar. 11, 2012), https://www.nytimes.com/2012/03/11/opinion/sunday/go-to-trial-crash-the-justice-system.html ("People

"[m]ass protest [that] would force a public conversation."[301] With just two lawyers, the TQH Project did not envision "crashing the system," but did believe that small legal battles could sow the seeds for more transformative change beyond individual legal victories. The theory was that by resisting the pattern of illegal evictions, challenging building-wide eviction proceedings, and demanding necessary repairs in court, tenants and lawyers could educate the judiciary about the three-quarter house problem and build a body of case law that could shift the legal landscape for three-quarter house tenants. There can be no doubt that there is still a long way to go. But the once-invisible population of three-quarter house tenants now occupies a tangible space in dialogue about housing justice, supportive reentry, and harm reduction approaches to substance use disorders.

1. Educating the Community

"I learned about my rights and how they were being abused after I came to my first TOP meeting, and now I organize with TOP so that others don't have to go through what I went through."[302]

Community education was at least as important as litigation strategy for the Project. As advocated by White, even where litigation was unsuccessful, extensive media coverage was effective in increasing awareness and shaping the narrative of the problem.[303] Yet there was still little formal information available to the public about the three-quarter house industry. To lend research-backed credibility to the problem, the Project collaborated with John Jay College of Criminal Justice to compile data and publish a report.[304] Using the awareness and outrage cultivated by the report, the Project built a coalition of institutional allies and garnered the support of local elected officials.[305]

The Project also undertook several directed efforts to create awareness. The lawyers and organizers regularly held know-your-rights presentations at TOP meetings, soup kitchens, social services offices, needle exchange programs, and parole offices.[306] The Project strategized to find tenants in the community. Whether it was at the entrance of the outpatient treatment program or the McDonald's where tenants sought refuge from the cold, the organizers were

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should understand that simply exercising their rights would shake the foundations of our justice system which works only so long as we accept its terms.").

301. *Id.*

302. Anthony Coleman, Leader in Tenant Organizing Project, Testimony in Support of Three-Quarter House Bill Package (Oct. 6, 2016) (on file with author).

303. Indeed, after years of litigation, media coverage from smaller outlets, and informal advocacy with elected officials, it was not merely a coincidence that New York City Mayor Bill De Blasio announced an intra-agency task force to investigate three-quarter houses just one day after the *New York Times* published a front-page exposé that highlighted how government inaction permitted exploitation and decrepit housing conditions in the three-quarter house industry. *See* Barker, *supra* note 7.

304. *See* JOHN JAY COLL. OF CRIMINAL JUSTICE, *supra* note 6.

305. *See infra* Section IV.B.3 (discussing formation of the TQH Reform Coalition).

306. *See supra* note 156. The following details about the Project come from the author's personal experiences and observations as one of the attorneys who was part of the law-and-organizing endeavor that is the focus of this article. The author has made every effort to support each factual assertion with independent sources.

there.[307] Tenants, lawyers, and organizers presented together at conferences and CLE programs, police precincts, and in meetings with local elected officials. The lawyers also provided training on the three-quarter house model for the housing court judges in Kings County, where many three-quarter houses were located.

Whenever possible, TOP members also participated in presentations. Their presence infused personal anecdotes and practical tips into the lawyers' academic presentation of the law. Affected people who benefited from or found community in TOP also vouched for the value of organizing, increasing membership. Perhaps unlike other know-your-rights trainings that may overstate the effectiveness of rights-based advocacy in the face of structural racism and economic oppression, the TQH Project incorporated "frameworks that recognize the political nature of law, displace its authority, facilitate broader rights claims, and foster collective mobilization."[308]

Tenants, organizers, and lawyers engaged in storytelling collectively. Although the white, formally-educated lawyers may have been able to help inform tenants about what the law *says*, they needed the tenants' stories to truly understand what *actually happens* in practice. Storytelling informed the lawyers and the organizers of the well-founded fear within the three-quarter house tenant community of the potential consequences of activism. Retaliation, arrest, parole violation, and homelessness were undeniable risks of standing up for one's rights. Acknowledging those risks fueled motivation, creativity, and critiques related to strategies the Project would pursue.

2. Class Action Litigation

While the increased contact with three-quarter house tenants broadened opportunity for representation in discrete legal matters that affected the particular individuals, those discrete legal victories did little to curb the systemic issues confronted by three-quarter house tenants around the City.[309] Absent a connection with movements on the ground, the reach of those legal victories was extremely limited. Tenants disconnected from the particular case in court did not benefit from favorable court decisions. Tenants who had no direct contact with the lawyers remained unclear or misinformed about their rights. In some cases, because of the protracted delay of the legal process, the pyrrhic courtroom victory came too late to circumvent displacement into a shelter, relapse, or reincarceration.[310]

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307. Samsel discusses a rather bland delivery of know-your-rights presentations that "maintains deference to the legal system" and fails to recognize the "inherently political nature of the legal system" and thus fortifies "the mythology of the unbiased, autonomous power of the rule of law . . . unable to expose the systems of oppression that reinforce and are supported by legal structures." Samsel, *supra* note 141, at 387–88 (discussing that the TQH Project rejected such de-politicized notions of the "rights discourse" in the context of community education).

308. *Id*. at 388; *see also* Sameer M. Ashar, *Public Interest Lawyers and Resistance Movements*, 95 CAL. L. REV. 1879, 1920–21 (2007) (endorsing a practice of "lawyering [which] places rights within the context of a larger political struggle").

309. *See* Mananzala et al., *supra* note 225, at 29 ("So I want to close by stating that legal victories alone mean nothing in the absence of community organizing and mass, sustained mobilization.").

310. *See* Shearin v. Back on Track Grp., Inc., 997 N.Y.S.2d 227, 232 (Civ. Ct. 2014) (discussing the order of restoration obtained nearly six months after the illegal eviction).

In theory, the aim of class action litigation was to translate courtroom advocacy into tangible relief that would benefit hundreds of tenants in one fell swoop. In practice, however, the slow, technical nature of the litigation did little to improve the day-to-day lives of tenants. Perhaps the most notable example stems from *Webster v. #1 Marketing Service, Inc.*, a class action suit filed in 2010.[311] After over seven years of litigation, thirty-four motions, and several multi-day hearings for contempt and on the merits, the plaintiff class obtained a judgment in excess of four million dollars against the defendant three-quarter house operator.[312] Despite that on-paper victory, tenants have not, and likely will not, see any of the money awarded to them.[313] Notwithstanding that frustrating outcome for the tenant class members, the litigation, consistent with Lucie White's second dimension of lawyering, produced "scaffolding for the development of local organizing"[314] that was largely successful in developing public consciousness.

The litigation coalesced a community of class members, stimulated regular press coverage,[315] and helped tenants and lawyers build an active three-quarter house tenant community. Tenants voiced frustration about the failure of the courts and law enforcement to protect their rights or provide tangible relief for their plight. Thus, incidentally, the frustrations with the litigation, the media coverage of it, and the uniting of tenants involved in it began to fortify solidarity among

311. *See* Webster v. #1 Mktg. Serv., Inc., No. 30238/2010 (N.Y. Sup. Ct. June 1, 2017); Rodriguez, *supra* note 133 (discussing the origins of the class action suit).

312. *See Webster*, No. 30238/2010, at *3 (issuing judgment in favor of tenants in the amount of $4,082,096.25). In February 2018, the lead defendant in *Webster*, Yury Baumblit, pleaded guilty to a number of criminal charges filed by the New York State Attorney General. *See State v. Baumblit*, Case No. 03334-2016 (N.Y. Sup. Ct. 2016). Baumblit was sentenced to 2.5 to 4 years in state prison. In addition to the criminal plea, Baumblit entered into a civil settlement, which provided that Baumblit would forfeit assets from which the Attorney General expected to recoup upwards of $2.5 million. *See* Barker Apr. 13, *supra* note 144; Press Release, N.Y. State Attorney Gen., A.G. Schneidernman Announces Guilty Pleas Of "Three-Quarter" Housing Operators Yury Baumblit and Rimm Baumblit (Feb. 15, 2018) (on file with author).

313. In pursuit of claims in *State v. Baumblit*, Case No. 03334-2016 (N.Y. Sup. Ct.) the New York State Attorney General obtained attachment and restraining orders that froze all of Mr. Baumblit's assets. As a result, tenants have been unable to collect on the judgment they obtained from New York State Supreme Court. Tenants requested that the Attorney General release assets recovered to satisfy the tenants' state court judgment, but the Attorney General declined the request. *See supra* note 306.

314. Grinthal, *supra* note 167, at 53, 55 ("This was an organizing victory, not a litigation victory.").

315. Indeed, the act of filing one class action case in 2010 provided impetus for the NPR affiliate in New York City, WNYC, to air a ten-minute story on the three-quarter house issue and on what tenants hoped to achieve through litigation. *See* Rodriguez, *supra* note 133. That initial story laid the foundation for substantial media coverage related to the class action over the next several years, including a front-page exposé in the *New York Times* in 2016. *See, e.g.*, Rick Bockmann, *Landlord Admits Misdeeds*, TIMES LEDGER (Apr. 14, 2012), http://www.timesledger.com/stories/2012/15/threequarterhouse_jt_2012_04_12_q.html; Chris Glorioso, *Addiction Clinic Accused of Inflating Medicaid Bills, Again*, NBC NEW YORK (Oct. 9, 2013), http://www.nbcnewyork.com/investigations/I-Team--Addiction-Clinic-Accused-of-Inflating-Medicaid-Bills-Again-227122721.html?akmobile=o; Lore Croghan, *'Three-Quarter House' Operator Yury Baumblit Driving Us Out of Bed-Stuy Building, Tenants Charge*, DAILY NEWS (Jan. 3, 2012), http://www.nydailynews.com/news/three-quarter-house-operator-yury-baumblit-driving-bed-stuy-building-tenants-charge-article-1.1000019; Jake Bernstein, *Inside a New York Drug Clinic Allegations of Kickbacks and Shoddy Care*, PROPUBLICA (Sept. 9, 2013), http://www.propublica.org/article/inside-a-new-york-drug-clinic-allegations-of-kickbacks-and-shoddy-care; Barker, *supra* note 6.

tenants and motivate collective, tenant-driven action to obtain change outside the courtroom.

For a critical mass of tenants who formerly vested faith in the courts to address the wrongs in the three-quarter house industry, the incidental mobilization produced from the failures of the class action litigation spawned righteous indignation and empowerment of tenants to demand change outside the court system. In addition to conversations about what lawyers and judges could do in court, tenants began meeting with elected officials, city and state agencies, the media, and potential allies to build a movement for change.[316]

3. Leveraging Media Coverage to Broaden Support Networks

Despite recognition of seemingly obvious injustices taking place in the three-quarter house industry, most judges, elected officials, and policymakers were not instinctively moved to intervene in support of this marginalized community of tenants, who still lacked the strong backing of a highly-visible grassroots movement. To realize any legislative or policy reform objectives, tenants would need more power. They built that power by increasing community awareness, obtaining media attention, and continuing to expand a base through discrete organizing campaigns.

Maintaining a presence in various media outlets was an ongoing asset to the TQH Project's advocacy. Aside from serving the important purpose of creating awareness of the three-quarter house problem, media coverage also instilled pride, self-confidence, and motivation in TOP members and tenants. While the press habitually sought interviews and statements from the lawyers, the Project was deliberate to capitalize on opportunities to amplify tenant voices whenever possible.

The *New York Times* exposé catapulted the three-quarter house issue into the political spotlight. Within hours of its publication, Mayor Bill de Blasio announced that his administration would convene an interagency task force to "end the use of substandard three-quarter houses in New York City."[317] As discussed in Section IV.C.4, *infra*, that Task Force became an essential resource for tenants and advocates to obtain redress outside of the court system.

The decision to engage so intimately with the media came with risks. Tenants' goal for media attention was to tell their story of injustice. But the layers of racism and stigma made it impossible to know whether a given reporter would see that story through the same lens. Despite the risk, brave activist tenants welcomed reporters into the most intimate corners of their lives.[318]

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316. For a heartening perspective on a lawyer's decision to shift efforts from litigation to movement-building, see Barr, *supra* note 61, at 731 ("So I decided that rather than spend all of my time trying to think of a lawsuit that would abolish prisons, I would try to figure out how to help push a people's movement forward.").

317. Press Release, The City of N.Y. Office of the Mayor, Mayor de Blasio Orders Immediate Actions to End the Use of Substandard Three-Quarter Houses in New York City (June 1, 2015), https://www1.nyc.gov/assets/dhs/downloads/pdf/press-releases/three-quarter-houses.pdf; Barker, *supra* note 6.

318. Tenants welcomed reporters to visit three-quarter houses, attend tenant meetings and political rallies, observe court appearances, and even to bear witness during the chaos of an illegal eviction. *See, e.g.*, Benjamin Mueller & Tatiana Schlossberg, *New York Today: Inside an Investigation*, N. Y. TIMES (June 1, 2015), https://cityroom.blogs.nytimes.com/2015/06/01/new-york-today-inside-an-investigation

The process was educational for both the tenants and the reporters. Lawyers and organizers worked with the tenants to mitigate the risk of a "bad" story by distilling the myriad problems related to three-quarter houses to a consensus of key "talking points" to frame the issue for an outsider. Lawyers and organizers urged use of people-first language like "person with a substance use disorder" or "person who was formerly incarcerated" in lieu of derogatory, colloquial terms like "addict," "junkie," "convict," or "ex-felon."[319] Those efforts were not uniformly successful, but with time, continued persistence and education, the results were increasingly visible in the way the press covered the human beings at the center of the three-quarter house crisis.[320]

Relying on the increased support, curiosity, and outrage that stemmed from the outpouring of press coverage, the Project convened a coalition of ally legal services providers, community-based organizations, prisoner reentry and harm reduction advocacy organizations, and tenants' rights groups to establish the Three-Quarter House Reform Coalition (TQH Reform Coalition).[321]

The collectivization of the institutional power from each individual organization that signed on to the TQH Reform Coalition gave traction to legislative proposals that had otherwise remained dormant. Rather than rely on the voices of lawyers and organizers, allies and community stakeholders began to see TOP and its membership as an autonomous source of tenant power and expertise. The development of TOP's own political consciousness, critical to a transition to Lucie White's third image of lawyering, was the most challenging aspect of the Project's work.

("Giving the landlord another excuse to evict by talking to a *New York Times* reporter would seem to be a risky choice for these tenants. And yet talk they did, to Kim Barker of the Metro desk, for a heart-wrenching investigation into 'three-quarter' houses, an unregulated network of crowded and crumbling rooms for people with no better option."); Mona El-Naggar, Channon Hodge & Kim Barker, *Profiting From the Desperate* (video), N. Y. TIMES (May 30, 2015), https://www.nytimes.com/video/nyregion/100000003711706/profiting-from-the-desperate.html (chronicling the day-to-day experiences of one three-quarter house tenant in the house, the outpatient treatment program, a tenant protest, and on the streets of New York).

319. For a compilation of bias-free language guides, see *Resources for Humanizing Language*, THE OSBORNE ASS'N, http://www.osborneny.org/resources/resources-for-humanizing-language.

320. *Compare, e.g.*, Lore Croghan, *'Three-Quarter House' Operator Yury Baumblit Driving Us Out of Bed-Stuy Building, Tenants Charge,* DAILY NEWS (Jan. 3, 2012), https://www.nydailynews.com/news/three-quarter-house-operator-yury-baumblit-driving-bed-stuy-building-tenants-charge-article-1.1000019 (referring to three-quarter houses as "transitional housing facilities for former addicts, ex-convicts and the homeless") *with* Lylla Younes, *What Happens When The 'Necessary Evil' Preventing Homelessness Falls Apart?*, GOTHAMIST (May 2, 2018), https://gothamist.com/news/what-happens-when-the-necessary-evil-preventing-homelessness-falls-apart (defining three-quarter houses as "unlicensed, unregulated buildings . . . where many of the city's most vulnerable and economically disadvantaged people live").

321. The Three-Quarter House Reform Coalition includes: Mobilization for Justice, Neighbors Together, BOOM! Health, Brooklyn Defender Services, Center for Court Innovations, Center for Employment Opportunities, Community Service Society, Correctional Association NY, Federal Defenders, The Fortune Society, Greenhope Services for Women, Legal Action Center, Legal Aid Society, Neighborhood Defender Services, New York City Anti-Violence Project, Office of the Appellate Defender, The Osborne Association, The Prisoner Reentry Institute at John Jay College, The Three-Quarter House Tenant Organizing Project, and VOCAL New York. *See* Patrick Tyrell, Three-Quarter House Task Force, Testimony Before the New York City Council (Apr. 29, 2019), http://mobilizationforjustice.org/wp-content/uploads/Testimony-2019-04-29-Intro-153-A-TQH-Task-Force.pdf.

C. Third Dimension: Developing Political Consciousness among Three-Quarter House Tenants

"I don't really think… that this is really going to be that crucial unless the tenants have a voice to say what happens too . . . We need for people to give us a directional path to fair housing, affordable housing for low-income people."[322]

The Project never fully succeeded in operationalizing a successful model of White's third-dimensional lawyering. For the lawyers and organizers in the TQH Project, the work was inherently and profoundly political. And as much as they desired every tenant to view their situation through a politicized lens of social inequity, political enlightenment was not an express goal for many tenants. As discussed repeatedly here, many tenants in three-quarter houses were in crisis and, as such, were acutely focused on basic survival. Thus, incentivizing political engagement was an ongoing challenge.[323]

To mitigate those challenges, the Project employed something akin to Grinthal's Political Enabler model. The lawyers remained tethered to community organizing goals and were "concerned specifically with [TOP's] interest in continuing to organize and to build power."[324] At all times during the Project's existence, the lawyers engaged in the "full range of [traditional] lawyering activities," but always in furtherance of organizing goals and the exercise of relational power.[325] The lawyers communicated regularly with the organizers to strategize how their practice could "enable the group to make its own demands and seek its own victory through political, economic, social or cultural means."[326] Rather than replace the "relational power with legal power," they used their privilege to "clear paths" for TOP to channel its own power to achieve victory.[327]

1. A Shared Understanding: Forming a Community and Framing the Problem

The small team of advocates that made up the TQH Project had, or at least believed that it had, some sense of the systemic issues that underlaid the three-quarter house problem, particularly stemming from the impact the housing crisis was having on very low-income single adults with histories of substance use or incarceration. But the lawyers and organizers never lived in a three-quarter house.

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322. Emma Whitford, *Three-Quarter Housing Slumlord Still Doing "Business As Usual" Despite City Crackdown*, GOTHAMIST (Dec. 28, 2015), https://gothamist.com/news/three-quarter-housing-slumlord-still-doing-business-as-usual-despite-city-crackdown (quoting TQH Project activist Luther Mack).

323. It is worth highlighting here that while incentivizing tenant engagement was a goal, it did not trump commitment to tenant autonomy. Thus, to remain consistent with the Project's goals to participate in, rather than lead, a tenant-driven movement, it was not the practice to "convince" people to join a particular campaign. We would, of course, try to identify some potential benefits but never without also discussing corollary risks. It was always paramount that the tenant exercise independent judgment in electing whether or not to participate.

324. *See* Grinthal, *supra* note 167, at 50.

325. *See id.*

326. *See id.*

327. *Id.* at 50–51.

They lacked the expertise of lived experience. Tenants had to be the architects of the movement's goals for there to be a movement at all.

At the Project's outset, however, three-quarter house tenants did not typically see themselves as a "community," and they did not necessarily have a shared understanding of the "problem."[328] Community-based organizing efforts existed and were doing important, under-valued, and under-funded work. Those groups, however, were frequently targeting populations and building campaigns that failed to encompass the unique circumstances of the three-quarter house tenant. For example, there were robust campaigns focused on curbing gentrification and preserving housing for rent-stabilized tenants.[329] Likewise, movements to end homelessness were organized and continuing to build power.[330] There were grassroots community-based campaigns that aimed to end police violence in communities of color and hold law enforcement officers accountable for misconduct.[331] Parole reform and reentry services seeking to engage formally incarcerated people were similarly grounded and gaining traction.[332] Seeds of mobilization had also been sowed in the areas of substance use treatment and harm reduction services.[333] Despite these essential movements for progressive and sometimes radical reforms to injustice, there was not a space that effectively targeted the intersectionality of the movements—a movement focused acutely on justice for three-quarter house tenants.

Developing a community directed by three-quarter house tenants for the betterment of three-quarter house tenants became a key objective of tenants and organizers alike. It was that central goal that gave birth to TOP. TOP was established as "a tenants' union of current and former three-quarter house tenants fighting for justice for people living in three-quarter houses and the communities in which they live."[334] However, building a membership for TOP was challenging. During the initial years, TOP members were generally current and former clients represented by the lawyers in housing court proceedings.[335] Attendance at the

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328. Indeed, one challenging component to our organizing was the racism, homophobia, gender bias, and othering that permeated within the three-quarter house tenant community. The lawyers and organizers continually worked to meet tenants where they were in their process of political consciousness based on their experiences and recognize that process of movement-building "will be imperfect, that its members will have blind spots, and that each area of its program, like all aspects of anti-oppression, is not about arriving but instead about engaging in a process with integrity, reflection, and openness to change." *See* Mananzala & Spade, *supra* note 218, at 58.

329. *See, e.g.*, GOOD OLD LOWER EAST SIDE (GOLES), https://goles.org (last visited Nov. 17, 2019); COMMUNITY ACTION FOR SAFE APARTMENTS (CASA), https://nsacasa.wordpress.com/coalition-organizing (last visited Nov. 17, 2019).

330. *See, e.g.*, PICTURE THE HOMELESS, http://picturethehomeless.org (last visited Nov. 17, 2019); COAL. FOR THE HOMELESS, https://www.coalitionforthehomeless.org (last visited Nov. 17, 2019).

331. *See, e.g.*, VOICES OF COMMUNITY ACTIVISTS & LEADERS (VOCAL-NY), http://www.vocal-ny.org (last visited Nov. 17, 2019); COMMUNITIES UNITED FOR POLICE REFORM, https://www.changethenypd.org/ (last visited Nov. 17, 2019).

332. *See, e.g.*, FORTUNE SOC'Y, https://fortunesociety.org (last visited Oct. 1, 2019); OSBORNE ASS'N, http://www.osborneny.org (last visited Nov. 17, 2019).

333. *See, e.g.*, INJECTION DRUG USERS HEALTH ALLIANCE, https://iduha.org (last visited Nov. 17, 2019); ST. ANN'S CORNER OF HARM REDUCTION, https://sachr.org (last visited Nov. 17, 2019).

334. THREE-QUARTER HOUSE TENANT ORGANIZING PROJECT, http://www.topnyc.org/who-we-are (last visited Nov. 17, 2019).

335. Much like the community building discussed by Karen Gargamelli and Jay Kim, the space for storytelling and the recognition of shared legal experiences coupled with "support and politicization"

meetings was low, three to six members most of the time. Layers of personal crisis in tenants' lives often inhibited sustained involvement.[336] Because of the legal services providers' reluctance to allocate scarce funding entirely to organizing, institutional capacity to organize was also limited.[337]

Given the lack of organizing capacity and a still-underdeveloped base of tenant leaders, lawyers increasingly became involved in the organizing. One or both of the two attorneys regularly attended the weekly meetings and frequently took some role in facilitating part of each meeting. Despite diligent efforts by organizers to focus meeting agendas on global campaign issues and broadly-applicable community education, the presence of lawyers invariably, even if unintentionally, opened the door to distractions caused by discrete, individual legal questions.

Slowly but surely, members began to take ownership of TOP and crafted a formal mission statement.[338] The attorneys continued to attend and assist with facilitation of the meetings, but as membership grew, the "need" for attorneys in the room diminished. The organizers ultimately requested that lawyers disengage from membership meetings to allow tenants to concentrate agendas on collective, rather than individual, goals and interests and to brainstorm non-litigation tactics for resistance.[339] Even if seemingly insignificant at the time, the targeted exclusion of lawyers from the organizing agenda was indicative of TOP beginning to realize a "shared goal of [a] 'nonhierarchical community'" made by and for directly affected people.[340]

Tenants coalesced around the injustice and indignity of the pattern of illegal evictions; forced substance use treatment; overcrowding; demeaning housing conditions; scrutiny by parole officers and law enforcement; apparent indifference by government officials; and, more than anything else, the need for safe, stable,

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helped convert legal education into "transformative, organizing space[.]" *See* Gargamelli & Kim, *supra* note 232, at 208.

336. *See* Cummings & Eagly, *supra* note 135, at 498 (recognizing how people with "severe disabilities, health problems, or substance abuse issues" may be "less able to participate in organizing activities for a variety of reasons unrelated to their desire to organize").

337. By 2014, the TQH Project staff increased to one part-time social worker/organizer, a full-time paralegal/organizer, two staff attorneys, and one supervising attorney. In 2016, the institutional collaborators to TOP expanded from MFY and Neighbors Together to include VOCAL-NY, a "grassroots membership organization that builds power among low-income people affected by HIV/AIDS, the drug war, mass incarceration, and homelessness in order to create healthy and just communities." *See* VOICES OF COMMUNITY ACTIVISTS & LEADERS (VOCAL-NY), http://www.vocal-ny.org/?page_id=211 (last visited Nov. 17, 2019).

338. *See* THREE-QUARTER HOUSE TENANT ORGANIZING PROJECT, http://www.topnyc.org/who-we-are (last visited Nov. 17, 2019) ("The Three-Quarter House Tenant Organizing Project (TOP) is a tenants' union of current and former three-quarter house tenants fighting for justice for people living in three-quarter houses and the communities in which they live.").

339. Perhaps one of the most unique components of the TQH Project model has been the willingness of team members to openly express discomfort, concern, and genuine uncertainty about what the consequences of our work would be for the tenants that we were so committed to serving. This is not to suggest that the team was not deliberate about strategy and process—it was. But the team was acutely aware of how systems—and even advocates—have overlooked, undermined, and failed the population of diverse individuals who live in three-quarter houses. Thus, in addition to the relational exchange between advocates and tenants, the Project also endeavored, albeit imperfectly, to maintain open lines of communication and to at least attempt to check and balance the roles undertaken by the various members of the team.

340. White, *supra* note 3, at 765.

and dignified housing. They pointed to prior contact with the criminal legal system, substance use, mental health disabilities, poverty, and personal crisis as factors that led them to reside in a three-quarter house. Their expertise and their stories tangibly identified "the problem" and pinpointed some of the root underlying causes.

2. Politicizing Education within the Three-Quarter House Community

Three-quarter house landlords routinely violated the law by illegally evicting tenants. Consistent with established critiques of the "rights discourse," a narrow focus on "[w]inning a 'right' in a court case" would fail to recognize on-the-ground realities for tenants and run a risk of stunting the broad, progressive change that tenants sought.[341] To combat that risk and demand enforcement of the law, tenants, organizers, and lawyers launched a grassroots campaign to educate police officers, garner support from elected officials, and empower tenants to engage in collective action. Aiming toward the "full potential [of] community education [to] advance social justice agendas by planting seeds for leadership development, community empowerment, and mobilization,"[342] organizers used education about tenants' legal rights to stimulate education about the "historical, economic, social[,] and political roots" of the underlying inequities and to energize "non-hierarchical, participatory, and community-driven" collective action for change.[343]

Central to that goal was politicizing TOP members' experiences and motivating a view of individual legal problems through the lens of historical systems of power and oppression.[344] Rather than look to lawyers or judges or politicians, the organizers looked to a local museum. Organizers arranged a trip to New York City's Museo del Barrio for TOP members to view an exhibit on the legacy of the Young Lords Party in New York.[345] The metamorphosis that occurred among TOP members was remarkable. The museum space appeared to trigger near-uniform recognition that three-quarter house tenants were part of a politicized social history. Members transcended a normative discussion of "tenant rights." They talked about politics and history. They talked about their identity and how they experienced New York as Black or Puerto Rican men. They drew on personal connections to the Young Lords, the Black Panthers, and other activists in poor New York City communities. Admiring a photograph from the Young Lords' "Garbage Offensive," one member said, "What if we cut off the street until we all get stable housing?"[346] Without a word about "the law," the organizers' goal

341. *See* Paul D. Butler, *Poor People Lose: Gideon and the Critique of Rights*, 122 YALE L.J. 2176, 2189 (2013) (discussing regressive nature of the rights discourse and inadequacy of "rights" to further broader political goals).

342. Newman, *supra* note 231 at 632.

343. *Id.* at 637.

344. White, *supra* note 3, at 745 (discussing the collaboration of organizers and the community to "recast" individual problems as "collective [and] political").

345 . *See ¡PRESENTE! The Young Lords in New York*, EL MUSEO DEL BARRIO, https://www.elmuseo.org/the-young-lords-in-new-york (last visited Nov. 17, 2019).

346. The Garbage Offensive refers to a 1969 direct action campaign undertaken by Young Lords activists who piled garbage in the street, blocking traffic in East Harlem to demand the City's Department of Sanitation do regular garbage pickup in their neglected community. *See Young Lords' 'Garbage*

of politicizing a community identity—a challenging and often fraught task—spurred organically from the artwork, photography, and news clippings of a political movement that colored the Museo's exhibit.[347] It would be disingenuous to suggest that the museum visit resulted in a transformative political rebirth of TOP, but it certainly reinforced the value of art as education and as a tool to invigorate a grassroots law-and-organizing campaign.

3. A Grassroots Campaign to End Illegal Evictions

"Whether living in a three-quarter house or not, all tenants deserve to be treated with dignity and respect, and their rights need to be protected. I applaud the [Three-Quarter House] Tenant Organizing Project for advocating against illegal evictions by working with the NYPD to protect New York's most vulnerable tenants, but hope police officers do more to ensure bad landlords do not violate the law."[348]

Making a person homeless is a violent act.[349] Notwithstanding the violence of illegal eviction, it is classified as a mere misdemeanor under New York law.[350] Tenants were tired of police inaction and tired of their housing stability being left to the whim of officers who disproportionately sided with landlords. In the spring of 2014, TOP organizers commenced the "No More Illegal Lockouts Campaign."[351] The goal was to collect 1000 signed postcards from tenants and community allies demanding that NYPD Commissioner Bill Bratton issue an operations order instructing officers to properly enforce the Illegal Eviction Law, consistent with the NYPD Patrol Guide.[352]

At the outset of the No More Illegal Lockouts Campaign, TOP requested a meeting with top brass officials at the NYPD to present the postcards collected and

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Offensive' [1969], ALL OUR HISTORIES NYC, https://www.allourhistoriesnyc.com/new-page-4 (last visited Nov. 17. 2019).

347. *See* Holland Cotter, *When the Young Lords Were Outlaws in New York*, N.Y. TIMES (July 23, 2015), https://www.nytimes.com/2015/07/24/arts/design/when-the-young-lords-strove-to-change-new-york.html.

348. Press Release, MFY Legal Servs., Inc., Tenants Protest Illegal Evictions (Oct. 14, 2014) (on file with author) (quoting New York City Council Member Jumaane Williams).

349. NAT'L COAL. FOR THE HOMELESS, VULNERABLE TO HATE: A SURVEY OF BIAS-MOTIVATED VIOLENCE AGAINST PEOPLE EXPERIENCING HOMELESSNESS IN 2016–2017, 7–9, 16 (2018), https://nationalhomeless.org/wp-content/uploads/2019/01/hate-crimes-2016-17-final_for-web2.pdf (explaining how "structural violence," characterized by systemic inequality, institutional divestment and lack of compassion, "can lead to direct violence when a community is thoroughly dehumanized").

350. *See* N.Y.C. ADMIN. CODE § 26-523. "Broken windows" or "quality-of-life" policing is premised on a theory that sees a law enforcement focus on "minor incivilities as the way to restore neighborhood stability." See ALEX S. VITALE, CITY OF DISORDER 2 (N.Y.U. Press 2008). Proponents of the model believe "criminalization of homelessness and the rise of quality-of-life policing as a necessary counteraction to the growth of unregulated social behaviors that threaten to destabilize local neighborhoods and entire cities." *Id.* at 17. The irony is that by failing to hold the monied class of landlords accountable for their so-called "minor" illegal eviction offenses, the police were necessarily complicit in the destabilization of an entire community of low-income tenants.

351. *See* Press Release, MFY Legal Servs., Inc., Tenants Protest Illegal Evictions (Oct. 14, 2014) (on file with author).

352. *See* Three-Quarter House Tenant Organizing Project, Letter to Comm'r William Bratton (Apr. 11, 2014) (on file with author).

air grievances about the ineffectual enforcement of the Illegal Eviction Law at three-quarter houses. The NYPD did not respond. Righteously indignant, the tenants, lawyers, and organizers planned a rally and press conference on the steps of city hall to denounce systemic failures of the NYPD to protect the rights of three-quarter house tenants. The date of the press conference approached with no word from the NYPD. On the eve of the press conference, however, the legal team received a call from the Deputy Commissioner for Collaborative Policing, indicating that she would be willing to meet. TOP did not cancel the rally but shifted the tone to celebrate the triumph of grassroots, collective action.

Following the rally, the NYPD committed to arrange meetings with the top brass at each precinct where three-quarter houses were located. Tenants and lawyers met face-to-face with the commanding officers and trained officers about the rights of three-quarter house tenants. In addition, and perhaps more consequential than any other tenant victory inside the courtroom or out, the NYPD issued a FINEST Message "to ensure enforcement of the Unlawful Eviction Law at three-quarter houses."[353] The TQH Project copied and distributed the document to tenants around New York City. With the FINEST Message in hand, tenants were no longer placed in the uncomfortable position of attempting to explain their rights to the officers from whom they sought assistance. In addition to becoming a practical, effective tool for tenants to obtain assistance from the NYPD, the issuance of the FINEST Message was concrete evidence that in the tenant-driven movement to improve three-quarter house tenants' lives, tenants were winning.

4. Legislative Advocacy and Government Accountability

"Thankfully the Taskforce came to my three-quarter house, and I was able to be relocated. Since being relocated by the Taskforce, I no longer worry about bed bugs, roaches, or lack of heat and hot water. I no longer have to worry about my belonging being stolen. I no longer have to worry if I or someone else in my house is going to be thrown out on the street with no notice. I have security and peace of mind today."[354]

The Project coupled strategic use of the press with targeted campaigns to control the narrative and further tenants' objectives. On the heels of the *New York Times* multi-part exposé, New York City mayor, Bill de Blasio, convened an interagency taskforce charged with enforcing housing code requirements and tenant safety in three-quarter houses. Then, with a base of community leaders, a galvanized coalition of allies, and political will cultivated by tenants' efforts over the years, the Project advocated for legislative reform, advancing a package of five legislative proposals in April 2016.[355]

353. An NYPD FINEST Message is an internal policy document meant to clarify NYPD procedure. Memorandum from the N.Y.P.D. on Enforcement of Unlawful Evictions to All Commands (Aug. 23, 2014), http://mobilizationforjustice.org/wp-content/uploads/NYPD-FINEST-Message.pdf.

354. Anthony Coleman, Leader in Tenant Organizing Project, Testimony In Support of Three-Quarter House Bill Package (Oct. 6, 2016) (on file with author).

355. *See* Jonathan Sizemore, *Three-Quarter Housing: Council Seeks to Address Blight*, CITYLAND (Feb. 2, 2017), https://www.citylandnyc.org/three-quarter-housing/.

On February 15, 2017, after years of grassroots advocacy with City elected officials, Mayor de Blasio signed into law a package of five bills intended to improve the lives of people who live in three-quarter houses.[356] A community of three-quarter house tenants, once invisible to governmental stakeholders, was now posing for a photograph together with the mayor to memorialize the new laws on the books.[357] The years of advocacy in the courts, in the press, and on the street continued to bear fruit. Tenants and advocates now met on a regular basis with the Commissioner of the New York City Human Resources Administration, the agency at the helm of the Mayor's Taskforce on Three-Quarter Houses.[358] Sustained pressure from TOP, and the organizers who support it, has compelled city agencies to take affirmative action to restore essential services like heat, hot water, or gas, instead of merely directing tenants to the courts to pursue their own—often futile—remedy there.

Successful legislative reforms, litigation victories, and media attention also spurred action from various prosecutorial authorities. In recent years, at least four major operators of three-quarter houses were convicted of crimes stemming from multi-million-dollar Medicaid fraud and kickback schemes.[359] Because tenants bore the brunt of the abuses at the heart of landlords' criminality, many tenants were relieved to finally see some accountability. While just a drop in the accountability bucket, the prosecutions of the elite, profiteering landlords served to demonstrate, even if only symbolically for some tenants, that the lives of poor people matter.[360]

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356. *See* N.Y.C. ADMIN. CODE § 21-138 (requires that the Department of Social Services provide "know-your-rights" materials to all tenants receiving the public assistance shelter allowance in New York City, helping educate and protect them from illegal evictions); THREE-QUARTER HOUS. TASK FORCE, THREE-QUARTER HOUSING QUARTERLY REPORT (REPORT PERIOD: JUNE 1, 2015–DEC. 31, 2017) 1 (on file with author) (Local Law No. 13 requires Mayor's Task Force on Three-Quarter Housing to report information to the City Council and the public to track the extent of the problem and properly target solutions); N.Y.C. ADMIN. CODE § 26-301(1)(a)(v) (removes the deadline—previously ninety days—within which the occupant of a building vacated pursuant to a city vacate order may obtain "emergency relocation services" from the Department of Housing Preservation and Development); *Id.* § 26-1201 (prohibits landlords from conditioning occupancy of a dwelling upon the occupant seeking, receiving, or refraining from medical treatment including substance use services); *Id.* § 26-1202 (provides occupants with a private right of action to seek damages against any landlord who violates N.Y.C. Admin. Code § 26-1201); *Id.* § 27-2142 (provides for a $5000 fine to be imposed against landlords who permit re-occupancy of the premises while it remains subject to a vacate order); *Id.* § 26-301(7)(a) (codifies reasonable alternative means by which displaced people can prove their residence and eligibility for relocation services, including other government agency records and medical records, and prohibits the Department of Housing Preservation and Development from denying relocation assistance based solely on the unsupported word of a landlord with a financial interest in preventing the tenant from accessing assistance). *See generally* Kim Barker, *Bills Passed to Help Tenants of New York 'Three-Quarter Homes*,' N.Y. TIMES (Feb. 1, 2017), https://www.nytimes.com/2017/02/01/nyregion/bills-tenants-protection-three-quarter-homes-new-york.html; Tom Valentino, *Laws Boost Protections for Three-Quarter House Tenants*, BEHAVIORAL HEALTHCARE EXECUTIVE (Mar. 22, 2017), https://www.psychcongress.com/article/laws-boost-protections-three-quarter-house-tenants.

357. *See, e.g.*, TOP (@TOPnyc), TWITTER, (Jun. 7, 2017, 6:18 PM), https://twitter.com/TOPnyc/status/872578622313426944.

358. *See, e.g.*, TOP (@TOPnyc), TWITTER (June 7, 2017), https://twitter.com/TOPnyc/status/872578622313426944 (photo of HRA Commissioner Steve Banks addressing a town hall organized by and for three-quarter house tenants and advocates).

359. *See supra* note 295.

360. *See* Barker Apr. 13, *supra* note 145.

But those prosecutions did not fundamentally shift the paradigm. At every stage of the movement, tenants and advocates remained ambivalent about engaging law enforcement as an advocacy tool. Many tenants carried deep scars from their own traumatic experiences with the criminal legal system. Those histories tarnished the ability or willingness to trust the police or to see them as allies. That did not change with a handful of landlord prosecutions. To contrary, the prosecutions underscored legal systems' inability to deliver justice. As a result of lawsuits and prosecutions, the federal government recovered some $118 million for landlord fraud.[361] The State of New York obtained or expects to obtain upwards of five million dollars more.[362] But what did the tenants who were the scapegoats at the center of the entire three-quarter house scheme recover? Zero.[363]

5. A Note about Reliance on the Non-Profit Industrial Complex

"[W]e must remain critically aware of the contradictions inherent in using the non[-]profit structure to build power for oppressed people. We must remember that our services operate as a shadow state, quelling resistance, and that foundations operate as stored, stolen wealth, often keeping the lid on social justice and rewarding reformist projects, while the state criminalizes radical redistributionist political organizations."[364]

Dean Spade characterizes the non-profit industrial complex as "the carrot that corresponds to the stick of criminalization of social movements."[365] The result, he argues, is that the types of social movement work funded by elite corporate funders are only those that "do not threaten the white supremacist political and economic status quo."[366] Thus, the work is relegated to a role of providing "direct, survival-based services" that are "disconnected from any political mobilization aimed at getting to the root causes of the need for these services."[367] As discussed in Section III.A.1, *supra*, non-profit legal services providers tend to be designed with structural limitations that confine the ability for those institutions to engage in

361. *See* Press Release, N.Y. State Office of the Attorney Gen., A.G. Schneiderman Announces Criminal Guilty Plea & Multi-Million Dollar Civil Settlement With Narco Freedom (May 31, 2017), https://ag.ny.gov/press-release/ag-schneiderman-announces-criminal-guilty-plea-and-multi-million-dollar-civil (noting that Narco Freedom settled government claims for $118 million).

362. *See* Press Release, N.Y. State Office of the Attorney Gen., Attorney Gen. James Announces Conviction of "Three-Quarter House" Director Charged With Defrauding Medicaid Through A Kickback Scheme (Jan. 8, 2019), https://ag.ny.gov/press-release/attorney-general-james-announces-conviction-three-quarter-house-director-charged (noting that the defendants will pay more than $2.4 million in restitution to the New York State Medicaid Program); Press Release, N.Y. State Office of the Attorney Gen., A.G. Schneiderman Announces Guilty Pleas Of "Three-Quarter" Housing Operators Yury Baumblit & Rimma Baumblit (Feb. 15, 2018) (on file with author) (noting that the New York Medicaid program expects to recoup between $1.5 and $2.5 million).

363. Tenants obtained a judgment awarding them more than four million dollars. *See* Webster v. #1 Mktg. Serv., Inc., No. 30238/2010, at *3 (N.Y. Sup. Ct. June 1, 2017) (issuing judgment in favor of tenants in the amount of $4,082,096.25). To date, not a single dollar has been paid out by the defendants.

364. *See* Mananzala & Spade, *supra* note 218, at 17.

365. DEAN SPADE, NORMAL LIFE: ADMINISTRATIVE VIOLENCE, CRITICAL TRANS POLITICS, AND THE LIMITS OF THE LAW 97 (Duke University Press 2015).

366. *Id.* at 96.

367. *Id.* at 97.

more radical systems-change work. As a result, movements are fragmented to disaggregate the delivery of direct legal services from grassroots organizing.[368] "[S]ervices organizations offer little opportunity for vulnerable communities facing poverty, homelessness, unemployment, deportation, and criminalization to build networking relationships for analysis and resistance."[369]

To combat that reality, creating a space for networking and critical analysis by three-quarter house tenants was at the heart of TOP's mission. Thus, even when courtroom advocacy involved clients who were unaffiliated with TOP, the triumphs and setbacks from that litigation were embraced by TOP as their own. TOP members made the Project's legal work relevant. Without TOP, there was no grassroots thread to unite the stories, victories, and defeats into one coherent narrative. And without the organizing component of the TQH Project, the momentum fueled by litigation would fade away. Yet without institutional support from an organization that would prioritize funding, training, and supervision for organizers, maintaining a robust community organizing structure was unsustainable. The ironic central flaw in the Project's design was that the institutional support that made the Project possible was also the barrier that inhibited TOP from blossoming into an autonomous, tenant-driven movement toward radical, transformative change.[370]

Embedded within White's discussion of the Three Dimensions is the implication that a hallmark of successful social justice or movement lawyering would be linear progression from lawyer-driven legal claims towards a more hands-off approach directed by an autonomous, politically-enlightened constituency. Although that kind of trajectory may be the idyllic aspiration of many social justice practitioners, it obscures the messiness that is arguably inherent in any law-and-organizing practice. As this Article argues, it is the flexibility and dexterity of a law-and-organizing approach informed by a systems theory analysis of the problem that can cultivate seeds for more lasting change. It is also patience. Movement lawyering, like movement-building, is a recursive process. Active participation, leadership development, and engagement from the tenant community, consistent with White's Third Dimension, was always the goal. Because of the systemic obstacles to basic survival and the destabilizing effects of human crisis, which is ever-present in the lives of three-quarter house tenants, it was seldom possible for the Project to proceed on an unencumbered trajectory toward a united front of tenant autonomy without the support, intervention, and creativity of organizers to push the movement forward.

Campaigns started, paused, and rekindled. Litigation stalled, waned, or failed to translate into transformative change. Funding for the Project grew and diminished. But through it all, litigation and organizing tactics adapted to account for the intersectionality of systems and circumstances that formed the particular

368. *Id.*; Farnia, *supra* note 206, at 280.

369. SPADE, *supra* note 365.

370. For discussion about the challenges of relying the non-profit structure to promote grassroots social movements, see DYLAN RODRÍGUEZ, THE REVOLUTION WILL NOT BE FUNDED: BEYOND THE NON-PROFIT INDUSTRIAL COMPLEX 21–40 (Incite! Women of Color Against Violence eds., 2007) ("[F]orms of sustained grassroots social movements that do not rely on material assets of institutionalized legitimacy . . . have become largely unimaginable within the political culture of the current US Left.").

needs of the three-quarter house community at a given time.[371] And fundamentally, the TQH Project remained patiently steadfast, willing to welcome newcomers and allies, accept setbacks, and adjust strategies however necessary to further the objectives of the constituency.

It would be disingenuous to assert that the TQH Project and the three-quarter house tenant community fully realized implementation of White's Third Dimension. However, as a result of that adaptive creativity, tenants for whom the government was previously out of reach were able to collectivize their power. They produced tangible reforms from the New York Police Department, changed the law in the courtroom and in the legislature, built relationships with elected officials, and forced city and state agencies to be accountable to three-quarter house tenants. Tenants are now a recognized voice on issues related to housing and homelessness, policing and community reentry, as well as substance use treatment and harm reduction.

Despite those victories, in 2018, when the headlines from the legal battles in the three-quarter house industry began to subside, Mobilization for Justice quietly disbanded the Three-Quarter House Project.[372] With the remarkable development of Universal Access to Counsel in New York City, it was no longer an organizational priority to secure funding from other sources to keep the Project afloat.[373] While TOP remains intact due to continued support from Neighbors Together, an underfunded community-based organization and soup kitchen, and VOCAL-NY, a fierce but overworked community membership organization, it no longer has the embedded legal support of any institutional legal services provider. Consequently, that vibrant, if messy, law-and-organizing endeavor with three-quarter house tenants is no more.

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371. One example where tenants shifted strategy came in the context of a federal indictment and civil suit commenced by the United States Department of Justice against Narco Freedom. *See generally* United States v. Narco Freedom, Inc., 95 F. Supp. 3d 747 (S.D.N.Y. 2015). Although three-quarter houses were the vehicle through which Narco Freedom engaged in its criminal enterprise, the wellbeing of the house occupants was a distant afterthought in the litigation, which sought criminal and civil penalties against Narco Freedom. *See id.* (remaining silent as to the maintenance of physical conditions in the Narco Freedom three-quarter houses). Indeed, during the course of the proceedings tenants complained that they were without air conditioning during the hot summer months. When the temporary receiver appointed by the federal court failed to respond to tenants' concerns, TOP mounted a campaign that culminated with TOP confronting the receiver in the courthouse, presenting her with a demand letter signed by some 200 tenants, and informing her that tenants would not be silenced. Air conditioners were installed immediately in the days that followed. *See* Cole Rosengren, *Narco Freedom About to Lose Its Three-Quarter Homes*, MOTT HAVEN HERALD (Aug. 28, 2015), http://www.motthavenherald.com/2015/08/28/narco-freedom-about-to-lose-its-three-quarter-homes ("One notable change for Narco Freedom residents has been the addition of air conditioners, as the result of a tenant organizing campaign."). Even though obtaining air conditioners was a "non-legal" victory, in that the occupants had no "right" to them, the organizing effort made it nearly impossible for the receiver to refuse the demand. And because that win came as a result of grassroots mobilizing—as opposed to arguments made by lawyers in court—tenants were able to more tangibly take ownership of their triumph.

372. Although the TQH Project is still on the Mobilization for Justice website, the organization no longer staffs attorneys, paralegals, or organizers who specialize in three-quarter house issues and does not provide institutional support to TOP.

373. Because several legal services providers around New York City are now funded for Universal Access to Counsel, the historical reluctance to undertake cases where there may be no long-term right to occupancy has diminished. *See supra* note 101.

V. A FOURTH DIMENSION: EMBRACING THE UTILITY, VERSATILITY, PATIENCE, AND RESILIENCE OF A LAW-AND-ORGANIZING PRACTICE

"[L]egal victories alone mean nothing in the absence of community organizing and mass, sustained mobilization."[374]

The TQH Project was an experiment in balancing tension between the constrained conservatism of individual client representation and the more radical drive of grassroots activism. TOP along with the individual attorneys, organizers, and social workers in the TQH Project believed in the ideals of White's third dimensional lawyering whereby TOP would develop into a wholly autonomous, politically conscious grassroots community by and for affected people. Although there may be a lot about which the Project can boast, it fell short of fully realizing that vision. The Project's work undoubtedly contributed to the ability of many individual tenants to exercise their power and self-determination, but broad swaths of others remain plagued by the systems of oppression that continue to impede their liberty, wellbeing, housing security, and safety.

Perhaps this moment, like many before it, is merely an expression of the recursive flexibility, patience, and resilience—a "fourth dimension" of lawyering for social change—that has been the quintessential lynchpin to this law-and-organizing endeavor. The takeaway, if there is one, is a charge that lawyers, with the organizers and affected people, continue to view their collective work through a critical lens that sees law as a tool, but not the only tool, to invigorate new movements for social, racial, and economic justice. Having observed, practiced, triumphed, and failed in pursuit of that charge, what remains unshakably clear is that the movement for transformative justice in the lives of three-quarter house tenants has only just begun.

374. Mananzala et al., *supra* note 225, at 29.