



Staff Memorandum

HOUSE OF DELEGATES Agenda Item #12

REQUESTED ACTION: Approval of the report and recommendations of the Committee on Legal Aid and President's Committee on Access to Justice.

In November 2021, the President's Committee on Access to Justice ("PCAJ") and the Committee on Legal Aid ("COLA") held two remote hearings at which members of the public were invited to discuss access to justice issues since the onset of the COVID-19 pandemic.

Representatives of approximately thirty organizations either testified at these hearings or submitted written testimony, including staff of statewide legal services providers, law schools, the OCA Office for Justice Initiatives, bar associations, community-based access to justice organizations, and individual attorneys.

Topics covered at the hearings included family court proceedings, immigration proceedings, housing court/landlord-tenant proceedings, criminal justice, social security proceedings, state benefit proceedings, the efficacy and equitability of remote proceedings, and the factor that race plays throughout these considerations, with focus on the interrelationship and impact of high-volume courts' hybrid virtual/in person court proceedings and operations, and the effect of the digital divide on low-income community members, court users, and providers of free legal assistance to these communities..

After the hearings, the PCAJ and COLA established a joint Working Group on Access to Justice During the COVID-19 Pandemic to review and distill the information gathered at the hearings into an extensive report.

The report at pages 3 to 5 offers several recommendations based upon the hearing testimonies. The recommendations include that a joint NYSBA-OCA task force of court personnel and legal services practitioners should be convened to develop recommendations to improve the administration of the justice system for all court users, including access to and information on court proceedings and procedures; that NYSBA should increase its commitment to non-litigation ways in which clients' needs could be more quickly addressed than via court processes; and that stakeholders should develop preparedness plans for access to legal services should there be a future event similar to COVID-19 that affects court operations. The report also calls for an increase in assigned

counsel rates in New York¹ and for New York State to invest in increased broadband internet access across the state for low-income and under-resourced communities.²

This report was submitted to the Reports Group in August 2022. No comments have been submitted as of October 18, 2022.

The report will be presented to the House of Delegates by Hon. Edwina F. Martin, immediate past co-chair of the President's Committee on Access to Justice.

¹ In June 2018, the House of Delegates approved a report of the Criminal Justice Section and the Committee on Mandated Representation on the need to increase assigned counsel rates in New York. *See* <https://nysba.org/app/uploads/2021/09/NYSBA-Access-to-Assigned-Counsel-Report.pdf>.

² The House of Delegates adopted a resolution on broadband access in June 2020. *See* <https://nysba.org/app/uploads/2022/06/adopted-resolution-on-broadband-access-June-2020.pdf>.



NEW YORK STATE
BAR ASSOCIATION

Report and Recommendations of the New York State Bar Association **Committee on Legal Aid and President's Committee on Access to Justice – Joint Report on Access to Justice During the COVID-19 Pandemic**

November 2022

THE NEW YORK
STATE BAR
ASSOCIATION'S
PRESIDENT'S
COMMITTEE ON
ACCESS TO JUSTICE
AND COMMITTEE ON
LEGAL AID JOINT
REPORT ON ACCESS
TO JUSTICE DURING
THE COVID-19
PANDEMIC

August 17, 2022

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I. Introduction

On March 20, 2020, then New York State Governor Andrew Cuomo signed the “New York State on PAUSE” Executive Order (PAUSE), which called for 100% closure of non-essential businesses statewide with exceptions for services such as groceries and healthcare, and included moratoriums on foreclosures, evictions, and other legal proceedings.¹ The impact of PAUSE on the New York State court system – the Office of Court Administration – and the greater legal community, and the continuing impact of COVID-19 on the courts and the practice of law, has been profound; increased reliance on technology and virtual court proceedings appears permanent.

On November 16 and 18, 2021, the NYSBA’s President’s Committee on Access to Justice (PCAJ) and Committee on Legal Aid (COLA) held public hearings regarding access to justice in New York State in the post-COVID legal landscape. The primary purpose of these hearings was to assess and determine recommendations for the New York State Bar Association (NYSBA) on how to address these impacts in the long term, in accordance with NYSBA’s mission to “facilitate the administration of justice.”²

Legal Services programs, *pro bono* practitioners, court personnel, and 18-B attorneys from across the state were invited to attend to opine on developments since the onset of the COVID-19 pandemic regarding access to justice in relation to: family court; immigration proceedings; housing court/landlord-tenant proceedings, criminal justice, social security proceedings, state benefit proceedings, the efficacy and equitability of virtual proceedings, and how the factor of race may have impacted these areas.

Hearing attendees were also asked to speak on the interrelationship and impact of high-volume courts’ hybrid virtual/in person court proceedings and operations as well as the effect of

¹ “Governor Cuomo Signs the ‘New York State on PAUSE’ Executive Order,” (available at <https://www.governor.ny.gov/news/governor-cuomo-signs-new-york-state-pause-executive-order>); (March 20, 2020).

² *Laws of New York – 1877; Chapter 210, “An Act to Incorporate the New York State Bar Association.”* (Section 1 of the Enabling Act; and The Bylaws of the New York State Bar Association, Section II: “Purposes”). Reflecting that the NYSBA’s mission and objectives, as outlined in its 1877 founding constitution, are “to cultivate the science of jurisprudence, promote reform in the law, facilitate the administration of justice, and elevate the standards of integrity, honor, professional skill and courtesy in the legal profession.” (full text available at <https://nysba.org/app/uploads/2022/02/Bylaws-January-2022.pdf>)

the digital divide on low-income community members, court users and providers of free legal assistance to these communities.

II. Recommendations

Recommendations for the NYSBA based upon the hearing testimonies includes:

- I. Convening a NYSBA-OCA Task Force of court personnel and legal services practitioners to develop recommendations for a plan that can address issues such as:
 - a. Significant gaps in the ability to obtain Orders of Protection³⁴, within a Court system that had diminished capacity⁵;
 - b. Increasing and improving user-friendly online information and instructions for those proceeding without counsel⁶;
 - c. Addressing language access and literacy issues;
 - d. Delineating proceedings appropriate for virtual court and those that must be conducted in a courtroom (such as witness examination and hearing testimony);
 - e. Whether litigants should be provided a choice between in-person and virtual court appearances;
 - f. Addressing the digital divide;
 - g. Ensuring that technology limitations are not held against the parties in a proceeding;
 - h. Developing an equitable e-filing system for *pro se* litigants.
 - i. Providing basic information in multiple languages in a written format on the courts' websites and providing court notices in commonly spoken languages.

³ Judith Olin, Esq.; Clinical Professor and Director, *University at Buffalo Law School Family Violence and Women's Rights Clinic*; Virtual Public Hearing Testimony, (November 18, 2021), (at approximately 39:20; video link below). (Discussing the problems with pre-screening Family Court matters, and specifically screening Family Offense Petitions as "essential" or "non-essential," the substantial delays in docketing and hearing such applications, the frequency of domestic violence homicides in Erie County relative to other larger counties, and the inability of *pro se* litigants to utilize Law Help and similar online applications). (<https://nysba.org/committees/presidents-committee-on-access-to-justice>); *See also*: written testimony submitted.

⁴ Andrew F. Emborsky, Esq.; Supervising Attorney, Family Unit; *Neighborhood Legal Services, Inc.*, (written testimony submitted, November 23, 2021, pages 1-2).

⁵ Anna Ognibene, Esq.; Supervising Attorney, *Her Justice*; (written testimony submitted, November 18, 2021, pages 3-9).

⁶ *Id.*, at page 6.

- j. Offering live proceedings with full simultaneous interpretation and, where that is not possible, offering video proceedings with sequential interpretation of the entire proceedings.
 - k. Prioritizing language access during telephonic hearings by allotting more time to the allow for proper translations.
 - l. Increasing hourly rates for 18B lawyers to provide incentives to bring more attorneys into the various programs available to the thousands of *pro se* clients coming to court.
- II. That NYSBA should increase its commitment to non-litigation ways in which clients' needs could be more quickly addressed than via court process by:
- a. Supporting community legal education;⁷
 - b. Increasing training on pre-litigation and non-litigation advocacy;⁸
 - c. Exploring ways to help clients navigate the initial application and investigation process required to secure clearances and licenses to perform regulated work;
 - d. Exploring ways to help New Yorkers navigate various types of situations where they are asked to provide information regarding conviction history and addressing RAP sheet errors;⁹
 - e. Supporting legislation granting public defenders' direct access to client RAP sheets.¹⁰
- III. General Recommendations:
- a. Future planning for preparedness needs to incorporate and facilitate access to services.

⁷ Estee Konor, Esq.; Senior Staff Attorney; *Community Service Society of New York*, (written testimony submitted, November 24, 2021) (page 2).

⁸ *Id.*

⁹ *Id.*, at pages 3-4.

¹⁰ *Id.*, at page 3.; “For court-involved New Yorkers, it is almost impossible to successfully navigate the many barriers to full participation in their community if they do not understand their own RAP sheet and how to talk about their conviction records. ... Accessing their information...requires court-involved legal services clients in New York to undergo physical fingerprinting as part of the process of requesting their RAP sheet. This fingerprinting takes place in person at a legal services provider’s office. The process, cumbersome even before COVID hit New York, has been especially hard to navigate during the pandemic. Because legal services providers do not have direct electronic access to client RAP sheets, the pandemic has exacerbated existing challenges associated with educating, advising, and representing them when their legal rights are violated. Most were cut off from essential information about their conviction records [during] the pandemic, a time when many were desperately looking for work to support themselves and needed information about their records to navigate the job-search process.”

- b. New York State should invest in increasing access to broadband internet service in low-income and under-resourced communities across the state.

The following sections are a summary of the hearing testimony in the following areas: the amount of people who could not access courts (Family Court, Criminal Court, and limited virtual access in rural courts); the amount of people who could not access services; how COVID highlighted race concerns; virtual hearings; the digital divide; language access; and 18B attorney concerns.

III. Number of People Who Could Not Access Courts

The results of the COVID-19 pandemic were varied and overarching. The effects were felt in different government systems, surfacing inherent problems embedded in their framework. Our systems of justice were no exception, highlighting the limits it put on peoples' accessibility to the courts and other legal services. Ultimately, it will take years to be fully understood but lessons can be taken from the experiences of those serving low income and vulnerable New Yorkers during the initial turbulent months.

Family Court Access

LIFT estimated no less than 8,000 individuals in 2020 could not receive help from the court system.¹¹ Legal Services of Hudson Valley reported a twenty-five percent (25%) decline in the number of clients.¹² Bronx Defenders, Brooklyn Defenders, Neighborhood Defenders and Center for Family Representation submitted joint testimony reflecting that they collectively represent thousands of New Yorkers as the “the primary providers of mandated legal representation for low-income parents and children in Article 10 cases filed by the New York City Administration for Children’s Services (“ACS”)”¹³. They reported the rates of reunification for families decreased by

¹¹ Cathy Cramer, Esq., CEO; *Legal Information for Families Today (LIFT)*; (written testimony submitted, November 24, 2021, page 2).

¹² Lucy Turner, Esq.; Staff Attorney, Housing Unit; *Legal Services of Hudson Valley*; (virtual hearing testimony; November 18, 2021; at approximately 2:14:43)

¹³ Emma S. Ketteringham, Esq.; Managing Director - Family Defense Practice; The Bronx Defenders; Lauren Shapiro, Esq.; Managing Director - Family Defense Practice Brooklyn Defender Services; Michele Cortese, Esq; Executive Director - Center for Family Representation; Zainab Akbar, Esq.; Managing Attorney - Family Defense Practice; Neighborhood Defender Service of Harlem; (written testimony jointly submitted, November 18, 2021; page 2).

over twenty percent (20%) during the pandemic.¹⁴ The backlog will most likely persist for over several years.

During their testimony, many legal aid/services organizations pointed to the effects of the pandemic in the family law courts. In New York City, only “essential” cases were heard without detailing what falls under the definition of “essential” resulting in grave miscarriages of justice. Specifically, child support cases were not heard leaving parents of children without a source of income. Additionally, many custody and visitation cases were deemed non-emergency.¹⁵ Parents were separated from their children for months.¹⁶

The discrepancy was made apparent when NYC Family Courts prioritized creating a system that allowed the Administration for Children’s Services (ACS) to seek the removal of children from their families, and then failed to set up an adequate process by which families could contest those separations.¹⁷

New York City Family Court also failed to distinguish between cases which had hearings that could be conducted virtually and those that involved complex litigation and were better suited for in-person proceedings. Brooklyn Defenders Services found that “the court proceeded to allocate long periods of virtual court time for trials in termination of parental rights matters, without regard for the importance of in-person proceedings for these sensitive trials. The court has stated that there is access to in-person courtrooms but then has routinely denied our requests to use those courtrooms for these trials and other complex litigation.”¹⁸

These challenges were not limited to the New York City family courts. The Family Violence and Women’s Rights Clinic at the University of Buffalo described systemic problems

¹⁴ Emma S. Ketteringham, Esq.; Managing Director - Family Defense Practice; *The Bronx Defenders*; Lauren Shapiro, Esq.; Managing Director - Family Defense Practice *Brooklyn Defender Services*; Michele Cortese, Esq.; Executive Director - *Center for Family Representation*; Zainab Akbar, Esq.; Managing Attorney - Family Defense Practice; *Neighborhood Defender Service of Harlem*; (written testimony jointly submitted, November 18, 2021; page 2).

¹⁵ Ognibene, *Her Justice*, (written testimony, pages 3-4).

¹⁶ Lisa Schreibersdorf, Esq., Executive Director, *Brooklyn Defender Services*; (written testimony submitted, November 18, 2021; pages 5-8).

¹⁷ *Id.*, at page 7.

¹⁸ *Id.*

with dealing with urgent cases in both Erie and Niagara County Family courts even though the rate of family-related homicide in Erie County is higher than Kings County.¹⁹

These limitations on accessibility were potentially life threatening, as discussed in the testimony of Neighborhood Legal Services, that pointed to the difficulty in obtaining Orders of Protection (OOP) in cases of domestic violence.²⁰

The efficacy of the family court system was reduced significantly by the pandemic and the limited access caused infringement of rights and privileges of mainly the unrepresented and indigent.

Criminal Court Access

Without a doubt the most sensitive area in the context of the pandemic and the violation of freedoms and privileges is the criminal court system. The potential for the infringement of rights in this specific field of law is self-evident and indeed there have been concerning reports of significant breakdown in the system when it came to indigent clients. Access was severely limited in our criminal courts system, and because of fingerprinting requirements and processes, those of limited means accused of committing a crime were disproportionately impacted by the lack of access to physical resources. This point was explained in the Community Service Society testimony:

“[B]ecause we must obtain in-person fingerprints to get rap sheets, our new client intake all but ceased. We attempted to work around the lack of rap sheets by ordering—and paying \$95 per report for—NYS Office of Court Administration ‘CHRS Reports.’ But these documents are provided on the basis of name and date of birth, and they proved all but useless where aliased and even small variations in name spelling permeated clients’ experiences with the criminal court system.”²¹

¹⁹ Olin; *University at Buffalo Law School Family Violence and Women’s Rights Clinic*; (virtual hearing testimony of November 18, 2021, and written testimony submitted, page 1).

²⁰ Emborsky, *Neighborhood Legal Services, Inc.*; (written testimony, page 2).

²¹ Konor; *Community Service Society of New York*, (written testimony submitted, November 24, 2021) (page 2).

Eventually they began fingerprinting operations by appointment, but this limited the number of clients they could work with.

Limited Virtual Access in Rural Courts

The COVID-19 pandemic also made apparent how lack of access to justice manifested itself in different ways depending on location. In the Capital Region and North Country, Courts that turned to virtual hearings were not as accessible since many clients do not necessarily have access to unlimited data, wireless services, or digital devices needed to access remote courts. Even when clients have smartphones, their plans are often basic pay per month plans which do not include streaming. Additionally, some clients—particularly elderly clients—simply do not have or know how to use smartphones or computers.²²

In the context of Social Security hearings, the testimony of the Legal Aid Society of Northeastern New York, reports that some attorneys have expressed concern that a hearing judge will not grasp the full extent of a client’s disability without an in-person hearing. (This is particularly true in telephone hearings, although it also holds true for video hearings.)²³

The New York State Justice Courts, where many rural eviction cases are litigated,²⁴ were particularly unprepared for the COVID-19 pandemic.²⁵ These courts do not have the infrastructure, staff, or technology to allow for remote hearings.²⁶ In some cases, the Justices or court staff did not appear to be interested in learning how to use technology.²⁷

The most difficult scenario occurred when justices, the majority of whom are not attorneys, ordered appearances regardless of any stay or moratorium; did not observe social distancing and

²² Victoria Esposito, Esq.; Advocacy Director; *Legal Aid Society of North Eastern New York* (undated written testimony submitted, page 2).

²³ *Id.*, at page 2.

²⁴ See: <https://www.nycourts.gov/courts/townandvillage/> (Date Accessed, August 6, 2022)

²⁵ Lucy E. Turner, Esq.; Staff Attorney – Housing Unit; *Legal Services of Hudson Valley* (virtual hearing testimony; (November 18, 2021; at approximately 2:17)

²⁶ *Id.*, virtual hearing testimony, November 18, 2021, at approximately 2:19

²⁷ Victoria Esposito, Esq.; Advocacy Director; *Legal Aid Society of North Eastern New York* (undated written testimony submitted, page 2).

mask guidelines; and made inappropriate political or personal remarks to staff who were attempting to observe those guidelines.²⁸

It should be noted that organizations such as the Legal Aid Society of Northeastern NY, the Legal Aid Society, Legal Services of the Hudson Valley and others did not object to virtual hearings at its core but simply stated that many times the options were not utilized correctly and that some hearings should only be conducted in a courtroom; particularly those hearings that require testimony and examining witnesses.²⁹

IV. Number of People Who Could Not Access Services

In addition to affecting the ability of the public to directly access the Court themselves, the COVID-19 health crisis also greatly changed the way in which residents of New York State were able to access ancillary and related services, which are essential components to enforcement and implementation of the relief sought in the Courts.

For example, multiple agencies in the 8th Judicial District reported massive backlogs of unserved Orders of Protection (OOP), perhaps as many as two hundred (200) from time to time.³⁰ This issue was reported by no fewer than four (4) legal services agencies and partners at ad hoc meetings held to discuss and coordinate COVID-19 responses.³¹

Despite a clearly identified issue affecting the communities served during the pandemic, there was an overarching desire not to alienate law enforcement during such a sensitive time, which resulted in a “wait-and-see” approach. Going forward there cannot be a significant gap in the ability to obtain *and then serve* OOPs, as in many cases these were the only tool available to enact immediate relief within a Court system that was operating at diminished capacity.

Since the most effective and heavily utilized tool during the pandemic was virtual and on-line access to the legal system and related services, this needs to be addressed. It appears that a

²⁸ *Id.*, at page 2.

²⁹ *Id.*, at page 2; and Clare J. Degnan, Esq.; Executive Director; *Legal Aid Society of Westchester County*; (written testimony submitted; December 2021, page 6; and Lucy Turner, Esq; Staff Attorney; *Legal Services of Hudson Valley*; (virtual hearing testimony 2:17:45 through 2:20:45).

³⁰ Emborsky, *Neighborhood Legal Services, Inc.*; (written testimony, page 2).

³¹ *Id.*

significant effort needs to be made to increase the amount of information available online, as well as to simplify it and provide instructions that are friendly to those proceeding without counsel.

The Permanent Commission on Access to Justice (The Permanent Commission) surveyed more than 600 litigants this year about their experience navigating the judicial system. Seventy-nine percent (79%) of unrepresented litigants reported using websites to find information about their legal rights or to try and find help with their case, yet two out of every five users (40%) said they were unable to find what they were looking for.³²

But even with greater online and virtual access to the Courts, gaps in accessibility have been observed in *pro se* matters. For example, seventy-five percent (75%) of unrepresented litigants said that they needed help in completing court forms. One out of every four (25%) *pro se* litigants reported not understanding which forms to use. Significant percentages of those polled by The Permanent Commission could not understand the words or could not speak the language used in forms (15%); or could not find the information or document required to complete the forms (15%). It became clear that in addition to language barriers, there were people who lack digital literacy to participate in online services, and those who encountered other barriers such as scanning, printing, and signing documents.³³

Court-involved New Yorkers reported not being able to access conviction records during the pandemic. This was critical at a time when layoffs and furloughs were commonplace, and many looking for work needed access to their criminal and conviction records to navigate the job-search process. Limited access to “rap sheets” during COVID, because of in-person fingerprinting requirements caused similar issues, and needs to be addressed going forward.³⁴

Limitations to access to services were observed outside of the family and criminal courts as well, as detailed in the testimony of the Nassau Suffolk Law Services Committee Inc. They reflected upon difficulties stemming from the lack of in-person options for assisting clients. This

³² Veronica Dunlap, Esq.; Director of New York Programs; *probono.net*; (virtual hearing testimony, November 18, 2021, at approximately 12:25; and undated written testimony submitted, at page 2).

³³ *Id.*, at page 5.

³⁴ Konor; *Community Service Society of New York*, (written testimony submitted, November 24, 2021) (page 2).

resulted in problems for disabled clients, specifically in accessing the SSA and the related issues with that government agency's offices being fully remote.³⁵

The Legal Aid Society of NYC (LAS) testimony confirmed the language access issues and availability of information to non-English speaking litigants, as disabled litigants, as areas to address. LAS also highlighted the importance of developing an equitable e-filing system for *pro se* litigants as the basis for long-term justice.³⁶

Access to services outside of the legal system, yet directly related to the well-being of the persons served by the agencies operating within the legal system, were identified as practical problems that need to be addressed in connection with any review of the bar's COVID-19 pandemic response. For example, "many grantees reported significant efforts to facilitate client access to non-legal services including cash assistance, food pantries, and other essential resources."³⁷

The Brooklyn Defender Service (BDS) noted certain, inherent, impacts that a virtual law practice has on providing legal advice and services to clients. Specifically stating:

"the first meeting between a parent and their attorney is pivotal—it sets the tone for a robust and trusting attorney-client relationship. Moreover, as crucial decisions about a family—including whether they will be separated—are made at the first court appearance, it is vital for a parent to have the time and space to share facts and guide representation prior to that appearance. In this virtual world, ACS is tasked with supplying parents' phone numbers to defense counsel prior to intake. This is often done so at the last possible minute and frequently the numbers provided are incorrect."³⁸

³⁵Rezwanul Islam, Esq, Deputy Executive Director; *Nassau Suffolk Law Services Committee Inc.*; (virtual hearing testimony, November 16, 2021; at approximately 39:30) (In discussing the effect of not having more options for providing services for clients seeking disability representation, the testimony indicated that unfortunately "More likely than finding assistance, they will give up and go without the services they need." (emphasis added, virtual hearing testimony at 43:40).

³⁶ Adriene Holder, Esq.; Chief Attorney of the Civil Practice; *Legal Aid Society* (written testimony submitted, November 17, 2021; at page 15-16). "If approached carefully, a uniform, user-friendly, accessible, and multilingual remote filing system has the potential to create massive benefits for pro se litigants, and would facilitate efficiency and transparency in the court system...The pro se e-filing system should also include regularly updated resources for pro se litigants including, but not limited to, an appropriately staffed helpline, FAQs, contact information for city marshals, sheriffs, legal services providers, clerks in each courtroom, Family Justice Centers, and a directory of the New York State courts."

³⁷Christine M. Fecko, Esq; General Counsel; *Interest on Lawyer Account Fund of the State of New York (IOLA)*; (written testimony submitted, November 23, 2021) (page 3).

³⁸ Schreibersdorf; *Brooklyn Defender Services*; (written testimony submitted, November 18, 2021; page 7).

Further, the testimony of BDS observed that only a small portion of attorneys have access to the Universal Case Management System (UCMS), the only way for counsel to access court orders (including orders of protection) and other critical information severely limiting advocates' ability to zealously represent parents whose children may have been subject to removal.³⁹ They went on to state that although "this lack of access preceded the onset of the COVID-19 pandemic, ... given the disproportionate impact of the family regulation system on families of color, full access to this needed information is a matter of equity."

Finally, it appears that legal service agencies and service providers reflected a marked increase in administrative burden with increased virtual services, which can limit their ability to serve clients. There was significant difficulty in finding volunteers willing to meet in-person with clients, and there was a perceived difficulty providing services to clients with mental and physical health issues, as well as those with transportation and childcare complications.⁴⁰

V. How COVID-19 Highlighted Concerns of Race and Racial Inequality

The COVID-19 pandemic has been unprecedented in scope. Its impact on our most vulnerable neighbors cannot be understated. The pandemic's negative consequences have been felt disproportionately by people of color.

The Legal Aid Society spoke at length about the disparate impact the pandemic has had on marginalized communities in New York City.⁴¹ Acknowledging and identifying these issues are the first step in addressing them so that we may learn from these experiences, or as LAS stated "...It is through this lens of disparate impact that we must view our path forward."⁴²

³⁹*Id.*, at pages 7-9.

⁴⁰ Sally Curran, Esq.; Executive Director, *Volunteer Lawyers Project of CNY, Inc.* (virtual hearing testimony; November 16, 2021; at approximately 1:50:40).

⁴¹ Adriene Holder, Esq.; Chief Attorney of the Civil Practice; *Legal Aid Society* (written testimony submitted, November 17, 2021; at page 7). "For example, approximately one-third of Black and Latino households do not have access to a computer and more than one-third of low-income New Yorkers do not have access to broadband of any kind."

⁴² *Id.*, at page 4. "At the beginning of this pandemic, three of the top four counties suffering death rates from COVID-19 across the Nation were within New York City: Queens, Kings and Bronx. For example, South Bronx has one of the highest infection rates in the country, proving once again the disparate impact our Black and Brown communities continue to endure due to the lack of healthcare and resources needed to protect against a highly contagious and deadly pandemic that ravages the nation. It is through this lens of disparate impact that we must view our path forward."

There were disproportionately high rates of COVID-19 in communities of color.⁴³ Additionally, these same communities had issues accessing the internet, services and programs people need to survive. The pandemic has illustrated that issues of poverty manifest themselves differently depending on where you might live.

Organizations reported a number of issues that impacted people of color including limited access to Individual Taxpayer Identification Number (ITIN) and the family justice centers, such as family court.^{44 45} Similarly, some groups testified that due to issues of systemic racism, many ethnic groups resided in the poorer rural and urban areas of their regions with limited access to the internet.^{46 47 48} As more and more venues moved online, the inability to access these services were also disproportionately felt by people of color.

Brooklyn Defenders Services testified that the disparities in healthcare, employment, and housing that put communities of color at greater risk of being targeted by the legal and court systems have also put them at greater risk of illness and death during this pandemic. The COVID-19 pandemic hit New York just as the State began implementing groundbreaking criminal justice reforms. These historic reforms were designed to address a system that continually and disproportionately impacted Black and Latinx/Hispanic/Latino/a/é communities, especially pretrial mass incarceration. When the pandemic struck, many procedural protections enshrined in

⁴³ Curran; *Volunteer Lawyers Project of CNY, Inc.*; (hearing testimony; November 16, 2021, at approximately 1:49:00) (Comments include discussion of the overwhelmingly disproportionately effects of COVID in communities of color.)

⁴⁴ Terry Lawson, Esq.; Executive Director; *UnLocal*; (written testimony submitted, November 18, 2021, pages 3-4) (Discussing difficulties resulting from limited access to get ITIN numbers as well as Family Courts.)

⁴⁵ Cramer; *Legal Information for Families Today (LIFT)*; (written testimony submitted, November 24, 2021, page 1-2). “The unrepresented litigants who come to Family Court in New York City are disproportionately low-income, from communities of color, often undocumented immigrants, or speak monolingual Spanish or some other language. And, as the family courts are under-resourced and understaffed, there is a justice gap for many of the litigants.”

⁴⁶ Turner; *Legal Services of Hudson Valley* (virtual hearing testimony; (November 18, 2021; at approximately 2:17); Comments briefly mentioned in the beginning of the testimony, due to the systemic racism in our country, many ethnic groups reside in the poorer rural areas with limited internet access.

⁴⁷ Leah Goodridge, Esq.; Managing Attorney for Housing Policy; *Mobilization for Justice, Inc.* (written testimony, November 18, 2021, page 3). Comments cited are studies showing that indigent, black, Latino and senior NYC residents have a greater percentage of homes without internet access, thus resulting in a greater percentage of evictions for these litigants than for white or Asian American households. In addition, digital access in public facilities is hampered due to “rampant police reporting of black residents” engaging in normal everyday activities such as sitting in a coffee shop or in a public park.

⁴⁸ Dunlap; *probono.net*; (undated written testimony submitted, at page 5). “Prior to the pandemic, the digital divide was often thought of as an infrastructure issue, for example “last mile” connectivity gaps in rural areas. While broadband access and affordability remains an issue for too many New Yorkers - particularly low-income, Black, Latinx, and rural communities.”

the Criminal Procedure Law (CPL), including the newest reforms, were suspended through a series of overly broad executive orders.

Courts acceded to former Governor Cuomo’s unnecessary suspension of key procedural safeguards. The results have been disastrous: New York City’s jail population was, at the time of the testimony, higher than it was before the pandemic. Bail was set in many more cases and in higher amounts despite legislation designed to decrease these amounts. Our cases were allowed to be repeatedly adjourned while our clients were allowed to languish in jail at heightened risk of exposure. It should be, noted that some providers saw a positive impact from bail reform finding it reduced COVID-19 transmission, and allowed communicating with the clients to be more proactive. (Nassau County Legal Aid Society; Day 1, 15:30)

At the hearing, Brooklyn Defenders Services testified that over the past year, fourteen people have died while incarcerated at Rikers Island due to the inhumane conditions that were exacerbated by the pandemic.

Brooklyn Defender Services also shared that clients faced increased scrutiny and disrespect at an alarming rate, oftentimes being ejected from virtual courtrooms. The same disrespect clients faced was also felt by Brooklyn Defender Services attorneys practicing in these virtual forums.⁴⁹

During this time, the United States also experienced social unrest due to the murder of George Floyd. In response, the Office of Court Administration appointed Secretary Johnson on June 9, 2020 to be the Special Advisor on Equal Justice in the Courts. He was tasked with reviewing equal justice and racial bias in the New York State court system, the largest and most complex in the country. The OCA Office of Justice Initiatives testified regarding their new task of implementing the thirteen recommendations from the report on race and justice stated in the

⁴⁹ Schreibersdorf; *Brooklyn Defender Services*; (written testimony submitted, November 18, 2021; page 6). “Our office saw an increase in the disrespectful and dehumanizing language used to speak to both families in the court system and our staff. The disrespectful treatment of families has included judges ejecting parents from virtual courtrooms when they did not want the parent to speak and using abusive language towards parents who were unable to appear by video. Our staff—particularly our staff of color—have also experienced being denigrated by judges in the presence of their clients, which is not only unacceptable, but compromises the attorney-client relationship and undermines the goal of objectivity in the court system.”

report.⁵⁰ One of their first tasks was drafting a new mission statement that would emphasize the courts commitment to zero tolerance for racial bias.⁵¹

VI. Virtual Hearings

The impact of the COVID-19 pandemic on the New York State Court system, its litigants, and especially its most vulnerable litigants, cannot be overstated. As access to justice and access to the courthouse was severely limited, the New York State Court system's response in pivoting to virtual hearings became a critical tool to continue that access, with both successes and failures.

The testimony adduced by the various agencies and providers often showed similar concerns with the virtual hearing model. In criminal proceedings, representation and hearings by telephone or video raised substantial concerns over fundamental due process rights. The Legal Aid Society of Westchester County cited a law review article from 2010, well before the pandemic, that studied the outcomes of criminal defendants whose hearings were conducted over video. The findings confirmed substantially higher bond amounts for virtual defendants than their in-person counterparts, with increases "ranging from 54 to 90 percent, depending on the offense."⁵² This situation was only exacerbated by the pandemic's use of telephone arraignments resulting in these worsening outcomes. The use of remote video proceedings made attorney-client communications more difficult and sometimes impossible.

Lack of access to technology, computers, digital devices, remote access, smart cell phones, technological illiteracy, lack of privacy, connectivity, and adequate broadband service was a consistent theme throughout. These difficulties impact predominantly on the more vulnerable

⁵⁰ See New York State Unified Court System, "Report from the Special Adviser on Equal Justice in the New York State Courts" (October 1, 2020), <https://www.nycourts.gov/whatsnew/pdf/SpecialAdviserEqualJusticeReport.pdf>

⁵¹ Hon. Edwina G. Mendelson; Deputy Chief Administrative Judge for Justice Initiatives; and Director, New York State Courts Access to Justice Program; *New York State Unified Court System's Office for Justice Initiatives (OJI)*; (virtual hearing testimony, November 16, 2021; written transcript submitted, page 5) "The mission of the Unified Court System (UCS) is to deliver equal justice under the law and to achieve the just, fair and timely resolution of all matters that come before our courts. In the service of our mission, the UCS is committed to operating with integrity and transparency, and to ensuring that all who enter or serve in our courts are treated with respect, dignity and professionalism. We affirm our responsibility to promote a court system free from any and all forms of bias and discrimination and to promote a judiciary and workforce that reflect the rich diversity of New York State."

⁵² Degnan; *Legal Aid Society of Westchester County*; (written testimony; page 4).

litigants, including the poor, elderly, mentally challenged and disabled, thwarting their access to equal justice under the law.

There were advantages cited for litigants, including the lack of necessity to take off an entire day of work, seek childcare, rely on intermittent public transportation to appear in the courthouse (and especially in rural areas where public transportation is limited or non-existent), or the necessity to travel long distances, especially in rural or remote areas.

Volunteers of Legal Service (“VOLS”) cited as problematic Department of Labor (“DOL”) telephonic hearings, without a video option, which created confusion for the claimant seeking unemployment benefits.⁵³ Serious challenges included the inability for litigants to access the telephone hearing because they were unable to pay their phone bill, or missing the Administrative Law Judge’s call, or the call coming up as “Anonymous” or “Unknown”, and then the claimant not picking up the phone. Some claimants who do not speak English received notices in English only, advising that the hearing is by telephone. The lack of ability to read English then caused the claimant to misunderstand the directive, instead appear at the DOL office only to find it closed, causing them to miss the hearing and default on their administrative appeal. Conversely, there were claimants who do speak English, have adequate phone service, and who preferred the telephonic hearings rather than having to travel to the DOL office.

Similarly, the Social Security Administration offered disability hearings initially by telephone only, then recently, by video. Clients who did not want a virtual hearing were afforded the right to wait for an in-person hearing. Clients who did not want to wait an indefinite amount of time for an in-person hearing could opt for a virtual hearing. Litigants choosing a telephone hearing were often much more comfortable with this option, greatly reducing their anxiety levels.

The Legal Aid Society of Northeastern New York found that virtual hearings, in the 3rd Judicial District (Capital District) and 4th Judicial Districts (mostly rural counties), were most successful where kiosks were installed in some courts and community centers such as libraries or

⁵³ Stephanie Taylor, Esq.; Project Director, Unemployed Workers Project; *Volunteers of Legal Service (VOLS)*; (written testimony submitted, November 18, 2021, pages 1-2)

churches. These kiosks afforded litigants, who did not otherwise have sufficient digital access, to appear virtually in the courthouse but still be protected from exposure to COVID-19.

Family Court Article 10 proceedings seemed to have proved to be most problematic when held virtually. New York City, in particular, found its family court remained essentially closed throughout the pandemic, and have only recently been opened for in-person hearings. Requests for in-person emergency hearings to terminate placement of children removed from their homes and parents were often denied, without explanation. Testimony presented jointly by the Bronx Defenders, Brooklyn Defender Services, Center for Family Representation and the Neighborhood Defender Service of Harlem (collectively, the “family defense providers”), lamented that the reunification rates of families separated by the Agency for Children Services (“ACS”) in New York City decreased dramatically, from 2,309 reunifications in 2019 to 1,830 reunifications in 2020, finding that the failure to prioritize family reunification and the preservation of family bonds thwarts the very purpose of the family court and demonstrates a low regard for the human bonds of the family who rely on the court for justice.⁵⁴

Virtual hearings in family court proved to be especially difficult and challenging for litigants without proper access to digital devices, lack of technology to join court appearances, judges who refused to recall a case so that a parent may re-charge their phone or judges admonishing parents for appearing from a noisy, crowded public location where they can access free Wi-Fi.

There were successful programs implemented during the pandemic to enhance virtual hearings. The Westchester County Association (an economic development organization) partnered with WestHab (an affordable housing non-profit) in “Project OVERCOME”, based in Yonkers. This program is part of US Ignite, a national non-profit organization, to expedite delivery of broadband services to underserved communities across the United States.⁵⁵

⁵⁴ Ketteringham; *The Bronx Defenders*; Shapiro; *Brooklyn Defender Services*; Cortese; *Center for Family Representation*; Akbar; *Neighborhood Defender Service of Harlem*; (written testimony jointly submitted, November 18, 2021; page 2).

⁵⁵ Degnan; *Legal Aid Society of Westchester County*; (written testimony; page 5)

Legal Information for Families Today (“LIFT”) established a Tech Hub pilot, with private funding, whereby they opened their administrative offices, located in Brooklyn, near the courthouse, for people to conduct their virtual hearings in a safe, private space.

Some of the recommendations or guidelines, from these joint defender organizations for utilization, or not, of virtual appearances in Article 10 proceedings include resuming in-person proceedings for Article 10 intake, emergency hearings pursuant to FCA 1027 and 1028 and all contested hearings when a parent chooses to appear in person; hold conferences with court attorneys and uncontested appearances virtually; provide technology and technical assistance to ensure that parties have access to family court in any proceedings conducted virtually; expand in-person family court hours to accommodate emergency hearings; and ensure equal access to the court by requiring that judges schedule all Orders to Show Cause and motions filed by defense counsel.⁵⁶

VII. How the Digital Divide Impacted Indigent Populations

Similar to issues with virtual hearings, legal services providers across the state consistently highlighted how the digital divide impeded the ability of low-income and under-resourced communities to access justice as courts transitioned to virtual proceedings and legal services providers pivoted to remote service delivery models during the pandemic.

Low-income communities across the state do not have reliable and consistent access to computers, tablets, or internet connections necessary to participate in virtual proceedings and online community education programs, or access online legal forms.

In Westchester County, thirty-two percent (32%) of households do not have a laptop or tablet.⁵⁷ One-third of black and Latino NYC residents do not have access to a computer.⁵⁸ Forty-two percent (42%) of NYC seniors lack internet access and thirty percent (30%) of Black and

⁵⁶ Ketteringham; *The Bronx Defenders*; Shapiro; *Brooklyn Defender Services*; Cortese; *Center for Family Representation*; Akbar; *Neighborhood Defender Service of Harlem*; (written testimony jointly submitted, November 18, 2021; pages 4-5).

⁵⁷ Degnan; *Legal Aid Society of Westchester County*; (written testimony; page 5).

⁵⁸ Adriene Holder, Esq.; Chief Attorney of the Civil Practice; Legal Aid Society (virtual hearing testimony, November 18th, 2021, at approximately 2:38:31).

Latinx NYC residents lack broadband access.⁵⁹ In rural communities, access to broadband is limited.⁶⁰

In many instances, when there is a computer or tablet in the household, multiple members may need to share it for work and/or school. The quality of internet access also varies, with some families lacking access to broadband service, resulting in slow or inadequate internet speeds.

Clients who rely on their cell phones for internet access may only be able to afford limited data plans. Those with a tablet or phone, but no computer, are hindered in their ability to complete online court forms or petitions.⁶¹ Cell phone access may also be limited, with clients needing to buy minutes and/or not having good cell phone coverage based on their location.⁶²

Some clients have been able to access the internet in public spaces, such as libraries. However, internet connections in public spaces are not necessarily secure. It is inappropriate to utilize these spaces for completing legal documents that require social security numbers and personal health information.⁶³ Limits on the amount of time one can use computers at libraries and other public spaces have also impeded the ability to navigate and complete lengthy forms.⁶⁴ Given the rampant policing of black communities, the ability to access the internet in public places such as a coffee shop or parks is hampered.⁶⁵

⁵⁹ Leah Goodridge, Esq.; Managing Attorney for Housing Policy; *Mobilization for Justice, Inc.* (virtual hearing testimony, November 18th, 2021, at approximately 2:24:40).

⁶⁰ Esposito; *Legal Aid Society of North Eastern New York*; (virtual hearing testimony, November 18, 2021, at approximately at approximately 1:11:52).

⁶¹ Cramer; *Legal Information for Families Today (LIFT)*; (virtual hearing testimony, November 18, 2021, at approximately at approximately 51:10).

⁶² Degnan; *Legal Aid Society of Westchester County*; (virtual hearing testimony, November 18, 2021, at approximately 2:10:01); Goodridge; *Mobilization for Justice, Inc.* (virtual hearing testimony, November 18, 2021, at approximately 2:25:52).

⁶³ Michael Conors, Legal Services of NYC (virtual hearing testimony, November 18th, 2021, at approximately 1:43:58).

⁶⁴ Conors, Legal Services of NYC (virtual hearing testimony, November 18th, 2021, at approximately 1:44:06).

⁶⁵ Goodridge; *Mobilization for Justice, Inc.* (virtual hearing testimony, November 18th, 2021, at approximately 2:26:44).

Clients with inadequate internet access have found virtual hearings challenging. For example, Family Court judges in New York City were insisting that parties appear by video without regard to a family's access to technology.⁶⁶

Family Court litigants who appear late for virtual hearings because of connectivity issues have found their hearings adjourned or even dismissed. As a result, attorneys representing clients in family court have had to spend time filing to re-calendar cases for clients who had a technology problem.⁶⁷

Even when hearings are telephonic, such as unemployment insurance hearings, clients may need to file documents electronically over the internet. Those without the means to do so are unfairly disadvantaged.⁶⁸

As courts were almost exclusively virtual for an extended period, the onus was placed on legal services providers to ensure their clients were able to participate in virtual proceedings. Some legal services organizations were able to access private funding to help address the digital divide. For example, as mentioned earlier, LIFT was able to access private funding to launch a Tech Hub for client use. Additionally, Brooklyn Defender Services was able to identify funding to provide a limited number of clients with tablets with data plans. However, the responsibility should not be solely on a client and their attorney to overcome obstacles to accessing technology to participate in proceedings.⁶⁹

Despite the availability of devices and the internet, some clients may lack digital literacy skills needed to access justice. Limited digital literacy has impacted clients across practice areas, including housing, elder law, and public benefits. Older adult clients have been particularly limited

⁶⁶ Anya Mukarji-Connolly, Esq.; Associate Director of Policy & Advocacy; *Brooklyn Defender Service*; (virtual hearing testimony, November 18, 2021, at approximately 1:33:20).

⁶⁷ Cramer; *Legal Information for Families Today (LIFT)*; (virtual hearing testimony, November 18th, 2021, at approximately 49:48).

⁶⁸ Stephanie Taylor, Esq.; Project Director, Unemployed Workers Project; *Volunteers of Legal Service (VOLS)*; (virtual hearing testimony, November 18, 2021, at approximately 1:13:40).

⁶⁹ Lisa Schreibersdorf, Executive Director, Brooklyn Defender Service; (written testimony submitted November 18, 2021, , page 8); and Cramer; *Legal Information for Families Today (LIFT)*; (virtual hearing testimony, November 18, 2021, at approximately 50:34 and 53:24).

by such digital literacy from effectively engaging in life planning at a particular time of vulnerability.

Lack of digital literacy also impeded the ability of litigants to complete online forms and participate in virtual court proceedings. Judges were not necessarily patient with clients struggling with technology during hearings.

A recent study by the Permanent Commission found that seventy-five percent (75%) of respondents needed help filling out online legal forms. In the public benefits context, barriers encountered included: the need for an email address to create an online account; multi-factor authentication; and requiring multiple accounts or apps to access benefits.

As legal services providers shifted from in-person to virtual intakes over the course of the pandemic, some providers noted a decrease in overall intakes, which may be related to digital access.⁷⁰ In addition, while community legal education doubled via virtual means,⁷¹ clients' lack of access to technology and limited digital literacy may have limited their ability to benefit from these types of services.

In the criminal justice context, clients' lack of access to technology limited the ability of public defenders to provide high quality representation as private face-to-face interaction was limited.

OCA Office of Justice Initiatives⁷² (OJI) offered testimony detailing how it helped bridge the digital divide. OJI has a collaborative approach to problem-solving and has created strategic partnerships with bar associations, law schools, law firms, and legal services programs to help fulfill its core mission of advancing access to New York's Justice system.

⁷⁰ Fecko; Interest on Lawyer Account Fund of the State of New York (IOLA); (written testimony submitted, November 23, 2021, page 2).

⁷¹ Fecko; *Interest on Lawyer Account Fund of the State of New York (IOLA)*; (written testimony submitted, November 23, 2021) (page 2).

⁷² Hon Edwina G. Mendelson; *New York State Unified Court System's Office for Justice Initiatives (OJI)* "Our core mission to ensure meaningful access to justice for all New Yorkers in all courts is more important than ever." Comments go on to detail efforts to promote access via the Policy and Planning Division, Child Welfare and Family Justice Division, Youth and Emerging Adult Division, Judiciary Legal Services Program, and the Access to Justice Division. (written transcript of virtual hearing testimony, pages 1-2).

During the pandemic, most of its programs shifted to a virtual format. They provided free legal consultations, prepared uncontested divorce papers, and extended outreach to vulnerable communities through “Know Your Rights” presentations in partnership with the Brooklyn Public Library.

Legal services providers offered several recommendations for eliminating the digital divide for indigent clients and reducing the unfair burden placed on legal services providers to facilitate client access to technology. Specifically, New York State should invest in increasing access to broadband internet service in low-income and under-resourced communities across the state. In addition, the New York State Court system should be responsible for ensuring access to justice by:

- Providing litigants with a choice between in-person and virtual court appearances.
- Providing litigants access to computers through the following mechanisms:
 - Offering designated private computer stations in courthouses and government agency buildings.
 - Coordinating with local shelters and libraries to provide a secure digital system that enables litigants to upload court documents and other paperwork relating to their proceeding.
 - Collaborating with community-based organizations to set up hubs where residents can borrow computers or tablets if they do not have one.
- Simplifying websites and online forms to make them more accessible for those with limited digital literacy skills and for those who rely on phones and tablets to access the internet.
- Developing a written policy that technology limitations will not be held against the parties in a proceeding.

VIII. Language Access

The COVID-19 pandemic has both exposed pre-existing failures of language access for limited English proficiency (“LEP”) individuals in New York Courts and created a new need for better language interpretation in written materials and during court proceedings.

More than two million New Yorkers are not fluent in English, while another three million do not speak English as their primary language.⁷³ In total, New Yorkers speak more than 150 languages.⁷⁴ The courts are required to provide adequate interpretation so that LEP litigants can meaningfully participate in proceedings.⁷⁵

Practitioners emphasized that meaningful language access must occur at all stages of litigation – from court websites explaining how to file and/or respond to a case, to initial meetings with assigned counsel and at hearings and trials in front of a judge.

As an initial matter, practitioners raise grave concerns that the courts do not provide written instructions for filing and answering litigation in the most spoken languages in New York.⁷⁶

Prior to the pandemic, would-be litigants could walk into the courthouse to seek advice on filing or answering. Court staff would either find an interpreter to assist or attempt to communicate using flyers or court forms. This was sub-optimal, but at least allowed many LEP litigants some access to justice.

With fewer in-person services available, it is now vital that this basic information be provided in multiple languages in a written format on the courts' websites. Court notices must also be offered in commonly spoken languages.

The failure to provide this simple accommodation has real-world effects; for instance, LEP appellants in hearings administered by the Department of Labor have accidentally defaulted on their hearings because the notice telling them to appear via video conference rather than in-person was sent only in English.⁷⁷ For all these documents, there must be access to a language line service that will be able to provide translation into less commonly spoken languages in New York.

⁷³ See New York State Unified Court System, “Ensuring Language Access: A Strategic Plan for the New York Courts” 1 (March 2017), <http://ww2.nycourts.gov/sites/default/files/document/files/2018-06/language-access-report2017.pdf> (citing U.S. Census Bureau, Language Statistics (2013), www.census.gov/data/tables/2013/demo/2009-2013-lang-tables.html).

⁷⁴ *Id.*

⁷⁵ 22 N.Y.C.R.R. § 217.1(a).

⁷⁶ Adriene Holder, Esq.; Chief Attorney of the Civil Practice; *The Legal Aid Society* (written testimony submitted, November 17, 2021; at page 13).

⁷⁷ Stephanie Taylor, Esq.; Project Director, Unemployed Workers Project; *Volunteers of Legal Service (VOLS)*; (written testimony submitted, November 18, 2021, page 1).

Similarly, it is vital that written instructions for joining and participating in virtual court appearances be posted in multiple languages. These instructions should include explanations of the procedure for calendar calls – often a moment for significant confusion – in relevant court systems. The New Jersey Court website features an instructional video on how to prepare for remote court hearings in Spanish, Haitian Creole, Korean, Polish, Portuguese, and Arabic. New York should similarly make this information available in a variety of languages.⁷⁸

Even more pressing is the need for improved interpretation during court proceedings. LEP litigants have found telephonic proceedings particularly difficult to understand, as it is not always clear who is speaking, and time is not generally allotted for interpretation of the full proceeding. Instead, interpreters often translate only when the LEP individual is speaking or being addressed directly. By contrast, during live proceedings the interpreter is generally seated near the LEP individual and can offer simultaneous interpretation of the entire proceeding. Proceedings via video conference are somewhat better than telephonic proceedings, as litigants can more easily identify the speaker. However, the problem remains that there is no way for functional simultaneous interpretation of the entirety of the proceedings.

As a result of these difficulties, live proceedings with full simultaneous interpretation should be the gold standard for cases involving LEP individuals. If live proceedings are not possible, every effort should be made to offer video proceedings with sequential interpretation of the entire proceedings. This is undoubtedly more time-consuming, as each statement must be followed by an interpretation of that statement. However, it is the only way to ensure that LEP litigants can meaningfully participate. Courts must therefore be aware that they should allot additional time for virtual proceedings involving LEP individuals. In the event of a telephonic hearing with an LEP participant, even more time must be allotted so that each speaker can identify themselves each time they speak.

LEP litigants who are assigned counsel must be provided an adequate opportunity to communicate with counsel through a language access line. Otherwise, the right to counsel in these cases is severely undermined by the inability of client and attorney to communicate regarding even

⁷⁸ Adriene Holder, Esq.; Chief Attorney of the Civil Practice; The Legal Aid Society (written testimony submitted, November 17, 2021; at page 14).

the basic facts of the case.⁷⁹ In some limited circumstances, New York City has funded a language line for assigned counsel, and the outcomes in those cases have been significantly better⁸⁰ Assigned counsel throughout the state should be provided access to a language line to ensure that the right to counsel is not meaningless.

IX. 18B Attorney Concerns

Additional funding for legal services during the post-COVID period is essential to providing direct representation and would allow for Court operations to normalize more from occurring in the future. Increased funding must also be directed to the Family Courts themselves, to obtain additional staff, referees, and magistrates, to handle the initial surge of cases in a future health crisis, and the corresponding overload of docketed cases.⁸¹

There is a general shortage of 18B attorneys, which further prolongs cases. Hourly rates for 18B lawyers should be increased to provide incentives to bring more attorneys into the various programs available to the thousands of pro se clients coming to court.

X. Conclusion

The delivery of legal services to low income, disabled and elderly communities around New York State will continue to be a challenge as we build back from the pandemic. By gathering testimony and developing this report, we hope that we can all learn from the collective experience of the legal services community. In that way, the entire state is better prepared for the next emergency and can avoid the needless suffering of our most vulnerable neighbors.

⁷⁹ Sarah Tirgary, President of the Assigned Counsel Association-NYS (written testimony submitted, November 17, 2021; at page 1-3).

⁸⁰ Sarah Tirgary, President of the Assigned Counsel Association-NYS (written testimony submitted, November 17, 2021; at page 1-3).

⁸¹ Ognibene; *Her Justice*; (written testimony submitted, November 18, 2021, pages 7-8).

XI. Appendices - Organization Testimony

- A. ACA-NYS, Inc.**
- B. Brooklyn Defender Services**
- C. Her Justice**
- D. Hon. Edwina G. Mendelson**
- E. Interest on Lawyer Account Fund (IOLA)**
- F. Legal Aid Society of Northeastern New York**
- G. Legal Aid Society of Westchester County**
- H. Legal Information for Families Today (LIFT)**
- I. Nassau Suffolk Law Services Committee Inc.**
- J. Neighborhood Legal Services, Inc.**
- K. Pro Bono Net**
- L. The Bronx Defenders, Brooklyn Defender Services, Center for Family Representation, and Neighborhood Defender Service of Harlem**
- M. The Legal Aid Society**
- N. University at Buffalo School of Law Family Violence and Women's Rights Clinic**
- O. UnLocal**
- P. Volunteers of Legal Service (VOLS)**

APPENDIX A

Testimony of Sarah Tirgary, President of the Assigned Counsel Association – NYS before the commission on November 16, 2021.

Good Afternoon;

My name is Sarah Tirgary and I am President of the Assigned Counsel Association of NYS, an organization that is approximately 5 years old, whose mission is to bring about improved access to resources for the assigned counsel panel attorneys and their clients, as well as to facilitate better communications between the courts, and our attorneys. Our goal in a nutshell is to advocate for improvements in the quality of legal representation of indigent clients and children.

Our members represent almost every county in NYS – each having their own unique demographics and bureaucratic structure.

Most if not all attorneys on the Assigned counsel panels (family, criminal and appellate panels alike) maintain their own private practices, yet are each bound together by one common factor – they represent some of the most vulnerable members of our communities within NYS- including indigent adults and children.

Our attorneys are some of the most qualified and talented attorneys in their field of practice, yet during COVID, these attorneys have been limited in what they CAN accomplish for their clients due to their lack of access to resources.

Our association recognizes the unique needs of each individual county. Having worked primarily in NYC in the county of Queens, I am intimately familiar with NYC issues, but have recently learned of many issues concerning upstate counties.

In the midst of this pandemic, most if not all courts at one point or another reverted to a 100% virtual court system. One thing that stands out in a virtual practice for counties with a diverse cultural make up is the inability for our attorneys to communicate with our non-English speaking clients. Although our panels are made up of the most racially and ethnically diverse group of attorneys, we cannot guarantee at any given time of day that we have available an attorney with language skills to match the language needs of a client. These clients are exposed and vulnerable, experiencing a trauma that often times is considered unspeakable. We have been in situations on almost a daily basis where we cannot speak with our clients with the aid of an interpreter. This is unforgiving, especially since the solution to this problem is so simple.

The need for our access to a telephonic interpreter services was made known to the NYC MOCJ on numerous occasions. We were repeatedly told 'we will have to get back to you'. Months would go by when we would not hear a word so we would have to email again the ACP administrator to ask for a status update, only to be told 'I will get back to you but completely understand the dilemma'.

The constitutional right to effective assistance of counsel is undermined when an attorney cannot speak with their client using the same language skills. Access to justice is completely undermined when we don't have access to a telephonic interpreter services in a virtual world. This is having a disproportionate impact on people of color, denying them access to justice at a time when their families are potentially being torn apart. Please note that when courts were in person, on the first day that we are assigned to represent a client, we could ask an interpreter in the courthouse to help interpret for us right before the case was about to be called. This situation was not ideal as it rushed us, not allowing clients to tell their story. This problem became magnified as we are now unable to speak at all with our clients unless we use google translate or a comparable translation app. We all know these translation apps are ineffective.

To demonstrate how access to resources such as a telephonic interpreter service can improve the outcome of a case, I give you another example. In Queens County, the assigned counsel attorneys recognized the growing surge in domestic violence and child abuse due to people sheltering in due to the pandemic. Children no longer had their teachers or guidance counselors to report abuse or neglect, survivors of DV were not missed at work or school when they didn't show up, or if they showed up with bruises. Our attorneys in Queens formed what is now known as the O Squad. WE formed an alliance with the Family Justice Center a Mayoral agency who makes sure that survivors are put in touch with appropriate resources. IN this example, the FJC would connect survivors with agencies who are mandated to assist them in accessing services, including legal assistance.

Our attorneys, upon receiving a referral, would meet with the clients on the phone, draft a petition, file it, and appear on behalf of the client. For these cases, the NYC Mayor's office, FJC DID give us access to a telephonic interpreter service for the life of the case. However, the Mayor's office refuses to provide us with access to the same service for representation of all other types of adult.

In cases where we represent survivors of DV through the O Squad program, our attorneys have been able to successfully represent hundreds if not over a thousands of survivors, particularly non-English speaking clients. Our petitions

were thorough, succinct, and told a story that interwove the specific body of law that was violated. Sworn pleadings must be complete, dependable and reliable. Without an interpreter, a client could not swear to the contents of a petition.

This program was so successful that we formed another alliance with the District Attorney's office in filing family offense petitions for survivors who had their criminal case jeopardized due to a technicality, not on the merits of the case. Again we were given access to a telephonic interpreter service by the NYC Mayor's office. However we were not given access to such a service for our other cases.

The reason why these two scenarios are so important is so that we can demonstrate how access to basic resources enable us to successfully and robustly represent a client in court. Effective communication with our clients ensures that pleadings are reliable and accurate. Our panels have seen first-hand how access to resources have made a profound difference in the quality of our advocacy. In the case of NYC not paying for us to have access to a telephonic interpreter for our regular intake days, we cannot adequately or robustly represent a client without being able to speak with them in their native tongue.

It must be noted that NYS who is responsible for managing the AFC panel, does provide their attorneys with immediate access to a telephonic interpreter service. Why should adults not have similar access?

Whether a client is represented by an assigned counsel attorney or an IP, and whether a client is a child or an adult, all clients should be given access to the same resources so that attorneys can represent them with the same robust advocacy. Regardless of who pays us, clients of NYS should benefit from being able to access through their attorneys the same services.

We are ultimately failing families by not being provided them with the same access to basic services. The pandemic has magnified this disparity, making it obvious to us how such denial of basic resources is disproportionately impacting people of color.

Changing the subject to something unrelated, I would briefly like to move on to one more issue— and that is the elephant in the room which is the heavy caseloads that our attorneys are now carrying due to the failure of NYS to raise the rate of pay of assigned counsel attorneys in about 18 years.

While the ACANYs, along with all NYC bar associations, the Macon B Allan Black Lawyers Association, Metropolitan black lawyers association, Asian American lawyers association and Latino Lawyers Association have filed a lawsuit against NYC and NYS alleging ineffective assistance of counsel due to the lack of increase in statutory rate of pay of assigned counsel attorneys, we do not stop there. Our mandate is to improve services for our clients. If our attorneys are carrying high caseloads due to our inability to retain qualified attorneys, then each client cannot possibly get the amount of attention that they need and deserve. Instead of hiring institutional providers to do this work at an enhanced rate of pay, it is incumbent upon the state to restore the assigned counsel panel, provide us with access to sufficient pay and access to necessary resources.*

We cannot wait any longer to address these issues. We are in the midst of a crisis – a crisis that is impacting primarily people of color -both clients and attorneys. This is a pandemic that has been going on for years before COVID. We are asking for access to the same services regardless of what language our client speak or their age. Without equal access to services, people of color and children will remain vulnerable, disenfranchised and impoverished.

I thank you for this opportunity and appreciate the effort that this commission is making to help improve the quality of representation of the indigent and children.

*Highlighted portion was not mentioned at the hearing as I didn't think it applied to the discussion.

APPENDIX B



Written Testimony of Lisa Schreibersdorf, Executive Director, Brooklyn Defender Services

Presented Before The New York State Bar Association President's Committee on Access to Justice and Committee on Legal Aid

Joint Public Hearing on Access to Justice in a Post-COVID Legal Landscape

November 18, 2021

On behalf of Brooklyn Defender Services, I offer this written testimony to the New York State Bar Association's President's Committee on Access to Justice and Committee on Legal Aid to accompany the oral testimony our organization gave on November 18, 2021. Thank you to the Committees' co-chairs for holding today's joint hearing on access to justice in a post-COVID legal landscape.

Brooklyn Defender Services (BDS) provides multi-disciplinary and people-centered criminal, family, and immigration defense, as well as civil legal services, social work support and advocacy to nearly 30,000 people and their families in Brooklyn every year. In addition to zealous legal defense, we provide a wide range of legal services and advocacy to meet our clients' unique needs. Our expertise lies in the intersection of the criminal legal, immigration, and family regulation systems that disproportionately target low-income communities of color. In many cases, our advocacy is of a preventive nature, helping people maintain or access housing, immigration status, public benefits, education and employment.

In March 2020, when the COVID-19 pandemic first emerged in New York City, our office—like many others—immediately pivoted online to protect our clients and staff while continuing to represent and support our clients in the midst of the growing crisis. The COVID-19 pandemic has disproportionately impacted the communities our office serves. The disparities in healthcare, employment, and housing that put communities of color at greater risk of being targeted by the legal and court systems have also put them at greater risk of illness and death during this pandemic. Our clients lost loved ones, jobs, housing, access to their children in the foster system, and delays in accessing relief in their court cases. As the pandemic grew in New York City, hundreds of people we represented were being held in unsafe conditions inside City jails and

immigration detention. We filed unique legal proceedings in criminal and immigration courts and ultimately secured the release of dozens of people. In the early months of the pandemic, we fought to reunite or ensure in-person contact for families separated by the foster system. We provided families with the technology they needed to maintain contact until it was safe to visit each other in person. We conducted virtual Know Your Rights trainings so that the communities we serve knew about the housing moratorium, changes to how to access court and how to access emergency assistance.

Once the courts closed their doors in March 2020 and moved to virtual appearances, we worked diligently to protect our clients' due process rights and to ensure they had access to counsel and the technology needed to participate in their virtual court appearances. In the nearly two years since the pandemic began, we have advocated for continued access to court without compromising the health and safety of staff and those we serve. Once criminal court resumed limited in-person court appearances, we advocated for stronger protective measures inside court and for non-dispositive proceedings to be held virtually.

We have entered a new stage of the pandemic in New York which gives us an opportunity to reflect on many of the systems that have long needed reform and new solutions to address these longstanding issues. More than ever, this crisis has forced us to consider the intersecting institutions and legal systems that surveil, control, and oppress people in low-income communities of color. The pandemic and the swelling national movement for racial justice provide a unique opportunity to consider the ways that our legal systems operate and the impact on the communities it targets. With increased access to COVID vaccines and the anticipated re-opening of courts this is a crucial moment to reconsider the status quo in this harsh and often degrading and dehumanizing court system.

BDS represents people in criminal, family, immigration, and housing court. While there are many similarities in how the COVID pandemic has impacted these four court systems, the solutions needed to ensure greater equity in these court systems will vary from court to court. Below, I address how the pandemic has impacted the court systems in which we work, in most cases exacerbating an already flawed system, and our recommendations for immediate steps needed to right some of the most pressing wrongs to ensure greater access to justice and to protect the due process rights of litigants.

Criminal Court

The COVID-19 pandemic hit New York just as the State began implementing groundbreaking criminal justice reforms. These historic reforms were designed to address a system that continually and disproportionately impacted Black and Latinx/Hispanic/Latino/a/é communities, especially pretrial mass incarceration. When the pandemic struck, many procedural protections

enshrined in the Criminal Procedure Law (CPL), including the newest reforms, were suspended through a series of overly broad executive orders. Courts acceded to former Governor Cuomo’s unnecessary suspension of key procedural safeguards. The results have been disastrous: New York City’s jail population is now higher than it was before the pandemic.¹

At the emergence and height of the COVID pandemic, as infection rates were surging across the State, some emergency measures—such as the suspension of grand juries and in-person arraignments—were necessary. All cases were administratively adjourned as the courts began to adopt remote technology to conduct virtual court proceedings. Virtual arraignments began immediately. Despite the new bail laws, courts flouted the spirit and goals of these reforms. Bail was set in many more cases and in higher amounts.² At the same time, procedural deadlines designed to protect the rights of persons held in pretrial detention were suspended and many of our clients faced weeks, if not months, in jail without due process hearings. Prosecutors needed to say nothing more than “COVID-19” to justify continuing to hold our clients behind bars. The courts went along with this systematic abridgment of due process and agreed that CPL §§180.80 and 190.80 were indefinitely suspended. Cases were adjourned repeatedly while our clients languished in jail at heightened risk of exposure to the virus.

In May 2020, courts began to schedule virtual preliminary hearings to satisfy the time requirements in CPL §180.80. Meanwhile, pretrial incarceration rates continued to climb. Prosecutors were given license to choose which cases were deemed worthy of preliminary hearings. In many Article 130 cases, prosecutors simply refused to conduct preliminary hearings citing the alleged sensitive nature of the allegations and courts went along, allowing indefinite detention of the accused. In other cases, judges rubber-stamped the allegations after perfunctory virtual preliminary hearings and found probable cause that a felony had been committed.

In all cases, speedy trial under CPL §30.30 was deemed suspended even after prosecutors could obtain supporting depositions in misdemeanor cases, and some grand juries were convened. Throughout much of this time period, prosecutors were more than capable of turning over discovery and meeting their deadlines under CPL Article 245. To this day, prosecutors have not offered any plausible explanation of their claimed inability to turn over discovery, and simply assert they were not legally required to do so under the executive orders. Without access to

¹ In the first quarter of 2020, when bail reforms took effect, the pretrial jail population reached a record low of under 4,000 people. (See https://www.criminaljustice.ny.gov/crimnet/ojsa/jail_pop_v.pdf)

² Comparing the pre-pandemic period (January 1-March 16, 2020) to the final quarter of 2020, bail-setting rose from 10% of cases to 18% among nonviolent felony charges, and from 44% to 56% among violent felony charges. See “Closing Rikers Island: A Roadmap for Reducing Jail in New York City,” by the [Independent Commission on New York City Criminal Justice and Incarceration Reform](#) and the [Center for Court Innovation](#) (July 2021). (<https://thecrimereport.org/2021/07/21/rikers-closure-called-model-for-shrinking-jail-populations/>)

discovery, plea dispositions stalled because defense lawyers did not have critical information to assess the evidence and advise their clients³.

Given this background, remote technology is just one factor in any analysis involving access to justice. Constitutional and statutory protections limit the utility of virtual court appearances.⁴ More than a year and a half later, as criminal justice system stakeholders ponder access to justice and what it means, those ensnared in the system remain marginalized. Hearings and trials may have resumed. Virtual appearances for case conferences are still occurring. But access to justice is still being denied, especially to those who remain behind bars.

The New York City Police Department (NYPD) has continued to vilify bail reform with false and misleading fear mongering. Despite data that show otherwise, the Mayor and NYPD continue to cite a rise in violent crime when, in fact, violent crime has gone down. Prosecutors persist in asking for bail in higher amounts and in more cases and judges continue to routinely accede to their requests.

Over the past year, fourteen people have died while incarcerated at Rikers Island, an unprecedented number. The inhumane conditions at Rikers Island have made national news to the disgrace of the City and the entire criminal justice system.⁵ Weak responses to the Rikers crisis and the backlog of cases have failed to address the underlying problems or causes that led to this crisis in the first place. Transferring sentenced people and all women to State prison facilities is merely a temporary and inadequate band-aid on the real problem of mass incarceration. And the transfers have resulted in other kinds of injustice. With persons locked away far from their communities, there are serious concerns about visits with attorneys and family members. It remains to be seen how the New York State Department of Corrections and Community Supervision (DOCCS) will provide for early morning transportation from upstate facilities to New York City courts for in-person appearances, an indispensable right for those who are incarcerated and have little opportunity to speak with their attorneys in person. Despite all these problems, judges continue to agree to prosecutors' requests for bail in amounts that are unreachable. In fact, in its report, *Closing Rikers Island: A Roadmap for Reducing Jail in New York City*, the Independent Commission on New York City Criminal Justice and Incarceration Reform and the Center for Court Innovation, estimates that the pretrial jail population could be reduced by 750 to 1100 people if affordable bail were set, or pretrial services properly utilized.

The experience of virtual court proceedings over the course of the pandemic has revealed that these proceedings often provide the appearance—but not the reality—of fairness. Virtual court proceedings should have no place in criminal justice when important rights are under

³ C.P.L. §245.25 requires the prosecution to turn over discovery 3 (for unindicted felonies) or 7 days (for indicted felonies and misdemeanors) prior to the expiration of a plea offer.

⁴ N.Y. Const., art. I, § 6. C.P.L. §182.30.

⁵ <https://www.nytimes.com/2021/09/15/nyregion/rikers-island-jail.html>

consideration by the court. And virtual proceedings are especially inappropriate when the defendant is incarcerated. Throughout the pandemic, our incarcerated clients have had to struggle to follow—and be heard—in virtual court proceedings conducted using broken or malfunctioning equipment and in the loud environment of a jail. BDS clients were often torn away from court proceedings because their pre-arranged timeslot had expired and another defendant’s case was scheduled to begin. Confidential attorney-client communication has been hampered by software that did not readily allow for private conversations. Virtual court proceedings can promote efficiency, eliminating transportation costs and the waiting time and inconvenience that precede routine court appearances in situations where “nothing of substance will be determined.”⁶

Recommendations for Criminal Court:

- The statute authorizing virtual court proceedings should be expanded to cover all counties in New York (it currently applies in only 27 of New York’s 62 counties).
- The existing limitations on the use of virtual proceedings should largely be maintained. Virtual proceedings should never be allowed—even with purported consent of the defendant—for initial criminal court arraignments or any pretrial hearing or trial. The stakes are simply too high at these proceedings to permit the use of anything other than a traditional in-person appearance.
- Prosecutors and judges have broad authority to reduce the pretrial population by ceasing to seek and to set bail. Prosecutors should consent to the release of people on their own recognizance or supervised release rather than sending them to Rikers.

Family Court

Like the criminal legal system, race and poverty are defining characteristics of the family regulation system.⁷ Poor communities and communities of color are disproportionately impacted by the state’s family regulation system. In New York, Black children make up 40% of the children in foster care yet make up only 15% of the children in the state, whereas white children make up 25% of the children in foster care and 48% of the children across the state.⁸ Black children also fare far worse in the foster system and have much longer stays within the system.⁹ Moreover, investigations and involvement in this system are pervasive in New York City’s communities of color—recent research has shown that 44% of Black children in New York City are investigated and approximately 6% are placed into the foster system, and that 43% of

⁶ Preiser, Practice Commentary McKinney’s Cons. Law of New York, CPL Article 182

⁷ Many, including scholar Professor Dorothy Roberts, have come to refer to the “child welfare” system as the family regulation system, given the historical and current harms perpetuated by the system. *See e.g.*, Dorothy Roberts, “Abolishing Policing Also Means Abolishing Family Regulation”, *The Imprint* (June 16, 2020), found at: <https://imprintnews.org/child-welfare-2/abolishing-policing-also-means-abolishing-family-regulation/44480>.

⁸ <https://ocfs.ny.gov/main/reports/maps/counties/New%20York%20State.pdf>, page 7.

⁹ <https://www.gao.gov/new.items/d07816.pdf>, page 4.

Latinx/Hispanic/Latino/a/é children in New York City experience an investigation.¹⁰ Over 90 percent of our family defense clients are people of color living in poverty, often raising their children in homeless shelters or public housing, and in neighborhoods that are subject to extensive police surveillance.

Even prior to the onset of the COVID-19 pandemic, our staff routinely bore witness to the ways in which court personnel, including judges and court officers, dehumanized and disrespected the largely Black and Latinx/Hispanic/Latino/a/é families in the courthouse. Parents were often referred to by generic labels like “birthmother” or “subject-child” rather than by name; an expression of grief or anger was treated as dangerous or a sign of untreated mental illness and not approached with compassion; families were forced to wait for hours to go before a judge or only to find out that the matter had been adjourned; and families’ knowledge of their own needs and bonds were routinely disregarded.

We witnessed the ways in which this disregard manifested in the practical functioning of the courthouse, including prioritizing court time for proceedings—such as termination of parental rights trials—that severed family bonds, rather than litigation that kept families together or reunited families; failing to hold counsel for the New York City Administration for Children’s Services (ACS) accountable for causing court delays due to failure to provide timely discovery and settlement offers; limiting defense counsel’s time and ability to present a robust defense; and disregarding the importance of giving counsel time to meet and interview a parent or caretaker prior to being first assigned for representation.

Many of these inequities were amplified as the family court transitioned to virtual proceedings early in the COVID-19 pandemic. Our office saw an increase in the disrespectful and dehumanizing language used to speak to both families in the court system and our staff. The disrespectful treatment of families has included judges ejecting parents from virtual courtrooms when they did not want the parent to speak and using abusive language towards parents who were unable to appear by video. Our staff—particularly our staff of color—have also experienced being denigrated by judges in the presence of their clients, which is not only unacceptable, but compromises the attorney-client relationship and undermines the goal of objectivity in the court system.

The transition to virtual courtrooms has also hampered families’ ability to fully assert their due process rights, and attorneys’ ability to fully advocate for their clients. The detrimental impact of virtual proceedings on the experience of parents in court—particularly during initial “intake”

¹⁰ Kinya Franklin & Sara Werner, *‘A Call to Action’: New Research Finds Extremely High Rates of Investigations of Black, Brown and Native Families*, Rise Magazine (Nov. 3, 2021), <https://www.risemagazine.org/2021/11/a-call-to-action-research> (citing Frank Edwards, Sara Wakefield, Kieran Healy, Christopher Wildeman, “Contact with Child Protective Services is pervasive but unequally distributed by race and ethnicity in large US counties,” *Proceedings of the National Academy of Sciences* 118 (Jul 2021)).

appearances and contested and complex litigation—as well as the ability to maintain a high-level of zealous representation cannot be overstated. Counsel must build a trusting attorney-client relationship in mere minutes over the phone prior to an initial appearance. During a court appearance, it is difficult—if not impossible—for attorneys and their clients to communicate privately, which not only prevents counsel from incorporating a parent’s personal knowledge and opinions about their families into of-the-moment litigation decisions, but also prevents counsel from being able to answer a parent’s questions and ensure that they understand what is happening in court. A parent and family’s humanity can be lost in virtual proceedings: a parent cannot make eye contact with a judge or best-establish their credibility during emotional testimony. And when a court appearance is traumatic, counsel is not able to reassure and support a parent in a pivotal point in their attorney-client relationship. This is especially important in family court proceedings, which affect a parent’s ability to keep their family together, are highly emotional, and during which the parent may feel as if all the other parties are against them.

Vitality, only a small portion of attorneys have access to the Universal Case Management System (UCMS), which is the only way for counsel to access court orders—including orders of protection—and other critical information about court matters, severely limiting advocates’ ability to zealously represent parents. This lack of access preceded the onset of the COVID-19 pandemic and given the disproportionate impact of the family regulation system on families of color, full access to this needed information is a matter of equity.

At the onset of the COVID-19 pandemic, the court prioritized creating a system that allowed for ACS to seek the removal of children from their families, and then failed to set up an adequate process by which families could contest these separations. This failure led to long delays in the commencement and conclusion of emergency hearings that could reunite families¹¹. The court proceeded to allocate long periods of virtual court time for trials in termination of parental rights matters, without regard for the importance of in-person proceedings for these sensitive trials. The court has stated that there is access to in-person courtrooms but then has routinely denied our requests to use those courtrooms for these trials and other complex litigation.

The transition to virtual court proceedings has also created the unique challenge of reaching and then communicating with a parent or caretaker at the filing of a new neglect or abuse petition (“intake”). The first meeting between a parent and their attorney is pivotal—it sets the tone for a robust and trusting attorney-client relationship. Moreover, as crucial decisions about a family—including whether they will be separated—are made at the first court appearance, it is vital for a parent to have the time and space to share facts and guide representation prior to that appearance. In this virtual world, ACS is tasked with supplying parents’ phone numbers to defense counsel prior to intake. This is often done so at the last possible minute and frequently the numbers provided are incorrect. If the attorney can reach the parent at the number provided, they must

¹¹ Emergency hearings pursuant to Family Court Act Sections 1027 and 1028.

introduce themselves and the entire process of a court proceeding, create a trusting rapport, and confirm a legal strategy in mere minutes, usually without even having received a copy of the petition setting forth the allegations against the parent. Often at that point of first contact, parents are not fully aware that they are respondents in a legal matter, nor that the government will be asking to remove their children from their care. Currently, the court is scheduling these first appearances within minutes of when—and at times even before—the assigned attorney receives a copy of the petition, rather than when counsel and parties are truly ready to proceed. This prioritization of court efficiency overdue process for families has intensified the inequities that existed within our court systems prior to the onset of the pandemic.

Certainly, a key issue in the transition to virtual proceedings is families' lack of access to Wi-Fi or data plans, hardware, and safe and confidential spaces to participate in their court cases. The onus has been and continues to be on organizations like BDS to ensure parents have this needed access. Our experience is that judges insist parents and caretakers appear by video without regard to a family's lack of access and counsel's limited resources to assist. We have done our part by securing separate funding to provide a limited number of parents a tablet with a data plan and by creating confidential and equipped spaces in our offices for our clients to appear by video. However, as meeting these needs is a matter of ensuring a fair and accessible court system – the responsibility should not be solely on a parent and their attorney.

At the same time, the ability to access court by phone or video has made court proceedings – particularly those appearances that are routine or uncontested – much more accessible for some parents, including those who work, have young children at home, must take their children to or from school, or do not have the resources to travel to court. The families before the court are diverse, and as such, the Court should make a variety of efforts to increase accessibility and equity within the court system to meet all families' needs.

To that end, a hybrid model of both in-person and virtual proceedings, including by phone and video, are needed to increase equitable access to all court proceedings. Such a hybrid model should include access to in-person courtrooms for respondents in Article 10 cases for first appearances where crucial decisions regarding a family are made; access to all court appearances by phone and video; and access to video equipped spaces for litigants who do not otherwise have this technology. In the same vein, the implementation of the Electronic Document Delivery System (EDDS) has simplified court procedures and any plan to improve the court system should include a fully electronic filing system for family courts, in addition to full access to UCMS.

Recommendations for Family Court:

- Efforts should be made to get feedback and recommendations from those directly impacted/litigants in family court.

- Family courts should provide technologically equipped in-person facilities and ensure the parties' access to the court, as well as issue a written policy that technology limitations may not be held against the parties.
- Family courts should provide litigants and counsel timely and meaningful access to in-person courtrooms for complex litigation.
- All attorneys and attorney offices should be granted immediate access to the court's Universal Court Management System (UCMS) and work directly with impacted people and counsel to develop how the system will be used.
- The courts should prioritize enhanced and expanded interpretation services for additional languages beyond Spanish.
- Steps must be taken to end the daily acts of racism and discrimination by judges and court employees toward litigants and staff of color before the court and create clear reporting mechanisms for when they occur and institute measures of accountability.

Housing Court

Housing Court is the state's most voluminous civil court, and the vast majority of its cases are summary eviction proceedings, brought by landlords to quickly evict tenants. Tenants of color are disparately represented in these eviction proceedings. As of 2020, tenants of color were three to four times more likely than white tenants to report that they had fallen behind on their rent or deferred payment; they were also two to three times as likely as white tenants to have little to no confidence that they could pay next month's rent on time. Latinx/Hispanic/Latino/a/é tenants faced the highest rates of housing instability: more than a third are behind on their rent and nearly half had little to no confidence in their ability to make next month's rent on time. Compared to renters nationwide, Asian and Latinx/Hispanic/Latino/a/é tenants in the New York City metro area are at much greater risk for losing their housing.¹²

The COVID-19 pandemic has exacerbated New York City's existing housing crisis and compounded its disproportionate effect on tenants of color. The same communities and neighborhoods that have historically borne the most eviction filings have been disproportionately ravaged by the COVID-19 pandemic, have been slowest to recover, and will be at greatest risk of eviction when the moratorium expires in January.¹³

Housing court has been operating primarily virtually since the outset of the pandemic and expects to continue with a "remote-first" practice going forward.¹⁴ While our client population tends to have inconsistent access to technology, remote-first practice was less of an issue in the earlier months of pandemic housing court practice as moratoria were in place and the court was not issuing default judgments. As a result, the impact of the pandemic on day-to-day operations

¹² <https://www.cssny.org/news/entry/race-evictions-new-york-city>

¹³ <https://www.brookings.edu/research/the-coming-eviction-crisis-will-hit-black-communities-the-hardest/>

¹⁴ <https://www.law360.com/articles/1366647/takeaways-from-a-pandemic-year-in-nyc-housing-courts>

of housing court has yet to be fully realized. As we prepare for the expiration of the last eviction moratorium, cases are moving forward with both virtual and in-person appearances after eighteen months of remote operation. As of September, housing court has resumed mandatory in-person appearances for all new eviction cases. Tenants are connected with potential counsel at a preliminary “intake” virtual appearance, and then are required to appear in-person in housing court at the next appearance, presumably by or with their newly acquired counsel.¹⁵

While there is access to justice concerns for *pro se* remote proceedings, requiring tenants and attorneys to appear at mandatory in person appearances *after* they have been connected with counsel is unsafe, unhealthy, and most importantly unnecessary, especially as the Delta variant persists. Brooklyn Housing Court is situated in a building that was repurposed and is not equipped for safe in-person appearances. The hallways are narrow, the facilities are old, not thoroughly cleaned, and not designed for crowd flow.¹⁶

Further, the very purpose of the in-person appearance, to further negotiation between the parties, necessitates close communication and discussion—in other words, the court is directing that parties not observe social distancing in court. These appearances are risky for all litigants and parties, and especially tenants, attorneys and staff with disabilities or pre-existing conditions. Advocates have attempted to draw attention to this issue for the past eighteen months, yet the Office of Court Administration has not promulgated alternatives or provided a clear process to request a reasonable accommodation.

Given the ordinary course of housing court proceedings there is no reason in-person appearances cannot be agreed upon, or even mandated by a particular judge, on a case-by-case basis.

Recommendations for Housing Court Post-Moratorium:

The statewide eviction moratorium is set to expire in January, at which point pending cases will move forward, courts will issue new warrants of eviction (including from default judgments), and marshals will be able to execute existing warrants. We expect that tens of thousands of tenants will be at risk of eviction.

The slower pace of housing and eviction proceedings over the past eighteen months should be a source of reflection and reexamination of housing court and its processes. We recommend that housing courts reframe themselves as a place that protects tenants’ rights and promotes safe stable housing, as opposed to serving as a debt collection and eviction certification tool for landlords. While this suggestion seems radical given the current priorities of housing court, we recommend that the courts’ reorientation can be framed as a return to the original purpose—a

¹⁵ <https://www.law360.com/pulse/articles/1423389/nyc-housing-court-mandates-some-in-person-appearances>

¹⁶ <https://www.nydailynews.com/new-york/manhattan/ny-nyc-courthouses-crowdrx-report-unsafe-conditions-coronavirus-20201001-avpvzs435jd6xkxiuvq4z5cii4-story.html>

forum for “the enforcement of housing standards ... a necessity in the public interest”.¹⁷ In the current climate, enforcing not only housing standards but providing access to legal assistance and financial relief, mitigating the public health crisis of COVID-19 and ensuring equities should also be priorities for the housing court system. While the introduction and administration of the ERAP program was an important step towards linking eviction proceedings with positive tenant-based assistance, this funding has already been exhausted and we have not even reached a point where evictions can legally resume.

To this end, we recommend the following.

- Housing courts should ensure all tenants facing eviction are aware that they have the right to an attorney before courts issue any new judgments or warrants. While the “intake” part system is theoretically ensuring access to counsel, the process is confusing and chaotic. This court appearance should not be the only chance provided to tenants for accessing counsel. Tenants should receive notice simultaneously with predicate notices and their court notices that free lawyers are available and be encouraged to seek out such assistance before their court date, or even before a case is filed. Access to legal advice when a notice is received, before a court case has been filed, can often result in pre-litigation solutions that save time, money, and judicial resources. Once a case begins, Judges and court staff should be directed to connect litigants with counsel at every possible opportunity and provide such options to tenants well in advance of any discussion of the substance of their proceeding. To make the “Right to Counsel” a meaningful right, all parts of the court system must be active in ensuring that tenants are aware and advantage themselves of this right.
- Robust protections for any tenants who are not represented by counsel are needed. Given the disparities in access to technology, we recommend that such tenants are not subject to default judgments.
- Unrepresented tenants should be given clear communication about the option for virtual or in-person proceedings. While we are opposed to any one-size-fits-all mandate for in-person appearances, access to such appearances may be essential to litigants who are not comfortable with, or do not have the ability to use, internet court access. This option should be clearly communicated in every notice that tenants receive.
- Housing courts must implement a clear and visible process for tenants with disabilities to obtain reasonable accommodations related to their court appearances. Notice to tenants should include details on in-person and virtual appearances as well as accommodations to ensure that tenants who are hard-of-hearing, blind or low-vision and with mobility issues can still access the court process. The onus of providing this information should be on the court, and tenants with disabilities should not need to seek out assistance merely to ensure their due process rights.

¹⁷ <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1457&context=ulj>

- Ultimately, if we are to stem the tide of the eviction crisis that will occur once the moratorium expires in January 2022, tenants will need financial support and both tenants and landlords will need assistance. Without additional programs and funding for rental assistance the vast majority of tenants facing eviction will be unable to avoid losing their homes in the long term which will have ripple effects on children, employment, communities and ultimately, New York. Those that can avoid being evicted over unpaid rent may still face civil judgments for tens of thousands of dollars in unpaid rent. While the moratorium was an essential component in minimizing the public health impacts of the pandemic, especially for communities of color, it also resulted in unpaid rent reaching staggering amounts. Vouchers and programs that previously could have been accessed to encourage a landlord to sign a new lease will be unavailable where a tenant owes \$60,000 in rental arrears. We should not lose sight of the continued increase in self-help evictions and illegal lockouts or of the necessity of continuing to push for programs that can help provide permanent housing stability and avoid evictions, not just delay them through additional due process procedures.

Immigration Court

Immigration courts fall under the jurisdiction of the Executive Office for Immigration Review (EOIR) which is an office of the Department of Justice (DOJ). The immigration court system is made up of various administrative immigration courts throughout the United States and the Board of Immigration Appeals (BIA), an administrative appellate body also known as the Court of Immigration Appeals. There are seven immigration courts in the state of New York, three of which are located in New York City. The immigration judge is responsible for conducting removal proceedings and has the authority to decide whether an immigrant respondent may remain in the United States.

The Varick Street Immigration Court in New York City remained open throughout the pandemic and cases involving detained immigrants continued to proceed via video teleconference as they had since 2018. Most attorneys appeared via telephone though some chose to appear in person. Then on March 27, 2020, the Varick Immigration Court transferred all of its hearings to appear before immigration judges in Fort Worth, Texas and Fort Snelling, Minnesota. New York City-based attorneys were given the option to appear virtually before these judges in-person from the Varick Immigration courthouse or to appear telephonically.¹⁸ The respondents, who were in ICE detention, appeared via video teleconference from the county jail at which they were held.

The non-detained immigration courts in New York City, which are among the largest and busiest immigration courts in the country, were closed for over a year. After nearly sixteen months,

¹⁸ Mazin Sidahmed, “The Varick St. Immigration Court Has Moved All of Its Hearings to Fort Worth” (March 27, 2020) available at <https://documentedny.com/2020/03/27/the-varick-st-immigration-court-has-moved-all-of-its-hearings-to-fort-worth/>

EOIR resumed virtual hearings on a limited basis in non-detained cases at the Broadway Immigration Court and the Federal Plaza Immigration Court on July 6, 2021.

During the COVID-19 pandemic, New York City’s immigration courts handling the cases of detained respondents increased the use of remote telephone and video court appearances. In our experience, these remote appearances run counter to due process, exacerbate inequity, deprive respondents of access to counsel, prejudice *pro se* respondents and rob immigrants from an opportunity to fully access the courts and participate in their defense. Generally, hearings in removal proceedings can be conducted in person, telephonically or via video conference.¹⁹ Prior to the pandemic, immigration removal proceedings had been predominantly in-person for both the detained docket at the Varick Immigration Court and the non-detained docket at the Broadway Immigration Court and the Federal Plaza Immigration Court. The use of video teleconferencing technology became more widespread in New York City in June 2018 when, without prior notice, ICE’s New York Field Office began conducting removal proceedings at the Varick Immigration Court exclusively by video teleconferencing. Under this practice, immigrants detained by ICE appeared by video feed from the county jail at which they were held. This practice proved problematic and led to immigrants being unable to fully and fairly participate in their own hearings or fully and fairly present their defenses to removal.

Video teleconferencing is an unreliable and an ineffective tool for conducting immigration hearings in a manner consistent with due process both for immigrants who are detained in custody of the Department of Homeland Security (DHS) and those not detained, particularly considering the stakes involved. Video teleconferencing prevents litigants from being able to fully and fairly participate in their own court proceedings – hearings which decide their fates. Removal proceedings often hinge on judicial determinations of character, truthfulness, remorse, and an individual's recollection of personal history and personal accounts. In most cases, these determinations cannot be effectively or fairly made over video teleconference appearance. Instead, they require an in-person representation before an immigration judge with all parties including the government attorney, interpreter and in some cases, witnesses present. Video teleconferencing often does not allow respondents to properly hear the judge, speak to their attorneys, or fully see and understand what is happening during their hearings.

¹⁹ INA § 240(b)(2)(B). INA § 235(b)(1)(B)(iii)(III); 8 C.F.R. § 1003.25(c). The use of video teleconferencing to conduct hearings in immigration courts is contemplated in the Immigration and Nationality Act (INA) and have been historically used in other parts of the country, particularly in rural detention settings and at the border. Pursuant to current EOIR policies regarding the use of technology to conduct hearings, EOIR’s use of video teleconferencing is usually “determined principally by operational need—e.g., to reach locations where no permanent immigration court is located; to increase convenience and accessibility for respondents; to reduce travel costs; to consolidate and manage dockets.” See INA §§ 235(b)(1)(B)(iii)(III), 240(b)(2)(A)(iii); Maya P Barak, *Can You Hear Me Now? Attorney Perceptions of Interpretation, Technology, and Power in Immigration Court*, *Journal on Migration and Human Security* (2021) available at <https://journals.sagepub.com/doi/pdf/10.1177/23315024211034740>

Exacerbating the challenges of remote court appearances, most respondents in immigration proceedings have limited English language proficiency.²⁰ Besides logistical hurdles on how interpretation is made available, existing issues with interpretation itself have been complicated by remote translation which impact the quality of the interpretation. There is no right to interpretation during a removal hearing. Oftentimes, interpretation is only provided when a respondent is speaking or being directly spoken to. This practice deprives respondents of the right to understand the entire proceedings – proceedings which are determining the fate of their lives. Moreover, there is no right to translation of court notices, there are no interpreters available at the court windows or at the main court number where respondents are often directed to call when trying to figure out what's going on with their case. The importance of language access cannot be overemphasized since immigration proceedings are often multilingual and because immigrants must be able to understand what is happening in their own proceedings and ensure their testimony is clearly conveyed on the record.

Prior to the COVID-19 pandemic, the US immigration court system was suffering from a significant backlog of cases, among other inefficiencies and a lack of fairness. Pending cases in immigration courts had an average wait time exceeding four years, including cases that require urgent attention, such as those seeking asylum and humanitarian relief.²¹ COVID-19 exacerbated these delays and caused many disruptions to immigration court operations, including postponed proceedings, court closures, and led to an expanded use of video or telephone conferencing to conduct proceedings throughout the country. There are currently 1.4 million cases pending in the entire United States, with 161,562 cases in New York.²²

Unlike with the criminal legal system, because removal proceedings are deemed civil matters, immigrants facing removal are not afforded the right to an attorney if they cannot afford one. This leads to a high percentage of *pro se* respondents in immigration courts. When removal proceedings moved to virtual courts, *pro se* respondents lost access to the EOIR Self-Help Legal Centers which provide general legal information, *pro se* legal forms and lists of pro bono legal service providers. Detained immigrants, with many in remote locations, face even greater obstacles. Where there are no universal representation models such as New York's Immigrant Family Unity Project or non-profit Legal Service Provider programs through VERA's SAFE Cities network, unrepresented individuals face insurmountable hurdles when it comes to retaining counsel due to the lack of in-person appearances.

Some immigration practitioners must also practice in state court as part of their representation of an immigrant client. Special Immigrant Juvenile Status (SIJS) provides a pathway to lawful

²⁰ Maya P Barak, *Can You Hear Me Now? Attorney Perceptions of Interpretation, Technology, and Power in Immigration Court*, *Journal on Migration and Human Security* (2021) available at <https://journals.sagepub.com/doi/pdf/10.1177/23315024211034740>

²¹ <https://www.aila.org/advo-media/issues/all/featured-issue-immigration-court-backlog>

²² https://trac.syr.edu/phptools/immigration/court_backlog/

permanent residence and citizenship for children who have been deemed abused, abandoned, or neglected by one of their parents. An application for SIJS requires lawyers representing these children to first go to the state court systems before submitting an application with immigration. In New York, these matters fall under the jurisdiction of the state family courts.

In New York City, family courts closed their doors in March 2020 and began operating by video and telephone to adjudicate essential and emergency matters. As of November 2021, the court is now open for the initiation of new cases involving non-essential and non-emergency matters. However, there is a long backlog. For SIJS cases, this translates into a system that is accepting filings but is plagued with extreme delays in the adjudication of most petitions.

Recommendations for Immigration Court:

- EOIR should conduct hearings in person unless the immigrant provides a knowing and informed waiver of the right to appear in person.
- For any hearings conducted in a remote or hybrid manner, EOIR must coordinate different players who need to participate in the proceedings. Right now, the systems in place are not working and have placed the burden largely on legal services providers who lack adequate resources to tackle these issues affecting client representation.
- For video teleconference hearings in cases where the respondents are detained, EOIR should impose and enforce the burden on Immigration and Customs Enforcement (“ICE”) (or its agents in local facilities) to certify that the area where the detained respondent is participating in the hearing via is indeed “closed”—without the presence of any ICE officers, corrections staff, or other detainees.
- EOIR should provide rooms in the courthouse for providers to speak privately and confidentially to unrepresented respondents—regardless of whether they appear in person or via video—prior to their appearance at an initial master calendar hearing.
- EOIR should provide dedicated, confidential spaces—along with sufficient technology, logistics, and IT support to maintain those spaces—in the courthouse where people in proceedings can meet with counsel either in person or by video before, during (i.e., via breaks) and after hearings.
- Regardless of whether proceedings are conducted in person or by video, EOIR should prioritize ensuring that families can attend court appearances and people can see their loved ones.
- EOIR should also facilitate access to the necessary technology for remote video teleconference appearances. One way is to provide internet portals and/or stand-alone kiosks at the court building to allow respondents who are unable to otherwise access remote proceedings to appear. EOIR must also prioritize providing real-time assistance from court personnel.

- Immigration judges should be encouraged to exercise their discretion to order in-person production in an individual case or for an individual appearance based on due process considerations. Factors that immigration judges should consider include:
 - Potential for sensitive testimony
 - Potential competency issues or other vulnerable characteristics (e.g., age, mental or physical health, disabilities) that would render testimony and participation via VTC problematic
 - Reliance on an interpreter for extensive or complicated proceedings or testimony
 - Repeated technological breakdowns, in an individual case or systemically at a facility (e.g., dropped or busy lines, interpretation problems) that require adjournment or rescheduling
 - Evidence filed late by the government, particularly related to criminal issues or impeachment, or
 - Any other issues that may impede a fair hearing.

Conclusion

Once again, I would like to thank the President's Committee on Access to Justice and the Committee on Legal Aid for holding today's important hearing on access to justice in a post-COVID legal landscape. Much of the current legal landscape has been dramatically altered by this terrible health crisis that has wreaked havoc on the lives of the most vulnerable. This tragedy has laid bare many of the inequities in the fabric of our society, including our legal and court systems. Amid this tragedy, we have an opportunity to change the legal landscape and to create a more equitable court system. We are encouraged by the joint two-day hearing held by your committees and the Bar's commitment to ensuring access to justice in a post-pandemic landscape. We look forward to continuing this conversation with your committees. If you have any questions or concerns, please do not hesitate to contact me at (917) 593-0078 or Lschreib@bds.org.

APPENDIX C



Testimony: Anna Ognibene, Supervising Attorney, Her Justice
Hearing: New York State Bar Association: Access to Justice Post-COVID
Hosts: President’s Committee on Access to Justice and Committee on Legal Aid
Date: November 18, 2021

Thank you for the opportunity to submit testimony regarding access to justice in the “post-COVID landscape”. I am a Supervising Attorney at Her Justice, a legal services organization dedicated to serving low-income women in New York City. My practice focuses on the Family Court in all five boroughs of New York City, which is the basis of my testimony before these Committees.

As will be discussed below, and as the Committees heard from many providers during these hearings, the COVID-19 pandemic exposed significant barriers to justice faced by the most vulnerable New Yorkers. Rather than being caused by the pandemic, though, these barriers existed well before this current crisis hit. Clearly, there have been some uniquely pandemic-related disruptions: closing the New York City Family Court for 14 months caused significant back-ups and delays that will be felt by Family Court litigants for a long time. However, the Family Court, like other underfunded pro-se courts, already suffered from access issues and long wait times, which the COVID-19 crisis only brought to the fore.

The disruption caused by the pandemic, ironically, gives us a unique opportunity now to build back better: we can make broad changes so that a “post-COVID landscape” can look significantly better than the pre-COVID one. As a “pro bono first” organization, Her Justice can offer insight into ways to make the Family Court more accessible—not only to the communities who rely on it for basic safety and financial protections, but also to pro bono attorneys who want to serve these communities. More engagement from the private bar in pro bono service will help to close the gap in services felt by low-income New Yorkers.



Organization Background

At Her Justice, we serve women living in poverty in New York City by providing free legal help as they navigate the civil justice system for urgent legal needs in the areas of family, matrimonial and immigration law. While so many things in our lives were put on pause due to the COVID-19 pandemic, the legal needs of our clients—and the essential services we provide—were not. In 2020 alone, Her Justice provided a range of legal help to more than 6,900 women and their children. Our service delivery model makes us unique: our small legal department of 25 (who speak 10 languages other than English) recruits, trains and then serves as virtual mentors to volunteer attorneys from the best firms across the City. These volunteer lawyers then stand side-by-side with women who would otherwise have to navigate the complex legal system on their own. Our pro bono first model has enabled us to assist tens of thousands of women over the years, far more than we could have reached relying exclusively on direct service.

We believe that the client-centered services we provide must also be paired with policy work, to advance systemic reform while meeting individual need. In this way, we create a virtuous cycle of change, advancing systemic solutions that are informed by the lived experience of our clients. Through our pro bono model and policy reform work, we begin to break down systemic barriers that are built into our civil justice system, barriers that reinforce and exacerbate economic, gender and racial imbalances.

Her Justice clients come from all over New York City: 31% live in Queens, 28% in Brooklyn, 22% in the Bronx, and 15% in Manhattan. They also represent New York City: 54% are Latina, 25% are Black and 11% are Asian or from another minority group. We find clients through our live legal helpline and by partnering with community-based organizations. All our clients are in critical need of legal support; 80% are survivors of intimate partner violence; 71% are mothers; and 62% were born outside of the U.S.



Family Court closed for most cases for 14 months during the pandemic, creating harmful gaps in protection and case delays that will last for years.

Although those who practice in Family Court were familiar with the difficulties that came, even pre-COVID, from it being over-burdened and under-funded, the stress of the pandemic and the sudden closure of court buildings made an imperfect system essentially non-functional, resulting in harmful delays and backlogs that affected the most vulnerable populations and their ability to address basic safety and financial needs.

From the start of the pandemic, when courthouses abruptly closed, the Family Court distinguished between cases that were “essential” and those that were “non-essential.” “Essential” cases were allowed to be filed and heard, and “non-essential” cases were turned away, with no indication of when they might be accepted again. The Court’s definition of “essential matters” included child protective matters, orders of protection, and juvenile delinquency matters. Notably missing from this list of “essential” matters were custody, visitation, and child support matters.

What designation of custody/visitation matters as “non-essential” meant for our clients was that they were left entirely on their own to figure out complex and controversial parenting issues, often with co-parents who were uncooperative or abusive. Ever-evolving CDC and government guidelines about lock-down, mask-wearing, socializing versus social distancing, in-person versus remote school, travel restrictions, and quarantining were difficult enough for parents to navigate for their children even when they had amicable relationships with each other. But for our clients in volatile relationships, pandemic parenting issues became ways that an abuser could assert power and control, with essentially no accountability. For example, our clients’ abusers could insist they bring their children on long trips on public transportation in order to comply with visitation that had been ordered before the pandemic, because our clients had no way to go back to court and ask for an amended order based on the changed circumstances of the pandemic. Our clients were faced with the choice of having to accept untenable and unsafe demands from their abusers, or resort to



self-help, which could trigger a judge’s ire or even police intervention if there was an existing order being violated.

It was also confounding that the Family Court deemed support cases to be “non-essential”, and refused to schedule or hear them, given how clearly the pandemic wrought financial havoc on low-income communities. Many of our clients were employed in service positions, such as food service, cleaning, or home health aides, and lost their jobs. Many of our clients are undocumented immigrants, and thus did not qualify for public assistance, unemployment benefits, or the CARES Act relief. Without a court to mandate child support, our clients found themselves completely without means of support if their partners walked away and refused to support their families voluntarily. In this period, some of our clients reported that their ex-partners told them, “I’m not going to give you a penny, and there’s nothing you can do about it.”¹

One Her Justice client grew so desperate after the Family Court declined to hear her support petition that she felt she had no choice than to leave the state with the children to stay with family, where at least they would have housing and childcare. After his refusal to pay child support drove the client to this decision, her abusive partner then filed an emergency writ of habeas corpus to force her to bring the children back to New York (at her own expense); *that* petition was accepted and heard. In other words, the Family Court was not available to our client to help her feed her children, but was available to her abuser to allow him to keep her trapped in a city she could not afford. Months after being ordered to leave her support network and come back to New York City, the client is still waiting for her first appearance on the child support petition and even a temporary order.

In May 2020, to address the lack of access to child support through the courts, Her Justice and other legal services providers submitted a letter to New York State court

¹ At the same time, over in Civil Court, debt collection filings by creditors against our clients were permitted to continue, even while our clients were cut off from child support to help pay those debts, and in fact may have been forced into debt to cover their expenses in the absence of this income.



administrators urging them to accept new petitions (both to establish support and to modify orders of support) for purposes of preserving filing dates for retroactivity of support. We also urged court administrators to allow support applications as “emergencies,” an approach that Her Justice and our pro bono attorneys pursued in individual cases, submitting orders to show cause with evidence of parents’ dire financial hardship. (These individual case requests were all denied.) The court administration responded by stating that the New York City Family Courts would accept petitions for downward modification from *payors* of child support, but not that *custodial parents* who so desperately needed child support would also be able to file petitions.²

Even now that Family Court has adopted virtual hearings and, since Spring 2021, reopened for “non-essential” petitions, this change has not been well-communicated to the public. To date, the Family Court website still advertises that it is “currently accepting only emergency/essential applications”³ and is “not yet open for the initiation of new cases involving non-essential and non-emergency matters.”⁴ In effect, this means that parents are most likely to know that their custody or child support petition can now be filed if they are lucky enough to have access to a lawyer with this inside information. Further, since this change has been seemingly communicated from the courts on an ad-hoc basis during meetings with advocate groups, even lawyers have not always been sure which Family Court in which county is accepting what type of cases.

Further, litigants who are able to learn that their petitions will now be accepted are then waiting months for any action on their petitions. Some of Her Justice’s clients, who have needed child support since 2020 but are only just now able to file, are being given return dates—their first opportunity to ask for even a temporary order of support—in 2022.

² These letters are on file with Her Justice; *see also* the Family Court website at <https://www.nycourts.gov/LegacyPDFS/COURTS/nyc/family/Notice%20on%20Child%20Support%207.pdf> – giving instructions to litigants on how to file a request “to change your order of support because of a change of circumstances such as a loss of your job or funds.”

³ <https://www.nycourts.gov/LegacyPDFS/COURTS/nyc/family/fact-sheet-for-FamCt-public-website.pdf>

⁴ <https://ww2.nycourts.gov/coronavirus-and-new-york-city-family-court-29611>



Our clients, who are single mothers trying to juggle closed schools with low-wage jobs that sometimes do not entitle them to paid sick leave, cannot wait two years for financial support.

A “post-COVID” Family Court should remove the existing barriers for litigants to participate in their own cases, which will also make it easier for the private bar to provide pro bono services to fill in the gaps.

The Family Court’s challenges serving vulnerable populations were exacerbated by the pandemic and court closures described above, but this “pro se friendly” court has always been difficult to navigate without an attorney, even for the most basic cases. The website, as discussed above, has out-of-date information, is not translated into multiple languages, and is inaccessible to those people who cannot read or do not have reliable internet access. At the courthouses, there is a lack of staff or information posted giving directions about how, what, and where to file. As one Her Justice client said about information posted in the courthouse: “Even with the know your rights posters they have, I didn’t know mine.”⁵ Language barriers compound the challenges for non- or limited English speakers, and the court administration’s efforts to convey information in plain language do not go far enough.

The first step in creating the “post-COVID” Family Court should be simplification of court forms and processes, and enhancement in litigant education.⁶ Simplified financial disclosure forms, for example, and clearer instructions for those forms, will help litigants participate more fully and with greater accountability in their support cases and will benefit the efficiency of the process overall. Attorneys should not be a necessity for simple cases, for example child support cases where both parties’ incomes are fixed and on-the-books, or

⁵ See Her Justice, *Towards Justice for Parents in Child Support Courts* (March 2021), available at: <https://herjustice.org/childsupportpolicyreport/>.

⁶ See American Academy of Arts & Sciences, *Civil Justice for All*, at 21 (2020) (noting “Simplification should proceed on the assumption that most people pursuing matters in court are not lawyers and do not have lawyers representing them....”), https://www.amacad.org/sites/default/files/publication/downloads/2020-Civil-Justice-for-All_0.pdf.



routine tasks, for example putting in an answer to a Civil Court consumer debt case to avoid default.

Ideally, simplification and education would allow many more people to successfully pursue and resolve their cases without an attorney, and ease the pressure on legal services organizations who can then focus their efforts on those complex cases that would most benefit from direct representation. Currently, legal services organizations in New York City are so stretched beyond their limits by the overwhelming demand, that clients report many places are not even picking up the phone. More legal services funding is necessary to address the alarming gap in services for some of the most life-altering cases.

Pro bono services complement traditional legal services. With Her Justice's experience as a "pro bono first" organization, we know very well the power of pro bono to make a difference to our clients: Her Justice serves women in a broad range of Family Court matters, but we put particular focus on cases for which there is no right to counsel and/or where traditional legal services may not have capacity. Given our pro bono attorneys' access to volunteer forensic accountants, our service delivery model can be particularly effective for child support cases, custody or order of protection matters when there are evidentiary issues and private counsel representing the opposing party, or other complex cases that benefit from additional resources. At the same time, we are keenly aware that Family Court operations pre-COVID made it challenging for pro bono attorneys to participate in many cases. We believe that improvements in the operations of and access to Family Court for the benefit of litigants will in turn encourage greater participation by private sector attorneys in critical pro bono representation.

Adjournments and Long Delays

Long delays between court appearances have become a way of life since COVID-19 closed courthouses. While courts were completely closed during the height of the pandemic, existing cases did not move forward, and new filings were not accepted. Now court



personnel are trying to work through a more-than-a-year backlog of already filed cases, while managing the surge of new petitions that could not be filed during the closure.

As described above, custody and child support cases address some of our clients' most critical safety and security needs. A Family Court litigant should not have to wait two or more years for resolution on where their children will live or how they will support them. Additionally, pro bono attorneys at private law firms are often unable or unwilling to commit that length of time to one pro bono case. High associate turnover and the unpredictability of billable workflow means that many would-be volunteers do not feel comfortable taking on a Family Court case that might require them to appear in court multiple times over multiple years.

More funding *must* be directed to the Family Court to hire additional staff, Special Referees, and Support Magistrates and start tackling this critical backlog of the Family Court dockets. The caseload is simply not manageable at the current staffing level, and will only result in cascading delays as more and more people learn that their petitions can now be filed again.

On the other hand, sometimes adjournments are necessary to the litigants and attorneys, because of scheduling conflicts, or the hope that a case will settle. While other courts allow adjournment requests by email or phone, Family Court has the Catch-22 that the only sure way to request an adjournment is to appear in person at the date sought to be adjourned. In the "post-COVID landscape", where more business can be done electronically, the Court administration should create a platform on the Family Court website through which adjournments could be requested and approved in advance of an appearance.

Virtual Appearances and Times Certain

Pre-COVID, there were almost no times-certain given in Family Court appearances. This meant that a litigant had to take an entire day off work, risk losing a day's wages, and secure childcare to move their case along. Sometimes, the litigant might wait in Family Court



all day, only to be called shortly before the end of the day and given an adjourn date with no actual discussion of the substance of the case. In some cases, the long wait and adjournment might be because the other party or attorney did not show up, or came late, often with no accountability. As a Petitioner seeking child support, one failure to appear meant the case was dismissed altogether and had to be started over from scratch. But for Respondent-payors, not showing up, or showing up unprepared, simply meant that the case would be adjourned to another date, and it would take several rounds of this before there were any meaningful consequences. Frustrated with the amount of time spent in Family Court with no perceived progress, many of our clients abandoned their cases. Because they were not getting child support in the first place, they could not afford to take so much time off work to seek child support.

This inefficient scheduling of cases also created a high barrier for pro bono volunteers to take on direct representation. Unlike dedicated Family Court practitioners or 18B court appointed attorneys, who might appear on multiple cases in Family Court in one day, pro bono attorneys would generally be in Family Court for one case only. We often heard from these volunteers that they simply do not have the flexibility to be away from the firm and sit in Family Court for an entire day only to be in front of the referee or magistrate for five or ten minutes.

The advent of virtual appearances during the pandemic has eased some of this burden, as appearing virtually means that litigants do not have to take an entire day off work or seek childcare, and pro bono attorneys do not have to miss an entire day of billable work.⁷ Of course, virtual appearances have their own set of challenges which must be considered—not all litigants can participate easily. Some do not have reliable internet access, or do not have a safe or private place to conduct sensitive court proceedings from home. Virtual

⁷ Virtual appearances can also be safer and more comfortable for victims of intimate partner violence, who no longer have to spend the day sitting in a court waiting-room with their abuser, or risk being followed home and having their confidential location compromised.



courtrooms make it difficult for attorneys to have private conversations with their clients, and technical difficulties and glitches by the court have resulted in some cases being unfairly dismissed, when the litigant tried to appear but was unable to log on.

These challenges can be worked through with proper investment in technology infrastructure and training, and should not be a reason to discontinue virtual appearances in a “post-COVID” landscape. Virtual appearances will not be appropriate for all instances or all people, but they can be a powerful way to streamline the process and cut down the amount of time litigants and attorneys spend on cases.

Further, for virtual appearances as well, but *especially* for appearances that resume in-person, the court should offer times-certain to reduce the amount of inefficient wait time that is currently keeping both the litigants and potential pro bono volunteers from being able to participate meaningfully.

E-filing and electronic access to files

Family Court has always had a paper-filing system. Only the most basic case information is available on the “eCourts” website, and even then only when a case has a pending court date. Pre-COVID, filings of new petitions had to be done in person with the petitions clerk, and anyone needing to access their own files had to appear in person in the records room. When the courthouses closed, the Family Court cobbled together a hybrid email/mail system of filing and requesting records, but, especially at the beginning of the closures, with confusion about the procedure by attorneys and court personnel alike, many petitions were simply getting lost: sent to email addresses that no one was checking, or mailed in envelopes that no one was opening.

As difficult as this can be for our clients, our pro bono attorneys, many of whom are used to practicing in well-funded federal courts (which were able to remain open and run largely without interruption through the pandemic), are always surprised that there is no way for them to log in and get access to their client’s court file when taking representation



of a new case. With no way for attorneys to access a case’s docket history electronically, they must rely on their client’s reports of what happened in previous appearances—oftentimes when the client herself was confused and did not understand much of what happened. In addition to case files, individual court’s rules of practice are not readily available online, which puts pro bono attorneys who do not regularly practice in Family Court at a disadvantage as compared to “insiders” who are familiar with the various particularized rules from regular practice in the Family Court.

Since the pandemic started, the Family Court has started accepting electronic documents through EDDS, which allows for the uploading of court documents, but is not an “e-filing” system in that it does not automatically deem such documents “filed” or “served”. The argument against using an electronic court docket in Family Court has typically been concern around protecting the sensitive and confidential nature of personal matters. That said, matrimonial cases in Supreme Court, dealing with many of the same issues, can now be electronically filed, served, and accessed using the more robust and feature-rich NYSCEF system. If Family Court adopted the NYSCEF online docket system, it would allow both litigants and their pro bono attorneys much greater access and flexibility than requiring them to travel to the courthouse in person to file court documents or access records.

Conclusion

The Family Court must prioritize speeding up cases, working through its backlog, and respecting litigants’ and attorneys’ time and competing needs. Simple cases could be streamlined by giving litigants accessible information in their language to empower them to go forward without a lawyer. By hiring a sufficient number of court personnel and fact-finders, these simple cases could likely be resolved in only a couple of appearances, allowing the litigants to focus on their employment and their families’ needs with minimal disruption.

For more complex or contentious cases that benefit from attorney representation and need judicial attention, changes to Family Court forms and procedures could reduce delays,



and allow Her Justice and our pro bono partners, along with legal services attorneys, the ability to handle more cases efficiently, thus better serving the most vulnerable populations. At the same time, these changes would create a more equitable and empowering experience in court for litigants.

We commend the Association and the Committees on their dedication to addressing the impact of the COVID-19 pandemic on access to justice in New York, and we hope that this testimony has served to render more visible the hardships many of our clients face in this challenging time and the opportunity for the courts to build back better for those they serve.

APPENDIX D

Hon. Edwina G. Mendelson
NYS Deputy Chief Administrative Judge For Justice Initiatives
Remarks - NYSBA Access to Justice Hearing—November 16, 2021

Thank you for the opportunity to present remarks today at this very important hearing. I thank the NYSBA President's Committee on Access to Justice and the Committee on Legal Aid for gathering us to listen and learn from each other about the impact of Covid-19 on low-income New Yorkers in the court system and on legal services and pro bono providers of legal services.

I provide comments today in my capacity as statewide Deputy Chief Administrative Judge for Justice Initiatives, a position I have held over 4 years now.

I hope my remarks provide information about our court efforts to promote access to justice during the lengthy ongoing COVID-19 pandemic season—I find hard to believe and to say this, but we are entering the 20th month of pandemic life.

I hope to also highlight our plans to promote justice in its aftermath, which will be our new, and perhaps in some ways better, normal.

I am also here today to listen and to learn. Know that my team and I serving in the Office for Justice Initiatives promise to take in all that is presented to us at these hearings with open ears, minds, and hearts, as we consider ways to enhance and promote meaningful access to justice for all New Yorkers today and going forward.

The portfolio of our office has grown over these years and now operates in five divisions—all with Access to Justice as their mission.

- Our **Policy and Planning Division** is where we address foreclosure policy endeavors, as well as provide oversight and support for our more than 300 problem-solving accountability and intervention courts. These include our groundbreaking opioid courts, drug courts, family treatment courts, veterans' treatment courts, mental health courts, human trafficking intervention courts, domestic violence and integrated domestic violence courts, young adult and juvenile treatment courts, community courts, and impaired driving courts.
- Our **Child Welfare and Family Justice Division** includes the work of the Child Welfare Court Improvement Project where we promote safety, stability and permanent homes for children and families involved with the child welfare system.
- Our **Youth and Emerging Adult Division** is where we provide training, guidance and support to our courts in the ongoing implementation of the recent laws Raising the Age of criminal responsibility. Here we have added a newer policy focus on the 18-25 year old emerging adult criminal justice population. Those working in the Access to Justice field know that criminal justice system involvement leads to a host of collateral consequences impacting the essentials

of life legal needs, so our focus on promoting access to justice extends to this area.

- Our core mission to ensure meaningful access to justice for all New Yorkers in all courts is more important now than ever. Connected to our Access to Justice work is our programmatic oversight of the **Judiciary Civil Legal Services Program**, which provides 100 million dollars yearly to enable so many New Yorkers to have their life essential legal needs met. JCLS funding ensures that low-income New Yorkers have meaningful access to the courts and the legal assistance in the following areas: (i) housing matters (including evictions, foreclosures, and homeless prevention); (ii) family matters (including domestic violence and family stability); (iii) access to health care and education; and (iv) subsistence income (including wages, disability and other benefit entitlements, and consumer debts).
- Our **Access to Justice Division** manages a variety of court and community-based self-help service programs, including pro bono volunteer attorney and other volunteer programs, establish and support Help Centers throughout the state, launch technological initiatives to enhance justice for New Yorkers and provide many other resources designed to serve unrepresented court users, including those developed specifically to help court users navigate our virtual court operations ushered in by the Covid-19 public health crisis.

Partnerships with local bar associations, law schools, legal services providers, law firms, and community organizations remain key to many of our access to justice endeavors, and throughout this extremely long pandemic season, we have continued to work closely with all our justice partners—many of whom have or will provide testimony at this hearing.

Our goal is to re-imagine and strengthen our existing programs, as well as create new ones to address emerging needs.

To meet our goals and the public need, we have successfully shifted many of our programs and initiatives to virtual formats so that we may continue to provide program services, while reducing our physical footprint in our courthouses as necessary for public health reasons.

I will highlight some of our programs:

We have created virtual pro bono assistance programs connected with New York City's Family Court, Civil Court and Supreme Court.

- Our NYC Family Court Volunteer Attorney Program creatively transitioned from an in-person model to a virtual model by partnering with the private bar and using technology to provide free legal consultations to clients with limited resources. Using both low and high-tech methods, the program has expanded its reach, enabling diverse clients with limited resources to access legal help without having to travel, lose work time or find childcare. This model also significantly expands the pool of volunteer attorneys and facilitates their participation.

- In Civil Court my office works with the City Bar Justice Center to offer free online and phone consultations to unrepresented litigants in New York City Civil Court. Volunteer attorneys provide legal advice and guidance on a variety of Civil Court matters including Small Claims, Name Change, Security Deposit Issues, Warranty of Habitability, Consumer Debt, Judgment Collection/Payment, and Service of Papers.
- In the Supreme Court we operate the Virtual Uncontested Divorce Volunteer Attorney Program that assists unrepresented litigants with the preparation of uncontested divorce papers.

We have established a partnership with the Brooklyn Public Library co-hosting virtual “Know Your Rights” presentations. A new series will begin early next year and will run quarterly. We will begin with the topic of Eviction Prevention and Housing Court matters.

Statewide, we worked with the NYS Unified Court System/New York State Bar Association’s COVID -19 Recovery Task Force to provide pro bono legal assistance in child support and child guardianship matters. That was done with great support from LIFT and private bar leaders in coordination with court managers throughout the state.

My office piloted transition of our popular Court Navigator volunteer program from an in-person, in-courthouse program to a virtual platform last summer which expanded its reach to courts throughout the state. Court Navigators were also assigned to assist in-person at the 9th JD Help Center and at houses of worship that are part of the 9th Judicial District Faith Based Court Access Initiative. We are now developing plans to expand the Virtual Court Navigator Pilot Program to additional locations.

The work we have done to continue to support those in our community who are especially vulnerable and at risk is especially important.

Our office has long overseen the Guardian Ad Litem Program in the NYC Civil Court Housing Court for quite some time. The program recruits, trains, and provides Housing Court Judges with a pool of GALs whose goal is to safeguard the rights and prevent the eviction of some of New York City’s most vulnerable people. The work continued throughout the pandemic. OJI is supporting current efforts to expand this popular program to Westchester County.

Still on the topic of supporting vulnerable communities: we have recently received a grant from the US Department of Health and Human Services Administration for Community Living that will enable us to implement a uniform, modern data tracking system to give court officials, particularly judges and court examiners, a continuous and complete overview of the services being provided to incapacitated individuals needing court assistance, as well as engage in other system improvement endeavors in that arena.

We are user testing, and soon preparing to launch, an Elder Abuse Self-Assessment Tool developed in collaboration with the Center for Elder Law and Justice, the Weinberg

Center and the NYS Unified Court System’s Division of Technology. It is designed to provide older adults with community-based resources tailored to the needs that are identified by their response to a brief series of questions.

And, as part of the statewide Rural Justice Working Group, we are working to identify and reduce rural justice challenges and facilitate remote access to courts by creating additional Community Court Access Programs (CCAP)—access stations linking litigants to virtual court proceedings in community-based settings like libraries, community centers or houses of worship. This past year we have supported CCAP sites in the 3rd, 5th, and 9th JDs.

Working with the Brownsville Community Justice Center, we have piloted a court community access hub in NYC with more to follow.

I will spend a few final moments discussing our court system’s efforts to promote racial equity.

Access to justice and racial equity are inextricably intertwined.

Earlier this year at her annual Hearing on Civil Legal Services, Chief Judge DiFiore expressed this sentiment this way, and I quote: “The access to justice crisis is, in so many vital respects, a racial and equal justice crisis affecting the legitimacy of our system”.

To understand the context for our court system’s recent work in this area, I bring us back to the painful time of late May 2020 and the horrific circumstances of the death of George Floyd that we all witnessed together on our screens and devices. That is what has brought us to this moment where we are experiencing our most recent racial reckoning in our society and in our institutions, including our courts.

During this same time—some refer to it as the pandemic within the pandemic—and closer to home for those who work in the courts, our equal justice work was desperately needed to respond to disturbing racist social media depictions made by our very own court employees.

We needed to act decisively, and we did.

The unique response of Chief Judge Janet DiFiore, who like other court leaders throughout the country was asked to respond to what was happening in our society, was to appoint a highly respected former Presidential Cabinet member—Secretary Jeh Johnson—to conduct a searching review of our entire court system as it regards racism, discrimination, bias and fairness. What followed was Secretary Johnson issuing a deeply painful to read 100-page report that I commend to your attention and my subsequent appointment to the assignment of a lifetime—to implement the recommendations made in that report.

Joining me in our equal justice in the courts work are a remarkable number of deeply invested and hard-working judicial leaders, staff and interested stakeholders of every type and in every region of our state.

They and we have been acting nonstop to address the recommendations made by Secretary Johnson. Later this week, Chief Judge DiFiore will present a report to the public highlighting our efforts to promote racial equity in our courts. Please look out for it.

At this time, I will only discuss with you the first recommendation of the 13 we are implementing, and the one considered most important to Chief Judge DiFiore, which is that we make a firm commitment from the top to embrace zero tolerance for racial bias. To further the goals of our commitment, we drafted and issued a new mission statement that I wish to recite to you. I'm quite proud of it:

The mission of the Unified Court System (UCS) is to deliver equal justice under the law and to achieve the just, fair and timely resolution of all matters that come before our courts.

(traditional and important and likely found in most judiciary mission statements in our country)

(Here is the new part—the part that excites me and I hope inspires you, as it does me)

In the service of our mission, the UCS is committed to operating with integrity and transparency, and to ensuring that all who enter or serve in our courts are treated with respect, dignity and professionalism. We affirm our responsibility to promote a court system free from any and all forms of bias and discrimination and to promote a judiciary and workforce that reflect the rich diversity of New York State.

Our courts' new mission statement—aspirational at this time, but a work in deep progress—is access to justice in action. That is our commitment and our calling as a court.

I end with thanks for the opportunity to greet you and learn from you all at today's hearing and the session to follow later this week.

I leave you with full acknowledgment and recognition that we remain in a season of immense legal and health challenges for so many in the communities in which we live and those in which we are privileged to serve.

I express my sincere hope and desire that you and all your loved ones remain very healthy and stay well!

APPENDIX E

Interest on Lawyer Account Fund of the State of New York

Funding civil legal assistance for low-income New Yorkers since 1984

MEMORANDUM FROM:

CHRISTINE M. FECKO Esq.
General Counsel



DATE: November 23, 2021

TO: New York State Bar Association's President's Committee on Access to Justice and Committee on Legal Aid

RE: Access to Justice in the post-COVID Legal Landscape

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I offer the following statement in support of the effort by the New York State Bar Association's President's Committee on Access to Justice and Committee on Legal Aid to collect information regarding access to justice in the post-COVID legal landscape.

IOLA Fund

The IOLA Fund ("IOLA") supports non-profit organizations in New York State that provide legal assistance to low-income people and improve the administration of justice for communities underserved by legal services.

IOLA was established as a public body by the State of New York in 1983, with the strong support of the New York State Bar Association. It is governed by an independent Board of Trustees appointed by the governor, legislative leaders, and the Chief Judge of the State of New York. A former President of the New York State Bar Association currently sits on the IOLA Board.

IOLA's revenue is derived from interest on attorney IOLA escrow accounts that hold pools of client money that individually are too small or expected to be held too briefly to generate sufficient income to justify the expense of administering a segregated account for the client's benefit. Today, every state, along with the District of Columbia, Puerto Rico, and the Virgin Islands, operates a similar program.

In New York, approximately 45,000 IOLA accounts are currently open at 185 banking institutions. The interest from these accounts, together with an annual grant of \$15 million from the Office of Court Administration, allowed IOLA to provide \$70 million in grants to 74 non-profit organizations for the two-year grant cycle ending March 31, 2021.



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IOLA Grantee Reporting

IOLA collects extensive reports from its Grantees to track progress towards contract goals and to aid IOLA's understanding of the civil legal aid community in New York State. IOLA Grantees submit annual reports with detailed narrative descriptions and statistical and financial data regarding their programs. These Grantee reports are not limited to the work funded by IOLA, but rather include data on all civil legal services delivered.

Overview of Legal Services by IOLA Grantees during the Pandemic

After comparing the narrative and statistical reports from IOLA Grantees for fiscal years 2021 and 2020, I offer the following overview of legal services provided by IOLA Grantees during the pandemic:

- Overall client intakes were down by 22% due to a dramatic fall in in-person intake. Telephone and online intake, however, doubled.
 - Many Grantees reported creating new hotlines and new online intake tools to meet community demand.
 - Several Grantees conducted systemized outreach to check on the well-being of current and former clients.
- Approximately 25% fewer cases were closed.
 - Cases closed after litigation (including due to settlement, administrative decision, and court decision) were down 51%, likely due to court closures. In contrast, non-litigated resolutions (including non-litigation advocacy and settlement) were down 19% and brief services were down 16%.
 - Housing matters, which account for the largest number of cases, were down almost 30% and may reflect a reduction in client need due to the eviction moratorium.
 - It seems unlikely that other categories of cases such as Family Law, Income Maintenance and Employment experienced a reduction in need. Rather, given news reports of family tensions, job losses and increased food insecurity during the shutdown, these case closure reductions may reflect unmet legal need.
- Community Legal Education doubled. Unsurprisingly, this was driven by presentations via Teams, Google, FaceBook, and Zoom. The people served online in this manner increased from about 90,000 in 2020 to over 2.6 million in 2021.
- Pro Se assistance, which is largely comprised of helping individuals to prepare their own court filings, was down by about 30%, likely a reflection of court closures.
- Pro Bono volunteers slipped only 5%, but the total hours donated dropped 20%.
- Overall, IOLA Grantee staffing remained steady, with a small increase

in legal staff that was offset by a small decrease in administrative staff. Many Grantees reported significant delays with government contracts that caused cash flow problems, but the receipt of PPP loans appears to have staved off staff reductions.

- Many Grantees reported significant efforts to facilitate client access to non-legal services including cash assistance, food pantries, and other essential resources.

Statewide Data

The above Overview is supported by the following statewide data, taken from IOLA Grantee reports for the fiscal years ending March 31, 2020 and March 31, 2021. Brief explanations of reporting metrics are included.

1. **Intakes** counts completed intakes (aka, “screenings,” “initial interviews,” etc.), defined as the collection of a potential client’s information used to determine client and case eligibility.

Intakes by Type			
	2020	2021	% change
Online	6,386	9,716	52%
Telephone	138,853	200,940	45%
In-Person	173,959	37,457	-78%
Total Intakes	319,198	248,113	-22%

2. **Cases Closed** counts all matters where the legal work has concluded, including the rendering of individualized legal advice (“brief services”), finalizing a settlement (with or without litigation), and obtaining a judgment (after an administrative proceeding or court trial).

Cases Closed by Level of Service			
	2020	2021	% change
Brief Services	207,442	173,664	-16%
Closed without Litigation (non-litigation advocacy and settlement)	36,640	29,748	-19%
Closed after Litigation (settlement, administrative decision, and court decision)	82,756	40,570	-51%
Other	374	73	-80%
Total Cases Closed	327,212	244,055	-25%

A closed case is classified into one of 11 broad case types (e.g., Housing), each of which is further broken down into a specific case benefit (e.g., “Prevented eviction from public housing,” “Avoided or delayed foreclosure or other loss of home,” etc.).

Cases Closed by Case Type			
	2020	2021	% change
Housing	84,508	59,473	-30%
Family Law	47,337	37,816	-20%
Immigration	57,807	37,014	-36%
Income Maintenance	37,900	33,183	-12%
Education	20,953	18,217	-13%
Consumer	19,374	8,982	-54%
Health	16,020	13,637	-15%
Employment	10,788	8,709	-19%
Individual Rights	5,527	4,317	-22%
Juvenile*	735	1,158	58%
Miscellaneous¹	26,263	21,549	-18%
TOTAL	327,212	244,055	-25%

¹ Miscellaneous cases include advanced planning, taxes, reentry, etc.

*Result of improved data reporting.

3. **Community Legal Education** counts individuals receiving legal education via in-person presentations to community groups, distribution of brochures, and other (online forums such as Facebook, YouTube, and Instagram Live and via email or text distribution of legal information).

Community Legal Education			
	2020	2021	% change
Presentations to Community Groups	304,733	708,255	132%
Legal Education Brochures	1,209,702	1,425,071	18%
Other	90,633	2,661,044	2836%
TOTAL	1,605,068	4,794,370	199%

4. **Pro Se** counts the number of self-represented individuals assisted with individualized documents to aid with their legal disputes via workshops or clinics, court help centers, self-help materials, and other (primarily, online forms).

Pro Se Assistance			
	2020	2021	% change
Workshops or clinics	24,696	28,556	16%
Help Center at Court	24,024	2,004	-92%
Self-Help Printed Materials	117,511	69,356	-41%
Other	41,093	47,830	16%
TOTAL	207,324	147,746	-29%

5. **Pro Bono Involvement** counts attorneys (including AEP volunteers), law students, and others who are enrolled with Grantee programs. “Enrolled” means, at a minimum, that the volunteer has committed to do work, usually evidenced by registering and receiving training from the Grantee. Volunteer hours counts the time worked on pro bono matters as reported by the volunteers or, in some cases, estimated by the Grantees.

Pro Bono Involvement			
	2020	2021	% change
Total Volunteers	40,602	38,687	-5%
Total Volunteer Hours	1,022,308	832,382	-19%

6. **Grantee Staffing** counts the total number of full-time equivalent paid staff persons and compensated fellows (e.g. AmeriCorps members, Equal Justice Works fellows, Immigrant Justice Corps or deferred associates) who were directly involved with Grantee programs throughout the full fiscal year.

Grantee Staffing			
	2020	2021	% change
Lawyers	2,389	2,467	3%
Paralegals	988	1,014	3%
Other	1,038	992	-4%
Total Staff	4,415	4,472	1%

APPENDIX F

Good morning. My name is Victoria Esposito; I am the Advocacy Director for the Legal Aid Society of Northeastern New York, which provides civil legal services to low-income individuals in sixteen counties throughout the region. Our practice covers Supreme Court, justice courts, and everything in between. We work in our region's most urban areas, and also in some of its most rural areas. I would like to talk about how our practice has changed throughout the pandemic to reach clients and the ways in which we had to change our models; I would also like to cover the experiences of our attorneys and staff with virtual and remote court during the COVID-19 pandemic: the good, the bad, and the ugly.

In March 2020, like so many other agencies, we closed our doors and very suddenly transitioned to remote work. In some ways our large service area made the transition relatively easy; with some of our offices two hundred miles away from each other, even before COVID we relied on remote meeting tools and programs, such as GoToMeeting and Skype for Business. That meant that our staff was familiar with these tools and did not have to learn completely new technology while working from home—although during the pandemic the specific platforms switched to Zoom and Teams. However, reaching and working with clients presented a particularly large barrier.

As the courts' availability and protocols changed, and as new policies and moratoria came down almost daily, we had to find a way to let clients know what rights they had. We relied heavily on our website and on social media posts, using Facebook Live appearances for particularly time-sensitive pieces of information; we also began holding virtual Town Halls, sometimes in conjunction with partner agencies, to discuss the rights and procedures available to tenants, Social Security recipients, public benefits recipients, unemployment applicants, and others. We worked through our files to find clients who had particular problems and needs, such as SSI recipients who had a very short timeline to fill out forms for the first stimulus check, and did our best to contact every one of them.

The advent of remote notarization allowed us to hold Zoom clinics for clients who needed help with pro se divorces or name change petitions, and remote will signing allowed us to assist many of our clients with their advance planning needs; in light of the pandemic, we were particularly happy to be able to help out with health care proxies in addition to the other planning documents. While these processes are cumbersome and time-consuming in a remote setting, the option of not assisting clients at all was unacceptable to us.

Even before the pandemic, we had regular contact with the state's other legal services organizations, and that became invaluable during the worst of COVID. We were able to identify problems which were common throughout the state and to hear what solutions and strategies had worked for other organizations. In the wake of the Supreme Court's decision in Chrysafis v. Marks, striking down the state's eviction moratorium, these existing relationships made it easy for LASNNY coordinate these organizations to jointly produce a pattern pleading, intended to combat the flood of evictions which we expected to follow.

With courts moving to remote operations only, we anticipated that the barriers that made it difficult to contact our clients would also make it difficult for them to attend court when necessary. While that was true in some cases, there have also been some unanticipated benefits for clients and attorneys alike.

The Good: Clients were happy to be able to save money on gas and to be able to appear in court despite being under quarantine. Our attorneys tell us that remote foreclosure settlement conferences have been particularly successful. While there have been occasional problems with the courts' video links, our attorneys have found that they and their clients can meaningfully participate in the conferences by telephone. (As our foreclosure grant allows us to serve individuals with slightly higher incomes than most of our funding, our attorneys have speculated that our foreclosure clients might also have better access to wireless, data, computers and/or smartphones.)

Throughout most of the pandemic the Social Security Administration has been offering disability hearings by telephone only, although they have recently begun offering video hearing options. Those clients who did not want a telephone hearing could wait until in-person hearings were resumed; as the pandemic continues, however, many of these clients have opted for remote hearings rather than wait for an indefinite period of time. Some of our attorneys have found that their clients were much more comfortable with telephone hearings than they would have been with in-person hearings, since it greatly reduced their anxiety.

Our attorneys also gave high marks to those courts which installed kiosks for our clients to use for virtual hearings. This recognized that our client base does not necessarily have access to computer access, smartphones, unlimited minutes, or wireless, and it allowed them to safely and meaningfully participate in these important proceedings. (We also particularly appreciated the court systems' understanding of this and their work to install more kiosks in courts and community centers alike. In our service area, the 4th Judicial District, which covers most of our rural counties, installed self-help kiosks in many court buildings so that people without access to technology could still appear virtually and safely. The 3rd Judicial District, which covers the Capital District, installed kiosks in some courts and also in community centers such as libraries or churches. Some kiosks are set up to allow individuals to transmit documents directly to and from court staff, so that they can receive, fill out, and scan back a Petition or other paperwork.)

The Bad: As you might expect, our clients do not necessarily have access to unlimited data, to wireless services, or to the devices they need to access remote courts. Even when clients have smartphones, their plans are often basic pay per month plans which do not include streaming. Additionally, some clients—particularly elderly clients—simply do not have or know how to use smartphones or computers. In some cases they do not have a camera on their device or are unable to use them, which was unacceptable to the judges as they were then unable to assess the client's credibility. In administrative hearings, witnesses do not receive a link to the proceeding until just before the judge intends to swear them in. However, this means that if the witnesses do not happen to be on email at that moment or have difficulty connecting for whatever reason the entire proceeding gets held up and the judge can get quite annoyed. One of our attorneys requested an accommodation for a hearing impaired client in a telephone hearing for an unemployment case; the only available accommodation was TTY, which our client does not use. (Unemployment cases have been telephone-only throughout the pandemic, so our client had no viable option.)

Our rural clients in particular lack consistent wireless service, and accordingly they have had to appear from parking lots, cars, and libraries. This means that it is particularly difficult for clients to review the documents that the judge or opposing party is relying on. Our own COVID protocols prevent us from allowing clients into our offices unless they do not have access to digital technology or there is some other barrier preventing them from appearing virtually. One client who had received permission to appear from our office was actually under quarantine on the day of her court appearance. This meant that she had to appear from our parking lot while her attorney was inside. Finally, our clients sometimes have great difficulty finding a quiet and private place in their home, particularly if they also have children.

Some agencies sent out instructions which were confusing, particularly to litigants who we did not yet represent. At least one housing authority sent out notices that tenants facing eviction should come to their office to use their video capabilities. The tenants did not understand that they could appear remotely from their homes or other places; accordingly, they felt they had no choice but to go to a public place during an ongoing pandemic. Other clients did not understand that they had the right to appear remotely, and still others were never notified by the court or by the housing authority that their hearings had been canceled. This led to our clients going to court during the height of the pandemic, only to be told that their hearings or appearances had been canceled.

In the context of Social Security hearings, some of our attorneys have expressed concern that a hearing judge will not grasp the full extent of a client's disability without an in-person hearing. (This is particularly true in telephone hearings, although it also holds true for video hearings. One attorney expressed concern that she could not adequately read the judge's facial expressions or reactions in a video hearing.) Similarly, some of our disability attorneys have expressed concerns about holding telephone hearings for clients who need interpreters, as this would require a six-way conference call. They have also pointed out that telephone hearings require our clients to use their minutes, which is a great burden on the population we serve, and that Social Security will not reimburse the clients for their minutes. It is of note here that Social Security will reimburse clients for mileage to and from in-person hearings and will sometimes advance money to extremely needy clients; the policies and regulations do not seem to have caught up with our current reality. One other problem that our disability attorneys encountered was that if the parties could not connect immediately the judge would reschedule the hearing, regardless of the reason for the difficulty. By contrast, judges generally wait 15-20 minutes before rescheduling in-person hearings or calling the next hearing. Many of these concerns carry across all our practice areas, of course.

THE UGLY: Our justice court system, which is where most of our rural eviction cases are litigated, was particularly unprepared for the COVID pandemic. These courts do not have the infrastructure, staff, or technology to allow for remote hearings, and in some cases the justices or court staff did not appear to be interested in learning how to use technology. The most difficult scenario occurred when justices, the majority of whom are not attorneys, ordered appearances regardless of any stay or moratorium; did not observe social

distancing and mask guidelines; and made inappropriate political or personal remarks to our staff who were attempting to observe those guidelines.

As all of us know, the pandemic completely upended and continues to affect our professional as well as our personal lives. LASNNY was able to weather this relatively well as an institution, although not without some acute growing pains. While there have been unexpected benefits to our clients, both their and our experiences have reminded us of the urgent need to consider technology and connectivity as a crucial part of our nation's infrastructure, rather than a luxury for those who can afford it.



CLARE J. DEGNAN
EXECUTIVE DIRECTOR

SHERRY LEVIN WALLACH
DEPUTY EXECUTIVE DIRECTOR

*Testimony from the Legal Aid Society of Westchester County
for the joint hearings of the
New York Bar Association's
Committee on Legal Aid
and
The President's Commission on Access to Justice
in the Post Covid Landscape.*

December 2021

“ACCESS TO JUSTICE”

“Access to Justice means different things to different people. In its narrowest sense, it represents only the formal ability to appear in court. Broadly speaking, it engages the wider social context of our court system and the systemic barriers faced by different members of the community.”ⁱ

At the highest levels of our government an understanding that there are barriers preventing equal access to our courts and quasi-judicial proceedings. President Biden issued a Presidential Memorandum on May 18, 2021. In it, he distilled the challenges before us in these terms:

“The coronavirus disease 2019 (COVID-19) pandemic has further exposed and exacerbated inequities in our justice system, as courts and legal service providers have been forced to curtail in-person operations, often without the resources or technology to offer remote-access or other safe alternatives. These access limitations have compounded the effects of other harms wrought by the pandemic. These problems have touched the lives of many persons in this country, particularly low-income people and people of color.”ⁱⁱ

The President's comments apply even to a “wealthy” county such as Westchester County, New York.

What does access to justice mean for the Legal Aid Society of Westchester County (LASW) and the population we serve, especially in a post- Covid world?



Barriers to accessing the court system and all the trappings of the criminal, family, landlord/tenant courts are significant. The barriers include the existing barriers of poverty, education, language, sufficient legal representation, lack of public support and transportation all of which are highlighted and exacerbated by technology. The “digital divide” is real; LASW clients are further marginalized every day. The Covid-19 pandemic response by the courts has served to emphasize existing barriers and created new barriers for our clients to appear in court.

TRADITIONAL BARRIERS:

Geography:

Westchester County is a microcosm for all New York State. It has rural areas, densely populated urban areas, poverty, and extraordinary wealth. Westchester County has some areas with a robust public transportation systems and other areas with minimal services with little or no direct access to courts. It can take over four hours on public transportationⁱⁱⁱ what it would take 40 minutes to drive; couple limited transportation options with forty (40) local court jurisdictions, six (6) of which are cities^{iv} and 34 are towns and village municipal courts. Some of the town and village courts meet at night, at time when public transportation may not run. The county seat is in White Plains where you can find the County and Supreme Courts and one of the three Family Courts, there are two additional locations for Family Court, Yonkers, and New Rochelle. The local court jurisdictions are not under Office of Court Administration jurisdiction, they meet both day and night.

Every jurisdiction has its own housing court (referred to as Landlord/tenant), and each have vehicle and traffic court, criminal court, small claims court and local code violation court. At the best of times these courts were difficult to navigate, and post Covid, almost impossible.

Each town and village court has its own court rules. Some courts have never opened after being closed in March 2020. For example, as of today, the Town of Harrison is still only operating virtually with no in-person access at all.

Indeed, while the housing courts in the local jurisdictions have been mostly shut down, the eviction moratorium^v is due to expire on January 15, 2022, and advocates are expecting a massive uptick housing petitions for evictions. It is not clear if these proceedings will be conducted virtually or in-person.



Public Transportation:

Public bus transportation is very limited in the northwestern part of the county and non-existent in the northeastern portion of the county,^{vi} and while there are train lines (Harlem to the east and Hudson to the west) it is difficult to get to those train lines from many areas. For example, if you live in the town of Yorktown and you need to take public transportation to get to Family Court in White Plains, there are a few bus lines available. You could take the weekday express bus to White Plains. The trip will take one hour ten minutes but there are only 3 scheduled express buses on any morning. If you missed the express bus, it takes over two hours to make this same trip^{vii}. If you have a court date, you will need to take off the entire day for court. Missing work not only causes economic hardship for the litigant by reduced work hours but may also result in job loss.

Housing:

Westchester County has little affordable housing for low-income residents. The County was sued for their failures to provide sufficient affordable housing in 2009 with an agreed settlement in 2017.^{viii} The National Low Income Housing Coalition (NLIHC) surveyed the Congressional Districts of each state, including the three Congressional Districts which incorporate parts of Westchester County, Congressional Districts 16, 17 and 18. There are 135,818 renters in the Westchester County Statutory Exemption Area and of those renters approximately 102,000 families are spending more than 50% of their annual income on housing.^{ix} Housing insecurity and high costs prevent the vast majority of renters from having additional disposable income to have the technology to appear in virtual court, to afford to take off time to come to court, pay for fines, access their attorneys by telephone, in-person or via electronic meeting.

Shelters and short-term housing are issues for our clients. There are no long-term housing options for client who are being released from jail, there overnight “drop in shelters” where the “residents” come to the shelter in the evening and must leave during the day.¹ Many LASW clients who are accepted into a “problem solving court” such as the Diversion Court do not have stable housing. Those discharged from the County Jail often have a time lag where they are without housing and services before going into treatment. Lack of housing and services places our clients at a risk of relapsing.

¹ In the city of Peekskill there is an amazing non-profit, Caring for the Hungry and Homeless of Peekskill (CHHOP). It serves approximately 1,300 clients each week.



COVID -19 BARRIERS:

Digital Divide:

March 2020, the country shut down. Businesses shuttered, courts and other public institution closed. Everyone scrambled to propose plans to continue with work and school while working to keep everyone separate and reduce the spread of the Covid-19 virus. Inside a month, our courts pivoted to a virtual court for only the most pressing matters. Criminal and civil trials stopped, and New York Pause stopped all the grand jury proceedings. Schools scrambled and developed online learning strategies. Initially, all that was needed was telephone, cell phone preferred but a non-smart telephone or landline was sufficient. However, in a few short months (like the schools), a telephone was not sufficient, and a tablet, computer or laptop was necessary for the appearance. The public health crisis required everyone to pivot and compromise on procedures – which in non-crisis times are a violation of due process rights. Everyone did what was needed to keep the system moving, even if difficult and cumbersome. Now, it is commonplace for the local courts to push remote proceedings for after hour arraignments and appearances for incarcerated clients, unfortunately, many of the attorneys are capitulating to the courts’ requests.

Criminal representation of a client cannot be accomplished over the telephone – or the equivalent of a telephone, video on a computer. Telephonic arraignments violate fundamental due process of the client often resulting in worse outcomes for the clients. A law review article from 2010 studied the outcomes of criminal defendants whose hearings were conducted over video. Their study reported substantially higher bond amounts set than their in-person counterparts, with increases ranging from 54 to 90 percent, depending on the offense.^x

The Brennan Center for Justice published research supporting what is intuitive for defense attorneys; “the use of remote video proceedings can make attorney-client communications more difficult. For example, a 2010 survey by the National Center for State Courts found that 37 percent of courts using videoconferencing had no provisions to enable private communications between attorneys and their clients when they were in separate locations.”^{xi}

At the beginning of the pandemic, the digital divide between rich and poor became even more apparent with schools going virtual. According to the Pew Research Center nationally, there are still gaps in high-speed internet access. Only 49% of African Americans and 51% of Hispanics have high-speed internet at home, as compared with 66% of Caucasians. Internet speed has important effects on media access, especially when it comes to streaming video, so this gap is significant.^{xii} The studies are similar to the realities faced by Westchester County residents. For example, Scarsdale^{xiii} a very wealthy area of the county, only 2.4% of the population lacks in-home high-speed internet, by comparison, Mount Vernon, 29.4% of the households do not have internet access^{xiv} and it was estimated that in Yonkers 25% of the population did not have a laptop or computer in the home.^{xv}



Community organizations are trying to help the students/families who need the broad band conductivity. For example, there is a public/private pilot in Yonkers. The Westchester County Association (economic development organization) partnered with WestHab (an affordable housing non-profit) in project OVERCOME. The Westchester County Association (WCA) is one of seven lead organizations to have been selected by US Ignite, a national non-profit accelerating the smart city movement, to participate in Project OVERCOME. Project OVERCOME is a \$2.7 million effort is designed to expedite the delivery of broadband services to underserved communities across the United States^{xvi}. However, this is just one community in one city (out of six) within the county.

Studies show that 32% of the households in Westchester County do not have a laptop or tablet^{xvii}, and this is a statistic in comparison to Scarsdale which has only 3% of its population without broad band access. Clearly there is a divide between the richly resourced and those who have less; two communities next to each other have divergent capacities to appear in virtual proceedings.

All LASW clients are working poor or indigent. They are from the families who may be housing and food insecure without access to broadband and many of them do not have unfettered access to a computer to appear in remote court. Many clients have cellphones but according to the Pew Research Center full 30% of the people surveyed are worried about being able to pay the cell phone bill.^{xviii} LASW also represents clients who fall into the vulnerable categories: non-citizens; non-English speakers; homeless; addicted; mentally ill or otherwise marginalized. Despite the increase in the ubiquitous smart cell phones, marginalized populations still do not have the same access to digital devices.^{xix}

Vaccine Hesitancy:

Westchester County identified three major population centers, Peekskill, Yonkers, and Mount Vernon as areas where there was vaccine hesitancy.^{xx} The response was to provide more pop-up clinics in those areas to provide greater access for the populations. The majority of LASW assignments come from Yonkers and Mount Vernon and the three are densely populated cities with significant lower income populations.

It is more difficult to access courts and services when you are fearful of contracting Covid and unable to receive a vaccination against the virus.



Conclusion:

The expansion of technology in our legal systems (to coin a phrase) is “a blessing and a curse.” The use of the technology is extraordinarily attractive. When technology is used mindfully and appropriately, it can be of tremendous value in allowing for access to courts. For example, it is a good use of time and resources to schedule remote court calendars for conferences and status updates. However, we need to avoid the pitfalls of allowing the convenience of sitting before our computers to replace human interactions.

In every case, access to justice means that the person has an opportunity to be heard; the in-person court and interactions with attorneys cannot be replaced by an electronic appearance. Criminal defense attorneys must not allow convenience to interfere with representation of a client. During court appearances the attorney must have constant and easy communication with the client. The attorney must be able to read the body language of the client, shifting feet, glancing around, fidgeting – the non-verbal cues that the client does not understand what is happening. It is difficult if not impossible to see these signs of a client’s distress over video. There is no way to whisper to a client, “you, okay?” over Zoom. The clients must have an unfettered opportunity to speak with and be heard by their attorneys, anything less is not acceptable.

If the use of technology is expanded, there must be steps taken to make sure our most marginalized clients have both access to technology (allowing alternative methods of accessing the courts) and in-person access.

It is important to note, the traditional barrier in access to justice are still part of the problem. For our less resourced clients, their access to technology is limited (not everyone has a computer, or a smart phone). Education, reach out, collaboration with community stakeholders must continue with the overarching goals of making it easier to access necessary legal services. Technology will allow the legal systems to better serve the justice system, but we cannot allow technology to replace the “human touch.”

Clare J. Degnan, Esq.
Executive Director



END NOTES:

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- ⁱ <https://www.aclrc.com/what-is-access-to-justice>
- ⁱⁱ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/05/18/memorandum-on-restoring-the-department-of-justices-access-to-justice-function-and-reinvigorating-the-white-house-legal-aid-interagency-roundtable/>
- ⁱⁱⁱ <https://transportation.westchestergov.com/images/stories/Schedules/sysmapeng052020.pdf> village
- ^{iv} In descending order of population: Yonkers, New Rochelle, Mount Vernon, White Plains, Peekskill, Rye.
- ^v <https://www.nytimes.com/2021/09/01/nyregion/eviction-moratorium-new-york.html>
- ^{vi} <https://transportation.westchestergov.com/images/stories/Schedules/sysmapeng052020.pdf>
- ^{vii} <https://transportation.westchestergov.com/images/stories/Schedules/rte1417fall21r10082021.pdf>
- ^{viii} <https://nlihc.org/resource/new-developments-westchester-county-affh-court-settlement>
- ^{ix} <https://nlihc.org/sites/default/files/Housing-Profiles/Congressional-District-Housing-Profile-NY.pdf>
- ^x <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article>
- ^{xi} https://www.brennancenter.org/our-work/research-reports/impact-video-proceedings-fairness-and-access-justice-court#footnote10_bzl4w47 quoting Eric Bellone, “Private Attorney- Client Communications and the Effect of Videoconferencing in the Courtroom,” *Journal of International Commercial Law and Technology* 8 (2013): 44-45.
- ^{xii} <https://www.pewresearch.org/fact-tank/2021/07/16/home-broadband-adoption-computer-ownership-vary-by-race-ethnicity-in-the-u-s/>
- ^{xiii} Bloomberg’s annual 2020 rankings of richest places, Scarsdale is the ‘richest town’ on the East Coast of the United States.
- ^{xiv} <https://wca4kids.org/infographics/westchesters-digital-divide-for-kids/>
- ^{xv} <https://www.lohud.com/story/news/education/2020/04/01/new-york-schools-online-classes-struggle/2920746001/>
- ^{xvi} <https://www.westhab.org>; <https://www.westchester.org/initiative/digital/>
- ^{xvii} <https://www.nysl.nysed.gov/libdev/documents/HorriganReportNY.pdf>
- ^{xviii} <https://www.pewresearch.org/internet/2020/04/30/53-of-americans-say-the-internet-has-been-essential-during-the-covid-19-outbreak/>
- ^{xix} <https://www.pewresearch.org/fact-tank/2021/06/22/digital-divide-persists-even-as-americans-with-lower-incomes-make-gains-in-tech-adoption/>
- ^{xx} <https://dailyvoice.com/new-york/poundridge/news/covid-19-westchester-works-to-ease-vax-hesitancy-in-some-areas-schedules-new-pop-up-clinics/812935/>

APPENDIX H

The New York State Bar Association's President's Committee on Access to Justice and Committee on Legal Aid

November 24, 2021

Thank you to the New York State Bar Association for the opportunity to submit testimony on the impact the COVID-19 pandemic has had on access to justice in the courts.

My name is Cathy Cramer, and I am the CEO of Legal Information for Families Today (LIFT). We provide limited scope legal representation to unrepresented litigants in New York State Family Court. For over 25 years we have worked closely with the Family Court to serve families having issues with child support, custody and visitation, and domestic violence. LIFT provides support through our Helpline, our legal consultations, our community outreach efforts and through our remote pro bono program. We work with 25,000 families every year and with litigants from across New York City and State. We have no income eligibility requirements and work with men, women, grandparents and other caretakers.

Even before the pandemic, the New York City Family Courts were already overburdened and under-resourced, hearing over 200,000 cases per year. 80% of litigants come to Family Court without a lawyer. The onset of the pandemic only exacerbated the existing problems. The Court has been working very hard throughout this period, but it has been very difficult for our clients in particular. The unrepresented litigants who come to Family Court in New York City are disproportionately low-income, from communities of color, often undocumented immigrants, or speak monolingual Spanish or some other language. And, as the family courts are under-resourced and understaffed, there is a justice gap for many of the litigants. Organizations like LIFT and others have worked closely with the Court to fill this justice gap.

None of us were prepared for the pandemic. In March 2020, the New York City Family Courts' initial response was to strictly limit the services they could provide. They went all virtual and only heard "essential cases." However, it was unclear what "essential" meant and there was little communication about what was deemed essential or even what emergency cases were.

In New York City, the Family Court stopped hearing cases related to child support altogether. These were not considered emergencies. Meanwhile, people were losing jobs and they could not pay their child support orders. But they could not seek any relief from the family courts, so child support debt continued to accumulate. And administrative enforcements were still in effect. On the other side, parents who needed child support to put food on the table weren't receiving it. And people hoping to resolve "non-emergency" custody and visitation issues in the family courts were often left without visiting or seeing their children for months.

In the early days of the pandemic, calls and emails to the Court went unanswered. People turned to the Court's website for information, but that website is confusing and not user-friendly. There were no help centers open, very few court clerks available, and no way to pick up or drop off petitions for pro se

litigants. LIFT created a PPE team that stood outside the courthouse for months to distribute masks and information about our Helpline and other free legal resources, to make sure people were getting some of the help they needed. We documented that in the fall of 2020 alone, 8,000 people came to the Courts for help and did not know that the Courts were physically closed. People continued to come throughout the next year.

People were desperate for information and help, so they called LIFT, often at the Court's suggestion.

Throughout the pandemic, LIFT had record-breaking numbers of requests for help on our Helplines – over 24,000 people called LIFT in FY21, an increase of 51%, and our legal advice consultations grew by 56% to nearly 3,000 consultations. Our pro bono program, Family Legal Connection, which takes place over video and is available on a client's mobile device, facilitated over 300 consultations. Over 144,000 people viewed our digital library of Legal Resource Guides. Despite growing and relentless client demand and increasingly complex cases, LIFT staff rose to the challenge. Yet it has been taxing, and we have prioritized increasing staffing and providing needed support to our team to manage the demand.

Now, the Courts have begun hearing more virtual or hybrid cases, but there are still many issues for unrepresented litigants. There are frequent problems with connectivity. In a few cases, people are getting notices of hearings the morning of their virtual hearing, leaving them no time to prepare. If people are even 5 minutes late, possibly due to connectivity issues, hearings are adjourned, or worse, dismissed. Our attorneys spend much of their time now filing to re-calendar cases for clients who had technology problems.

Although non-emergency matters are now being calendared and heard, the delays are extensive: some cases filed in early 2021 won't be heard until March and April 2022. It will likely take **many months** to catch up to the backlog. Families must continue to wait to get help they have needed since 2020. And new cases are being filed every day.

The New York City Family Courts continue to remain almost exclusively virtual and only have limited physical access available to litigants which intensifies challenges for clients who don't have access to computers, printers or Wi-Fi.

LIFT is attempting to bridge the digital divide with our Tech Hub pilot. We have opened our administrative offices, located in Brooklyn near the courthouse, for people to conduct their virtual hearings in a safe, private space, and can also download and upload Court documents, supported by our trained staff. We had to get private foundation funding to afford this effort and it is only a pilot.

Nearly 60% of the people who have come to our Tech Hub only have access to a phone or tablet at home, so they cannot fill out any petitions or court forms they need. 45% of Tech Hub visitors have Broadband Internet at their home, with 41% relying on a data plan for their smartphone. 16% of Tech Hub visitors have no internet connection at all and 5% have no access to any technology.

Here are some examples of how LIFT’s clients have been impacted by the pandemic:

An Urdu-speaking mother of two children and came to LIFT needing assistance filing for both paternity and child support. Her children’s father had been living with the family up until recently, when he had been drinking and got physically aggressive. When he abruptly stopped paying any child support, she lost a vital source of income to support her children. Her only source of income at the time was unemployment benefits and she was terrified that she and her children would be evicted if she could not pay the rent. She did not know where they would go. The LIFT attorney drafted all of the petitions to start her paternity and child support cases. At the time, however, the Court still was not yet hearing new child support cases unless they were considered “emergencies.” The LIFT attorney submitted an emergency petition in the hopes that the Court would hear her case more quickly. Child support cases, though, are rarely considered emergencies.

Another one of our clients is a Spanish-speaking mother of three young children. She and the father had separated four years ago due to domestic violence. He never provided any financial support for the children. The client attempted to start a child support case a few years ago, but the father evaded service and the Court dismissed the case. A LIFT staff attorney assisted her with drafting the forms to start a new case. However, the client had a difficult time figuring out how to download and save the forms as PDF files. Fortunately, the client lives in Brooklyn, so the attorney scheduled an appointment with LIFT’s Tech Hub for assistance with printing out, signing, and uploading the forms. The forms were then submitted to the Court.

We’re proud that the Tech Hub is available to provide in-person support to people who need help. However, there are still parents who cannot benefit from the Tech Hub, like the currently incarcerated.

A currently incarcerated client needed help to modify his child support order because one of his two children had died. Prior to incarceration, he informed the Office of Child Support Services of his pending incarceration and believed they modified the order. But months later he realized the order was still in place and he had \$7,000 in debt.

He could not file anything, as the Courts were closed to child support cases, so he reached out to LIFT. Our attorney reviewed the petition over the phone with the client and mailed it to the Courts. We are hopeful the Courts will accept it, but the arrears are still mounting.

LIFT has many recommendations for how the Courts should move forward from the pandemic. We believe that the virtual courts should be here to stay – when they work, they are much easier for litigants. They cut down on wait time and remove many barriers unrepresented litigants face like the need to travel to court, to take full days off work, find childcare, etc. **But the digital divide remains real and needs to be addressed.**

- We need more places like our Tech Hub, in each borough.
- The Courts need comprehensive IT back up and support staff.
- The Court’s website and forms need to be made much more user friendly, and accessible, especially to those for whom English is not their first language.

- Communications between the Court and the public need to be improved and made accessible in many languages. For example, right now, petition rooms in many courts are open, but the public has no way of knowing this – LIFT staff is telling them about this, not the Court.
- The Court needs more jurists and Court staff to handle the ever increasing caseloads due to backlog and pent up demand.
- There is a shortage of 18b lawyers and this prolongs cases. Their fees should be increased in order to get more lawyers into the profession and available to the thousands of pro se clients coming to court.
- There should also be greater access to UCMS. LIFT spends so much time trying to get background information from the clients on their cases, clients often do not understand what is happening in their cases or can accurately share their case history. This information is crucial for our attorney to provide accurate advice and relief for clients.

Our hope is that we have all learned a lot from the past year and a half. LIFT has provided hope and support to many litigants who had nowhere to turn. We look forward to continuing to work with the Family Court to improve access to justice for New York families. As we all believe, all New York families and children deserve EQUAL ACCESS to justice.

Thank you very much for this opportunity, and we look forward to working with the New York State Bar in the future.

APPENDIX I

NASSAU SUFFOLK LAW SERVICES COMMITTEE INC.

TESTIMONY FOR PUBLIC HEARING REGARDING THE IMPACT OF
COVID19 ON OUR CLIENTS.

Rezwanul Islam

November 16, 2021 at 1 PM

My name is Rezwanul Islam, I am the Deputy Executive Director of Nassau Suffolk Law Services Committee Inc. We are the largest provider of free civil legal services on Long Island. We serve indigent clients in Nassau and Suffolk County and appear in a number of venues at the local, state and federal level. We represent them in a full range of civil legal services, including social security hearings, fair hearings before OTDA, and in landlord/tenant court. Our attorneys also appear in family court and help guide clients through other civil legal issues they might be dealing with.

I would like to thank the New York State Bar Association, the Committee on Legal Aid and the President's Committee on Access to Justice for the opportunity to testify about the impact the COVID-19 Pandemic has had on indigent populations throughout New York State.

The pandemic has had a serious impact on the way our clients access services that are vital to their well-being. As the world shut down, so did many of the agencies and organizations our clients rely on.

While some aspects of these shutdowns have improved delivery of services to more capable clients, it has had a devastating impact on the more vulnerable which includes the poor, elderly, and disabled.

In our experience, new innovations such as remote hearings provided a safe and accessible way for our attorneys to provide representation and appear in court. However, our clients have had great difficulty accessing these same tools. For instance, some clients do not have sufficient technological literacy in the programs that are required for court appearances or hearings. In other instances, if they have the sufficient knowhow to access these tools, they typically lack other resources in the form of safe/secure housing or access to the required hardware or internet. Clients that live in emergency housing do not have the ability join a hearing alone, as typically required. So that means they needed to go to other venues to be able to appear at their hearings. In one instance early in the pandemic, before we could accommodate some clients to come use our facilities, we asked a client go to a park or other open area where they could access the hearing.

These experiences illustrate how important it is for clients with very little means to be able to access in person services. Agencies and organizations whose primary function is to serve the poor, elderly and disabled must always have a presence in the communities they serve.

One of the primary examples of this need can be seen in the operations of the Social Security Administration. At the beginning of the pandemic, the Social Security Administration began full remote operations, at the same time as many services our clients rely on. To their credit, they built a remote hearing infrastructure as the need arose. However, as the world has begun to reopen, the Social Security Administration has remained closed. Notably, their field/district offices where much of the day-to-day operations of the Administration is conducted have not returned to their offices. Meanwhile, they continue to process and deny applications and make other decisions that impact our client's benefits.

What most advocates and clients find when they are dealing with the Social Security Administration, is that calls go unanswered, mail goes unopened, faxes go undelivered and most importantly our clients have almost no way to access emergency services.

In the past, the district and field offices would be able to handle simple requests such as filing a request for a hearing, completing an application, or accepting documents that prove eligibility for benefits. Individuals that are blind or illiterate and who have no one in the world to assist them have been left to their own devices to “figure out” how to request a reconsideration when an application is denied. More likely than finding assistance, they will give up and go without the services they need to survive.

The Social Security Administration’s continued closure to the public can in some ways be seen as a case study of how the pandemic has impacted the lives of our clients who are the most underserved and vulnerable. Many of the issues these individuals have faced in accessing the Social Security Administration’s services are the same ones our clients face when trying to access our services when we are working in a purely remote environment.

While I believe remote hearings and services can increase access to our clients who are otherwise able but live-in secluded areas, it is detrimental to the elderly, disabled and mentally ill who rely on in person services to meet their needs. In order to properly serve these populations, the agencies and organizations that serve them must be able to provide in person services effectively.



APPENDIX J
NEIGHBORHOOD LEGAL SERVICES, INC.
 EQUAL JUSTICE FOR ALL

November 23, 2021

New York State Bar Association
 1 Elk Street
 Albany, New York 12207

Re: Written Testimony on access to Justice in the post-COVID legal landscape
 Hearings of November 16th and November 19th

Dear Co-Chairs:

I am the supervising attorney of the Family Law Unit at Neighborhood Legal Services, in Buffalo NY, and I am a committee member of the NYSBA Committee on Legal Aid. I submit this to be considered as written testimony to supplement the wonderful speakers who testified at the hearings held last week.

First, let me congratulate the co-chairs and the committees as a whole, as well as those who testified, on having the courage and dedication to the practice to be willing to discuss some of the important issues facing our clients. These are difficult times, and they have exposed some weaknesses in the procedures and systems that were in place prior to the pandemic. It is also clear from our hearings that the greatest strength of the profession is the human element, and those who took the time and invested the effort to testify showed a true commitment to bettering the lives of the attorneys, organizations, and clients we serve. I am proud to count myself among you.

Second, I work closely with Judith Olin, Esq., Director of the Family Violence and Women’s Rights Clinic, and Clinical Professor at the University at Buffalo School of Law. We have formed an ad hoc committee of legal service providers, meeting regularly to discuss issues we see in the Family and Supreme Courts during COVID. On November 18th, Professor Olin quite eloquently testified to the issues that we have in Erie County Family Court with timely hearing of family offense petitions in domestic and intimate partner violence cases in accordance with FCA §153-c(a).

Closely connected to these cases is a separate but extremely important issue: that of prompt processing and service of Orders of Protection (OOPs) during this pandemic. As all practitioners in this area are aware, the protections afforded and enhanced civil and criminal sanctions for violation of OOPs are only enforceable once the Respondent has been served

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 Batavia, New York 14020
 TEL: 585.343.5450
 FAX: 585.343.5503

BUFFALO OFFICE
 237 Main St., Suite 400
 Buffalo, New York 14203
 TEL: 716.847.0650
 FAX: 716.847.0227

NIAGARA FALLS OFFICE
 225 Old Falls St., 3rd Floor
 Niagara Falls, New York 14303
 TEL: 716.284.8831
 FAX: 716.284.8040

with the OOP. No less than four (4) agencies connected to our ad hoc committee in Erie County have reported that certain law enforcement agencies tasked with service of these vital documents, have simply stopped serving them at times.

It has been reported that some OOPs take weeks to even have service attempted, and that there are up to 200 unserved OOPs at the local special victims unit from time to time. This seemed to happen at the worst possible time—when violence victims were stuck inside quarantining or fleeing the virus, and while there was a sense of antagonism between the City, its legal services agencies, and a law enforcement community alarmed by possible defunding efforts. Further, no single agency wanted to be seen as the face of any action adverse to law enforcement, at a time when domestic violence was peaking in this area. Attorneys relied on reaching out to personal connections within law enforcement to push service in urgent matters, and prioritized matters accordingly.

We mainly serve victims of violence and low income populations whom cannot pay for private process service themselves. The assistance of law enforcement as a partner in this fight is vital to keeping our clients safe, including removing weapons from situations that may become inflamed. The potential ramifications of alienating them during COVID has kept efforts to address this issue to a minimum to the detriment of the vulnerable populations we serve. The hesitance is understandable, and there have been many other systemic issues to tackle as we pursue access to justice during these times.

Yet, if a victim of violence cannot count on the Courts in our district to timely hear a petition, and cannot count on law enforcement to timely serve a potentially violent offender with an order, it is difficult to see how justice is being made accessible. Ultimately, my hope is that rather than being viewed as an attack, this submission will be regarded as a starting point for an important discussion as we move toward a post-COVID legal landscape.

Very truly yours,

Andrew F. Emborsky, Esq. /s/

Andrew F. Emborsky, Esq.

Member – Committee on Legal Aid

Supervising Attorney – Family Law Unit
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APPENDIX K



NEW YORK STATE BAR ASSOCIATION PRESIDENT’S COMMITTEE ON ACCESS TO JUSTICE AND COMMITTEE ON LEGAL AID CIVIL LEGAL SERVICES HEARINGS

Access to Justice in the post-COVID Legal Landscape

INTRODUCTION

Pro Bono Net is a national nonprofit dedicated to increasing access to justice for low-to-moderate income individuals, families, and communities. For over 20 years, we have provided innovative technology solutions and expertise in building and mobilizing justice networks to transform the way legal help reaches those in need. Pro Bono Net’s New York programs - including LawHelp New York, TenantHelp New York, the New York Crime Victims Legal Help, LawHelp Interactive, Closing the Gap, Family Legal Connection, and Citizenshipworks - enable legal service providers to maximize their impact, increase pro bono involvement, and empower the public by providing legal assistance and information, including resources for unrepresented litigants. At Pro Bono Net, we believe that everyone navigating the civil justice system should understand their legal rights, responsibilities, and what to expect from the legal procedures that they are a part of, even when they can’t access or afford an attorney.

MAKING LEGAL HELP INFORMATION ACCESSIBLE TO NEW YORKERS

We are all familiar with the impact of the pandemic – there have been over 2 million cases of COVID-19 in New York alone, and over 50,000 people have lost their lives in the state because of the virus. Although we cannot yet know the full and long-term impact on individuals and families, we have learned through experience that legal needs have increased as a direct consequence of COVID-19. Last year, the Legal Services Corporation, the largest funder of civil legal aid for low-income Americans in the United States, reported that over 95% of its grantees anticipated a “sharp increase in legal needs arising from COVID-19 in the areas of eviction, foreclosures, unemployment assistance and appeals, consumer debt, and income maintenance.” We know from LSC’s reports that an overwhelming majority of the civil legal problems reported by low-income Americans receive inadequate or no legal

assistance and that self-represented litigants rely on legal information and low cost aid that is accessible to them. A report published in September of this year shows that the internet is the primary source of legal information, nationally, for people with legal needs, and most people rely on one source for legal information.¹

Here in New York, the Permanent Commission on Access to Justice surveyed more than 600 litigants this year about their experience navigating the judicial system. Seventy-nine percent of unrepresented litigants reported using websites to find information about their legal rights or to try and find help with their case; 40% said they were unable to find what they were looking for. Even when legal resources can be found, it does not guarantee they will be used successfully, as reflected in the fact that 75% of unrepresented litigants said that they needed help in completing court forms, including those who did not know which forms to use (25%); could not understand the words, or could not speak the language, used in forms (15%); or could not find the information or document required to complete the forms (15%).

Since March 2020, both LawHelpNY.org and LiveHelp have seen an exponential increase in user requests for information related to the pandemic. LiveHelp, LawHelpNY's bilingual chat program, is one of the most accessed legal resources in New York State and helps more than 10,000 people each year access direct services, legal information, and court forms, as well as enables people to identify, prevent or mitigate legal problems. LiveHelp provides assistance in English and Spanish Monday through Friday from 9am to 9pm. With the onset of COVID-19, LiveHelp experienced unprecedented surges as New Yorkers struggled with an array of legal problems. To respond to the demand, LawHelpNY recruited hundreds of law student volunteers.

LiveHelp is a critical tool and reliable resource to assist low-income pro se litigants with finding information about court procedures, accessing court forms, and understanding their rights when representing themselves. The services that LiveHelp provides, complemented by partnerships with legal service providers, makes it an essential part of the access to justice ecosystem. In 2020 during the height of the COVID-19 pandemic, LawHelpNY's trained volunteer operators provided information and referral-finding assistance to an average of 1,100 individuals a month from all over the state, 32% of which were CourtHelp-related.

¹Justice Needs and Satisfaction in the United States of America 2021 Legal problems in daily life, Institute for the Advancement of the American Legal System (IAALS) and the Hague Institute for Innovation of Law (HIIL), 2021.
<https://iaals.du.edu/sites/default/files/documents/publications/justice-needs-and-satisfaction-us.pdf>

Moreover, 119 LiveHelp volunteers from 20 law schools contributed over 4,685 hours of pro bono assistance through LiveHelp. Among the feedback we have received from LiveHelp users:

- “So grateful to have the help by live chat! I tried calling the court house number but no answer! Your service was needed!”
- “The operator who helped me was very helpful with the information provided to me. Thank you so very much.”
- “Thank you so much for being here [and] being free! You are greatly appreciated!”
- “[The] Rep was caring, looked up lots of information for me and shared useful resources. I am really grateful for the service.”

Since we launched TenantHelpNY.org, thousands of New Yorkers outside of New York City have visited the online resource looking to understand their rights around COVID-19 housing protections and eviction prevention. We anticipate increased usage of the site’s resources and tools when the eviction moratorium expires in January 2022.

Moreover, when the remnants of Hurricane Ida hit New York in early September, we saw an increase in LawHelpNY visits by people seeking legal resources and information about how to obtain assistance from the Federal Emergency Management Agency, commonly known as FEMA. We know from Superstorm Sandy and other recent disasters around the country that recovering from the impact of a climate disaster can span over several months, and in some cases, years. The legal needs arising out of Hurricane Ida include assistance with appealing FEMA and Small Business Administration determinations, landlord and tenant problems, replacing lost or damaged documents, insurance scams, and contractor fraud. These needs may exacerbate existing legal issues connected to COVID-19.

CREATING LEGAL SUPPORT NETWORKS FOR SELF-REPRESENTED LITIGANTS

In addition to accessible online legal help content, our tools have enabled thousands of community advocates and pro bono attorneys to assist New Yorkers in navigating their legal cases. For example, the Family Offense Petition Program, a program made available by the New York State Unified Court System in partnership with Pro Bono Net, was first piloted in the Bronx in 2013 and has expanded to all New York counties. The program enables trained advocates to help domestic violence survivors create and remotely file a temporary order of protection petition with the courts. During

the pandemic, more than 14,000 petitions were filed remotely using this program, a 20% increase over the prior year.

The Family Offense Petition program is powered by Pro Bono Net's LawHelp Interactive program (LHI), which allows self-represented litigants across the state to use plain language, often bilingual interactive DIY (Do-it-Yourself) Interviews to guide them through the process of completing court forms and other legal documents, and to make complex court processes more accessible and human-centered. In the face of widespread court and legal aid agency closures, New Yorkers used LHI to assemble more than 154,000 court forms in 2020 in areas such as consumer debt, child custody and support, landlord tenant issues and wills and estates. (And, through the first three quarters of 2021, usage is up by almost 20%.) When asked in a survey, "What did it mean to you to have this program available to help deal with the COVID crisis?" one user responded, "[E]verything, I am emotionally and economically impacted by the pandemic and this service was indispensable." Another stated, "I am a senior who is not computer savvy, so this website has been my lifesaver in this time of crisis in my life." These are just two of hundreds of testimonials we received in 2020 about how LawHelp Interactive provided a legal and safety lifeline for people trying to resolve legal problems amidst the great hardship of the pandemic.

Another of our programs, Remote Legal Connect, was developed before the pandemic and has expanded since March of 2020 due to the increased need for remote legal services. The program enables legal service providers and pro bono initiatives to set up remote legal support projects. These projects allow pro bono attorneys and other advocates to virtually meet with clients, in most cases self-represented litigants, while simultaneously reviewing and completing forms and other documentation. In New York, we learned that despite delays in several cases because of the pandemic, our partners continued to use the platform uninterrupted, including assisting pro se litigants with COVID-19 related matters. For example, last year, a woman who had lost her job because of the pandemic needed help with a custody dispute involving her three children. With an upcoming virtual hearing in Family Court, the woman was able to meet with a pro bono attorney through Family Legal Connection, one of the Remote Legal Connect projects in New York, to learn about her rights and prepare for court.

DIGITAL DIVIDE CONSIDERATIONS

While Pro Bono Net saw record-high usage of many of our online legal help systems during the pandemic, we also know that the digital divide had a profound impact on low income and under-resourced communities that lack the Internet access, mobile devices or support to access essential online legal resources and services.

Prior to the pandemic, the digital divide was often thought of as an infrastructure issue, for example “last mile” connectivity gaps in rural areas. While broadband access and affordability remains an issue for too many New Yorkers - particularly low-income, Black, Latinx, and rural communities - the pandemic spotlighted new dimensions of this divide, highlighting who is able to access basic legal services and participate equitably in our legal system. These new dimensions include barriers that low income New Yorkers face when seeking information in languages other than English, or in plain language (understandable to anyone unfamiliar with the legal system); barriers encountered by people who lack digital literacy to participate in online services; and barriers to scanning, printing and signing documents.

To reach underserved New Yorkers, especially communities that are disproportionately impacted by systemic barriers, Pro Bono Net’s programs work to advance digital equity. We advocate for a “no wrong door” approach, with online options increasing and complementing phone, in-person, and other traditional service delivery models. We work with direct service providers and trusted intermediaries to design wraparound services that help people successfully navigate complex processes and participate in remote services. Our programs provide language access, plain language information, and plain language privacy policies so users understand their data rights and options. And we train our LiveHelp operators on empathy-centered support to help people in crisis learn about their legal options and feel more confident taking the next step.

CONCLUSION

As illustrated by the data included in our testimony, hundreds of thousands of New Yorkers are already seeking out and successfully using online legal resources and services. We anticipate that this demand will only grow in the aftermath of the pandemic, which supercharged our collective reliance on digital tools. We are encouraged by new state and federal investments to reduce the digital divide and ensure widely affordable and accessible broadband access for historically marginalized and excluded communities. However, access to the Internet and access

to the civil justice system is not enough. To ensure that all New Yorkers are able to take advantage of investments made to increase access to justice, robust legal information and services must be made widely available to the public through a multitude of easily accessible digital channels. Moreover, true empathy for the most vulnerable must ensure that they are prepared and supported when they enter the legal or court system. We, as a community, have a responsibility to do all that we can to eliminate systemic barriers to justice, to center human well-being in the design of court proceedings, and to help ensure that people can successfully participate in civil justice processes.

APPENDIX L



New York State Bar Association

President's Committee on Access to Justice and Committee on Legal Aid

Access to Justice in the Post-COVID Legal Landscape

November 18, 2021

The following written testimony is submitted jointly by the Bronx Defenders (BxD), Brooklyn Defender Services (BDS), Center for Family Representation (CFR) and the Neighborhood Defender Service of Harlem (NDS) (collectively the “family defense providers”). Our four offices are the primary providers of mandated legal representation for low-income parents and children in Article 10 cases filed by the New York City Administration for Children’s Services (“ACS”).

Our clients are low-income parents and children, the vast majority of whom are from racially and ethnically marginalized communities and who are living under the constant threat of family separation and surveillance by the family regulation system¹ in New York City. The families appearing in family court Article 10 proceedings have been disproportionately policed by ACS and the extent to which their race makes them vulnerable to the negative consequences of contact with the family regulation system is profound. Our clients rely on New York City Family Courts to ensure that their families are not wrongfully separated and to ensure that, in cases where children are placed in the foster system, ACS makes the efforts required by law to send them safely home as quickly as possible.

When the family court is not operating efficiently or fairly, families are deprived of the most elemental of human bonds and fundamental rights. As it operates today, the family court does not serve as a check on the discriminatory policing of low-income Black and Brown families by ACS or as a vigilant protector of fundamental rights and family bonds. Rather, it too often operates as an extension of the surveillance experienced by communities of color at the hands of ACS and itself causes lasting trauma for the most marginalized families. This reality has been exacerbated by the pandemic and the resulting shut down of in-person Article 10 proceedings.

As an initial matter, we must qualify our experience and recommendations. As attorneys representing parents in Article 10 court proceedings, we are on the spectrum of power within a court system that does great harm to the families that rely upon the court for justice. We ask that you center any inquiry on the families directly impacted, looking specifically at whether families

¹ Together, ACS and its attendant systems, including the foster system, so-called preventive services, and the family court are most accurately described, in our view, as the family regulation, rather than the “child welfare” or “child protective” system.

have access to justice and whether and how the courts are functioning to prioritize the needs of impacted families. It is their experiences and recommendations that matter most. **Our recommendations should not preclude or be deemed a substitution for recommendations from the community and families who are directly impacted by the court system.** We urge your committees to create meaningful opportunities for those most directly harmed to communicate their experience of accessing justice in the post-COVID era and make recommendations for change.

How a court prioritizes its proceedings, often with limited resources, and how it operates daily demonstrates who and what it values. During the pandemic, the family court has failed, in its everyday operations and priorities, to value the families appearing before it. Particularly problematic has been the family court's low regard for due process protections for parents and children and its overall prioritization of expediency and proceedings that curtail or end family bonds over proceedings that protect them and prevent family separation. Perhaps this failure was in part because of a lack of resources, rather than a lack of commitment to justice by the court itself. The failure of our courts to prioritize family integrity, however, is not unique to the pandemic. The family court has long demonstrated a fixed and embedded disregard for the families it purports to serve and is in large part why families appearing before the family court believe, with considerable supporting evidence, that their lives and family bonds do not matter to the court.

Our recommendations below are aimed at addressing this structural failure. While some of the following recommendations include "quick fixes," others require a deep commitment by the court to the reunification of families, humility, anti-racism, and to a re-orientation of priorities for the judiciary.

The Impact of the Pandemic on Article 10 Proceedings and Family Separation

The family court has been all but shuttered to in-person Article 10 proceedings since March of 2020. While the city's criminal courts, often situated just next door or in the same building, have resumed in-person arraignments and gradually opened to other proceedings, including grand jury proceedings and jury trials, all but a handful of Article 10 appearances have been conducted remotely. Even while the Office of Court Administration announced the re-opening of courts and family courts across the state resumed in-person proceedings, New York City's family courts have remained essentially closed to in-person proceedings. Although a few cases involving multiple interpreters have been conducted with a hybrid model (some attorneys and parties on screens and some appearing in person), most singular requests to conduct in-person emergency hearings to end family separation have been denied, without explanation. Not surprisingly during this time, the reunification rates of families separated by ACS in New York City have gone down: there were only 1,830 reunifications in 2020, as compared to 2,309 in 2019—a decrease of over 20%. In addition, emergency hearings which are required by law to commence pursuant to statutory time frames are regularly adjourned beyond what is required by law, and often take weeks to months to complete.

During the pandemic, the court's remote operations were limited to "essential proceedings," defined for Article 10 cases as those that involve ACS applications to remove children and separate families. ACS could no longer file to surveil families through "court-ordered supervision," for much of the first year of the pandemic. While "court-ordered supervision" cases include several different sets of circumstances, ACS can normally seek ongoing court oversight of a family instead of family separation. Notably, the decrease in reports, investigations, and court cases has not resulted in children being less safe. This is true even despite the economic stress and challenging circumstances for families during the pandemic. Indeed, when asked at a City Council hearing in June, 2021 whether the shutdown affected child safety, ACS Commissioner David Hansell answered, "I'm happy to say, and very relieved to say, that we haven't seen any indication, at least in New York City, that that's the case."²

During the almost two-year shut down of the New York City Family Court, emergency hearings under Family Court Act §§ 1027 and 1028 to prevent the unnecessary removal of children or to return children unnecessarily removed, respectively, have not been prioritized by the courts and in many cases, even over objection, have been delayed. The Family Court Act requires that 1027 hearings commence within 24 hours of the removal of a child and 1028 hearings must commence within 3 days of a parent's demand to have their child returned to their care. The court must return children home to their parents unless ACS proves that a child is at imminent risk of serious harm in their parent's care. While needless delay in emergency hearings has always been a problem in New York City Family Courts, this delay has been exacerbated by remote operations. When family courts first shut down, they remained open only for emergency applications by ACS which sought the removal of children from their homes. Only after advocacy from our offices and from those organizations representing children in these proceedings did the court agree to conduct emergency hearings at the request of parents and children.

In addition, several family court judges have insisted on hearing emergency applications through motion practice and that parents seeking the return of their children provide written affidavits, despite no statutory requirement to do so. This practice shifts the burden from ACS to parents, depriving parents of the due process required under the law and delaying justice for families who are predominantly Black and Brown. While emergency hearings to end family separation have not been prioritized, the court has ensured that termination of parental rights cases (TPRs) move forward. Very few parents' rights were terminated in the first months of the pandemic, but the filing of TPRs increased in the fall of 2020 and dramatically increased in 2021.³ The failure to prioritize family reunification and the preservation of family bonds thwarts the very purpose of

² See, Testimony of Commissioner David Hansell, Committee on General Welfare hearing June 14, 2021, video at 52:00 minutes; Kendra Hurley, "How the Pandemic Became an Unplanned Experiment in Abolishing the Child Welfare System," New Republic August 18, 2021 (<https://newrepublic.com/article/163281/pandemic-became-unplanned-experiment-abolishing-child-welfare-system>); Anna Arons, "An Unintended Abolition: Family Regulation During the COVID-9 Crisis," Columbia Journal of Race and Law, March 31, 2021 (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3815217).

³ ACS July 2021 Flash Indicator Report, at 18. <https://www1.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2021/07.pdf>.

the family court and demonstrates a low regard for the human bonds of the family who rely on the court for justice.

In addition, the family court has also failed to ensure that the parties have access to the court throughout the pandemic. Throughout the court's shut down, it has prioritized calling new cases over parents having time to speak to their assigned attorneys about the allegations against them which are sometimes provided while attorneys are making an appearance. The court routinely schedules new cases only moments after attorneys have received the petitions and contact information for their clients. Many litigants struggle to access remote court proceedings due to a lack of the technology needed to join a court appearance, and the court relies on defense counsel to ensure their clients can access the court. We have observed numerous instances where judges refuse to recall a case so that a parent may re-charge their phone or where judges admonish parents for appearing from a noisy, crowded public location where they can access free Wi-Fi. Our clients often cannot afford basic communications technology such as phones, ample data plans, laptop computers and Wi-Fi, and they often must share the devices they have across family members. When parents do not have technology or Wi-Fi, the court orders parents' counsel to facilitate the appearance of parents in court. The court's approach to our clients' lack of access to the resources and technology needed to meaningfully engage in court reflects both its misunderstanding of its role – to be accessible to all who need assistance, regardless of means.

The following are suggestions for court operations that will better ensure access to justice:

- Resume in-person proceedings for Article 10 intake, emergency hearings pursuant to FCA 1027 and 1028 and all contested hearings when a parent chooses to appear in person.
- Prioritize the scheduling of emergency hearings to prevent and end family separation and ensure that such hearings are held according to statutory and constitutional time frames.
- Abolish standards and goals for family court judges and end the prioritization of termination of parental rights proceedings over hearings to prevent or end family separation.
- Continue to hold conferences with court attorneys and uncontested appearances virtually, and
- Provide technology and technical assistance to ensure that parties have access to the family court in any proceedings conducted virtually.
- Require the Family Court to issue a written policy that the lack of technology cannot be held against the parents and require ACS case planners to appear from a private and quiet location.
- Expand in-person family court hours to accommodate emergency hearings.
- Require trial orders of readiness and complete discovery before scheduling Article 10 cases for fact finding or disposition.
- Adopt the Best Practices for Virtual Article 10 Proceedings dated December 2020, drafted by the institutional parent defense organizations, attorneys for children, and FCLS.
- Provide mandatory and ongoing bias training for all judges and court personnel.

- Provide all attorneys access to the court’s Universal Court Management System (UCMS).
- Enhance and expand interpretation services for additional languages beyond Spanish.
- Center the schedules and responsibilities of the parents in scheduling court appearances and hearings over those of the attorneys, ACS and foster care agency case planners.
- Ensure equal access to the court by requiring that judges schedule all Orders to Show Cause and Motions filed by defense counsel.

We appreciate the opportunity to provide you with information about how the pandemic and the veritable shut-down of the family court to in-person proceedings have impacted access to justice by parents and children in Article 10 proceedings and share our recommendations for change. We are available to answer any questions or provide additional explanation or information for why these changes are necessary and you can reach us at the contact information provided below.

Sincerely,

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November 17, 2021

John K. Carroll
President

Zachary W. Carter
Chairperson of the Board

Re: HEARING: ACCESS TO JUSTICE IN THE POST-COVID
LEGAL LANDSCAPE

Janet E. Sabel
*Attorney-in-Chief
Chief Executive Officer*

TESTIMONY OF THE LEGAL AID SOCIETY

I. **Introduction**

Thank you to the New York State Bar Association’s President’s Committee on Access to Justice and the Committee on Legal Aid for holding this timely and important hearing. We welcome the opportunity to testify on the critical issues around access to justice as our city, state, and country move forward from the Covid-19 pandemic. We advocate for a new framework for “virtual justice,” which means a top-to-bottom rethinking of how the courts work through the lenses of technology and access to justice. Such a framework includes studying the opportunities and challenges posed by remote hearings, addressing the digital divide, and reworking electronic filing as the gateway to a functional virtual justice system.

II. **Background**

The Legal Aid Society (“the Society”), the nation’s oldest and largest legal services and social justice organization, is an indispensable component of the legal, social and economic fabric of New York City – passionately advocating for low-income individuals and families across a variety of criminal, civil and juvenile rights matters, while also fighting for legal

reform. The Society has performed this role in City, State and federal courts since 1876. With its annual caseload of more than 300,000 legal matters, the Society takes on more cases for more clients than any other legal services organization in the United States, and it brings a depth and breadth of perspective that is unmatched in the legal profession. The Society's law reform and social justice advocacy also benefits some two million low-income families and individuals in New York City, and the landmark rulings in many of these cases have a national impact. The Society accomplishes this with a full-time staff of nearly 2,100, including more than 1,200 lawyers working with over 800 social workers, investigators, paralegals and support and administrative staff through a network of borough, neighborhood, and courthouse offices in New York City. The Society operates three major practices – Criminal, Civil and Juvenile Rights – and receives volunteer help from law firms, corporate law departments and expert consultants that is coordinated by the Society's Pro Bono program.

The Society's Criminal Practice is the citywide public defender in the City of New York. Prior to the COVID-19 pandemic and its impact on our criminal legal system, our Criminal Practice represented approximately 180,000 low-income New Yorkers accused of unlawful or criminal conduct on trial, appellate, and post-conviction matters. In the context of this practice, the Society represents people accused of crimes from their initial arrest through the post-conviction process, and represents prisoners' safety and health issues in New York City jails and state prisons.

The Society's Civil Practice provides comprehensive legal assistance in legal matters involving housing, foreclosure and homelessness; family law and domestic violence; income

and economic security assistance (such as unemployment insurance benefits, federal disability benefits, food stamps, and public assistance); health law; immigration; HIV/AIDS and chronic diseases; elder law for senior citizens; low-wage worker employment law problems; tax law; consumer law; education law; community development opportunities to help clients move out of poverty; and reentry and reintegration matters for clients returning to the community from correctional facilities.

The Society's Juvenile Rights Practice provides comprehensive representation as attorneys for children who appear before the New York City Family Court in abuse, neglect, juvenile delinquency, and other proceedings affecting children's rights and welfare. Last year, our staff represented some 34,000 children, including approximately 4,000 who were arrested by the NYPD and charged in Family Court with juvenile delinquency.

In addition to representing many thousands of children, youth, and adults each year in trial and appellate courts, the Society also pursues impact litigation and other law reform initiatives on behalf of our clients.

In March 2020, COVID-19 swept across our nation with great speed, impacting our community and bringing death, illness, and a rapidly changing environment of rules and protocols to address the deadly pandemic. At the beginning of this pandemic, three of the top four counties suffering death rates from COVID-19 across the Nation were within New York City: Queens, Kings and Bronx. For example, South Bronx has one of the highest infection rates in the country, proving once again the disparate impact our Black and Brown communities continue to endure due to the lack of healthcare and resources needed to protect

against a highly contagious and deadly pandemic that ravages the nation. It is through this lens of disparate impact that we must view our path forward. The communities impacted the most by COVID-19 are the same communities that are disparately pulled into our criminal and juvenile legal systems, as well as our child welfare system. They are the communities often most in need of assistance from our courts. As we examine access to justice in a post-COVID-19 environment, we must maintain this perspective to truly accomplish change.

Over the next 18 months, our legal community would see courts close and reopen with restrictions as transmission rates cycled over time. Our legal system would be pushed to make rapid adjustments, including an explosive expansion of technology and remote practice, unprecedented for our courts. As restrictions and capacity would grow and wane, we experienced and learned many lessons that can only assist us now as we plan for a future post-COVID-19.

III. **Inequities in Virtual Proceedings**

In March 2020, with the COVID-19 pandemic spreading rapidly, our courts, along with schools, businesses and communities, closed to all but the most essential of functions to slow the transmission rates and save lives. Courts quickly implemented new technologies to provide access, albeit remotely, to the courts until transmission rates and safety protocols permitted in-person appearances. These necessary steps directly impacted people with matters before our courts, placing barriers to access both courts and counsel. As a result of this rapid transition, the courts are now positioned to use technology and allocate resources to provide greater access and legal services in a new post-COVID-19

environment. The pandemic exacerbated a humanitarian crisis for all those incarcerated, particularly at Rikers Island, isolating people from courts, counsel and their loved ones. Correctional facilities closed to visitors and courts ceased or greatly restricted transportation for court appearances. In response, our courts and correctional facilities turned to new technologies to reestablish connections. Courts implemented video conferencing platforms, which quickly became overburdened.

Courts did not adequately allocate time and resources for needed capacity for the new format for court appearances, preliminary hearings, bail reviews or other matters. Counsel was not given enough time to discuss matters with their clients, including preparing for upcoming critical bail review, writs and hearings. Such conversations may require review of discovery materials including material in video formats for body worn cameras, surveillance and cell phone videos. Probation departments, diversion court staff and program services also required more time for assessments and addressing possible treatment programs or other needed services. Due to the lack of capacity and resources, people held in correctional facilities suffered delays as scheduled videoconferences and/or in-person appearances were cancelled and rescheduled.

If the Court is to rely on virtual hearings and continue to expand its digital operations as we think it should, it must also acknowledge and work to improve its capacity to deliver justice in virtual proceedings. For example, in local correctional facilities, videoconferencing capacity must increase to allow for timely attorney-client communications. Clients also need an opportunity to confidentially and privately access critical documents and files, many in

video format, to understand the nature and content of the charges. By reviewing the relevant evidence, clients can make knowing decisions as to whether a certain plea or trial will expedite a resolution of the matter. Court appearances, in-person and virtual, cannot be delayed to the detriment of those held in custody. Moreover, services and programs need to have timely access to help clients re-enter the community with the necessary support, services and supervision. We must continue to devote resources to increase capacity and permit clients held in correctional facilities to access courts without delays.

Courts must expand virtual appearances in order to provide greater capacity for matters best suited for in-court proceedings. For example, with current restricted capacity in criminal courts, our courts must ensure access for incarcerated clients to conference cases, dispose of cases, reassess bail determinations, or move the matter to hearing and trial. Similarly, court capacity should be used at this time to conduct hearings and trials, especially for incarcerated clients or for the oldest pending matters. Across the State, we have created and used capacity to conduct critical hearings and jury trials while attempting to maintain a safe environment during the COVID-19 pandemic. Many people have waited months and years, some in correctional facilities, to have their day in court. We must maintain our focus to provide that access as our capacity continues to expand.

We must also look to provide more legal services within correctional facilities, local and State, to provide greater access to the courts and legal services for people incarcerated. For example, The Legal Aid Society's Incarcerated Client Services located within New York City's correctional facilities were critical during this crisis to reconnect and

serve incarcerated clients. Defender services on site could quickly determine a client's health and location, communicate critical information, assist in telephone or video conferences with counsel, get essential documents signed for releases, plea and sentence, or other needed forms for reentry. As part of the defense team, defender services can operate and assist within the protections of right to counsel. Through the assistance of defender services, delays were addressed and people reconnected with courts and counsel.

In State correctional facilities, these same issues present themselves for people held post-conviction. People sought advice of counsel to seek motions to vacate or resentencing in light of the conditions driven by the pandemic or seek information on appeals. However, timely access to counsel, and the ability to communicate with counsel in a secure and confidential way, was limited for clients post-conviction. More needs to be done to assess and address access to courts, counsel and reentry services in our State correctional facilities.

IV. **Addressing the Digital Divide**

Access to digital technology is unequal in New York State. Communities of color and low-income people, in particular, are especially disadvantaged. For example, approximately one-third of Black and Latino households do not have access to a computer and more than one-third of low-income New Yorkers do not have access to broadband of any kind. In an effort to bridge this digital divide, New York City's Department of Education provided more than 300,000 internet-enabled iPads to students to enable remote learning in 2020. Similar

innovation is required to address access to courts. Lacking a device or internet service when trying to access virtual courts is like being denied entry to a physical courthouse building.

There are a number of actions that the courts should take to address digital inequity, beginning with a technology lending program. The courts should work with community leaders to designate a series of “hubs” at trusted locations throughout New York communities, at which people could borrow hardware such as laptops and tablets. These hubs could include the offices of elected officials, branches of public libraries, and community centers and places of worship. The courts should then provide the hubs with internet-enabled tablets, smartphones, laptops, scanners, cameras, and printers, and work with these facilities to establish lending programs, where community members can utilize these resources. The courts should develop ongoing communication channels with litigants and organizers to collect data and feedback on any access issues that continue to arise.

The Society created a pilot “Justice Tablet” initiative in collaboration with Columbia Law School’s “Lawyering in the Digital Age Clinic.” Through this program, students identified hardware and software and built prototypes to test with the Society’s clients in Queens. We identified a low cost Samsung tablet, purchased two of them, and loaded each with Zoom, Microsoft Teams, an email account, and a scanning app, and delivered it to clients who were facing eviction. We also activated the SIM card on the tablet so that it could access the internet anywhere, including in clients’ homes where there is no connectivity. Using the Justice Tablet, one client, an elderly Bangladeshi immigrant in Flushing, was able to obtain rental arrears through the Emergency Rent Assistance Program (“ERAP”) and prevent his

eviction. A second client, a grandmother in Astoria, is in the midst of suing her landlord for harassment and to get lead paint removed from her apartment so that her granddaughter can visit without facing exposure to lead paint. So far, we have learned that for many of our clients, the hardware and software are both completely new and out of reach. Our team spent many hours orienting these clients about what the hardware is and how it works. And yet, the results — significant improvements in communication with the advocates, including transmission of documents and photos, and greater access to virtual proceedings — have been promising.

The court system and all of its stakeholders should also actively advocate for increased access to broadband internet service at no or low cost to users. Expansion of the existing access points like LinkNYC and reduction of the cost of private internet service through subsidies and credits should be prioritized. Improving access to virtual courts must include greater access to legal information and resources for litigants. Such services can be provided online through virtual trainings and platforms hosted by law schools, legal services providers, and nonprofits.

V. **Remote Appearances: Opportunities and Limitations**

During the pandemic, as physical places ceased to operate, virtual spaces became the default. We learned that courts are a set of services, not a collection of buildings. This has offered many opportunities to improve the delivery of services to our clients, but has also posed serious threats to our clients' rights and interests. At times, remote hearings have

served as crucial tools to promote the dual goals of public safety and access to justice during the Covid-19 pandemic. Under the right circumstances, remote hearings can provide meaningful due process, allowing courts to work with litigants to bridge the digital divide and enforce procedural protections. For example, for our teenage clients at the heart of child welfare cases, the ability to participate remotely in their own court appearances, give testimony, and engage with the decision-making process around their own lives without sacrificing an entire day of school has been a tremendous bonus. We recommend the court continue to provide virtual hearings moving forward to accommodate litigants who opt-in to such hearings for any number of reasons, including as accommodations to disabilities and caretaking responsibilities, to address transportation challenges, and to avoid missing work or school.

If the court requires litigants to attend a hearing in person, it must allow litigants to call the court and obtain an adjournment if they cannot come to court due to childcare or work obligations, disability, illness, or an inability to afford the train or bus fare. In order to reduce the possibility that litigants are not able to attend hearings due to childcare concerns, every court should operate its own childcare center. Housing Court should follow the model of New York's Family Court system, which has ten court-based childcare centers running in the five boroughs, Monday through Friday from 9:00AM to 5:00PM, all of which provide free childcare and educational services to the children of adults who are obligated to make an in-person court appearance.

Litigants must be able to opt-in to virtual proceedings without coercion. If they don't, in-person proceedings should serve as the default type. In criminal cases, it is the accused who has a right to be present at all critical phases of the proceedings. A waiver of those rights to elect to appear in virtual court must be a knowing and voluntary one by the accused. Similar protections exist in juvenile delinquency proceedings. A person who wishes to appear in person must be afforded that opportunity and not compelled otherwise.

We also must also be mindful that for some people and in some cases, a virtual appearance is not the equivalent of an in-person court proceeding. There are critical phases within a criminal and juvenile legal matter that, with the greater public health demands abated, may only be fulfilled in-person. For example, no other appearance carries more significance than a determination of one's freedom. Bail or remand determinations at first appearance and/or arraignments have an immense impact on an accused's ability to fight the accusations and on the outcome of the proceeding. One study found using a virtual appearance for bail review led to a substantial increase in the amount of bail set during bail hearings. Virtual bail hearings led to a 50 percent increase in bail set on average over an in-person hearing. The lack of a shared physical encounter and recognition of the humanity of the accused person, in these scenarios, may have led to a barrier to attorney-client communication and an adverse perception of the accused.

We saw how a remote arraignment process can also negatively impact attorney-client communication and related services. The quality and connectivity of the platform greatly

impacted counsel's opportunity to assess a client for critical physical and mental health issues and to establish an attorney-client relationship. A remote practice placed barriers to obtaining needed HIPAAs and other releases, to coordinating with escorts and services for post-arraignment housing or programs, and to reuniting our clients immediately with their families. Moreover, many video conference platforms did not provide a private "break out" space to afford a confidential attorney-client discussion during the proceeding. This barrier hampered the ability to consult with counsel during the proceeding. Absent an overriding public health need, arraignments should remain in-person to afford people accused of a crime full access to counsel and services and to remove any possible bias or prejudice imposed by a virtual appearance.

Similarly, in criminal legal matters, the exercise of critical constitutional and legal rights at pretrial evidentiary hearings and trial may only be fulfilled in an in-person proceeding. Every aspect of a jury trial can be conducted more fairly when in-person, whether it is selecting a jury, confronting witnesses, presenting a defense, providing the right to counsel, or delivering summations. The opportunity to observe the demeanor of people in jury selection or in cross-examination is substantially impaired in a virtual hearing. Moreover, a virtual appearance will create barriers to live, immediate consultations between counsel and client. For all these reasons, our laws and our courts continue to refrain from virtual evidentiary hearings and trials in criminal legal matters. Juvenile delinquency matters, while lacking a jury, offer similarly strong protections of the need for in-person hearings and trial.

In civil proceedings, allowing litigants to opt-in for virtual appearances will greatly improve access for many. However, the court must work proactively to ensure that virtual hearings are truly accessible to all individuals, and take particular care to ensure that people with disabilities, people with limited English proficiency, and people without access to or knowledge of technology are afforded meaningful accommodations. This is particularly important because people with disabilities and people who speak languages other than English make up a disproportionate percentage of our clients, as they are twice as likely to live in poverty as others. In child welfare proceedings in Family Court, we serve as attorneys for the child. As a result, our clients are not required to be present. However, they are entitled to participate for certain critical proceedings and must be provided access to the proceeding, and confidential access to counsel, should a proceeding take place remotely.

The Court should provide comprehensive resources on its website that explain to all litigants how to utilize the platform that virtual hearings will be held on, such as Microsoft Teams. The Court can follow the models of the Connecticut Judicial Branch or the New Jersey Courts in designing these resources. The Connecticut Judicial Branch's website features both written guides and videos that instruct litigants on how to join a Google Teams meeting with a PC or mobile device, how to make a test call, and how to join a Google Teams call as a guest. Similarly, the website for the New Jersey Courts also features written guides that discuss how to join a Zoom virtual courtroom, how to join a Google Teams meeting, and what software requirements are necessary to operate Zoom. The website also features an instructional video on how to prepare for a remote court hearing.

Critically, the Court must provide resources in multiple languages to ensure that individuals who speak languages other than English can fully access the virtual court system. The New Jersey Court website features an instructional video on how to prepare for remote court hearings in Spanish, Haitian Creole, Korean, Polish, Portuguese, and Arabic. However, the remainder of the information and reference guides on the New Jersey Court website are only in English; this Court must strive to provide all resources in multiple languages. The Court must also provide interpreters in any virtual hearing where the litigant opts for one. Court personnel should proactively reach out to parties to inquire about language needs prior to a given hearing.

Furthermore, the Court should provide sign language interpreters for all litigants who are deaf or hard-of-hearing. The Court should consider following the model of the New Jersey Courts' website and feature resources that provide tips for interpreters assisting litigants with Zoom calls as well as the relevant procedures that must be followed by interpreters. Additionally, the Court should work with litigants to provide them with access to alternative text formats such as Braille and audio with Assistive Listening Devices. Finally, the Court should: a) establish multiple methods of communication that individuals can utilize to request accommodations, b) create a centralized process to review and adjudicate accommodation requests, and c) design an appeals process that litigants can utilize if their accommodations requests were not addressed in an adequate fashion.

By providing greater access to courts remotely, we can allocate resources for necessary capacity for in-person appearances, especially for hearings and trials. For people accused of

crimes held in jails, their criminal legal matters must take priority in criminal courts. Unfortunately, we have seen courts use critical limited capacity during this pandemic to order people at liberty to appear in-person on low level appearance tickets and summons. Other people at liberty were ordered back to court merely to receive new adjournment dates based on political winds to focus on certain charges or other administrative decisions. Courts must use capacity to conference cases for incarcerated clients looking to resolve the case, reassess bail determinations, or move the matter to hearing and trial. Similarly, court capacity should be used at this time to conduct hearings and trials, especially for incarcerated clients or for the oldest pending matters. Many people have waited months and years, some in correctional facilities, to have their day in court. We must maintain our focus to provide that access.

VI. **Improving and Expanding the E-Filing System**

If approached carefully, a uniform, user-friendly, accessible, and multilingual remote filing system has the potential to create massive benefits for *pro se* litigants, and would facilitate efficiency and transparency in the court system. However, vulnerable litigants' differential access to the technology which would allow them to utilize such a system is a source of inequity, creating yet another shortfall in the justice system. Additionally, procedural hurdles present an additional challenge to developing an equitable e-filing system for *pro se* litigants. New York must not only maintain an e-filing system *pro se* litigants can use at their choice, keeping remote filing as an option if the *pro se* litigant so chooses, but

must also assume the responsibility of ensuring that litigants have access to technology assistance and information explaining, in plain language, the system that is in place.

Lacking access to computers, tablets, and/or smartphones, and not understanding how to maneuver e-filing systems should not bar litigants from participating in proceedings in ways that are more convenient, and less disruptive to them. The *pro se* e-filing system should also include regularly updated resources for *pro se* litigants including, but not limited to, an appropriately staffed helpline, FAQs, contact information for city marshals, sheriffs, legal services providers, clerks in each courtroom, Family Justice Centers, and a directory of the New York State courts. Any notices or instructions provided to *pro se* litigants should use plain language and should be timely provided to litigants in a manner most effective for them. The court should also consider developing a continuous, and well-monitored, means by which litigants and organizers can provide feedback on the system's effectiveness, so that the necessary adjustments can be made, ensuring that the court is achieving equity in this domain to its highest potential.

A system such as this, with the reinforcements we recommend, would minimize the stress and expenses of litigation, not only including transportation to and from the courts, administrative costs, employment and/or childcare burdens, but also the stress and inequity that can arise from unrepresented party's unfamiliarity with the legal system. A uniform e-filing system would also potentially decrease bias that *pro se* litigants experience when their work product has imperfections, and would greatly reduce the wait time that results from court staff being responsible for all in-person filings. Rules for participating in e-filing should

be communicated publicly, in multiple languages, and in accessible ways. The system should be password protected, and include fillable documents such as pleadings, affidavits, orders to show cause, motions, and subpoenas. Adopting a model like this will make it much easier for both attorneys and litigants – *pro se* or represented – to navigate the legal system, and minimize the need for in-person appearances and travel.

Moreover, e-filing systems must be expanded to our criminal legal practice. During this pandemic, we saw courts adopt emergency, temporary procedures to allow parties to file and serve legal documents via new electronic portals or email. These necessary systems allowed filing and service without hardcopies delivered in-person in our courts increasing access and efficiency while addressing health and safety needs within our courthouses. But, as the courts expand in-court functions, we have seen the return of hardcopy filing and service in our criminal courts. E-filing has established itself as providing greater access and efficiency in our civil courts, including writs of habeas corpus. It has also enhanced our practice in Family Court, although some improvements remain to be made. For instance, attorneys in Family Court are required to upload documents directly to the court, robbing opposing counsel of the opportunity to object in advance, before the documents are put in the record. The process of subsequently removing those documents from the permanent file are arduous. It is time to bring its full benefits to criminal legal practice.

VII. Conclusion

As we continue to progress through the various stages of the Covid-19 crisis, we must focus on the objective of ensuring that New York’s marginalized and vulnerable community members have their legal needs met, and will continue to push for fairness and equity. The Legal Aid Society is already partnering with other stakeholders, such as law schools and other legal services organizations, to promote basic principles for access to justice in the post-Covid era. We hope that all stakeholders will join in this important endeavor in order to build the bridge to the future of service delivery within the justice system. On behalf of our approximately 300,000 clients, the Society thanks you for the opportunity to provide testimony on access to justice in a post-COVID-19 legal landscape.

APPENDIX N



Good morning. My name is Judith Olin and I am a Clinical Professor of Law at the University at Buffalo School of Law where I direct the Family Violence and Women's Rights Clinic. We will celebrate our 30th anniversary in 2022, and I am proud to say that we are the longest continuously running domestic violence law clinic in New York State.

I am here to talk about how citizens filing family offense petitions in Erie and Niagara County Family courts are routinely denied immediate access to the court as required by New York State law. Family Court Act section 153-c (a) states that

Any person appearing at family court when the court is open requesting a temporary order of protection under any article of this act shall be entitled to file a petition without delay on the same day such person first appears at the family court, and a hearing on that request shall be held on the same day or the next day that the family court is open following the filing of such petition.

This statute is clear and unambiguous. One would think that nearly 45 years after the seminal case of *Bruno v Codd*, we would no longer be experiencing this problem. According to statistics published by the New York State Division of Criminal Justice Services, in 2019, Erie County recorded 15 domestic violence homicides, of which 13 involved intimate partners, a larger number than Kings County which has 2 ½ times the population of Erie County.

I represent a work group of domestic violence advocates and attorneys who are deeply concerned about this ongoing injustice. We have learned from neighboring counties such as Monroe, that petitioners get access to family court the same day or the next day as required by the statute. This situation has been going on since before the Covid pandemic, and it is time to put an end to it and give citizens in Erie and Niagara counties access to an immediate hearing on their family offense petitions as required by New York State law.

Please do not hesitate to contact me at 716-645-3076 or by email at judyolin@buffalo.edu if you have any questions. Thank you for your attention.



Community Immigration
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APPENDIX O

Testimony submitted to the New York State Bar Association's President's Committee on Access to Justice and Committee on Legal Aid

Thursday, November 18, 2021, 10:00am

Good morning. Thank you for holding this hearing and for the opportunity to testify today. My name is Terry Lawson and I am the Executive Director of [UnLocal](#), a community-centered non-profit organization that provides direct community education, outreach, and legal representation to New York City's undocumented immigrant communities. I am a member of the Advisory Council on Immigration Issues in Family Court and am also the co-founder of the Bronx Immigration Partnership, a coordinated safety net of legal and social services providers assisting Bronx residents with their immigration-related needs. I am here today to discuss the challenges our clients and community members are facing in the current legal landscape.

UnLocal provides free high-quality legal services for New York's most vulnerable immigrants, many of whom are essential workers, who are seeking employment authorization, asylum, DACA, SIJS, lawful permanent residency, relief from removal, and much more. Over

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the last year, our Legal team has handled over 1200 cases for people across New York City and in parts of Long Island and upstate. Our [Queer Immigrant Justice Project](#) works with LGBTQ+ immigrants who are seeking asylum, and UnLocal is part of the Rapid Response Legal Collaborative, along with Make the Road New York and NYLAG, which has fought tirelessly during this pandemic to stop deportations and get people out of detention. Over the past year, our Education and Outreach team has conducted 70 virtual community events and informed community members about the Fund for Excluded Workers, DACA, the NYS Dream Act, unemployment, taxes, the census, and more.

Many of the challenges our clients and community members face today are the same ones that have plagued us from the beginning of the pandemic and before: lack of access to affordable housing, technology, and free high quality legal services. In the current landscape, with many previously walk-in services now virtual, our clients facing eviction struggle to find legal representation to stop their displacement. With the depletion of the Excluded Workers Fund and the Emergency Rental Assistance Program and the ending of the eviction moratorium, we fear that many more of our clients will lose their homes unless New York takes meaningful steps to

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address New York’s housing crisis. The rapid closing of the Excluded Worker Fund underscored how the help that exists is not for everyone. Those who were able to quickly provide the required documentation of their lost wages during COVID had their claims approved while those forced to go to shelters, who worked for employers who paid them cash, who had to juggle children in remote school, or were blocked access to their documents by abusive partners, were left out. Those seeking assistance from the Excluded Workers Fund had to show the existence of an Individual Taxpayer Identification Number, or ITIN, or that they had applied for one. Yet, the process of applying for and receiving ITINs is arduous, particularly at a time when the system is being flooded and community offices remain closed.

Over the past eighteen months, our clients experiencing intimate partner violence have faced countless barriers from being stuck at home, with no access to resources, no ability to pay rent, and no way to buy food. We have families in New York who are literally starving, people who have already experienced multiple traumas. Spending so much time at home, with no money, with bills coming in, with mental trauma: this is how people get killed. We learned this fall that the U.S. murder rate [increased 30% last year](#), the highest in six decades. A staggering

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percentage of those involved domestic and gender-based violence. Immigrant survivors and victims of gender-based violence have the added stress of fearing that they could be reported to ICE at any time and separated from their children, also as a form of abuse, and that any information provided to government agencies or any public benefits sought for themselves and their families could get them deported. For those who are transgender or nonbinary, immigrant survivors and victims also face myriad stereotypes, minimal resources, and increased rates of violence. Institutional barriers obstruct immigrant victims and survivors from accessing the help they need during the pandemic. The lack of language access for immigrant survivors and victims continues to pervade interactions with government. It is often those who are most at risk who fear accessing the institutions set up to address their physical, emotional, and financial wellbeing, oftentimes for good reason. Without easy access to the Family Justice Centers and the services previously available there, our clients struggle to file for family court orders of protection and to navigate the court system without counsel. Further, by limiting the New York City Family Courts to only accepting emergency and essential filings, many of our clients are unable to file custody

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and guardianship petitions for their children, who are eligible for Special Immigrant Juvenile Status, unless their child is turning 18 or 21.

The electronic filing systems developed by the courts are a welcome change and one that we hope will continue to be supported with the requisite resources. Being able to file electronically has been critical to ensuring the efficient filing of court documents, both in the New York state court system and immigration court. As my colleagues have testified, however, the backlogs and delays mean that our clients are waiting years for their day in court, making true access to justice impossible.

The ability to appear in court proceedings via video conference has made it much easier for our attorneys and our clients to access the courts. I join my colleagues who have explained the importance of permanently adopting a hybrid model, given how much time and money is saved for both litigants and counsel. A side note however is that the suspension of the ability to remotely notarize documents in New York was premature, as remote notarization remains an ongoing need.



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We believe that further investment in the technology, to ensure that the courts, litigants, and counsel are able to communicate via video conferencing, is paramount. Such efforts made must be keenly attuned to the needs of unrepresented litigants, who struggled to engage with and understand court systems prior to the pandemic. While increased reliance on technology is a welcomed advancement for legal representatives, unrepresented litigants could be left even farther behind.

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NYSBA Virtual Hearings on Access to Justice

November 18, 2021

Presented by: Stephanie Taylor, Unemployed Workers Project

My name is Stephanie Taylor and I'm the Project Director of the Unemployed Workers Project at Volunteers of Legal Service (VOLS). VOLS was established in 1984 and our purpose is to leverage private attorneys to provide free legal services to low-income New Yorkers to help fill the justice gap. In addition to the Unemployed Workers Project, VOLS' projects provide end-of-life and incapacity planning program for seniors and older veterans; uniquely holistic and full-service legal services for small businesses; school- and health-based legal service partnerships with pro bono law firms to serve children and their families; and an immigration law practice that reaches many young clients who might not otherwise access assistance. Last year, our services directly benefited 6,215 clients and their household members.

VOLS Unemployed Workers Project hears from dozens of New Yorkers every day asking for help with their unemployment insurance (UI) cases. Many of these claimants lost their jobs in the wake of the COVID-19 pandemic and successfully applied for unemployment insurance benefits (UIB)--providing them with a lifeline. Over one year later, many of these same claimants are now being charged with initial ineligibility and related overpayments. These claimants are facing thousands of dollars in alleged overpayments and require a hearing to fight these charges.

Prior to the pandemic, the default for UI administrative hearings was in-person at one of the New York State Department of Labor's (DOL) hearing sites. Telephonic hearings were available exclusively for claimants residing further than 90 minutes from the hearing site or if they had a substantial hardship (like a documented health reason that prevents them from appearing in-person, or if an unforeseen emergency arises). At the beginning of the Covid-19 pandemic, the DOL pivoted to exclusively offering telephonic (audio-only) hearings. To date, all hearings are over the telephone and do not provide a video option.

The major concern with telephonic-only hearings is that some claimants do not have the funds to pay their phone bill and are therefore not able to receive the Administrative Law Judge's (ALJ) call and participate in their hearing. Other areas of concern include (1) claimants' inability to electronically submit evidence and (2) some claimants miss the ALJ's call. We hear from many claimants who say that they were waiting with their phone, at the right day and time, but that they never received the call. Other claimants report that calls from the ALJ's offices come up as "Anonymous" or "Unknown," which confuses claimants; they believe it to be a spam call and don't want to tie up their line for when the ALJ calls, inadvertently refusing the call and missing their hearings. In such cases, in order to obtain access to justice, claimants must file a timely request to reopen their case, alleging the reasons for missing the call. While this is burdensome even for English-speaking claimants working with attorneys, it often is an insurmountable barrier for individuals with limited English proficiency (LEP) and no access to legal counsel. These claimants are frequently summarily shut out of the process.

Unchanged from pre-pandemic standards, the DOL does not provide important notices in languages other than English. When an LEP claimant receives their English-language hearing notice containing language informing them that the hearing will be over the phone, they sometimes mistakenly go to the physical DOL office for their hearing. Once they arrive, they find a closed DOL office and no one to assist them. Consequently, these claimants often miss their hearings and default on their administrative appeals.

Although telephone hearings present an impediment to accessing benefits for some, there are claimants who prefer telephonic hearings, especially those who are proficient in English and who have consistent reliable telephone access. These claimants don't have to go to the DOL's hearing office, which alleviates travel expenses, the burden of taking time off from work or dealing with childcare issues. Claimants might be more open to participating in a hearing and fighting for their benefits when they can do that from their own home or job.

Aside from hearings, the DOL has been extremely difficult to access throughout the pandemic. Back in early Spring 2020, the DOL hired hundreds of staff who gave out bad information or who erroneously granted applications. This incompetence led to many claimants to being charged with overpayments they can ill afford to pay back and are therefore forced to participate in administrative hearings to fight the claims of overpayments or seek a waiver.

In addition, while claimants, pre-pandemic, had the option of visiting a physical DOL office to fill out an application or ask for help, those offices are now closed. It's extremely difficult for claimants to get the DOL's to answer calls or emails so claimants are oftentimes unable to get information on their cases.

Our suggestions are to open the DOL's physical offices to increase access to services, to allow for in-person submission of requests and evidence, and to offer in-person hearings. At the same time, telephonic hearings should remain an option for all claimants. Finally, in order to ensure access to justice for all New Yorkers regardless of English-language ability, the DOL must greatly improve their translation and interpretation policies and practices. Without these modifications, the DOL is not affording due process to each and every New Yorker needing this critical assistance.