

John K. Carroll
President

Richard J. Davis
Chairperson of the Board

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

**Testimony of
The Legal Aid Society**

to

Examine the Re-Opening and Operation of New York's Courts During the COVID-19
Pandemic

Presented before

The New York State Senate
Senate Standing Committee on Judiciary
Senate Standing Committee on Codes
Senate Standing Committee on Housing, Construction and Community Development

Presented by

Tina Luongo, Attorney in Charge, Criminal Defense Practice
Adriene Holder, Attorney in Charge, Civil Practice
Dawne Mitchell, Attorney in Charge, Juvenile Rights Practice

Submitted on: September 4, 2020

Contents

Introduction.....	3
Concerns About In-Person Court Operations	5
Personal Protective Equipment (PPE)	6
Cleaning Protocols	7
Court Facilities:.....	7
Health Screenings to Enter.....	9
Training and Enforcement	10
Concerns about Remote Operations.....	10
Housing Court.....	13
Family Court – Custody, Child Support and Orders of Protection.....	18
Small Claims Courts	20
Criminal Courts.....	22
Insufficient Notice to Clients and Defenders About In-Person Appearances.....	24
Demands for Unnecessary In-Person Appearances that Needlessly Put People at Risk	25
Failure to Accommodate People with Disabilities in Violation of Federal Law	26
Family Court – The Juvenile Rights Practice	28
Challenges Of Limited Virtual Court In Child Welfare Cases	29
New York City’s Juvenile Justice System	34
Juvenile Detention and Placement	34
Going Forward Towards the Re-Opening of Family Court.....	36
The Legal Aid Society	38

Introduction

New York and New York City have been the epicenters of the world’s COVID-19 pandemic. Since March 2020, over 430,000 residents have tested positive for COVID-19. Nearly 33,000 New Yorkers have died—a death rate of more than 7.5% of confirmed cases. In March 2020, Governor Cuomo declared a State disaster emergency in order to halt the transmission of the virus, which included, among other things, closing courts and declaring a moratorium on evictions. Today, despite the State’s progress, many restrictions remain on in-person gatherings and commerce pursuant to the State disaster emergency. These measures have been necessary because the scientific consensus is clear: social distancing is the only effective tool to minimize the transmission of the virus and, accordingly, save lives.

Nine of the top ten zip codes in New York City with the highest infection rates are in Queens and the Bronx.¹ More people have died in the Bronx, Queens and Kings counties than in all other states in the Union but two.² The Bronx is the City’s poorest borough; it has the highest concentration of people of color; and it has experienced the highest tolls of infections, hospitalizations, and deaths.³ Data from the City’s own health system shows deep disparities in who is affected by COVID-19, with mortality rates tied to race and income. Neighborhoods with the highest concentrations of Black and

¹ Michael Schwartz and Lindsey Rogers Cook, These N.Y.C. Neighborhoods Have the Highest Rates of Virus Deaths, N.Y. TIMES, May 18, 2020, <https://www.nytimes.com/2020/05/18/nyregion/coronavirus-deaths-nyc.html>.

² As of July, Queens (5875 deaths), Kings (5548 deaths), and Bronx (3858 deaths) surpass all but the States of New Jersey (15,525) and New York State as a whole (29,585). All three counties and New York County (2472 deaths) are within the deadliest top 7 counties of the country. Johns Hopkins University, Coronavirus Resource Center (Last Updated July 9, 2020) <https://coronavirus.jhu.edu/us-map>

³ Kimiko de Freytas-Tamura, Winnie Hu and Lindsey Rogers Cook, ‘It’s the Death Towers’: How the Bronx Became New York’s Virus Hot Spot, N.Y. TIMES, May 26, 2020, <https://www.nytimes.com/2020/05/26/nyregion/bronx-coronavirus-outbreak.html>.

Latinx people, as well as low-income residents, have suffered the highest death rates.⁴ The CDC reports that regardless of age, Latinx and Black people are respectively 4-5 times more likely than white people to be hospitalized due to COVID-19.⁵ “[A]s more data becomes available, one thing is clear: COVID-19 has only magnified the systemic inequalities that persist in the United States. And nonwhite Americans, especially African Americans, have been hit hard on nearly every front.”⁶

The early months of the pandemic demonstrated that in-person court operations must be handled carefully. By the end of April 2020, three judges had died from COVID-19 and almost 170 court workers were infected.⁷ Policies to expand virtual filings and operations and limiting in-person proceedings are necessary to protect the health and safety of all persons involved in court proceedings. However, in creating such policies, the courts must reckon with substantial due process concerns, particularly for *pro se* litigants.

These fundamental issues are still being worked out by the courts. Chief Judge DiFiore has convened multiple working groups to recommend best practices for operations during the pandemic. In her most recent update, Chief Judge DiFiore acknowledges are the courts are still “pursuing a

⁴ Michael Schwartz and Lindsey Rogers Cook, These N.Y.C. Neighborhoods Have the Highest Rates of Virus Deaths, N.Y. TIMES, May 18, 2020, <https://www.nytimes.com/2020/05/18/nyregion/coronavirus-deaths-nyc.html>.

⁵ COVID-19 in Racial and Ethnic Minority Groups, Center for Disease Control and Prevention, Updated June 25, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html>.

⁶ Kaur, Harmeet, The coronavirus pandemic is hitting black and brown Americans especially hard on all fronts CNN (May 8, 2020) <https://www.cnn.com/2020/05/08/us/coronavirus-pandemic-race-impact-trnd/index.html>.

⁷ Andrew Denney, 3 New York judges died from coronavirus, almost 170 court workers infected, The New York Post, available at: <https://nypost.com/2020/04/28/coronavirus-in-ny-3-judges-die-almost-170-court-workers-infected/> [last accessed Aug. 24, 2020].

number of strategies to limit courthouse traffic in the future...[and] are working around the clock to expand access to our virtual courts”⁸

As of the date of this writing, few courts in New York State are functioning with any similarity to pre-pandemic operations. The fundamental right of criminal defendants to a speedy trial is still suspended. In civil actions where litigants are awaiting trial on damages, defendants have interest accruing and plaintiffs cannot get judgments for desperately needed funds. Family Courts have failed to allow emergency cases to move forward. Similar examples can be found in every forum in the State. And yet some courts have begun to reopen to in-person proceedings, endangering everyone who is forced to appear in court.

We have appreciated our regular conversations with the Chief Administrative Judge, and the Administrative Judges of the New York City Civil, Criminal, and Family Courts, as well as stakeholders from the Mayor’s Office for Criminal Justice (“MO CJ”) and elsewhere, but unfortunately our conversations have not always led to adequate resolution of these concerns.

Concerns About In-Person Court Operations

Currently, housing court and criminal court are open to in-person court proceedings. Recognizing that a return to in-person court operations required the input of health and safety experts, in June, The Legal Aid Society hired CrowdRx, a team of emergency physicians and public safety experts who prescribe and deliver medical services to large gatherings in the United States, to provide expert opinion as to the safety of our courthouses and to provide advice and guidance to the defenders,

⁸ Transcript of Chief Judge DiFore Message, August 24, 2020, available at: <https://www.nycourts.gov/whatsnew/pdf/August24-CJ-Message.pdf> [last access Aug. 24, 2020].

legal services providers, our clients, the unrepresented litigants, and OCA concerning safety measures that should be implemented before resuming in-person court appearances. In late June and early July and August, CrowdRx participated in tours of 25 courthouses where we regularly practice throughout the City. In addition, so far our health expert toured three immigration jails, two buildings where immigration proceedings are held, and the Rikers Island Justice Center. Based on these tours of the state courts, and our ongoing conversations with OCA and DCAS officials, CrowdRx and the expert hired by the UAW Local 2325 raised significant concerns about the courts' reopening protocols that remain unaddressed. It was disappointing to learn that OCA's epidemiologist has toured no courts and has given advice based solely on floor plans. There remains no clear plan for ensuring people's safety from the transmission of COVID-19. Even as plans continue to roll out in the sporadic and reactionary manner we have observed over the last weeks and months, OCA and DCAS have also failed to provide the public and attorneys representing client in criminal and housing courts with a clear and effective system for raising concerns about the implementation of and compliance with those policies. Despite these concerns, in-person appearances have resumed and continue to escalate in volume, putting people in danger. There are, however, several concrete steps that can and must be taken to ensure that any return to court is safe for those who attend and surrounding communities. Legal Aid convened a series of working groups comprising a cross-section of our staff – including managers, staff attorneys, investigators and social workers among others – to develop recommendations for steps to take before resuming in-court appearances. They are as follows:

- **Personal Protective Equipment (PPE)**: For the safety of all people entering a courthouse, PPE must be available and used while inside any courthouse.

- OCA must establish and enforce a policy mandating that all Court personnel are required to wear PPE while in any courthouse.
- NYPD and DOC must establish and enforce a policy requiring all personnel to wear PPE while in any courthouse.
- OCA must establish and enforce a policy requiring all members of the public to wear PPE while inside any courthouse.
- PPE must be made readily available to members of the public entering the courthouse but who do not have their own masks and PPE.

Cleaning Protocols: All stakeholders with the guidance of experts must establish and adopt stringent cleaning protocols to reduce the risk of infection:

- OCA and DCAS must develop cleaning protocols throughout the Court and Court based offices. These protocols must be consistent with the highest levels of public hygiene and safety.

Court Facilities: All courthouses and space therein must be assessed and altered to provide a protected environment as recommended by medical and OSHA experts, including:

- All courthouses must comply with the New York State Department of Health requirement that HVAC systems be MERV 13 or higher or be remediated by the addition of HEPA filtration and/or UV systems.
- Each court part needs to be reconfigured to allow for social distancing, including installation of barriers, Plexiglas or dividers, for all people appearing within the part, including, but not limited to, judiciary, reporter, counsel, court staff, officers and client.

- All holding cells in every facility where clients are held must be reconfigured to allow for social distancing, including installation of barriers, Plexiglas or dividers, in all phases experienced by the individual, such as transportation, movement, counsel meetings and court appearances.
- Public restrooms, restrooms set aside for any stakeholders or those in holding areas for people awaiting arraignments all must be reconfigured and retro-fitted to remediate the spread of COVID-19.
- Hand sanitizer, soaps and access to hot water are needed to reduce the risk of infection and spread of COVID-19.
- All stakeholders must reduce the number of staff in each court part (consistent with public safety) to accommodate social distancing.
- In courthouses where the arraignment parts are in courtrooms that are too small and cannot be reconfigured to allow for social distancing, the arraignment parts must be moved to larger courtrooms.
- In courthouses where the arraignment parts are in the basement and can only be accessed via elevators, poorly ventilated staircases or passageways, the arraignment parts must be moved to more safely accessible courtrooms.
- To the extent that reconfiguring the court parts will reduce the room for members of the public, family of our clients, and other visitors at the court proceedings, OCA must establish large overflow rooms, with audio and video, where members of the public can view the proceedings while allowing for social distancing.

- Court personnel must develop a system of alerting family members and concerned members of the public when an individual case is about to be called so that they can be present in the courtroom.
- Defense counsel must have a large and well-ventilated space to interview clients and witnesses. (Congregating in the hallways is unacceptable for our clients, ourselves and members of the public.)

Health Screenings to Enter: Everyone entering a courthouse must pass a uniform health screening with set protocols for each potential circumstance arising from the screening:

- All staff from all stakeholders must pass a health screening to enter the courthouse. This must include court staff, judiciary, District Attorney office staff, Department of Corrections staff, NYPD, and agency members associated with the criminal system.
- This screening must take place outside of the building to prevent an infected person from entering the building before a screening can take place.
- OCA must develop sound protocols to address different circumstances arising from the screening to ensure the individuals do not suffer adverse consequences if they are denied entry due to the screening including the creation of a containment room should a person need to wait for an emergency medical services.
- OCA must develop sound protocols to address circumstances arising when people within the courthouse display or communicate symptoms or illness address the health and safety of that person and of all people they have come in contact within the courthouse in compliance with health and safety as well as privacy rights.

Training and Enforcement: All stakeholder staff must be educated in the public health risks of COVID-19 and communicable diseases and proper procedures to reduce risks of infection. All appropriate hygiene practices must be followed and enforced for the safety of all.

- OCA must have a designated hygiene officer with executive authority to ensure that the established cleaning protocols and practices are enforced.
- Committees involving all of the stakeholders must be established in each county to assess these recommendations as they apply to the local court houses and monitor local compliance.

Concerns about Remote Operations

While our clients involved in criminal court and our child clients involved in Family Court matters have the right to counsel, most civil litigants do not. At this time, it is unsafe to return to court in person. Unfortunately, most of the systems set up for remote operations have failed to consider those litigants without attorneys. Pro se litigants lacking internet access are unable to effectively utilize the Electronic Document Delivery System (“EDDS”) or participate in teleconferences and are therefore limited in their ability to defend themselves in court. As the shift to remote learning laid bare, an enormous “digital divide” exists across New York State, as thousands of residents lack requisite technology to participate in remote learning, including computers and wi-fi access. Those lacking a home or mobile broadband connection also face barriers to employment, banking, healthcare, social networks and government services.⁹ Unfortunately, as of March 2020, about 30 percent, or 2.2 million, of New York City residents lack broadband internet access, including 350,000 who only

⁹ The New York City Internet Master Plan, New York City Mayor’s Office of the Chief Technology Officer (January 2020) https://tech.cityofnewyork.us/wp-content/uploads/2020/01/NYC_IMP_1.7.20_FINAL-2.pdf.

access internet through cell phones or tablets.¹⁰ The comprehensive connectivity provided when one has both home and mobile access is increasingly becoming crucial to gaining full access to the range of services private and government entities offer to the public.¹¹

The costs of home broadband access present a formidable barrier for low income families.¹² Low-income, immigrant-dense neighborhoods across the city most lack internet access: 50 percent in Chinatown and Lower East Side, 48 percent in Hunts Point, Longwood & Melrose, 46 percent in Borough Park, Kensington & Ocean Parkway, 44 percent in Morris Heights, Fordham South & Mount Hope, 43 percent in Belmont, Crotona Park East & East Tremont, and 43 percent in Jamaica, Hollis and St. Albans.¹³

Thirty-six percent of New Yorkers outside of the labor force lack a broadband internet connection, versus 20 percent of employed New Yorkers. Seniors are much more likely to be without a broadband internet connection compared to the general population.¹⁴ Forty-two percent of New Yorkers 65 years-old and above lacked broadband internet access, compared to 23 percent of 18 to 24 year-olds.¹⁵ Forty-four percent of New Yorkers in poverty lack broadband internet access, as opposed to 22 percent above the poverty line.¹⁶

¹⁰ Scott Stringer, *Census and the City: Overcoming NYC's Digital Divide in the 2020 Census*, Office of the New York City Comptroller (July 2019), at 5. https://comptroller.nyc.gov/wp-content/uploads/documents/Census_and_The_City_Overcoming_NYC_Digital_Divide_Census.pdf.

¹¹ NYC Internet Master Plan, *supra* note 13.

¹² *Id.* at 13.

¹³ *Overcoming NYC's Digital Divide*, *supra* note 14 at 5.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

Data widely demonstrates racial disparities in accessing broadband internet access. Approximately 30 percent of Latinx and Black New Yorkers lack broadband internet access, compared to 20 percent of White New Yorkers and 22 percent of Asian residents.¹⁷ Further, recent studies indicate that 67 percent of Black and Latinx New York City residents have Broadband internet access at their homes compared to 78 percent of White New York City residents and 15 percent of Black and Latinx New York City residents have no internet access compared to 11 percent of White New York City residents.¹⁸

In recognition that the digital divide and vulnerability to the COVID-19 crisis often overlap, courts should partner with other public agencies and community leaders to bridge the gap by, for example, creating community kiosks or providing hotspots and devices to any litigant who needs to appear virtually. Further, OCA should ensure language access and interpretation services for virtual appearances and should widely advise the public of the option to appear virtually. OCA should adopt uniform rules for virtual appearances so that all litigants have clear expectations on how a case will proceed.

The courts should enhance its technology, so it has one place on the web (and a phone system) where litigants can get access to their court appearances, ask how to adjourn matters, obtain numbers and get specific procedural assistance about their matters.

In addition, the courts must address how pro se litigants can navigate EDDS so that they can access the courts. The creation of was necessary to allow remote court proceedings to move forward.

¹⁷ *Id.*

¹⁸ American Community Survey, United States Census Bureau (2016), <https://www.census.gov/programs-surveys/acs/>.

Unfortunately, it was a system created for attorneys. The system is difficult to navigate for pro se litigants who lack familiarity with court terminology and technology, and limited guidance and support has been provided for them. EDDS only allows for the filing of specific types of documents, excluding basic pleadings such as answers. The actual filings of documents on EDDS has been marred by lengthy delays and inconsistent compliance by court staff.

Remote court appearances through Skype are daunting for those unrepresented litigants, who lack access to computers and reliable internet access. The digital divide is especially relevant in high volume courts, such as Civil Court and Small Claims Court, where many litigants have limited-English proficiency (LEP) or are disabled, and almost all are unrepresented. With the implementation of remote virtual appearances, including in Small Claims Court mediation and trials, it is critical that litigants are able to make an informed choice and have adequate tools and resources to effectively participate.

Housing Court

As of March 2020, 200,000 eviction cases were pending in the NYC Housing Courts, of which an estimated 165,000 involved tenants without counsel. In over 14,000 of these cases, warrants of evictions had already been issued by the court. The overcrowding in NYC Housing Court is legendary, with thousands of tenants packed into poorly ventilated courtrooms, hallways and elevators, typically spending hours in these conditions while waiting for their cases to be called and resolved. Tenants in eviction proceedings were drawn from the poorest districts of the City, populated by persons of color whose health was, even prior to the COVID-19 epidemic, far more precarious than that of residents in more affluent, whiter neighborhoods.

Since the initial closure of the City's Housing Courts in March, judges have begun to process only two-attorney cases that were pending before the epidemic, with these cases handled remotely through videoconferences. Although approximately 4500 new eviction cases have been filed after June 22, none of these cases has been calendared. However, upon the expiration of the current eviction moratorium set by the courts,¹⁹ thousands of tenant households can be served with eviction notices causing them to descend upon housing courts throughout New York seeking orders to show cause to stop their imminent evictions.²⁰ These tenants would have to stand in extremely long lines, and then endure lengthy waits in crowded hallways and courtrooms as judges examined and ruled upon their applications.

In the ordinary course of business, the hallways of New York City housing courts have been compared to a subway car at rush hour. In the busier boroughs, about 2,000 people go to court each day and stay in the building for hours. Outside New York City, eviction matters are heard in 1,300 town and village courts, 61 city courts and ten district courts. Most of these courts are cramped, antiquated buildings. These courts typically hear extensive calendars of traffic, small claims and criminal cases scheduled for the same time as eviction matters. Maintaining social distancing to prevent the spread of COVID-19 would be impossible in such an environment. Housing courts throughout the state are not prepared for an influx of litigants nor can they be while COVID-19 remains in the community and incurable.

¹⁹ <https://www.nycourts.gov/whatsnew/pdf/ao160a20.pdf>

²⁰ The Center for Disease Control's eviction moratorium may well not cover holdover situations. *See* <https://s3.amazonaws.com/public-inspection.federalregister.gov/2020-19654.pdf>

Moreover, the theoretical availability of virtual procedures cannot reduce the flow of tenants into the Housing Courts unless they are assigned counsel with access to and expertise in the necessary technology.

Chief Judge DiFiore recently convened a partnership—the COVID-19 Recovery Task Force’s Housing Working Group—to recommend changes to Housing Court in light of the COVID-19 pandemic.²¹ The Report pointed out that “[w]ithout substantial changes to court procedure, the increased number of cases will dramatically increase the number of people that travel to and appear at the courthouse, exacerbating the ongoing health risks of COVID-19 infection.”²² The Report recommends, *inter alia*, that housing courts provide all individuals subject to eviction proceedings who satisfy certain low-income eligibility thresholds with free legal counsel, advertise the right to counsel at several distinct steps in the legal proceeding and advocate for a systemic shift for tenants to seek counsel before a petition is filed, and allocate additional judicial resources to support the surge in housing court cases.

The just reopening and operation of New York City’s housing courts are crucial to our client community. The shortcomings of our housing courts have always disproportionately impacted low-income communities, people of color, and those with the least resources to weather forced displacement. By putting a pause on eviction cases, the pandemic has given us an opportunity to reflect

²¹ *Housing Working Group Report*, COVID-19 Recovery Task Force’s Housing Working Group, July 9, 2020 (“The COVID-19 Recovery Task Force, formed through a partnership of the New York State Court System and the New York State Bar Association at the request of Chief Judge Janet DiFiore, is led by former Chief Judge Jonathan Lippman, Of Counsel at Latham & Watkins LLP.”).

²² *Id.* at 3.

on our priorities. As we look towards the reopening of our housing courts, it is crucial that we do so in a way that reflects what we have learned about access to justice.

First, we must extend the eviction moratorium.²³ While infection rates in New York City are down, epidemiologists warn that a resurgence is all but inevitable as we loosen the very restrictions, including the eviction moratorium, that have helped make New York safer. If we allow evictions to take place at the cusp of a second wave, we will be flooding homeless shelters, subways, and streets at the very moment that we need to maintain the status quo to prevent the death toll from climbing again. In addition, new filings will mean more people entering the courthouses across the City, violating norms for social distancing, isolation, and quarantines. These outcomes, and the prospect of the eviction of thousands of individuals and families, do not represent the ideals of a fair and just system. Unfortunately, the Centers for Disease Control and Prevention order²⁴ will not extend relief to tenants in unregulated apartments where the landlord can avoid the moratorium by bringing a case based on non-renewal of the tenant's lease. Conservatively, we believe that tens of thousands of New Yorkers will still face eviction because of this loophole. The Governor and the leaders of the Legislature need to immediately enact a full-fledged moratorium to cover all tenants statewide before it is too late.

²³ Unfortunately, the Center for Disease Control's moratorium is unlikely to change this situation because it likely does not cover holdover situations and because most tenants will need an attorney to navigate its requirements. <https://s3.amazonaws.com/public-inspection.federalregister.gov/2020-19654.pdf>

²⁴ Centers for Disease Control and Prevention, Department of Health and Human Services, Order Under Section 361 of the Public Health Service Act (42 U.S.C. 264) and 42 CFR 70.2, Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19.

Second, equity requires that no one be mandated to come to court in person at this time. It is well documented that the pandemic has disproportionately impacted low-income people of color. Re-opening the housing courts for eviction cases requires these same individuals to risk their health before the courts, and transportation to the courts, have been evaluated and made safe. It also increases the risks to advocates, to other litigants, and to court personnel. Housing courts should allow any litigant to appear virtually at any time, without the need to prove a medical exemption. At the very least, it is critical that high-risk individuals not be required to appear in court. Moreover, parties and their representatives should be given an opportunity to resolve pending matters outside of court, which may successfully divert many cases from the system.

We must provide fair, transparent, virtual access to the courts. Housing courts should immediately refer all respondents in eviction cases to legal service providers and should only calendar the number of eviction cases on any day that legal services organizations have the capacity to handle.

Third, where parties choose to appear in person, OCA must ensure the maximum degree of safety for such in-person appearances. Tenants who feel they cannot navigate virtual appearances should have the opportunity to appear in person, if they so choose, to defend their homes. Housing courts should work with epidemiologists to develop safe reopening plans and should subject such plans to a public notice and comment period. No eviction case should proceed until such notice and comment period is completed. Among other procedures, detailed above, housing courts should distribute PPE to all litigants free of charge and should provide private spaces where litigants and their attorneys can confer at a distance.

Fourth, we must provide rent relief. The pandemic has wrought unprecedented levels of economic loss. Tenants are struggling to make rent payments and living in fear of displacement. At the same time, the loss of rental income threatens owners' abilities to maintain their homes, pay taxes, and meet their mortgage obligations. We need a subsidy program to support any tenant family who is rent burdened, access to rent arrears for both undocumented families, and rules barring landlords from bringing nonpayment cases for apartments with hazardous violations.

With these recommendations, we hope that the State can work to ensure that New York City's housing courts reflect the best of our city and our collective will to protect the most vulnerable New Yorkers.

Family Court – Custody, Child Support and Orders of Protection

The Civil Practice represents litigants in Family Court in custody and child support matters. The COVID-19 pandemic has caused a virtual shut down of the Family Courts. We have heard from far too many clients that without the ability to handle custody/visitation or support, they are helpless and trapped in domestic violence situations. Family Court must reopen virtually for litigants to be able to have their matters heard.

We applaud how quickly the courts were able to pivot to allow for virtual orders of protection to be filed, but what we are seeing now is an inability to add additional matters. Specifically, we represent clients who depend on their abusers for money to pay for rent and food. Many judges have refused to order support after issuing an order of protection. Instead, the judges tell our clients to file for support, even though those filings are currently not being heard. This means that clients cannot ask

the courts for a temporary support order. Our clients are choosing to go back to abusive situations rather than be homeless.

The entire virtual Family Court system is not set up to prioritize cases. Instead, litigants can file petitions, but they are put in a queue to be dealt with when the courts open for these cases. For custody/visitation, you cannot even submit a petition. We have heard of clients whose abuser improperly obtained a temporary order of protection in mid-March and have not seen their children since then as they cannot file for custody/visitation in court.

This lack of access to Family Court has led to an increasing divide between New Yorkers with means and those without. As the courts have re-opened, it has become clear that New Yorkers who file in Supreme Court can access the courts to resolve their issues. Currently Supreme Courts in all five boroughs are allowing the filing of divorces and allowing for motions asking for custody/visitation or support. Through New York State Unified Court System, attorneys (and some pro se litigants) can file for divorce, and are having their cases conferenced, and motions decided. Many of our divorce matters are moving forward, which include deciding issues of temporary custody and support.

New York's unmarried families must address their custody/visitation issues in Family Court. Unless you have access to an attorney. If you have the means to hire an attorney, you can access Supreme Court and have your matters heard. Attorneys are filing in Supreme Court for relief that would traditionally be filed in Family Court, but for the closure of the Family Court.

Clients who do not have access to attorneys and cannot navigate this complicated system are being left behind, not being able to see their children and fearing they will be homeless unless they live with their abusive partner.

Justice in Every Borough.

Family Court should rethink its ability to file and hear new cases of custody/visitation and support. Clients should have the same access whether they have the financial ability to hire attorneys or not. There is a right to counsel in family court, but it does not attach until a litigant appears in court. Without the ability to file a petition, these litigants are denied their right to an attorney and left without access to the system that is supposed to help them.

Small Claims Courts

During this time of crisis, many New Yorkers who were living on the brink of poverty before the crisis, now face collection actions which exacerbates food, income, and housing insecurity. Economically-distressed consumers, including the newly unemployed, face catastrophic consequences when creditors obtain and enforce judgments that result in wage garnishment, levied bank accounts, and liens. A wave of collection suits is expected due to the economic distress caused by the pandemic, especially for low-income communities and communities of color. Numerous litigants have had to place their health and safety at risk by going into New York City Civil Courts (Civil Courts) which lack effective protective measures, in order to access court files, affidavits of service, and to file court documents. Over 95 percent of litigants are unrepresented in consumer debt lawsuits, including those for medical bills, credit card debt, auto loans, and student loans²⁵. These litigants have been unable to respond to complaints, motions, and other legal papers, because the Civil Courts' recent measures in response to the pandemic, at a minimum, have led to confusion and uncertainty. Court clerks often

²⁵ In 2018, over 100,000 consumer credit actions were filed against alleged debtors in New York City Civil Court. Of those alleged debtors, a mere 4 percent were represented by counsel.

provide contradictory and incorrect information as some litigants are instructed by clerks to come in-person to the courthouse, while others are being turned away.

In an effort to address case docket backlogs due to the court's closure, the court has vigorously sought to encourage settlement scheduling remote mediation and court conferences. Though mediation is an efficient, less burdensome method to resolve many legal disputes in other forums, it is inappropriate and harmful in Civil Court, where there is serious imbalance of power between the parties. Plaintiffs are almost always business entities represented by counsel and almost all defendants are unrepresented. Many consumer defendants do not understand the legal documents they receive, or they only understand basic precepts of legal procedure. This problem is even more acute among LEP (limited English proficiency) defendants. Moreover, consumer debt litigation is characterized by profound information asymmetry and abuse: expert debt collection attorneys who are in court daily frequently file debt collection cases to either obtain a default judgment or intimidate the defendant into settling – not to actually litigate the claims. We do not believe that these mediation and settlement efforts are appropriate for Civil Courts, where one side is an attorney armed with legal knowledge and intimately familiar with the court process and the court staff, while the other side is an unrepresented, economically-distressed New Yorker who is unfamiliar with the law and court procedure.

We believe that the Civil Courts, and other high-volume courts, continue to remain unsafe for litigants, attorneys, and court personnel. There has been inadequate resources and guidance to assist pro se litigants, as they navigate e-filing and remote appearances. As the Civil Courts seek to reopen and as they develop solutions to the challenges that the COVID-19 virus presents, they must not risk

exposing more people to the virus while also protecting the procedural and substantive rights of the unrepresented and other vulnerable groups.

Criminal Courts

At present, The Legal Aid Society has more than 32,000 open criminal cases at the trial court level across the City, and many more cases pending on appeal, in parole revocation proceedings, and in other special criminal proceedings. COVID-19 has devastated our clients and their communities, as well as our staff. As we all know, this pandemic has disproportionately affected Black, Latinx, poor and disabled communities – the very same communities who are disproportionately involved in the criminal justice system and who represent a vast majority of our clients. According to the Center for Disease Control and Prevention, numerous common medical conditions place people at increased risk for severe illness or death from COVID-19, including chronic kidney disease, chronic obstructive pulmonary disease, serious heart conditions, sickle cell disease, obesity, and diabetes.²⁶ All of these conditions are disproportionately found among our client communities given historic and structural inequity of access to healthcare.

The deadly consequences of COVID-19 have affected our own staff as well as our clients. In the spring, as the City and the courts shut down, many staff members of The Legal Aid Society contracted COVID-19, possibly from their work in the courts. A Brooklyn staff member of our Criminal Defense office passed away from it; others have lost family members. Yet others who

²⁶ Centers for Disease Control and Prevention, People of Any Age with Underlying Medical Conditions, https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fgroups-at-higher-risk.html (last visited July 11, 2020.).

survived continue to have long-term, possibly permanent health consequences as a result of contracting the virus.

Against this tragic backdrop, it should come as no surprise that The Legal Aid Society and our sister defender organizations have insisted firmly that health and safety concerns guide any decisions about a return to in-person court operations and have sought to work closely with the OCA to ensure that is the case. The defender organizations have had regular conversations with the Chief Administrative Judge, local administrative judges in each borough, other representatives of OCA and other city-wide stakeholders to facilitate criminal court proceedings in New York City by developing systems to support virtual court appearances and carefully plan for the eventual, safe re-opening of the courts.

On July 9, 2020, amidst ongoing collaborative discussions between OCA and the defenders about health and safety planning for a return to court, OCA abruptly shifted away from a focus on remote video operations issued an order announcing that in-person attendance would resume in criminal courts across New York City within the week. OCA announced that up to ten criminal cases would be selected for in-person appearances each day in Criminal Court in each courthouse, on a rolling basis going forward, and unlimited numbers of criminal cases would be selected for in-person appearances in Supreme Court, at the discretion of individual judges. This plan ensures that large and ever-increasing volumes of people – including court personnel, judges, prosecutors, defenders and clients – are required to present themselves at criminal courthouses and congregate in small spaces inside those courthouses.

In the days and weeks following that announcement, the defender organizations have struggled to obtain critical information about re-opening plans and have observed a chaotic process unfold across courts and boroughs. This manifests in a lack of clarity around, and in some cases obvious inadequacy of health and safety measures, as well as a lack of clear process for addressing related concerns. Additionally, we have observed serious problems with decisions about which cases must proceed in-person and practices and procedures for hearing those cases. These problems include (1) a lack of notice of which cases will be called for in-person appearance, leaving defenders insufficient time to gather information about the client's ability to appear in person and to prepare for the hearing; (2) frequently calling lawyers and clients to appear in person for pointless hearings that do not advance the criminal process, and which judges know or should know in advance will accomplish nothing but putting people at risk; and (3) a facially insufficient and often-ignored policy and procedure for considering requests for accommodations for people with COVID-19-related disabilities who cannot appear in person because of their disability. Each of these issues is discussed in more detail below.

Insufficient Notice to Clients and Defenders About In-Person Appearances

These health and safety concerns have been exacerbated by the chaotic rollout of in-person appearances, which has made it difficult – and in some cases impossible – for clients and staff to gather information required to assess the specific health risk of our clients and adequately prepare for the hearing. OCA has never established or announced any criteria for identifying how cases will be selected for in-person appearances. Administrative and Supreme Court judges have been given unilateral authority to select cases for appearances at their whim, making it impossible for the defenders to predict which of the many thousands of cases we carry at any one time will be calendared

for in-person appearances. We commonly receive less than 48 hours' notice of which cases out of the many thousands of pending cases are being called for in-person appearances.

In another case in Brooklyn, the lawyer was notified at 2:52 pm that her client would be required to appear the next day at 11:30 am. That is less than 24 hours' notice on a case that had been dormant for months. The client in that case is on SSI and is unable to work due to diagnoses of asthma, obesity, anemia, bi-polar disorder, and schizophrenia, placing the lawyer in the impossible position of attempting to counsel the client on whether to make a request for accommodation, make the request, secure a decision and advise the client on how to respond to that decision, and prepare for the hearing in less than a single day. There was no obvious rationale for this court appearance, as the parties were waiting for a social worker to complete a report in that client's case making an argument for a program-based outcome to resolve the criminal charges, before considering any possible plea agreement.

In other cases, we have only become aware that a case has been called because the client was informed, and the client reached out to the lawyer.

Demands for Unnecessary In-Person Appearances that Needlessly Put People at Risk

Frustratingly, The Legal Aid Society's experience is that many of the hearings that judges have called for in-person appearances have not advanced any significant governmental objective or the due process rights of our clients, and instead have needlessly put people at risk.

On the first days of in-person court appearances across the City, The Legal Aid Society appeared in dozens and dozens of cases in which essentially nothing happened. All the cases from the first day were administratively adjourned, and this has remained true for the majority of appearances ever since. In one case just this week, a client and attorney were ordered to an in-person appearance

and when the attorney arranged for a babysitter and client made herculean efforts to attend, the court administratively adjourned the case before the attorney and client appeared, despite the case being a time certain matter. In many cases, both the defender and prosecutor agree that the appearance is pointless, but judges have ordered them anyway.

The reality is that most of the appearances that have occurred to date could easily have been conducted by remote video appearance. Indeed, for months before in-person appearances resumed, courts had successfully disposed of a wide range criminal charges – including very serious criminal charges – via virtual appearances, belying the claim that the resumption of in-person appearances is necessary to move cases toward resolution. In light of this and ongoing risks, virtual appearance should play a larger role.

Failure to Accommodate People with Disabilities in Violation of Federal Law

As discussed above, The Legal Aid Society has many hundreds of clients and staff members who have medical vulnerabilities that put them at great risk of serious illness or death from COVID-19. Many more reside with and having caring responsibilities for loved ones who have such vulnerabilities. Our clients are also disproportionately Black and Latinx, which the CDC has acknowledged is associated with worse outcomes from contracting COVID-19.

Everyone seems to agree in principle that there is a legal requirement to grant people with disabilities accommodations from in-person court appearances. Chief Judge DiFiore’s Commission to Reimagine the Future of New York’s Courts concluded that “[h]igh-risk individuals should not be required to appear in court, nor should such individuals suffer any penalty or loss of rights for declining

to participate.”²⁷ In testimony in federal court, Judge Tamiko Amaker stated that “the supervising judges and I instructed the other Judges of the Criminal Court to grant a defendant any and all accommodations requested due to COVID-19-related co-morbidities, risk-factors, or other circumstances, including allowing a virtual appearance or granting an adjournment.” Unfortunately, there is a gaping chasm between these admirable principles and the reality on the ground. OCA’s policy delegates decisions on accommodate requests to individual judges, many of whom have rendered irrational and unlawful determinations that either belie or ignore the guidance of the Chief Judge and the Chief Administrative Judge. For example, a Legal Aid attorney requested an adjournment of an appearance scheduled for July 15, 2020, based in part on the client’s disability-based vulnerability to COVID-19, and the court summarily denied the request on July 14, in a one-line email to the lawyer, saying “[T]he court on later court dates can make accommodations for your client. I look forward to seeing you tomorrow.” The client was forced to risk a warrant for his arrest in order to protect his health.

In another case, in Queens, we received an order to appear for an HIV-positive client who was reporting symptoms of COVID-19 at the time he was called to appear. His attorney sought an accommodation for the client to appear remotely and was denied. Not wanting to jeopardize his case, the symptomatic and vulnerable client appeared in person and, despite reporting his symptoms to court officers at entry, was admitted to courthouse. Court officers in the courtroom, however, observed his symptoms and removed him from the courtroom and his appearance was adjourned. When we raised

²⁷ Commission to Reimagine the Future of New York’s Courts, Goals and Checklist for Restarting In-Person Grand Juries, Jury Trials and Related Proceedings (Aug. 5, 2020) 4, available at: <https://www.nycourts.gov/LegacyPDFS/press/pdfs/Commission-on-Future-Report.pdf>.

this example with the Chief Administrative Judge for Queens County, he responded with surprise, but restated that decisions on accommodations are in the discretion of individual judges and defended the idea that court officers are capable of adequately screening people's health.

Both this immunocompromised client and every person he encountered on his journey and in the courtroom were put at unnecessary risk because of OCA's continued refusal to be accountable for the erratic, inconsistent and unlawful decisions of individual judges to require in-person appearances and the gap between OCA's assertions that its health and safety policies are adequate and the reality of poor implementation on the ground.

Even when accommodations are "granted," the result is only to deny those clients and lawyers' rights to access the courts. Legal Aid's clients with COVID-19-related disabilities should not be forced to choose between their fundamental right to participate in their own cases and their health and safety. Meanwhile, their attorneys who have these disabilities should not be required to endanger their lives in order to access to the courts, satisfy their professional obligations, and represent their clients. These untenable choices are endangering the lives of thousands of New Yorkers by perpetuating the spread of this virus, burden the constitutional rights to access the courts and due process of law, and violate federal disability law.

Family Court – The Juvenile Rights Practice

There is no question that the COVID-19 pandemic has had a devastating impact on all New York residents and institutions, and the Family Court is no exception. Judges, court officers and colleagues and the people who the court was created to serve became gravely ill or lost their lives because of the virus. While we appreciate the tremendous effort by the Family Court to navigate this

Justice in Every Borough.

crisis, there is still much work to be done to ensure the rights of children and their families are being protected during this challenging time.

Challenges Of Limited Virtual Court In Child Welfare Cases

The COVID-19 pandemic has caused a virtual shut down of the Family Courts for child welfare matters. Until this month, only emergency proceedings and brief appearances to enter admissions, uncontested dispositions, and stipulated settlements have been permitted to proceed. This lack of access to the court has had a profound and detrimental impact on our clients and on our ability to effectively represent them and protect their needs. It has taken an enormous amount of effort to coordinate and work with our young clients outside of court to manage the extraordinary challenges associated with virtual court, such as lack of access to technology and lack of access to our offices. Moreover, access to court time has been meted out in a manner that does not always appear consistent with the urgency of the case. There is no uniform procedure, and whether we are able to secure court time to address a client's needs seems to depend more upon which judge the case is before than on the nature of the issue presented. Prior to COVID-19, children of color were already grossly overrepresented in the child welfare system, which all too often confuses poverty with neglect. While Black children represent less than a quarter of the city's youth, they make up over 55% of the population in foster care.²⁸ Black children in NYC are 6.5 times as likely to be reported to Statewide Central Register of Child Abuse and Maltreatment ("SCR") compared to white children, 8.3 times as likely to have the investigation "indicated," and 12.3 times as likely to be in foster care.²⁹ Latinx

²⁸ https://ocfs.ny.gov/main/bcm/DMR_Section%20Seven%20of%20Grant%20RFP_2015.pdf.

²⁹ <https://ocfs.ny.gov/main/reports/DMR-County-Comparison-2018.pdf>.

children in NYC are likewise more likely to be involved in the child welfare system when compared to their white contemporaries; Latinx youth in NYC are 6 times as likely to be involved in an indicated case and 5 times as likely to be in foster care when compared to white children.³⁰ It is essential to remember that the communities most deeply impacted by the pandemic are the same communities suffering as a result of the closures and delays in the Family Courts.

The COVID-19 pandemic and subsequent city-wide shut down have elevated the critical need for attorneys for children to receive timely notifications regarding where the children we represent are placed within the foster care system. Too often, young children are removed from family members, moved between foster homes, or sent into group care without any notice to our staff. Without advanced notification of an anticipated move, our staff is not able to act to minimize the trauma of multiple shifts through the foster care system. Effective April 20, 2020, the Family Court Act and the Social Services Law were amended to require a local social services district (“LSSD”) to report any anticipated change in placement to the attorney for the child *forthwith, but not later than one business day following either the decision to change the placement or the actual date the placement change occurred, whichever is sooner*. Nonetheless, the NYC Administration for Children’s Services (“ACS”) routinely provides untimely notices of placement changes.

The lack of accurate and up-to-date information regarding the whereabouts of our clients has presented serious challenges in resolving cases and discrete issues without court appearances. The lack of access to court has required our staff to identify cases and issues appropriate for resolution upon

³⁰ Id.

consent of the parties. However, given the physical dislocation of our staff from our offices, the physical dislocation of all other parties, and the difficulty of locating and communicating with our clients, this task has been time-consuming and challenging. While we have been able to successfully resolve some cases and issues, these represent only a small subset of pending matters.

For the vast majority of our clients, for whom consensual case or issue resolution is not possible, the lack of access to the courts has had a significant negative impact. Many of our clients have languished in foster care while services needed to support them, assist their parents or facilitate reunification have been disrupted or unavailable. Permanency hearings, an essential mechanism for the court to oversee the efforts made by the local social services district or a voluntary foster care agency to achieve a child's permanency planning goal, are normally held every six months by statute. However, during the pandemic permanency hearings have not been considered essential matters and have therefore not been conducted, preventing an assessment of the possibility of discharge from foster care for many children. On August 20, the court issued a protocol to ensure that permanency reports are nonetheless provided and to allow for virtual permanency conferences; only after a permanency conference, at the discretion of the jurist, would a limited permanency hearing be scheduled in a virtual courtroom. However, this protocol does not address the enormous backlog of cases for which no permanency hearing has been held during the pandemic, and the court system has not put forward a plan or procedure for prioritizing those matters in the backlog.

Finally, lack of access to the courts has had a significant impact on the majority of children in foster care who have been deprived of in-person visitation with their families and critical mental health services. COVID-19 has had a profound effect on children across the state, as children have been cut

off from friends, routines, school counselors, and the sense that life is orderly or predictable.³¹ Mental health professionals predict a “looming mental health crisis among children and adolescents, as fallout from the COVID-19 pandemic continues to rain down across New York.”³² Children in foster care are already vulnerable, dislocated and often suffering from the loss of significant relationships, notwithstanding COVID-19.³³ COVID-19 is likely to have a severe and negative impact on children in foster care. According to the American Academy of Pediatrics, children in foster care are uniquely vulnerable to the negative emotional harms of social distancing as “social distancing can re-awaken feelings of loneliness and isolation that many children in foster care have experienced.”³⁴ Furthermore, most children in foster care have struggled with instability, and “changes like physical distancing during COVID-19 can trigger traumatic memories or symptoms.”³⁵ Moreover, the Centers for Disease Control and Prevention (“CDC”) reports that children and teens, as well as people with pre-existing mental health conditions, may respond more strongly to the stress and anxiety surrounding the COVID-19 outbreak.³⁶ Additionally, children who have intellectual disabilities and those who suffer

³¹ Kids and COVID-19: A Mental Health Crisis Looms, by Abigail Kramer. The Center for New York City Affairs, June 9, 2020, available at https://static1.squarespace.com/static/53ee4f0be4b015b9c3690d84/t/5ee07134376c567f89648295/1591767360121/Kramer_June10.pdf.

³² *Id.*

³³ See, e.g., National Resource Center for Permanency and Family Connections, “Post Traumatic Stress Disorder and Children in Foster Care,” (December 2012) available at http://www.nrcpfc.org/is/downloads/info_packets/PTSDandChildren_in_FC.pdf (citing multiple studies, which show that children experience trauma similar to people with Post Traumatic Stress Disorder).

³⁴ Douglas Waite and Anu Partap, Caring For Children In Foster Care During COVID-19, American Academy of Pediatrics, <https://www.healthychildren.org/English/family-life/family-dynamics/adoption-and-foster-care/Pages/Caring-for-Children-in-Foster-Care-During-COVID-19.aspx> (April 15, 2020).

³⁵ *Id.*

³⁶ Managing Anxiety & Stress, Centers for Disease Control and Prevention. 30 April 2020. Available at: <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/managing-stress-anxiety.html>

from mental illness, as a significant proportion of children in foster care do, may need extra support due to the stress of isolation.³⁷

One critical issue for our older clients in foster care placement is the suspension of the Judicial Hearing Officer (“JHO”) program in New York City. The JHO program provided the highest level of attention and accountability to our older clients who are likely to age out of foster care into “Another Planned Permanent Living Arrangement” (APPLA) or independent living as adults. The JHOs understood the demands and exercised a sense of urgency to problem solve. The suspension of this vital program during COVID-19 is doubly troubling -- the transition out of foster care has always been challenging for the young people we serve, and aging out in the middle of a pandemic and economic crisis is a frightening proposition. As counsel for these youth, we fear that the termination of a program that understood the nuances of transitioning into adulthood from foster care will undercut our clients’ future success. The JHO program is invaluable to youth leaving the foster care system. JHOs in the APPLA designated part display a mastery not just of the Family Court Act, but also a unique set of skills understanding the ins and outs of social services throughout the city and state including, but not limited to, Medicaid and SSI, OPWDD services and supportive housing, NYCHA housing and Section 8, vocational programs, college preparation and applications and scholarships, the dangers of financial debt young people face from being lured by for-profit colleges, youth programs, student bank accounts, credit checks, visitation within the state prison system, mother-child programs, immigration issues, and community organizations assisting domestic violence victims.

³⁷ Id.

New York City's Juvenile Justice System

The Legal Aid Society has dedicated teams of lawyers, social workers, paralegals and investigators devoted to serving the unique needs of children and youth charged as juvenile delinquents, adolescent offenders and juvenile offenders in the Family and Criminal Courts across the City. Since the implementation of Raise the Age, the Juvenile Rights Practice and the Criminal Defense Practice's Adolescent Intervention and Diversion Project have adopted an integrated representation model to ensure seamless and comprehensive representation of 16 and 17 year old youth who appear in the Youth Part and are removed to Family Court. In addition to representing our clients in trial and appellate courts, we also pursue impact litigation and other law reform initiatives.

When the COVID pandemic hit, The Legal Aid Society's Juvenile Rights Practice continued to provide representation to youth who were arrested and charged with delinquency matters by being available for arraignments, seven days a week, day and night.

Juvenile Detention and Placement

The COVID-19 pandemic has put unprecedented pressure on the juvenile justice system in NYC. At the same time, the pandemic has revealed that the juvenile justice system has the capacity to utilize already existing community resources as an alternative to prosecuting and incarcerating youth, thereby functioning in a more just and less punitive fashion. Because the juvenile justice system, like the criminal justice system, has a disproportionate and destructive impact on communities of color in NYC, these steps forward during the COVID-19 pandemic must be acknowledged, embraced and built upon so that NYC can move towards greater justice.

Justice in Every Borough.

During the pandemic, youth who have been arrested have had little access to the courts. As a result, detained youth face an unjust pressure to plead guilty in order to facilitate the possibility of being released or even placed. The vast majority of youth who have been arrested but whom Corporation Counsel has not sought to detain have not had their cases filed timely, which deprives them of the assignment of counsel to ensure the preservation of essential evidence. Those who had cases pending before the pandemic hit have had their cases adjourned for months upon months, depriving them of timely resolutions.

One of the biggest challenges of representing youth charged as juvenile delinquents in a virtual courtroom is the inability to speak confidentially with clients. While ACS's Division for Youth and Family Justice has made strides in setting up designated areas for video and phone conferencing, privacy remains an on-going concern. Our clients who are not in custody are likely to lack the technology necessary to enable them to speak privately to their attorneys. Family Court proceedings conducted via Skype are problematic as there is no way to privately communicate with the client once the proceeding has commenced, unless it is stopped altogether every time the client and counsel want to speak with each other. If paroled, our client is most frequently using the same electronic device as their parent or guardian to participate in the virtual proceeding, which again interferes with the youth's ability to communicate with their attorney privately, making it difficult for them to fully engage when they are sharing a small screen with someone else and thus undermining the quality and effectiveness of the client's representation.

While no delinquency trials have occurred virtually, there have been many arraignments, probable cause hearings, settlements and contested dispositional hearings. The limited time available

in the virtual parts has actually had the unexpected benefit of encouraging more communication and negotiation outside of the courtroom. Even when a hearing is necessary, evidentiary issues are settled with the court prior to the hearing, and court time has become more productive. In a recent contested delinquency dispositional hearing, exhibits were agreed upon prior to the hearing, and caselaw provided to the court, resulting in the matter being adjourned in contemplation of dismissal. We have also used this time to file motions to dismiss in the interest of justice, when the passage of time due to delay and our clients' circumstances have demonstrated that there is no need for supervision, treatment or confinement. Recently, after assisting a client to enroll and participate in a virtual internship/job readiness program, we filed a motion to dismiss with the court and upon reviewing the motion, the prosecutor agreed to withdraw and seal the client's case.

It is apparent, however, that virtual courtrooms are not appropriate for delinquency fact-findings. Not only is meaningful and effective consultation with clients extremely challenging, but the ability to assess witness credibility and confront witnesses is severely impaired. On the other hand, the dangers of too much delay are obvious – unavailability of witnesses and uncertainty for clients among them. As a result, it is essential that certain proceedings be permitted to proceed under appropriate safeguards as soon as possible to protect our clients' Constitutional rights.

Going Forward Towards the Re-Opening of Family Court

As we look towards the eventual re-opening of Family Court, we must ensure that it is not just a return to normal, but rather is used as an opportunity to address long-standing problems and racial inequities and to re-evaluate how the Family Court can best serve youth and the community. To the extent that children and families can be preserved and supported without resorting to the filing

Justice in Every Borough.

of petitions in court, this should continue. To the extent that unlawful behavior by youth can be addressed without resorting to arrests, prosecution or detention, this should continue.

As the Family Court moves to phase in greater re-opening for in person appearances, it is imperative that it act collaboratively with agencies and stakeholders to develop comprehensive plans and allocate sufficient resources. The Family Court should not move forward with another phase of operations without providing a minimum of 30 days' notice to agencies and stakeholders so that staff can prepare to return to work safely. Adequate resources must be provided to ensure the safety of all individuals who are required to appear in person. This means systems must be developed and implemented regarding maximum capacities, cleaning, ventilation and safe distancing protocols in all settings, from elevators, to courtrooms, to waiting areas, to lines to enter the courthouses. This also means that these plans and systems must be transparent, so that everyone understands what steps are being taken and how compliance will be enforced.

Through the pandemic, we have learned that much work can be conducted successfully through virtual courtrooms. As we continue to face this pandemic and an uncertain future, we must not abandon these technological improvements, but rather build upon them. In particular, virtual courtrooms should be continued and expanded because they improve court performance. Going forward, the Family Courts face an enormous backlog of child welfare and juvenile justice cases that must be quickly addressed. Virtual courtrooms can not only assist with this backlog, they can also help compensate for the reduced capacity for in person appearances in courthouses that will continue throughout the pandemic. In addition, members of the judiciary and other practitioners and clients who face high risk due to COVID-19 will also continue to require virtual appearances. Virtual courtrooms should also

be continued and expanded because they help to alleviate some of the onerous burden of court appearances on parties, including missing school, missing work or juggling childcare obligations. For virtual courtrooms to succeed, however, now and in the future, adequate technology must be provided to ensure all parties can effectively participate and can consult confidentially with their counsel. In addition, one of the biggest restrictions on expansion of virtual courtrooms has been the challenge of establishing effective court reporting for them. This simply should not pose an obstacle in this day and age. Accordingly, in order to improve efficiency and reduce the burden of virtual court appearances, the resources necessary to expand virtual courtrooms must be provided.

The Legal Aid Society

Since 1876, The Legal Aid Society has provided direct legal services to low-income New Yorkers. Over the years, our organization has expanded to become the nation's largest and oldest legal services provider for low-income individuals and families. We specialize in three distinct practice areas: Criminal Defense, Civil Litigation, and Juvenile Rights, where we passionately advocate for our clients in their individual cases, for their communities in our policy work, and for institutional change in our law reform litigation. Each year our staff handles over 300,000 cases throughout New York City, 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/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 Legal Aid Society provides comprehensive representation to many of the

Justice in Every Borough.

most marginalized communities in New York. We are a valuable piece of the New York City tapestry, and our work is deeply interwoven within the fabric of many low-income New Yorkers' lives.

Our Criminal Defense Practice is the city-wide public defender, practicing in each of the five boroughs and annually representing over 200,000 low-income New Yorkers accused of unlawful or criminal conduct on trial, appellate, and post-conviction matters.

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 problems; tax law; consumer law; education law; community development opportunities to help clients move out of poverty; prisoners' rights, and reentry and reintegration matters for clients returning to the community from correctional facilities.

The Legal Aid 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.

The breadth of our practice and the many ways our work directly connects us with low-income New Yorkers – who are mostly from communities of color – sharply focuses our ability to see the many interlocking ways that our most vulnerable communities are impacted by systemic injustice, discrimination, and neglect. In addition to representing many thousands of children, youth, and adults

Justice in Every Borough.

each year in trial and appellate courts, The Legal Aid Society also pursues impact litigation and other law reform initiatives on behalf of our clients. The Society's unique role provides our organization with one of the widest lenses to observe and address the ways in which New Yorkers of color experience inequities in many areas of City life, including health care, employment, housing, income and food security, policing, incarceration, and immigration enforcement. Disparate impacts based on race, as well as gender, sexuality, ability, and national origin, often drive these inequities. We have challenged these systemic problems and their underlying causes through our litigation and our relentless policy work and won hard earned successes on behalf of our clients and their communities.