

The Right to Counsel at Scale

Patrick Power, Shomik Ghosh and Markus Schwedeler

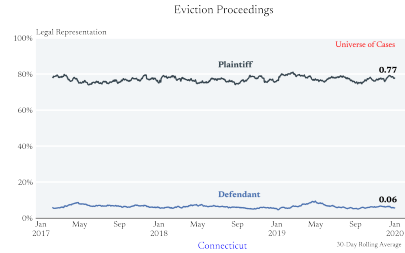
DRAFT

May 2, 2023

1 Introduction

1.1 What’s the Problem?

The 2 million evictions that occur each year across the United States are costly to individuals, landlords, courts, and the general public (Desmond [2016]). Unlike criminal cases in the U.S., defendants in an eviction case are not entitled to a public attorney. Currently, a gap in legal representation exists between landlords and tenants which has been documented to be as large as 95% – 1% in some areas in favor of the landlord (Collinson et al. [2022]).



Given the severity of the costs associated with eviction, the multitude of underlying factors which contribute to its occurrence, and the typical manner in which an eviction case is settled, many in the U.S. believe that legal counsel should be provided to low income households. Over the past several years, more than 15 cities and 3 states have acted on this belief by introducing a Right to Counsel with the aim of closing the gap in legal representation and improving downstream outcomes related to health, employment, and financial credit.

The problem is that we don’t have a good grasp on how this policy affects housing stability.¹ Some have argued that eviction cases are complicated and that legal aid can successfully keep families housed in a cost effective manner (Stout). Others, push back by pointing out that the majority of eviction cases are the result of a non-payment of rent², and that legal aid can only delay an eviction.³ This delay increases the costs for landlords who might then respond by making it harder for low income families to secure housing which would ultimately decrease housing stability. As Gunn [1995] writes, “By increasing landlords’ costs of doing business, legal services attorneys may enrich their clients at the expense of all other similarly situated poor tenants.”

The aim of this paper is to empirically address this open question, exploiting the ongoing roll-out of the Right to Counsel across the state of Connecticut.

1.2 The Others

¹The is despite what [government officials](#) say, ‘The Right to Counsel initiative is a proven and successful program that has helped thousands of New Yorkers avoid eviction and keep their homes, which is more important than ever amid the current economic challenges brought on by the COVID-19 pandemic,’ said Department of Social Services Commissioner Steven Banks.” -

²[Seron et al. \[2001\]](#) writes, “While New York’s Housing Court hears disputes between landlords and tenants over a range of issues, by far the most common case is a claim filed by a landlord to evict tenants for nonpayment of rent

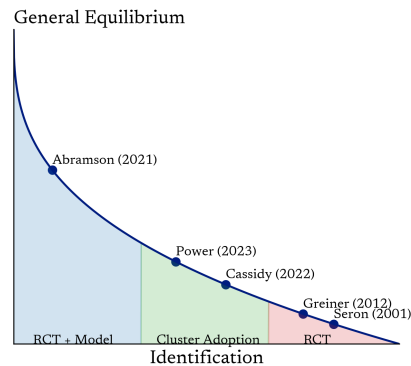
³“Once out in the hallway, the attorney quickly explained that James won because his landlord gave him an improper notice. . . . the landlord was willing to give James the week to move out before he would attempt to evict him again.”[Petersen \[2020\]](#)

The majority of prior work on this topic has focused on the question on how “legal counsel affect[s] outcomes for low-income tenants in Housing Court.”⁴

Based on a sample size of 268 cases which where thought to benefit from legal aid⁵, [Seron et al. \[2001\]](#) finds the number of final judgments against the tenant decreases from 55% to 22%.⁶

Using a selected sample⁷ of 129 cases, [Greiner et al. \[2012\]](#) finds that judgement of possession for the landlord falls from 0.75% to 0.17% and that monetary payments dropped from \$1124 to \$147

Exploiting the staggar rollout across New York City⁸, [Cassidy and Currie \[2022\]](#) find ...



Additional work on this topic has has combined RCT estimates with macroeconomic models to study the general equilibrium effects of this policy. Using results based on a pilot study in San Diego, via a counterfactual analysis [Abramson \[2021\]](#) finds that the Right-to-Counsel has no effect on keeping families and individuals housed and largely results in an increases in homelessness by 15%. We caution that the insights of this paper aren’t necessarily the raw estimates⁹ but rather the channels that it highlights as being crucial to the overall effectiveness of the policy. Specifically, it argues that understanding the nature of the risk that leads to defaults is central.

⁴[Seron et al. \[2001\]](#)

⁵Cases in this study were selected if they “[gave] reason to believe that a lawyer could have a significant impact on the outcome.” That is “Cases were selected in part on the basis of a CLO attorney’s judgment regarding expected benefit from the provision of legal assistance”

⁶These cases went before one of three judges in the Manhattan Housing Court

⁷“A condition of the funding was that the legal services providers offer representation only in cases that fit into one of three categories: (i) the occupant had a disability related to the evictor’s asserted reason for the eviction; (ii) the occupant had allegedly committed criminal misconduct related to the evictor’s asserted reason for the eviction; or (iii) the occupant was in danger of suffering a substantial injustice unless counsel were offered. ... This access-to-justice strategy was different from a focus on providing full representation (at state expense for persons unable to pay on their own) in certain typeps off adjudicatory proceedings, as proposed in a recent ABA civil Gideon pronouncement.” It’s also noted that “almost all cases, treated and control alike, received substantial legal assistance in the form of instructional sessions and help in filling out answer and discovery forms.” The paper goes on to say that “Either of the two selectioin processes identified above, the client-centered process of the GBLS-centered process, might have been sufficient on its own to produce a client base for this study that was not representative of all low- or moderate-income occupants in the district court’s summary eviction calendar.[Greiner et al. \[2012\]](#)”

⁸[Meyer et al. \[2021\]](#) “Studies that focus on New York City, where right-to-shelter laws require the city to provide beds and most of the homeless reside in shelters, will likely lead to different conclusions”

⁹As with all models, the raw estimates depend in part on several assumptions which can be difficult to test. For example, the model assumes that the lord pays a maintenance/up keep cost regardless of whether the renter defaults or is behind.

1.3 Contributions

Noting the serious limitations of our context, we provide two contributions:

Both anecdotally¹⁰ and empirically¹¹, we know that there is a noisy relationship between the legal outcome of the case and whether the tenant remains in the unit. Recognizing this, virtually all papers on the topic have emphasized the need to go beyond legal outcomes.¹² We do so in this paper by linking judicial housing court data with HMIS data on Rapid Rehousing and Emergency Shelter use. While an imperfect measurement, it allows us to understand whether the policy reduces the likelihood of homelessness.

The second contribution of this paper is that we empirically examine whether the housing search process become more difficult for low-income households following the implementation of this policy. Explaining how landlords may push the costs of this policy onto the unhoused, [Abramson \[2021\]](#) writes, “Low income households, who are priced out of the rental market, are intuitively the main losers.” Focused exclusively on individuals and families in a Rapid Rehousing program, and exploiting the zip code level rollout of the policy we estimate whether the **search length**, **probability of housing application rejection**, and the **total voucher cost** (which we proxy for a price of housing) increased in response to the Right to Counsel.



Figure 1: Three outcomes we use to capture the indirect effects of the Right-to-Counsel. (Left) Probability of having a housing application rejected. (Middle) Length of Housing Search. (Right) Total Amount of Voucher Support

¹⁰ “The landlord served a facially defective notice to quit. After a GBLS staff attorney moved to dismiss, the landlord agreed voluntarily to dismiss the case. For our purposes, this agreement means that the occupant retained possession at the end of the piece of litigation that entered our study, so we coded this case accordingly, and that was the end of the matter as far as this case’s contribution to the District Court Study. We happen to know in this case that the landlord did as one would expect, meaning that the landlord served a corrected notice to quit on the occupant, the filed another lawsuit. Thus litigation between the parties continued, but the subsequent litigation was not part of our dataset.” [Greiner et al. \[2012\]](#)

¹¹ “In the first year after case filing, an eviction order increases the probability of observing the tenant at a new address by 8 percentage points (28% of the non-evicted mean) and increases the probability of staying in emergency shelters by 3.4 percentage points (more than 300% of the non-evicted mean)” [Collinson et al. \[2022\]](#)

¹² “A related and important issue concerns the eventual outcome in society-in the life of the tenants and the condition of their housing-after a final judgment of the Court. For example, it is unknown from this study whether court orders of eviction or stipulations requiring rent abatements or repairs resulted in actual evictions (and perhaps homelessness), abatements of rent, or repairs made (and hence improvement of the housing stock). Tenants may simply move on to another unit before an eviction occurs, and landlords may delay or fail to provide rent abatements or repairs stipulated by the Court.” [Seron et al. \[2001\]](#) – “legal outcomes are critical, but studies of representation and, indeed, access-to-justice efforts more generally must expand to incorporate socioeconomic outcomes.” [Greiner et al. \[2012\]](#)

“However, such an intervention may hurt other tenants if housing supply contracts because universal legal representation reduces the profitability of renting a unit. While theoretically plausible, such market-level effects have been investigated little in the empirical literature.” - [Evans et al. \[2019\]](#)

“The argument is that increasing costs to landlords may incentivize them to decrease maintenance on their properties, abandon the rental market altogether, or pass the costs on to tenants, further harming low-income tenants more broadly. No data exists to support this argument” - [Petersen \[2020\]](#)

“Such policy reforms may also impact landlords, which could have consequences for rental housing supply, rent prices, and screening practices. A full welfare analysis of policy counterfactuals is beyond the scope of this paper.” - [Collinson et al. \[2022\]](#)

“Of course, an open question is whether giving tenants representation will, in the longer term, reduce the supply of affordable apartments or make landlords more reluctant to rent to some types of tenants.” - [Cassidy and Currie \[2022\]](#)