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<https://doi.org/10.15760/etd.3647>

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The Affective Discourses of Eviction: Right to Counsel in New York City

by

Hadley Savana Bates

A thesis submitted in partial fulfillment of the  
requirements for the degree of

Master of Urban Studies

Thesis Committee:  
Lisa K. Bates, Chair  
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Portland State University  
2023

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## **Abstract**

This study explores the interrelationships of urban policy, affect, and power through a critical discourse analysis of New York City's "Universal Access to Legal Services" / "Right to Counsel" ordinance, a 2017 initiative that has persisted amidst the evolving landscape of eviction diversion following the outbreak of Covid-19. By examining archival documents regarding the groundbreaking policy, this study reveals how affective discourses regarding vulnerability, stress, and solidarity situate political actors in relation to urban policy, political movement, and the material conditions of survival. Drawing upon critical policy studies and affect theory, this research underscores the affective dimensions of policy mobility and how the circulation of emotion functions in and through discourses surrounding eviction, its diversion, and the human right to housing.

*To those who have fought, even by existing, for the right to a home.*

## **Acknowledgments**

To my advisor and Chair, Dr. Lisa K. Bates—this work would not have been possible without your guidance. I am deeply grateful for every minute you have taken to help me explore who I am as a thinker and researcher. Thank you for giving me the opportunity and space to flounder and flourish in my academic journey, for challenging me, and for believing in me.

To Dr. Steve Marotta and Dr. Moriah McSharry McGrath—thank you both for your dedication to teaching and learning. Together, you have instilled in me a confidence in curiosity that I hope to always embody in my work and throughout my life.

To Miranda Mishan, Ryan Martyn, and Bryce Ehmig—each of you has inspired me endlessly, held me up during times of uncertainty, and left a permanent mark on who I am and how I learn. You are all endlessly admired as academics and as friends.

To Emily, Angie, Nora, and Milo—I am forever grateful to share a home with you. I would not be writing this if not for your friendship.

To Mom, Dad, and Kyle—thank you for being my best friends. Because of you, I know what it means to wonder, to care, and to speak up.

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## 1. Introduction

Despite being a fundamental feature of U.S. urban poverty, eviction—dominantly defined as the expulsion of tenants from rental property—was only brought to the forefront of U.S. public and political discourse in the years following the subprime mortgage crisis. As profit generation through the exploitation of the urban poor became visible in post-foreclosure housing markets (Seymour, 2021), several reports were published to highlight the severity of the eviction crisis and to advocate for tenant rights. In New York City, which experienced among the highest eviction rates in the country, it was estimated in 2013 that while 95 percent of landlords had counsel in the city's housing court, only 1 percent of tenants had legal representation (Ellen et al., 2021). In response to these numbers, NYC's Community Action for Safe Apartments (CASA) and the city's Urban Justice Center (2013) published a report calling for tenants' right to counsel in NYC's housing court. The following year, a group of tenants, organizers, advocacy groups, scholars, and legal service providers formed New York City's Right to Counsel Coalition, working to establish what would become the city's groundbreaking initiative, "Universal Access to Legal Services" or "Right To Counsel" (RTC), enacted in 2017.<sup>1</sup>

As the first jurisdiction in the U.S. to enact Universal Access to Counsel, NYC paved the way for cities such as Philadelphia, Cleveland, and Newark to implement similar RTC ordinances in the following years. Despite these legislative successes, tenants across the country continued to endure countless unjust and frequently illegal

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<sup>1</sup> Throughout this study, New York City's Right to Counsel ordinance is referred to interchangeably as NYC's RTC, NYC's Universal Access to Counsel/Legal Services (UA), or Local Law 136.

evictions, with many occurring outside of the court system altogether. By the beginning of 2020, the Right to Counsel movement—on a national scale—was still in its early stages.

Suddenly, with the spring came a set of unparalleled events that would reshape the everyday ordinaries of populations worldwide. As the Covid-19 outbreak led to an innumerable loss of life, many additional, exceptional circumstances came into being. The mediatized murder of George Floyd not only sustained the ongoing black-led demonstrations protesting the brutalizing of black and brown bodies at the hands of police, but also galvanized an unprecedented number of demonstrators to take to the streets. Simultaneously, the country saw a rise in white supremacist extremism and violence and a glaring "crisis of truth" and disinformation, both bolstered by increasingly hegemonic, for-profit social media companies (Davis & Boler, 2022).

With Covid-19 came a new set of eyes for the nation's dominant publics, as the inequalities integral to the functioning of U.S. racial capitalism (Robinson, 1987) became glaringly clear. While the ability to safely quarantine became exposed as a luxury—as working-class people such as service industry workers and day laborers, as well as medical care workers and first responders, were unable to or could not afford to stay home—the privilege of having a home at all was also laid bare. As housing supply shortages and rising rates of housing instability became starkly visible features of the U.S. urban landscape, eviction was exposed as a fundamental feature of urban poverty that even the federal government could no longer ignore.

In September 2020, the Centers for Disease Control and Prevention (CDC) issued a nationwide eviction moratorium to prevent the displacement of tenants experiencing

financial hardship due to the pandemic. Following the lifting of the federal moratorium in the fall of 2021, cities across the U.S. began implementing and extending local programs and policies to address the ongoing impacts of eviction, finally acknowledging the long-standing calls for a right to housing, waged by a coalition of community organizers, activists, lawyers, and unionists, many of whom are tenants themselves. As in the aftermath of the subprime mortgage crisis, eviction reemerged as a concern within public and political discourse. However, this time, it was not just that U.S. dominant publics suddenly acknowledged the realities and effects of eviction; they began to rally behind efforts to interrupt its impact.

The realities of capitalist power, white supremacy, inequality, and hate—features that have always been and are the root of the United States Nation-State—were thrust to the forefront of dominant public and political discourse in the wake of the Covid-19 pandemic. In the words of social justice scholars Elizabeth Davis and Megan Boler (2022), "there is perhaps no adequate way to encapsulate what 2020 felt like" (p. 357). However, collective understandings of these feelings exist, whether or not there are words to describe them. These very feelings—the collective affects and emotions that spur some publics into action and leave others frozen—are what move policies such as New York City's Right to Counsel.

While studies of policy mobility have tended to center ideology as the driving force in policy popularity, comparative policy researcher Maricia McKenzie (2017) suggests that "considering the collective conditions of affect in relation to ideology points to additional layers of investigation into mobility and the politics of policy" (p. 217). While existing research has examined the influence of emotional geographies and

"structures of feeling" (Williams, 1954) on urban space, including studies of fear in the structuring of displacement (Schoenberger & Beban, 2018), there remain few studies that explore the relationship between affect and policy mobility (Boren et al., 2021). This gap in literature is partly due to a dominant dismissal of affects as intangible epiphenomena, despite the suggestion that affects are real forces that make up the composition of everyday ordinaries (Anderson, 2014). As emotion becomes an increasingly publicized, thus influencing factor in the landscape of U.S. media, policy, and political movement, "it is particularly important that the value of discursive analyses of affect is not undermined" (Glapka, 2019, p. 617).

Drawing on the theoretical toolkit of critical policy studies—highlighting the role of narrative and discourse in the structuring of organizational and institutional apparatuses, decision-making, public opinion, and social action/inaction (Kingdon & Stano, 1984; Marston, 2004)—and affect theory—a framework tied to queer and feminist methodologies emphasizing the political dimensions of emotion, feeling, bodily phenomena, and performativity (Ahmed, 2004; Berlant, 2011; Butler, 2004; Hemmings, 2005)—this research asks how structures of feeling serve to situate individuals in relation to policies that may or may not affect their everyday lives, and how the circulation of affect functions in and through discourses surrounding eviction and strategies to prevent or divert it.<sup>2</sup> This qualitative case study examines the role of affect in shaping trajectories of urban policy by exploring how various political actors are affectively situated in

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<sup>2</sup> Though an academic consensus on the distinction between eviction prevention and diversion has yet to exist, this work references eviction prevention in relation to intervention strategies that occur before a court summons, first appearance, or court-related eviction process. On the other hand, eviction diversion is used in reference to intervention strategies that happen once the court becomes involved in an eviction process (often at the time of an eviction filing). Thus, RTC ordinances are referred to as strategies of eviction diversion throughout this study.

relation to New York's Right to Counsel and investigates what this reveals about power and, more critically, resistance.

The following section contextualizes New York City's Right to Counsel as a case study that reflects broader trends in discourses surrounding eviction and its interventions. It details the 2017 iteration of NYC's RTC ordinance and its subsequent 2021 amendment establishing Universal Access to Counsel. Furthermore, this section introduces the key actors engaged in the design, implementation, and utilization of NYC's RTC, as well as emphasizes the bureaucratic tensions between the Office of Civil Justice and legal nonprofit organizations as prominent factors in the discourses surrounding the legislation.

Following the contextualization of this case study, Section 3 details critical policy and affect theory, the primary theoretical frameworks that situate this study. Furthermore, this section describes critical discourse analysis. This multimethodological approach explores the linkage of policy discourses with social identities, public feelings, and relations of power (Wodak, 2014) through the evaluation of textual data found in archival documents.

Beginning by listing key research questions, Section 4 describes the design of this study. This section specifies the data selection protocol for archival document data sources grouped by publication type. It details the data corpus that includes official government documents, ordinance texts, advocacy press releases, webpage materials, press publications, and public testimony transcripts as the primary data in this study. The section goes on to describe the analytic method of qualitative thematic coding and lists the code groups that organize this research, which identify vital actors, affects, and relations of power involved in the circulation of discourse regarding NYC's RTC. This

section concludes by addressing this study's limitations, including the challenges associated with conducting research on eviction.

Critical in understanding how policies such as New York City's Right to Counsel shape the material conditions of the urban poor is an exploration of how policy moves, shifts, and evolves within the intricacies of power. Political-cultural geographer Ben Anderson (2014) argues that "understanding how power functions in the early 21st century requires that we trace how power operates through affect and how affective life is imbued with relations of power" (p. 8). Section 5 sheds light on this dynamic in the context of New York City's Right to Counsel, which, unlike many post-moratorium eviction interventions that have seemingly been abandoned as quickly as they were enacted, has persisted prior to and throughout the outbreak of Covid-19.

Section 5 presents three parts. First, it examines the co-occurrences of "Actor" and "Affect" codes to gain insight into the associations between actors, emotions, and/or affective states of being. Next, data is further examined by analyzing which actors use their own words to describe their feelings and which actors are more commonly spoken for. The scope of findings is then broadened, drawing on earlier insights to shed light on the intricacies of power and resistance as they shape the implementation and use of New York City's Right to Counsel. Together these findings reveal a tenacity that dominant narratives often obscure: tenant resistance. They expose and challenge the dominant framing of tenants as static subjects, inherently vulnerable and without power, and highlight how solidarity and love are integral to tenant experiences surrounding the legislation.



This study concludes by discussing the implications of earlier findings, which ultimately interrogate the long-term efficacy of eviction diversion strategies—such as New York City's Right to Counsel—embedded within the U.S. legal apparatuses, which, by their very nature, sustain and perpetuate the very systems that give rise to eviction.

## **2. Right to Counsel in New York City**

More than a public health concern amid a global pandemic, an existing and expanding body of research links eviction to chronic economic hardship, reductions in credit scores and access to credit, detrimental health outcomes and increased hospitalizations for mental health crises, prolonged housing instability, and increased risks of homelessness (Ellen et al., 2021). Not only does eviction entail the loss of stable shelter or potential difficulties in finding future housing, but it also may result in "a loss of historical connection; a weakening of roots; and partial erasure of the sources of memory, dreams, nostalgia, and ideals" (Brickell et al., 2017, p. 11). These harms of eviction fall disproportionately on Black and Latinx people, especially non-male identifying individuals and children (American Civil Liberties Union, 2022). While significant evidence points to the harms of eviction, there is little research on how to best prevent or divert them (Ellen et al., 2021).

Following the lifting of the federal eviction moratorium, some U.S. cities approached eviction prevention by initiating educational campaigns and mediation services for tenants and landlords, while others focused on eviction diversion in the housing court system. Though most ongoing eviction prevention and diversion strategies rely on voluntary programs involving multiple sectors and incorporate public and private funding, some jurisdictions have passed legislation to provide legal protections for those facing eviction. As of May 2023, fifteen cities, four states, and one county have enacted legislation regarding the "Civil Right to Counsel," which grants tenants facing

court-based eviction access to free legal services (National Coalition for a Civil Right to Counsel, 2023).

Although most RTC ordinances have been implemented in response to the COVID-19 pandemic, several jurisdictions had already adopted these laws prior to 2020. In 2017—through extensive advocacy and tenant organizing—New York City became the first jurisdiction to enact "Universal Access to Counsel" (UAC) through Local Law 136. Coordinated by the Office of Civil Justice and funded through the city's general revenue, NYC's RTC ordinance ensures legal representation for covered individuals<sup>3</sup> in any housing court summary proceeding for eviction as well as New York City Housing Authority (NYCHA) administrative proceedings for tenancy termination (National Coalition for a Civil Right to Counsel, 2023). In 2021, an amendment (250-A) was made to Local Law 136, expanding services to tenants citywide, independent of area code (New York City Council, 2021).

Organizers, legal experts, advocates, and researchers have argued that representation in court is necessary to ensure due process for tenants facing eviction as well as to enforce tenants' common law and statutory rights, such as the right to a habitable dwelling (Ellen et al., 2021). From providing brief advice regarding legally binding documents such as leases and eviction notices to challenging procedural defects in eviction proceedings, asserting relevant counterclaims, and negotiating with landlords' attorneys over rent abatements and repayment of arrears, legal practitioners can aid tremendously in keeping tenants in their homes (Ellen et al., 2021).

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<sup>3</sup> NYC's RTC ordinance covers tenants with an income at or below 200% of the Federal Poverty level, which means eligible tenants must have an income of \$25,760 or less (U.S. Department of Health and Human Services, 2021).

However, legal aid can only go so far in addressing the challenges faced by tenants threatened with eviction. Advice navigating the early stages of eviction prior to a court summons is an uncovered service across RTC legislation. The control of rising market-rate housing, safeguarding of long-term affordability of rental units, provision of access to social and supportive services to address additional survival and health needs, and ongoing housing support are additional areas of need where legal aid falls short. "In some cases," note a group of NYU researchers, "reaching tenants in housing court may simply be too late... legal representation may therefore not significantly improve outcomes for some tenants without access to additional social services or housing subsidies" (Ellen et al., 2021, p. 542).

Though limitations exist in the provision of legal aid for assisting with complex eviction processes, and a need for more comprehensive policy and programming is evident, there is compelling evidence that access to counsel has significantly reduced eviction rates and levels of homelessness across various jurisdictions in the United States (Ellen et al., 2021). As earlier mentioned, in 2013, only 1 percent of tenants in the New York City housing court had legal representation, compared to 95 percent of landlords (Ellen et al., 2021). In the 2021 fiscal year, 71 percent of tenants who appeared in Housing Court had full representation by attorneys, a far cry from the 1 percent in 2013. Between 2016 and 2019, tenant representation via the UA program reduced the probability of a possessory judgment by 62 percent and reduced the probability of a warrant being issued by 72 percent (Cassidy & Currie, 2022).

Before the outbreak of Covid-19, the implementation of the Right to Counsel in New York City appeared to be proceeding according to plan and was perceived, as

reflected in the dominant discourse, as a valuable tool in the city to prevent eviction and protect tenants' rights. However, a 2021 amendment (250-A) to Local Law 136 was expedited in response to the increased need for eviction defense, extending services to tenants across the city regardless of area code (Right to Counsel NYC, 2021). Suddenly, the dominant discourses surrounding the legislation began to shift, reflecting the bureaucratic tensions that arose from the expanded reach of the legislation, effectively diverting attention away from the hardships faced by tenants. However, Office of Civil Justice legislative reports continued to indicate an overwhelmingly positive impact for tenants across the city. For instance, in the 2022 fiscal year, 78 percent of represented households in eviction proceedings, and 87 percent facing administrative termination of their tenancy by NYCHA, could remain in their homes (Office of Civil Justice, Human Resources Administration, 2022).

Despite the impactful results reflected in the OCJ's 2022 report of the post-pandemic iteration of the legislation, it is far from the whole story. In partnership with NYCHA and the Housing Data Coalition, NYC's RTC Coalition released an eviction crisis monitor, revealing the percentage of tenants denied the Right to Counsel and the number of tenants who have been evicted since the lift of the federal eviction moratorium (Right to Counsel NYC, 2022). Between January and October of 2022, "17,000 tenants, or two-thirds of all of the tenants in court, have been denied this crucial right... 2,500 households have been evicted, [and] the vast majority of tenants who are being denied RTC and who are being evicted are Black and brown" (Right to Counsel NYC, 2022).

"Although filings and calendars were not at pre-pandemic levels," as stated in the OCJ's 2022 report on the universal expansion of NYC's RTC, "U.A. citywide expansion, vestiges of COVID-19 and the 'Great Resignation' meant that, for the first time in the program's history, providers did not always appear at housing court" (Office of Civil Justice, Human Resources Administration, 2022). However, for many legal advocates, community organizers, and tenants, the situation extends beyond the challenges attributed solely to lawyers' inability to fulfill their duties.

In her written testimony for the New York City Council Oversight Hearing regarding NYC's RTC, Susan Kohlman (2023), the president of the New York Bar Association states:

Housing Court operations are sliding back to the system of chaos and one-sided justice that RTC sought to address. RTC must be viewed as a right worth protecting, rather than as an obstacle to be overcome. We must recognize that there can be no meaningful court operations in Housing Court without RTC. That means, in addition to arranging calendaring and appearance practices to accommodate RTC, the courts must also adjourn cases to give RTC attorneys sufficient time to establish the attorney-client relationship and research and investigate complex cases. Anything less is not meaningful right to counsel.

The 2023 testimony of Addrana Montgomery, a senior staff attorney at TakeRoot Justice, mirrors these sentiments by identifying housing court operations as the primary contributor to unequal access to the Right to Counsel. Instead of heeding the calls to slow down the calendaring of eviction filings, Montgomery testifies, the courts have continued the scheduling of 50-70 per day per courtroom; "Even judges know this rush relies on the assumption that most tenants will default or quickly settle without raising defenses or seeing a judge" (Testimony before the New York City Office of Civil Justice Regarding

the Right to Counsel for Tenants Facing Eviction, 2023). During this testimony, Montgomery additionally expressed a number affective symptoms regarding the current situation:

It is with a palpable sense of despair and anger, however, that I am here now to report to you that Right to Counsel is in a deep crisis...I struggle with anger and depression from the workload and pressure. While I continue to slug it out, I am often thinking about my mother's experiences at Housing Court decades ago, imagining our family's relief if we had been eligible for a free lawyer, and then the nightmare of finding that we were only one of that lawyer's dozens of cases... Nevertheless, Housing Courts continue to deny tenants meaningful representation, and refuse to use their power to schedule eviction cases at a reasonable rate consistent with due process. There is NO REASON to return to pre-pandemic norm of calendaring more cases than the courts can actually hear. Prioritizing speed over justice is the antithesis of the RTC law.

Full of affective language, including references to despair, anger, struggle, depression, and relief, Montgomery's words exemplify the dominant affective framing of the current state of New York City's Right to Counsel. This framing portrays the perception that RTC is failing, emphasizing the emotionally charged tension between legal practitioners and the OCJ as the most critical aspect to address in salvaging the legislation. The following analysis aims to delve deeper into these socio-affective dynamics and their significance in the utilization and implementation of NYC's RTC. It investigates how various stakeholders, such as landlords, tenants, advocates, legal practitioners, government personnel, and the general public, are positioned as affected or affecting subjects in relation to Local Law 136. Additionally, it explores the implications of these dynamics in relation to power and interrogates the long-term efficacy of eviction diversion strategies rooted within U.S. legal institutions.

### **3. Conceptual Frameworks and Methodology**

Situated within the conceptual frameworks of critical policy studies and affect theory, this research sheds light on the intricacies of power that structure policy discourses surrounding eviction. By drawing upon poststructuralist understandings of power, this analysis highlights that discourse not only reflects but actively constructs social meanings that lead to action/inaction and the material conditions of survival. Moreover, it reflects the ways in which power is not only held by individuals and institutions but dispersed throughout social relations and embedded in discourses and practices of everyday life (Foucault, 1969, 1975, 1976, 1980).

#### **3.1 Affect Theory**

Though a body of literature explores how urban space is shaped by emotional geographies and structures of feeling—including studies on fear and anxiety in the structuring of displacement (Schoenberger & Beban, 2018)—the role of affect in urban policy-making and policy discourse has yet to be broadly studied (Boren et al., 2021). Despite the dominant dismissal of affect as intangible epiphenomena, affects are critical forces that play a significant role in shaping the material conditions of everyday ordinaries (Anderson, 2014).

Closely connected to feminist, poststructuralist, decolonizing, and queer methodologies, the "affective turn" responds to the continued emphasis on reason and rationality in the social sciences. The analysis of affect within social phenomena



emphasizes bodily life and felt experience as drivers of social action/inaction (Massumi, 2002). Rather than exploring concepts of emotion as individual responses or as simply residing within subjects, studies of affect examine the collective, cultural, and political dimensions of feeling. Socially, spatially, and temporally mediated—affective interactions extend beyond language and may manifest in relation to nonhuman materials, artifacts, and aesthetics (McKenzie, 2017).

In her study of the cultural politics of emotion, Sara Ahmed (2004) argues, "emotions are not just experienced, but are also transmitted. They are what move us, what bind us, and what bring us down. Emotions circulate, both within bodies and in the spaces between bodies" (p. 20). Similar to Ahmed, other feminist and queer scholars who study affect reject the assigning of felt experience to an outside ontological category, such as psychology, and instead focus on the political dimensions of emotion, feeling, bodily phenomena, and performativity (Ahmed, 2004; Berlant, 2011; Butler, 2004; Hemmings, 2005).

According to a historian of emotion, Rob Boddice (2016), the very identification of emotions, as opposed to feelings, sentiments, and affects, "changed understandings of what emotions were and how they worked, and in turn... re-wrote the cultural scripts for what constituted behavior and communication recognized as "emotional" (p. 12). While affects are always relational, felt experiences, "emotions are expressed according to a dynamic relationship within an epistemology of what emotions are, a delimited framework of available expressions (both verbal and gestural), the parameters of which are inherently political" (Boddice, 2016, p. 12).

While some scholars consider emotion as a form of affect, others perceive it as the external, verbal manifestation of affective experiences that cannot be fully conveyed outside the realm of the body. Because this research analyzes archival documents, textual data referring to emotions, feelings, and affects are identified and examined in relation to each other (see Section 4.3). Therefore, these terms are used interchangeably throughout this study. What matters is how affective and emotional language both reflect and actively construct discourse. To examine the cultural and collective conditions of emotions, otherwise known as "public feelings" (Cvetkovich, 2012), this analysis explores how language referencing emotions and affects is negotiated in the public sphere and shapes discourse surrounding eviction diversion in the U.S.

### **3.2 Critical Policy Studies**

The critical theories of discourse and policy studies meet in the interpretive policy tradition and, more broadly, critical policy studies. Highlighting the role of narrative and discourse in structuring organizational and institutional apparatuses, decision-making, public opinion, and social action/inaction (Kingdon & Stano, 1984), these approaches recognize policy-making as "a communicative event structured by a range of competing discourses, in which there are unequal outcomes for different policy participants" (Marston, 2004, p. 30). Rejecting policy analysis models that center "rational" decision-making and unbiased policy actors, interpretive and critical policy studies view policy-making as "a communicative event structured by a range of competing discourses, in which there are unequal outcomes for different policy participants" (Marston, 2004, p.

30). "As an arena in which different interest groups seek to establish a particular narrative or version of events as a means to pursue political objectives" (Jacobs, 2006, p. 39), policy processes provide a window into political relations of power, imbued with discourses of feeling that frame particular political actors as affected or affecting subjects.

As an emergent interdisciplinary field of critical policy studies, "policy mobilities" (e.g., McCann & Ward, 2012, 2013; Peck & Theodore, 2015) is used to make sense of actor motivation in policy implementation and asks why certain policies are felt necessary at specific moments in time, and what sentiments are mobilized in policy engagement. In her methodological approach to policy mobility, comparative policy researcher Maricia McKenzie (2017) emphasizes the importance of affect; "what moves us collectively and individually is...important for what moves policy" (p. 188).

Policy initiatives such as NYC's Right to Counsel can be understood as an "apparatus" of power (Anderson, 2014) that operationalizes affect, which in turn organizes and mediates how the policy is developed, implemented, spread, and resisted (McKenzie, 2017). However, McKenzie notes, "such institutional apparatuses are not wholly determining: additional encounters with people, place, networks, also contribute to the affective mobilities and immobilities of policy" (p. 188). Policy actors, thus, are not only administering bureaucrats, but anyone involved in the (re)production of policy discourse and those whose material and collective conditions are mediated through policy action/inaction.

In order to understand the nuances of NYC's RTC law and its mobility in relation to affect and the intricacies of power, this research employs the practice of critical discourse analysis, described in the following section.

### **3.3 Critical Discourse Analysis**

In introducing the varying and intersecting approaches to studying affect, Seigworth and Gregg (2010) note the importance of analyzing critical discourses of emotion. Critical discourse analysis (CDA) is a multi-methodological approach that analyzes how language is used to shape social realities, (re)produce and challenge relations of power and reinforce social identity, social structures, and ideologies (Wodak, 2014). Beyond written and spoken language, critical discourse analysis also incorporates inquiry into the discursive qualities of non-verbal, semiotic, and visual interactions and exchanges (Wodak, 2014). This study employs CDA to explore the linkage of policy discourses with social identities, public feelings, and power relations by analyzing textual data found in archival documents.

Essential to the practice of CDA is the recognition of text as rarely the work of a single subject. Across archival documents such as press releases, testimony, ordinance texts, press publications, and opinion editorials, "discursive differences are negotiated; they are governed by differences in power that are in part encoded in and determined by discourse and by genre" (Wodak, 2014, p. 14). According to linguist Ruth Wodak (2014), textual data are often, if not always, sites of struggle; thus, the practice of CDA requires an analysis of social life that centers on the relations of power between political actors.

A growing body of literature uses critical discourse analysis to explore discussions of eviction within different contexts, such as policy documents, press coverage, legal proceedings, and representations of lived experience (McKenzie, 2017). These studies include an analysis of policy framing, group representation within policy

debates, and how different actors use language to justify or challenge eviction and its effects. This research seeks to enhance understanding of the discourses surrounding eviction diversion by examining the intricate socio-affective dynamics among various actors engaged in utilizing, servicing, and implementing New York City's Right to Counsel.

## **4. Research Design**

Following the works of Foucault (1969, 1975, 1976, 1980), discourses are recognized as speech, writing, and images that express social relations of power and can be investigated for how they actively construct the social world and its subjects (Marston, 2004). With a focus on discourses circulated through written language, this study's primary data sources include archival documents related to New York City's Right to Counsel. As described in the previous section, the multi-methodological approach of critical discourse analysis allows us to observe how multiple and conflicting discourses in the public sphere shape policy mobility and how certain discourses take prominence over others (Marston, 2004). This section provides a detailed account of this study's data collection and qualitative analysis methods.

### **4.1 Research Questions**

- What is the role of affect in public discourses surrounding eviction diversion, and how does it shape the mobility of policies like New York City's Right to Counsel?
- Who are the actors involved in New York City's Right to Counsel, and what affective discourses do they (re)produce?
- Which actors have the loudest voice in speaking on the affective experience of others? Who has the most control over their affective narratives surrounding eviction and tenant right to counsel?

- What does this reveal about power and resistance regarding strategies of eviction diversion?

## **4.2 Methods and Data Collection**

The primary sources of data used in this study include archival documents related to New York City's Right to Counsel, which have been categorized into five groups: governmental documents, including text ordinances, official press releases, and policy evaluations commissioned by the OCJ; third party reports and evaluation regarding NYC's RTC; independent press publications; press releases and webpage materials published by advocacy groups, including legal nonprofits; and testimony transcripts, minutes, and notes from public meetings. Beyond making up the data corpus analyzed in this study (see Section 4.2.2), these archival documents have been used to provide historical records of events to contextualize analysis and findings.

**Table 1**

*Archival Document Sources*

<b>Document Group</b>	<b>Description</b>
<b>Government Documents</b>	Office of Court Administration press releases; ordinance texts; official policy evaluations/ related materials
<b>Research</b>	Independent policy reports and evaluation
<b>Advocacy Documents</b>	Press releases, webpage materials and self-published articles from advocacy groups, including nonprofit legal service providers
<b>Public Testimony</b>	Testimony transcripts, transcripts, minutes, and notes from public hearings
<b>Press</b>	(Online) newspaper articles; opinion editorials

*Note.* See the Appendix for full references to all included document data.

#### **4.2.1 Data Selection Protocol**

This section describes the protocols used for data collection and details the selection process for document selection for each document group (see Table 1). Because this study focuses on the prevailing discourse surrounding NYC's RTC, that is, the narratives that are most dominantly circulated based on policy information most easily accessible to the general public<sup>4</sup>, the data corpus included in this research is based on simple Google searches to reflect these prevailing discourses appropriately. Each document group (excluding "Government Documents" and "Public Testimony", see

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<sup>4</sup> According to the most recent Broadband Progress Report, 6 percent of the U.S. population—around 19 million individuals—still lack access to fixed broadband service at threshold speeds. In rural areas, 14.5 million people—nearly one-fourth of the population—lack access to this service (Federal Communications Commission, 2022). This limitation should be considered in this research as these individuals are not represented in the above description of the general population.



Section 4.2.2) includes texts found on the first five pages of the Google searches, "New York City Right to Counsel" and "New York City Universal Access to Legal Services." All included documents directly reference "New York," and "Right to Counsel," or "Universal Access to Legal Services" in their title, subtitle, and/or abstract.

To contextualize this study within the present day, as it has been affected by the COVID-19 pandemic, the Google search conducted filtered documents for publishing between 2021 and 2023 (see the following section for exceptions to these general criteria). The table below shows the inclusion criteria specific to each document group, followed by a description of the data corpus, exceptions to the general criteria described above, and descriptions of data excluded from the analysis (see Section 4.2.2).

**Table 2**

***Inclusion Criteria by Document Group***

<b>Document Group</b>	<b>Inclusion Criteria</b>
<b>Government Documents</b>	Published in English between 2021 and 2023, excluding NYC's original Right to Counsel law (Intro 214-A)
<b>Research</b>	Published in English between 2021 and 2023; directly reference "New York", "Right to Counsel" and/ or "Universal Access to Legal Services" in their title, and/or abstract
<b>Advocacy Documents</b>	Published in English between 2021 and 2023; directly reference "New York", "Right to Counsel" and/ or "Universal Access to Legal Services" in their title, and/or subtitle
<b>Public Testimony</b>	Published in English between 2021 and 2023; directly reference "New York", "Right to Counsel" and/ or "Universal Access to Legal Services" in their title, and/or subtitle
<b>Press</b>	Published in English between 2021 and 2023; directly reference "New York", "Right to Counsel" and/ or "Universal Access to Legal Services" in their title, and/or subtitle

#### **4.2.2 Data Corpus**

The data corpus used in this study includes texts organized into document groups based on their respective inclusion criteria (see Table 2). Aside from government documents, selected data was obtained from the Google searches "New York City Right to Counsel" and "New York City Universal Access to Legal Services." This section details the texts included in the data corpus and describes the document types excluded from the data corpus. Full references for the documents analyzed in this study can be found in the Appendix, organized by their respective document groups. Documents

excluded from this data corpus include book publications; zine or magazine publications; literary works; visual materials; instructional manuals, pamphlets, handbooks, flyers, user guides, or maps; proposals; court decisions; text, email, or letter correspondence. The data limitations that arise from these exclusions are described in Section 4.4.

### **Government Documents.**

Unlike the selected texts in other document groups, the government documents included in the data corpus do not adhere to the general inclusion criteria detailed in the previous section. However, these documents are necessary for analyzing the affective discourses surrounding NYC's RTC, as they provide official text ordinances and statements by NYC's governmental bodies outside of public testimony. Four government documents were selected for analysis, including the city government's web page titled *Eviction* (New York State Homes and Community Renewal, 2023) and the OCJ's most recent report regarding NYC's Local Law 136 (Office of Civil Justice, Human Resources Administration, 2022). Additionally, this document group includes the ordinance texts regarding the original New York Right to Counsel law (Intro 214-A), enacted in 2017, and its 2021 amendment (123-456).

### **Research.**

This document group includes non-governmental reports and evaluations regarding NYC's RTC, published in English between 2021 and 2023. Three of these selected texts are reports published by advocacy groups, including the American Civil Liberties Union, the New York Bar Association, and the New York Civil Liberties Union,

and two independent academic evaluations. All selected texts were found in the first five pages of the Google searches mentioned above and directly reference "New York" and "Right to Counsel" or "Universal Access to Legal Services" in their title, subtitle and/or abstract.

### **Advocacy Documents.**

The selected texts within this document group include press releases, webpage materials, and self-published articles from NYC-based and national nonprofit organizations, including nonprofit legal service providers. These nine data selections include public documents released by the ACLU, the Chicago Bar Foundation, the Community Service Society of New York, the National Coalition for a Civil Right to Counsel, the New York Legal Assistance Group, and Right to Counsel NYC. Published in English between 2022 and 2023, all texts included in this document group were gathered through the Google searches mentioned above and directly reference "New York" and "Right to Counsel" or "Universal Access to Legal Services" in their title and/or subtitle. This document group does not include testimony on behalf of advocacy groups or complete reports published by advocacy groups.

### **Public Testimony.**

This document group includes English transcriptions of public testimony spoken or written by elected government officials, representatives of nonprofit organizations, tenants, and grassroots advocates. All included documents were found through the Google searches mentioned above and directly reference "New York" and "Right to

Counsel" or "Universal Access to Legal Services" in their title and/or subtitle. Selected documents include public testimony before the New York City Office of Civil Justice Regarding the Right to Counsel for Tenants Facing Eviction between January and March 2023 and testimony at the Joint Legislative Budget Hearing on Housing in March 2023.

### **Press.**

The press publications included in this data corpus were gathered through the Google searches mentioned above, are all published in English between 2022 and 2023, and directly reference "New York" and "Right to Counsel" or "Universal Access to Legal Services" in their title and/or subtitle. Selected documents include articles released by both NYC-based and national online news publications, including CityLab Daily, City Limits, Hell Gate NYC, Gothamist, The Tablet, Riverdale Press, New York State of Politics, Norwood News, People's World, The Guardian, The Independent, The Yonkers Times, and The City.

## **4.3 Data Analysis**

The analysis employed in this research uses the qualitative data collection software Atlas.ti to conduct an inductive, reflexive, and iterative coding process. Following the Grounded Theory Method (Glaser, 1967; Strauss, 1998)—a systematic approach for categorizing data to generate theory—this analysis involves a cyclical process of open, axial, and selective coding (Williams & Moser, 2019). "The first step [open coding] aims at expressing data and phenomena in the form of concepts. Units of meaning classify expressions (single words, short sequences of words) in order to attach

annotations and "concepts" (Flick, 2009, p. 307). The following section details the code groups, codes, and subcodes identified during the open coding process. Once these emergent themes were identified, axial coding was employed to refine coding categories further and involved "line-by-line" analysis, which identifies the textual subtleties that fuel the construct of meaning (Williams & Moser, 2019). Finally, selective coding was employed to "select and integrate categories of organized data from axial coding in cohesive and meaning-filled expressions" (Williams & Moser, 2019, p. 52). Once keywords and phrases were categorized to assess relevant data and identify descriptive themes across document groups (see Tables 3, 4, and 5), research findings were generated through Atlas.ti's co-occurrence and document analysis functions (see Section 5).

#### **4.3.1 Code Groups**

The findings of this study, detailed in Section 5, are derived from the analysis of co-occurrences among codes and subcodes within two primary code groups: "Actor" and "Affect" (see Tables 3, 4, and 5) and two standalone codes, "Power" and "Resistance." These code groups, codes, and subcodes emerged during the coding process described above and include words and phrases directly mentioned in the data corpus.<sup>5</sup> The "Actor" code group includes individuals or groups of individuals involved in the implementation, use, and discursive representation of NYC's Right to Counsel. These actors are tenants, advocates, legal practitioners, the general public, landlords, and government officials (see Table 3 for further description).

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<sup>5</sup> The words and phrases coded in this study include all of their inflected forms. For example, the "power" code includes direct textual mentions of "power" and its inflected forms, such as "powerful" or "powerfully."

**Table 3*****Actor Code Group***

<b>Actor</b>	<b>Description</b>
<b>General Public</b>	Those referenced in relation to the greater NYC or national population; Those referenced as the “community” “public,” and/or “general public”
<b>Landlord</b>	Subjects referenced as a “landlord”, “land owner” or “property owner” in relation to a tenancy
<b>Tenant</b>	Subjects referenced as a “tenant” and/or “renter”
<b>Advocate</b>	Support service workers and providers; Nonprofit staff and leadership, excluding legal aid workers; Tenant/grassroots organizers not directly described as a tenant/renter themselves; Persons linked to non-governmental and not-for-profit associations and organizations
<b>Legal Practitioner</b>	Anyone described as a “lawyer” or “attorney” or as working in relation to legal aid; Legal practitioners working with tenants and/or landlords, excluding judges or anyone working directly under the OCJ
<b>Government Personnel</b>	Elected officials as well as government employees; NYC Council members and anyone speaking directly on their behalf; Persons representing, working for or with the Adams administration or previous mayoral administrations in NYC; Office of Court Administration and Office of Civil Justice employees; Those working under any governmental sector, including judges

From queer theory to neuroscience, discrete affective categorization is contested across scholarship (Ahmed, 2014; Barrett, 2017; Ekman, 1992; LeDoux, 1998; Tomkins, 1984; Sedgwick, 2003, 2008); thus, no agreed-upon definition or comprehensive list of

affects and their subcategories exists. The categorization of the "Affect" code group included in this study is informed by psychological and sociological theories of emotion. This organization relies heavily on the emotional features of affect, i.e., the outward expressions of feeling states communicated through language (see Tables 4 and 5).

Guided by Paul Ekman's (1992) influential argument on basic emotions, the subcode groups, presented in their pair of Tables below, separate negative emotions from neutral and positive emotions and include the "Primary Emotion" codes of Fear, Sadness, Anger, Disgust, Happiness/Joy, Surprise, and Adoration/Love. "Secondary Emotion" codes and subcodes listing their associated feelings and affective states are organized through a combination of Ekman's work as well as Sarah Ahmed's (2014) analysis of the cultural politics of emotion, neuroscientific studies on the construction of emotions (Barrett, 2017; LeDoux, 1998), and the seminal explorations of affect by Tomkins (1884) and Sedgwick (2003, 2008).

The "Affect" code group, which includes words and phrases referencing emotions or affective states, is divided into two subgroups. These subgroups separate negative affects from neutral or positive affects (see Tables 4 and 5). During the coding process, affective or emotional words written directly into document texts are first sub-coded by secondary emotions or affective states, then attached to codes that represent primary emotions categorized into one of the code subgroups.



**Table 4*****Negative Affect Code Group***

<b>Primary Emotion (code)</b>	<b>Fear</b>	<b>Sadness</b>	<b>Anger</b>	<b>Disgust</b>
<b>Secondary Emotion (subcode)</b>	Anxiety; Dread; Fright; Terror	Anguish; Despair; Disappointment; Distress; Grief; Guilt; Longing; Loneliness; Pity; Regret; Remorse; Sorrow; Shame; Sympathy	Envy; Frustration; Jealousy; Rage; Resentment; Wrath	Contempt; Annoyance; Revulsion; Embarrassment
<b>Associated Feelings/ Affective States (subcode)</b>	Apprehensiveness; Arousal; Aversion; Discomfort; Insecurity; Overwhelm; Perception of threat/danger; Powerlessness; Restlessness; Stress; Unease; Vulnerability	Depression; Exhaustion; Hurt; Hopelessness; Loss; Nostalgia; Numbness	Activation; Alertness; Agitation; Arousal; Annoyance; Defensiveness; Hostility; Impatience; Irritability; Motivation to address perceived threat/injustice; Tension	Aversion; Disapproval; Discomfort; Disdain; Distrust; Avoidance; Offense; Unpleasantness

**Table 5*****Neutral and Positive Affect Code Group***

<b>Primary Emotion (code)</b>	<b>Surprise</b>	<b>Happiness/Joy</b>	<b>Adoration/Love</b>
<b>Secondary Emotion (subcode)</b>	Amazement; Arousal; Astonishment; Curiosity; Disbelief; Excitement; Fascination; Shock	Contentment; Excitement; Hope; Pride	Compassion; Contentment; Excitement; Gratitude; Admiration
<b>Associated Feelings/ Affective States (subcode)</b>	Confusion; Overwhelm	Confidence; Ease; Elation; Empowerment; Fulfillment; Optimism; Pleasure; Relaxation; Serenity; Well-being	Care; Connectedness; Desire; Empathy; Security; Solidarity; Trust; Vulnerability; Warmth

*Note.* This affective categorization draws on Ahmed's (2004) analysis of the cultural politics of emotion, neuroscientific studies on the construction of emotions (Barrett, 2017; LeDoux, 1998), Ekman's (1992) influential argument on basic emotions, and the seminal explorations of affect by Tomkins (1884) and Sedgwick (2003, 2008).

As previously described, two standalone codes are included in the analysis to contextualize affective discourse within the frameworks of power and resistance. "Power" codes include any direct mention of power throughout the data corpus (including all inflected forms of the word), and "Resistance" codes include direct textual mentions of the following words and phrases and their inflected forms: "tenant movement"; "tenant organizing"; "collective action"; "tenant unions/unionizing"; "direct action"; "rally"; and "protest/protesting."

#### 4.4 Limitations

A primary limitation of this study is the reliance on archival documents gathered through simple Google searches. While these data reflect dominant discourses surrounding New York City's Right to Counsel and offer a historical account of political events and reflect the dominant discourse surrounding the legislation, they fail to capture the full range of actors involved in eviction processes and diversion efforts. Because texts that often exist outside of mainstream publication are excluded from the data corpus, this study is unable to assess informal power dynamics, strategies of non-institutionalized resistance such as mutual aid, landlord-tenant relationships outside of court, and the lived experiences of housing precarity, eviction, and threats of eviction. However, this limitation sheds light on the prevailing discourses surrounding eviction: those who have materially lived it, most often low-income people of color who do not identify as men, are systematically underrepresented within dominant discourse, while those who enforce, perpetuate, and institutionalize eviction are awarded the platform to speak on it's diversion.

Language itself presents a further limitation to this study. Because the Google searches that organize document groups were conducted in English, this research only includes documents published in this language. Because over 200 languages are spoken in New York City (NYC Department of City Planning, 2023), this study is culturally limited in using critical discourse analysis as a research method. However, the predominant documents pertaining to NYC's RTC, such as ordinance texts, official reports, and frequently cited external research evaluations of the legislation, are primarily

published in English. Similarly, the most widely distributed press publications in NYC are in English, reflecting the privileging of English as the (un)official language of the United States; this is despite the fact that there are nearly 68 million individuals in the country who speak a language other than English in their homes (U.S. Census Bureau, 2022).

In her research on situated linguistic practices, Susan Gal (2023) explores "language ideologies" as "evident in practices and in embodied dispositions, or may be implicit in textual form and in material infrastructures" (p. 1). Often explicit in discourse, "language ideologies are indispensable in social life because they mediate between aspects of language and other sociocultural phenomena such as identities, interactional stances, and hierarchies of cultural value (Gal, 2023, p. 1). Therefore, language functions as a legitimization process and instrument of control, manifesting symbolic power in discourse and society (Hodge & Kress, 1993; Bourdieu, 2001; Hodge & Kress, 1993; Reyes, 2011).

According to discourse scholar Antonio Reyes (2011), linguistic legitimization strategies often employ affective discourse to justify social practices and political action. Thus, while the limitation of conducting an analysis solely on data published in English is evident in this research, it also underscores the enduring privilege granted to the English language in the United States. This privilege reflects ongoing ideologies rooted in settler colonialism and white supremacy that underpin the United States Nation-State.

Despite a plethora of research on eviction and its role in the destruction of life, limitations to eviction research, in general, are also numerous, partly because of the disparity in data between court-filed eviction records and the processes leading up to

these forms of displacement. A recent epistemological shift that conceptualizes eviction—not as a single event of tenant expulsion from rental property—but as a series of evicting practices (Baker, 2021) highlights the temporal and spatial processes of eviction that have yet to be fully understood. Because most tenant expulsions from rental properties never reach court, it is challenging for policymakers and researchers to account for displacements outside of a courtroom and the "informal" communications between landlord and tenant. As a result, eviction prevention strategies targeting the early stages of eviction, i.e., the moment a tenant is first threatened with eviction, have limited evidence supporting their design.

The difficulties regarding limited eviction data across the U.S. also extend to court-filed evictions, as legal procedures and institutional implications vary across jurisdictions, and public discourses surrounding eviction and eviction intervention are also place-specific (Nelson et al., 2021). This study could be expanded upon through a comparative case study, additional research into the affective dimensions of eviction intervention strategies, and further inquiry into the informal resistance strategies of tenants in New York and other U.S. cities. While this research illuminates broader patterns in eviction diversion strategies across the United States, its essential significance reflects the unique circumstances regarding New York City's Right to Counsel. The absence of comparable legislation in the U.S. that follows a similar policy trajectory to NYC's Local Law 136 makes this study particularly distinctive. While this research may not be fully generalizable, it provides valuable implications for jurisdictions engaged in the design of RTC legislation and for developing non-institutionalized strategies to divert eviction.

## **5. Findings**

The findings of this research are presented in three parts, each consisting of subsections for "Results" and "Analysis." The subsequent section (5.1) focuses on the emotions, and affective states attributed to different actors throughout document groups. These results highlight the prevalent characterization of stress and overwhelm among legal practitioners and the frequent association of vulnerability with tenants. This section brings attention to the contrasting temporal qualities of these associations, where the feelings of legal practitioners seem transient in nature, and tenant affects are often portrayed as enduring states of being. Additionally, it highlights "the affective symptoms of precarity elicited by neoliberal policy" (McKenzie, 2017, p. 6).

Section 5.2 complicates these initial findings by examining which actors employ their own words to articulate their emotions and which actors are more frequently represented by others. This section uncovers a tension between the dominant and external portrayals of tenants as vulnerable and tenants' own expressions of solidarity. Informed by the first two sets of findings, Section 5.3 incorporates an analysis of affective discourse within poststructural understandings of power and resistance, lending support to Foucault's (1976) assertion: "Where there is power, there is resistance" (p. 95).

### **5.1 Actors and Affect**

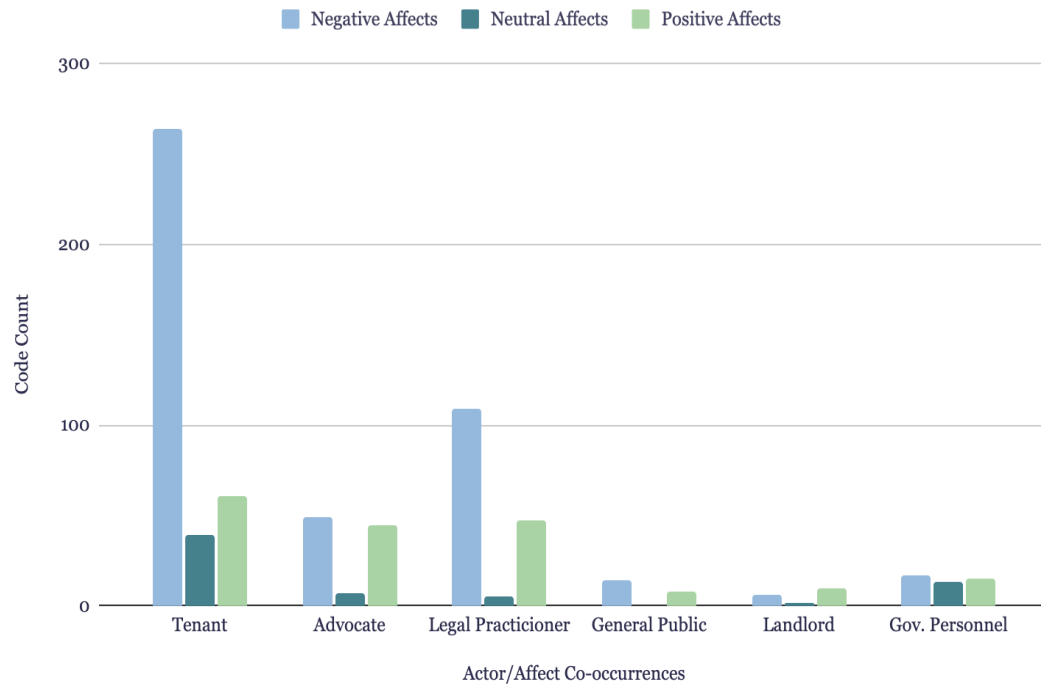
This section of findings examines the co-occurrences of "Actor" and "Affect" codes to gain insight into the associations between actors and emotions or affective states

of being. It finds that legal practitioners, more so than those at risk of homelessness, are the actors most frequently associated with feelings of stress and overwhelm across the data corpus. These affective associations are characterized by their transient nature, frequently depicted as temporary and contingent on the slowing down of court calendaring by the OCJ. Conversely, tenants are predominantly linked to affective states of helplessness and vulnerability, affects that are often discussed as fundamental characteristics of being rather than fleeting emotional states. Tenant/ affect co-occurrences are then evaluated in the context of research on vulnerability, precarity, and what urban scholar Jennifer Tucker (2017) calls "regulation by ambiguity." This section also illuminates a tension between the dominant and external portrayals of tenants as vulnerable and tenants' own expressions of solidarity.

### **5.1.1 Results**

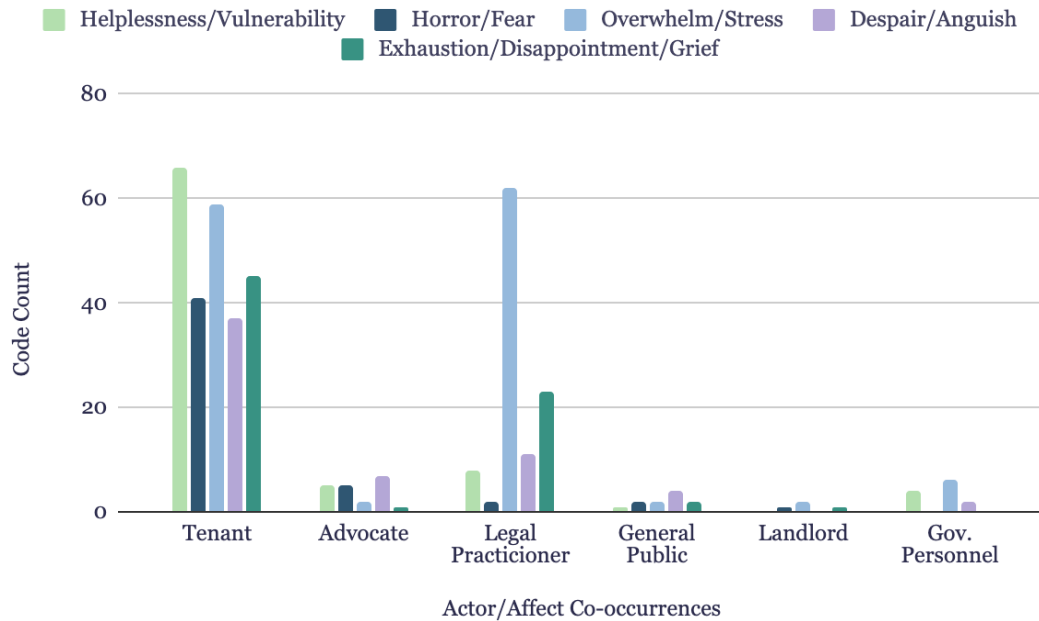
While a scholarly consensus recognizes the inherent power imbalance within the landlord-tenant relationship (Nelson, 2021), the affective experiences of landlords throughout document data regarding NYC's RTC is minimal. Instead, landlords are more often associated with behaviors or actions such as "harassment," "intimidation," and "abuse," described as taking place prior to any court process. On the other hand, Tenants are the actors most associated with affect, emotion, and feeling before, during, and following court processes. The following figure shows actor associations with negative, neutral, and positive affects across all document data. Negative affects are most frequently expressed concerning tenants, followed by legal practitioners.

**Figure 1**  
*Actor and Affect Subgroup Co-occurrences*





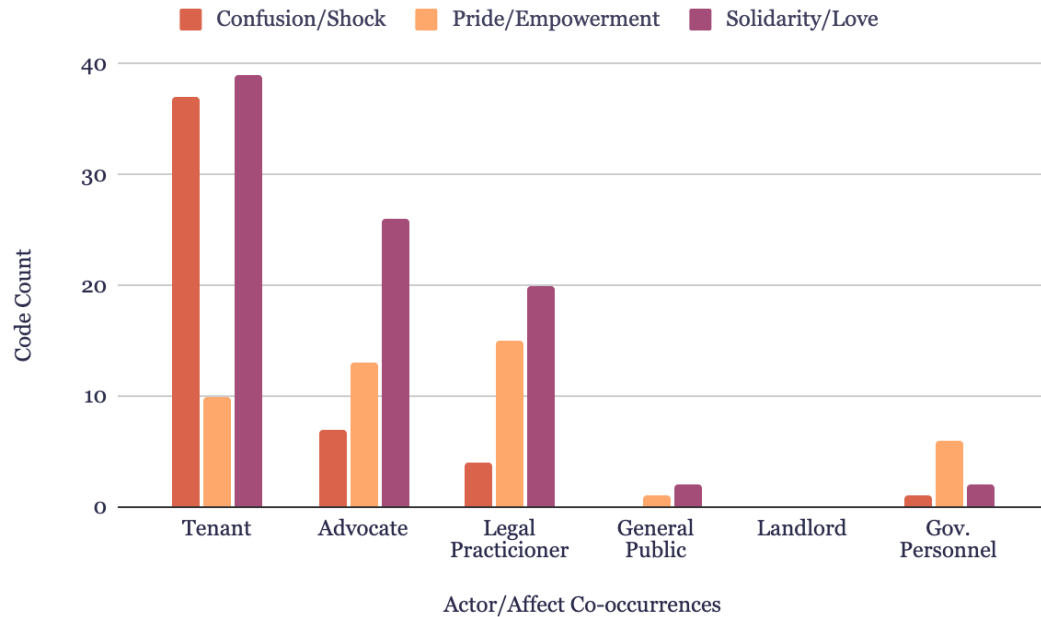
**Figure 2**  
*Actor and Negative Affect Subcode Co-occurrences*



The figure above shows the five most frequently coded secondary emotions/affective states within the negative affect subgroup. Tenants are the actors most associated with feelings of horror, fear, despair, anguish, exhaustion, disappointment, grief, helplessness, and vulnerability, while feelings of overwhelm and stress were more often associated with legal practitioners.

**Figure 3**

*Actor and Positive Affect Subcode Co-occurrences*



Alongside the affective states of shock and confusion, feelings of pride, empowerment, solidarity, and love are the three most frequently coded secondary emotions or affective states within neutral and positive affect subgroups (see Figure 3). While legal practitioners are the actors most frequently associated with feelings of pride and empowerment, tenants are most associated with feelings of solidarity and love.

### 5.1.2 Analysis

Despite an abundance of research regarding the effectiveness of RTC laws in reducing eviction rates, a cursory review of recently published press and testimony related to NYC's RTC exposes significant flaws in the universal implementation of NYC's RTC. As noted in the second section of this research, while the Office of Civil Justice Reports that 78 percent of represented households in eviction proceedings remained in their homes during the 2022 fiscal year, additional data uncovers more concerning trends. Between January and October of 2022, "17,000 tenants, constituting two-thirds of all tenants in court, have been denied this crucial right...2,500 households have faced eviction, with the majority of affected tenants being Black and brown" (NYC RTC Coalition, 2022).

Although NYC's OCJ has acknowledged issues in program capacity resulting from the universal rollout of the city's RTC, the office has yet to take responsibility for its role in these limitations and have instead placed the blame solely on legal practitioners' inability to fulfill their duties. In addition to Addrana Montgomery, the Senior Staff Attorney at the New York legal nonprofit TakeRoot Justice, who testified about her struggle with anger and depression resulting from the workload and pressure (see Section 2), Lucy Block, the Senior Research and Data Associate at New York's Association of Neighborhood and Housing Development, also provided testimony before the New York City Office of Civil Justice regarding the Right to Counsel for Tenants Facing Eviction.

Tenant attorneys, who do their work because they care deeply about the right to housing of New York City's most marginalized and vulnerable tenants, are overworked and exhausted. Over and over, they are facing the impossible choice of either turning tenants away, meaning that a tenant

may unnecessarily lose their home, or taking on so much work that they simply cannot do all of it with integrity. As a result, they are experiencing intense burnout, meaning that attorneys are leaving their organizations in droves, only exacerbating the problem...the situation is absolutely untenable and unjust to tenants and attorneys alike.

Block's words, like Montgomery's, emphasize the affective experience of legal practitioners and reflect the above. Legal practitioners—more so than those at risk of homelessness—are the actors most frequently associated with feelings of stress and overwhelm across the document groups. These affective associations are characterized by their transient nature, frequently depicted as temporary and contingent on the slowing down of court calendaring by the OCJ. Conversely, tenants are predominantly linked to affective states of helplessness and vulnerability, affects often portrayed as fundamental characteristics of their being rather than fleeting emotional states. In this sense, dominant narratives surrounding tenants portray them as static subjects with limited agency in shaping and navigating the context of NYC's RTC.

Further supporting Block's testimony in 2023, the portrayal of tenants as vulnerable within the context of NYC's RTC can be traced back to some of the earliest reports advocating for the legislation. In their 2015 report supporting tenant Right to Counsel, the New York City Bar states, "the access to justice gap disproportionately affects those who are already most vulnerable in our society, lacking the necessary resources to uphold their fundamental human rights" (New York City Bar, 2015, p. 3). Figure 2 depicts the enduring depiction of tenants as vulnerable throughout every document analyzed in this study.

As the most frequent and glaring affective experience throughout document groups, the helplessness/vulnerability of tenants reflected in these findings supports a

growing body of research into the realities of precarity, an increasingly common experience of economic insecurity (Tucker, 2017). Among other affective registers, fear, resignation, and false optimism have been studied (e.g., Clarke, 2014; Davies, 2005; Neilson & Rossiter, 2008) to highlight “the affective symptoms of precarity elicited by neoliberal policy” (McKenzie, 2017, p. 6). Precarity, according to critical theorist Judith Butler (2004), describes the uneven distribution of vulnerability, often shaped through governing projects and policies (McKenzie, 2017). Reflecting these conditions and helping to ground affect into research on precarity is the significance of the association between tenant actors and vulnerable affects shown in these findings.

Adding to an understanding of the affective dimensions of economic vulnerability, Figure 3 shows tenants as the actors with the highest frequencies of association with feelings of shock and confusion. In her exploration of the affective politics of precarity, urban scholar Jennifer Tucker (2017) explores what she calls the dialectics of uncertainty to describe how legal and spatial ambiguities discipline structures of feeling. The “emotive, sensorial registers of uncertainty are integral to practices of governing” (p. 4) and are theorized within a dialectic to highlight the tension in discourses surrounding ambiguous regulations such as RTC ordinances across the U.S.

## **5.2 The Situating of Subjects**

The following figures situate the results described above within the context of discursive power. Complicating these affect/actor associations is the question: Through

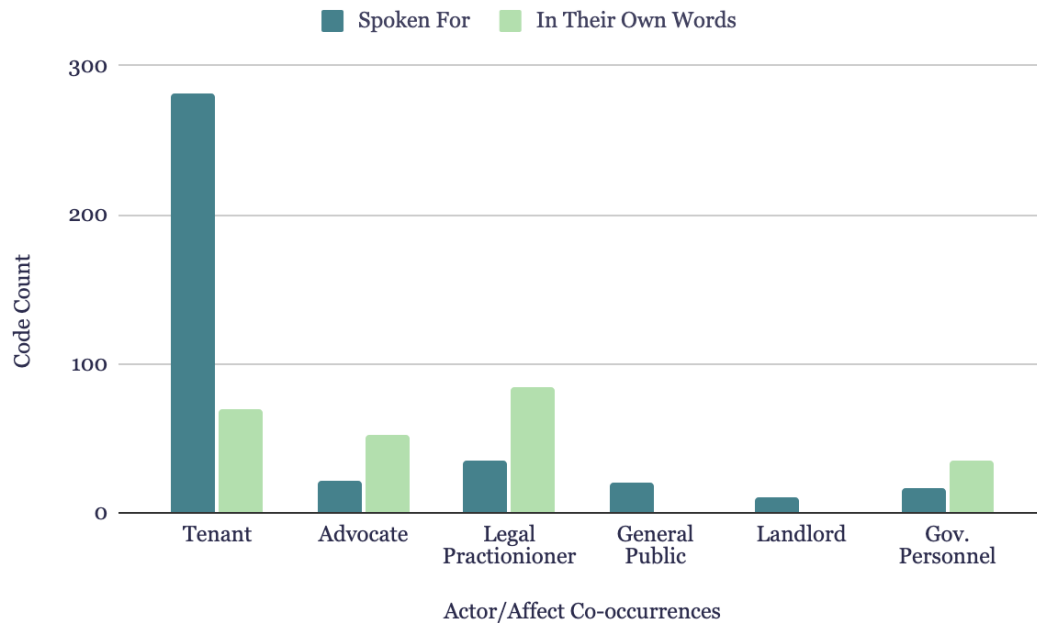
whose words are these connections expressed? This section analyzes which actors use their own words to describe their feelings and which are more commonly spoken for.

### **5.2.1 Results**

The figures below show co-occurrences of actors and affect in relation to who is speaking (themselves or another actor) and reveal tenants as the actors most frequently spoken for, while legal practitioners most frequently expressed their affective states and emotions in their own words.

**Figure 4**

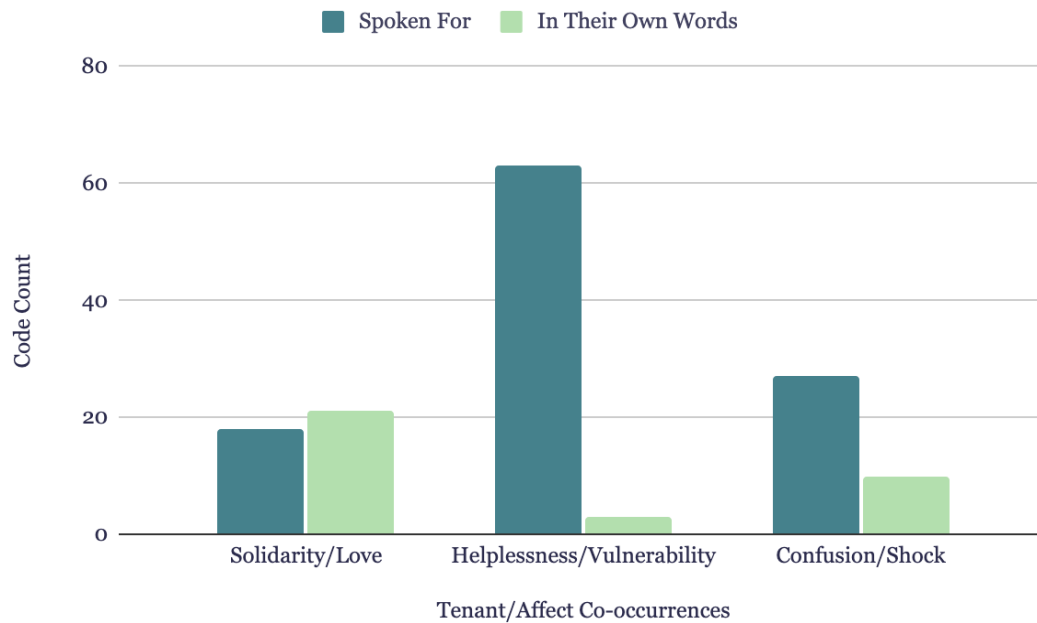
*Actor and Affect Co-Occurrences, by Speaker*



While the above figure shows that the feelings of legal practitioners are presented through their own words more often than other actors, the affects associated with tenants, particularly vulnerability, are predominantly conveyed through the words of others. The figure below evidences this by showing the tenant affects most frequently occurring in each subgroup, as expressed by tenants in their own words. Despite being the most commonly associated affect with tenants, tenants themselves only express feelings of helplessness and vulnerability two times across document data. On the other hand, feelings of solidarity and love are the most frequently coded affects by tenants expressed in their own words.

**Figure 5**

***Tenant and Affect Co-occurrences***



*Note.* Tenant actor codes and their most frequently coded affects from each affect subgroup.

### **5.2.2 Analysis**

These data indicate which actors have control over their narratives regarding NYC's RTC. Across document groups, discourses regarding NYC's RTC revolve around the actions/inactions of one actor group, government personnel, and the affects of two actor groups, legal practitioners and tenants. While tenants are the actors most often spoken for, legal practitioners express feelings in their own words more often than any other actor. This data indicates that the affects most associated with legal practitioners, stress and overwhelm, are often first-hand accounts. On the other hand, the feelings of



vulnerability and helplessness most associated with tenants are expressed through the words of other actors.

On the day of her first court appearance, Brooklyn-based tenant leader Fidele Albert states:

We can only rely on each other and a militant tenant movement. It is better to go down fighting and die than not to fight and still die...don't wait until a situation arises to find a tenant organization. All of us are family. We are a tenant family. If some of us don't have a story right now, sometime down the road, there will be a story, and with that, you need support (The Independent, 2023).

These findings highlight the dominant discourses surrounding the current state of NYC's RTC, primarily focusing on the perceived shortcomings of the OCJ and the challenging and stressful working conditions experienced by legal practitioners. While tenant vulnerability is mentioned throughout the document data, the centrality of tenants' experiences, unlike Albert's, appears superficial and, more often than not, comes from the words of other actors. These static representations are more than just afterthoughts; they actively replace narratives driven by the lived experiences of tenants, obscuring their inherent power as political actors.

### **5.3 Power and Resistance**

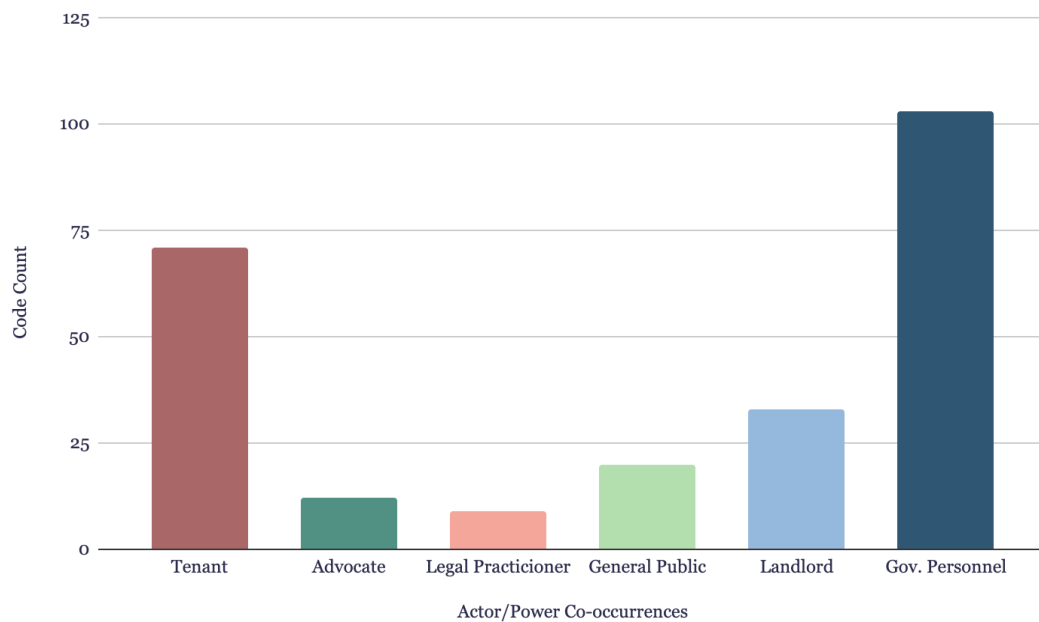
Urban scholar Elise Remling (2021) emphasizes the operation of affect within policy discourses, asserting that "beyond their seemingly 'rational' content"... policies seek to mobilize different latent desires and emotions a empower or disempower specific modes of action, and by doing so connects political discourses to social identities" ( p.

715). This section contextualizes these words within affective discourse regarding NYC's RTC and situates previous findings within broader frameworks of power and resistance.

### **5.3.1 Results**

The following figure reveals discursive associations between actors and power. This figure displays the co-occurrences of "Actor" and "Power" codes, which include any direct mention of power throughout document data. Government personnel are the actors most associated with power throughout document groups, followed by tenants, landlords, the general public, advocates, and legal practitioners.

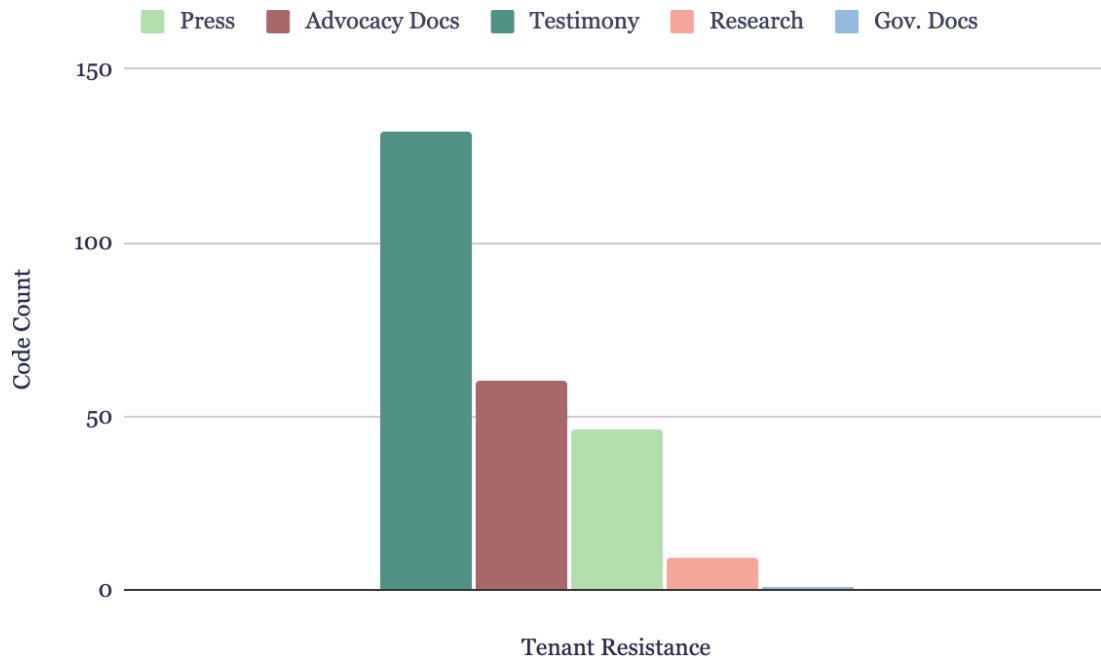
**Figure 6**  
*Actor and Power Co-occurrences*



*Note.* "Power" codes include any direct mention of power throughout document data.

Throughout document data, tenant expressions of solidarity and love, exemplified by Fidele Albert's words in the previous section, are frequently mentioned in connection to the "tenant movement," "tenant organizing," and "collective action." These references to resistance, along with "tenant unions/unionizing," "direct action," "rally," and "protest/protesting," make up the "Resistance" code group. As shown in the following figure, references to tenant resistance are presented in relation to document groups. Press publications extensively discuss tenant resistance, with approximately 130 mentions, while government documents, including press releases and statements by the OCA, only mention tenant resistance once.

**Figure 7**  
***Tenant Resistance by Document Group***



*Note.* "Resistance" codes include direct mentions of the following words and phrases: "tenant movement," "tenant organizing," "collective action," "tenant unions/unionizing," "direct action," "rally," and "protest/protesting."

### 5.3.2 Analysis

Figure 6, which shows that government personnel and tenants have very close frequencies of association with power, lends support to Micheal Foucault's (1976) assertion: "Where there is power, there is resistance" (p. 95). Exploring the Deluzian (2006) reversal of these concepts, urban scholar Alexander Baker (2020) states: "resistance, not power, is the driving force in the growth of institutions and practices. This is to recognize that the tactics and strategies focused on evicting people are

constantly responding to the new formulations of refusal that are produced by those resisting" (p. 500). The data presented in these findings reveal that resistance goes beyond responses to immediate threats of eviction or engagement with actors such as landlords and their attorneys. It encompasses the broader efforts to challenge the glaring inadequacies, affective indifference, inaction, and systematic shortcomings exhibited by the very institutions that once committed to safeguarding tenants' rights.

## 6. Implications for Theory and Practice

By examining the intricate socio-affective dynamics among various actors engaged in implementing, servicing, and utilizing New York City's Right to Counsel, this research complicates prevailing narratives regarding eviction diversion and exposes the limitations of institutional intervention. The above results reflect how dominant discourses surrounding NYC's RTC—which forefront the ephemeral feelings and stressful working conditions of legal practitioners rather than the affective experiences of those at risk of losing their homes—silence the lived experience of tenants and effectively obscure alternative forms of eviction diversion and resistance. These findings reveal that acknowledging tenants as powerful political actors threatens the fundamental depiction of New York City's Local Law 136 as an initiative to help the inherently weak. Thus, tenants are predominantly positioned, through the words of others, as static subjects, innately vulnerable and without the power to create and imagine liberated futures of their own.

This study supports a growing body of literature that engages with theories of policy mobility and affective governance to examine affect as a critical force in the shaping of political identities and, in turn, the relations of power that configure material worlds (Anderson, 2014; Baker, 2020; Feigenbaum et al., 2013; McKenzie, 2017). As a critical discourse analysis, this research highlights how written language functions as an instrument of control, mobilized through the associations between political actors and their affects. While the above findings reinforce the dominant depiction of tenants as inherently vulnerable, they also present contrasting narratives—primarily found in press publications—that emphasize tenant resistance and their affective experience of

solidarity. These contrasting portrayals reveal the tensions of power inherent within written language and support linguist Ruth Wodak's (2014) assertion that texts are often, if not always, sites of struggle.

These discursive findings prompt critical reflection on the extent to which the Right to Counsel can drive structural, material change: Can RTC legislation truly confront the capitalist and racialized systems of domination that enable and necessitate eviction, despite their instrumental role in the formulation and administration of these laws? When embedded within U.S. legal frameworks, is it inevitable that strategies of eviction diversion will eventually give rise to bureaucratic divisions that effectively overlook the individuals they were initially designed to support? Is Right to Counsel legislation fundamentally incompatible with the liberation of tenants?

Because the data corpus used in this study primarily includes documents found in mainstream publications—and excludes texts that are most often circulated by tenants themselves, such as zines, literary works, instructional manuals, pamphlets, flyers, and visual materials—this research is limited in its assessment of informal power dynamics, strategies of non-institutionalized resistance such as mutual aid, landlord-tenant relationships outside of court, and the lived experiences of housing precarity, eviction, and threats of eviction. However, this limitation reveals that those with direct experience of eviction, most often low-income people of color who do not identify as men, are systematically underrepresented within discourses concerning these displacements. On the other hand, those who enforce, perpetuate and institutionalize eviction are awarded the most prominent platform for speaking on its diversion.

The difficulties regarding limited eviction data across the U.S.—such as the inability of policymakers and researchers to account for displacements that occur outside of legal frameworks, even though most tenant expulsions from rental properties never reach a courtroom—also extend to court-filed evictions, as legal procedures and institutional implications vary across jurisdictions. Public discourses surrounding eviction and eviction intervention are also place-specific (Nelson et al., 2021). While this research illuminates broader patterns in eviction diversion strategies across the United States, it could be expanded upon through a comparative case study, additional research into the affective dimensions of eviction intervention strategies, and further inquiry into the informal resistance strategies of tenants in New York and other U.S. cities. However, the essential significance of this study reflects the unique circumstances regarding New York City's Right to Counsel, as there remains an absence of comparable legislation in the U.S. that follows a similar policy trajectory to Local Law 136. While this research may not be fully generalizable, it provides valuable implications for jurisdictions engaged in the design of RTC legislation and, perhaps more critically, for bolstering non-institutionalized strategies of eviction diversion.

Despite the initial momentum in programming and policy surrounding eviction prevention and diversion in the wake of Covid-19, many local legislations across the U.S. have significantly reduced the scope of their initiatives, often due to the exhaustion of federal funding. Consequently, numerous jurisdictions have abandoned institutional action to safeguard tenants' rights altogether or, in the case of New York City, must confront the reality that their RTC ordinance cannot reach its mandate. As a result, tenants continue to lose their homes. To resist the prescriptive remedies of eviction



diversion that abstract evicting processes from the communities they materially impact, researchers must turn towards personhood, felt experience, and affective life.

In their critique of Matthew Desmond's Princeton-based Eviction Lab, several urban scholars highlight that popular research on eviction often neglects to include individuals with direct experience of eviction (Aiello et al., 2018). Instead, eviction mapping and data sourcing practices have bolstered the eviction industry by selling data to private companies operating in the rent recovery sector (Aiello et al., 2018; Baker, 2020). Aligned with efforts to resist research practices that may lead to displacement, Alexander Baker (2020) poses a difficult question: "Is it possible to study the functioning of institutions without falling into the politics of "best practice" ....enclosed within existing parameters that facilitate further eviction?" (p. 366). According to Baker, the ultimate answer lies in anti-carceral black activism: abolition.

Towards this goal, I argue, is further inquiry into the discourses of emotion and feelings of everyday life as they formulate notions of citizenry, personhood, revolution, and what it means to have a home. As an intentionally non-prescriptive analysis, this study highlights the affective features of tenants' experience and argues that these stories—from the perspective of those who have lived through eviction—are necessary to understand evicting practices and, more critically, resistance to them.

Research that examines the affective registers of eviction reveals how “eviction resistance can contest capacities, create new kinds of bodies, and produce multiple temporalities” (Baker, 2021, p. 805). In other words, attention to affective experience is critical in imagining radical futures that exist outside of racialized, gendered, and classed hierarchies. A turn towards affect allows us to envision a world that supports our

collective emotional needs, such as feelings of safety, solidarity, resilience, and love. By shifting away from prescriptive structural changes that aim, and often fail, at helping others survive, we may find the space to listen, tune into the affects surrounding us, and decide together how we want to feel in our communities; only then may we create a material future that not only supports the survival of all bodies, but the right to inhabit, to connect, and have a place to call home.

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