

WHERE CRIMINAL DEFENSE MEETS CIVIL ACTION: AN INTERVIEW WITH RUNA RAJAGOPAL

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This is the third in a series of interviews with attorneys who are pursuing social change through their work. This conversation is between Social Change editor Meghna Philip and Runa Rajagopal, a Team Leader and Supervising Attorney with the Bronx Defenders' Civil Action Practice.

Meghna Philip: You are the Supervising Attorney of the Civil Action Practice at the Bronx Defenders. Can you briefly describe the Bronx Defenders' holistic model, and how the Civil Action Practice fits into that model?

Runa Rajagopal: The mission of the Bronx Defenders is to address both the causes and consequences of being accused of a crime, or being accused of abuse or neglect of one's children. What does that mean? For over eighteen years, we have understood that the moment of entry into the criminal injustice or family court systems can lead to a destructive domino effect on a person's entire life and the lives of his entire family, simply by way of being accused. Our organization was created to provide client-centered, comprehensive, interdisciplinary services to defend against this web of problems and, most of all, to be a legal home to the Bronx communities we serve.

The Civil Action Practice is dedicated to defending against the devastating *civil* consequences that arise from an arrest or the removal of children. There is a long, growing list of these so-called "collateral" consequences, which are in fact direct and devastating. For example, if you are not a citizen, you might be deportable; if you live in federally subsidized housing, you and your entire family might be evicted; you might lose your job, employment license or other source of income, like public assistance or Supplemental Security Income or, you might even have your property, like your cash or car, seized and forfeited. Our general civil practice defends our clients in all these various civil arenas, most of which have no right to counsel and have the lowest burden of proof, to prevent or mitigate against the severe civil fallout of entering into "the system." We represent our clients in civil, state, and federal courts and administrative fora throughout the city, and represent our clients in pre-trial postures, at trial and at the appellate level—wherever they need us to be.

Meghna: Working as a civil public defender puts you in a unique position relative to more traditional civil legal services organizations and public defense offices. Can you describe what has been different about your work at the Bronx Defenders?

Runa: The civil-criminal divide is a false one. The people we work for do not live in or experience their problems in such silos. The complicated problems our

clients face, which are rooted in pervasive racism and social inequality leading to poverty, require us to know more about all of the various cracks in the system they fall in, without boundaries, in order to meet their needs and help solve these problems. Wherever I've worked in civil legal services, I've had clients who either were fighting criminal prosecution or had a conviction as a result of a prosecution. It affected them in many ways that I wasn't necessarily equipped to address.

At our office, by working in and providing services in a team-based, interdisciplinary (criminal, civil, family, social work) model, we have the collective internal resources and knowledge to collaborate to meet our client's stated goals across the various criminal and civil courts and systems. As a civil public defender, I have to know as much as possible about criminal processes and the path of removal in family court to advocate for a counter-narrative—that my client is a human being despite being demonized to the fullest extent—and to educate the players and fight to uphold those constitutional protections my client is entitled in the civil arenas in which I represent them.

When I train and supervise lawyers and advocates about holistic defense, I tell them I know this is really, really hard work. It requires constant communication, education and a lot of humility. But when we are able to bridge the gap between civil, criminal and family problems, it can be a powerful and transformative experience—for our clients and for us.

Meghna: A major area of focus for your work relates to protecting the rights of public housing tenants who have been involved in the criminal justice system and who stand to lose their home as a result. Can you tell us more about the New York City Housing Authority's policies, including the policy of "permanent exclusion"?

Runa: Housing is an area that is almost certainly jeopardized when an arrest takes place on or near its vicinity. The arrest does not have to be of the actual tenant of record or even of someone who lives in the apartment; it could even just be a guest of the household for there to be grave consequences, like eviction. And we are talking about arrests—being accused of a crime—and not convictions.

The interesting thing about the New York City Housing Authority (NYCHA), which is the largest landlord in the country and whose mission is to increase opportunities for low and moderate income New Yorkers by providing safe, affordable housing, is that the federal government only mandates two automatic consequences (related to convictions of lifetime sex offender registration and the manufacture or production of methamphetamines) and for all other conduct, NYCHA maintains its discretion as to whether it will deny a family a lease or terminate a family based on alleged criminal conduct.

In fact, the U.S. Department of Housing and Urban Development has encouraged public housing authorities, like NYCHA, to use its discretion to consider the circumstances of criminal conduct, especially given the rate of incarceration, the sheer numbers of people who are being released from prisons and jails and the significant barriers to affordable housing. As such, on paper,

NYCHA has broad discretion to consider the circumstances of criminal activity for both applicants and tenants and to assess whether there is a reasonable probability of future favorable conduct to give a tenant a lease or whether there is sufficient rehabilitation to allow a family to continue to live in public housing. As a practical matter, however, in my experience NYCHA rarely uses its discretion and takes a punitive approach to regularly deny applicants admission based on even a minor criminal record and to terminate, applying a “one-strike and you’re out approach,” based on an arrest or conviction of the tenant or her family member. This is particularly the reality for individuals who are accused of non-violent, drug offenses or crimes.

Sometimes when the “bad actor” is not the tenant of record, NYCHA will, in lieu of terminating the tenant and her entire family, offer something called “permanent exclusion,” which is a disproportionately punitive and highly invasive policy that decimates families who live in NYCHA public housing. It is the policy of effectively evicting the person allegedly engaging in the offensive conduct from the household, permanently, so that the rest of the family can continue to keep their home. For the life of the tenancy, in the current apartment or any apartment the tenant moves to thereafter, the excluded individual cannot reside in or even visit the apartment. To make sure the tenant complies with this exclusion, NYCHA will conduct surprise inspections of the entire apartment, any time between 9 am and 7 pm. If the individual is found on premises, NYCHA will move to terminate the tenancy. Further, if the tenant fails to open the door to inspectors, NYCHA will also move to evict the tenant and her family.

Remember, in NYCHA termination proceedings tenants have no right to counsel, so we see mothers and grandmothers who regularly make the difficult decision to permanently exclude their sons and grandsons from their homes to safeguard the rest of their family, even if the criminal case is still pending and there has been no conviction of guilt and even if the accused conduct is of a minor nature. I have had many clients who say they felt they did not have a choice in excluding their children because they thought the whole family would be homeless otherwise. This happens even where their son’s or grandson’s case is later dismissed and sealed, but they have already agreed to the permanent exclusion. Put this in the broader context of young men of color who are over policed, arrested and incarcerated at disproportionate rates in the communities we serve and you can see why NYCHA’s policies towards involvement in the criminal justice system is problematic.

We represent individuals, at the administrative level and on appeal, and fight NYCHA on its failure to use its broad discretion. Most of our clients or their family members are accused or convicted of relatively minor, nonviolent offenses. There is usually a context to the conduct, if it even occurred, that does not negatively impact the apartments and developments in which our clients live. We challenge NYCHA to make decisions that actually protect the public housing community and do not arbitrarily displace vulnerable families. We are also part of

a coalition of advocates seeking to educate the public regarding these punitive policies and reform NYCHA's approach towards criminal justice involvement and permanent exclusion.

Meghna: Civil forfeiture is another major area of focus for the Civil Action Practice. How does civil forfeiture affect your clients and their families in the Bronx?

Runa: Civil forfeiture is yet another civil enforcement technique used by police and prosecutors to impose extrajudicial punishments on our clients. At the time of arrest, police seize all property (including, but not limited to, money, personal belongings, and even cars) and may seek an order to permanently deprive (forfeit) the property owner of that property on the basis that it was either used as an instrumentality of a crime or is the proceed of the commission of a crime. A potential forfeiture action is a wholly separate and distinct proceeding from a person's criminal case, and a forfeiture action may be brought by the New York Police Department (NYPD), the District Attorney's Office or even the federal government, like the Federal Bureau of Investigation or the Department of Justice, even before the criminal case is adjudicated. Moreover, no conviction is needed for a civil forfeiture action to be brought; simply the accusation that the property was used as part of or is a proceed of a crime is all that is needed. Again, as in most civil proceedings, there is no right to counsel in a forfeiture action and the lowest burden of proof is imposed.

The concept of civil forfeiture is a very complicated and confusing one. Many of our clients have trouble understanding, rightfully so, how it is possible for the government to seize and continue to keep their possessions, if they have not yet been convicted of a crime or even if their criminal case was dismissed. The burden is always on the property owner to start the process of getting her property back and failure to do so means the government—police and prosecutors—keep some, if not all, of the property seized.

The biggest fallacy around civil forfeiture is that it is used against criminal kingpins who have acquired millions, houses and luxury cars from their grand criminal endeavors. The reality we see is that our poor and working class clients are deprived of property of significant value to them and great importance to their daily lives, but probably of minimal value to the government. For example, one woman who had her criminal case dismissed had to fight for several months to get \$700, which was from a tax return, to be used for rent. She was evicted while she fought to get her money back. It was not until we intervened that her money was released. Another young man, who was accused of driving while intoxicated when he was waiting for his friend in a car after going out one night and whose case was ultimately dismissed, had his 1996 Toyota Camry seized. He spent many months fighting the NYPD to get his car back, almost losing his job because he did not have the ability to get to his office and then travel, which was a key part of his job responsibility.

In addition to defending our clients against civil forfeiture actions, we have launched a campaign to educate the public on what civil forfeiture is and how it unfairly punishes property owners. We are also working with City Council members and other elected officials to advocate for legislative reform and transparency around these practices.

Meghna: Having been a legal services attorney and social justice advocate for ten years, what advice would you give aspiring public interest lawyers looking to work in your field?

Runa: The most important advice I can give is to find your own voice and be your truest self. Authenticity is so important. My journey in this work has been about knowing who I am as an advocate and who I am in relation to the communities I serve, as well as knowing what I believe in and the skills I have to actualize those beliefs, and having the integrity to stay consistent to those beliefs in whatever I do.

The other thing I want people to know is that as legal services advocates, we are change-makers. Often change is only thought of as class action litigation or some other grand scale advocacy. We are in the trenches every day standing beside our clients, who we have the privilege and honor of working for, fighting to tell their story, in a space where they are usually alone and their rights are trampled on. This is tough, gritty, high volume, intense and challenging work. Even though our victories may not be published as front page news, we effect change every day—on our adversaries, on the courts, on our clients, and on each other.