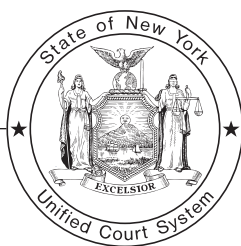


STATE *of* OUR JUDICIARY

Chief Judge Janet DiFiore

NEW YORK STATE UNIFIED COURT SYSTEM • FEBRUARY 16, 2022



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Janet DiFiore

Chief Judge of the State of New York
Chief Judge of the Court of Appeals

Lawrence K. Marks

Chief Administrative Judge of the State of New York

ASSOCIATE JUDGES OF THE COURT OF APPEALS

Jenny Rivera

Michael J. Garcia

Rowan Wilson

Madeline Singas

Anthony Cannataro

Shirley Troutman

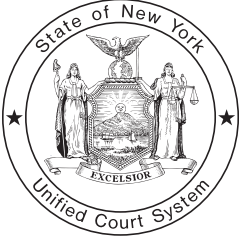
PRESIDING JUSTICES OF THE APPELLATE DIVISION

Rolando T. Acosta First Department

Hector D. LaSalle Second Department

Elizabeth A. Garry Third Department

Gerald J. Whalen Fourth Department



STATE *of* OUR JUDICIARY 2022

Introduction

Welcome to the 2022 State of Our Judiciary.

It has been a long, difficult and challenging two years for all of us. Even now, we continue to navigate our way through this historic pandemic and experience the outsized stresses created in our personal and professional lives. But in spite of, or perhaps because of, the challenges presented, we also have experienced growth and positive change and learned a great deal about ourselves and those around us. We have learned that we as a family are smart, resilient and devoted to our work. And we have shown that we will not be deflected from our mission and our sacred promise to deliver fair and timely justice.

Since I last reported to you on the State of Our Judiciary one year ago, our court system has made enormous progress. Over the last year, we commenced more than 2,000 jury trials, resolved almost 1.8 million cases, and constantly moved our dockets forward.

Last February, we were experiencing the “second wave” of COVID-19 in our state. We successfully navigated that surge by leaning heavily on the virtual component of our new hybrid model of in-person and remote court operations. By March, as the COVID metrics improved, we increased our courthouse staffing levels to support the resumption of in-person jury trials. By May, all of our judges and court staff were back at work in their assigned courthouses, once again doing the people’s business and supporting New York State’s economic reopening. By mid-summer, we had restored in-person criminal arraignments and returned to full-scale operations statewide.

And at every step of the way, we prioritized the health and safety of all who entered our buildings. We adopted and enforced stringent health and safety protocols and led the state in implementing COVID preventative measures. Last September, we were the first branch of government to enact a systemwide mandatory vaccination policy. Without a doubt, these measures helped save lives and prevent the spread of the virus in our buildings while sending a strong message to the public that our facilities are safe places in which all

may appear to conduct their business. It is a distinct point of pride that our vaccination program received a near-perfect response from our judges (99%), and an overwhelmingly successful response from our professional staff.

Now comes our reset. Our workforce is effectively fully vaccinated. We know how to safely navigate the challenges of the pandemic. And we have a powerful, productive new hybrid operating model to help us manage our dockets and deliver justice services as effectively, efficiently and safely as possible.

We are poised and prepared to return to our pre-pandemic focus on effective management principles and resume the outstanding progress we were making under the banner of the “Excellence Initiative” to resolve cases efficiently and expeditiously. Under the Excellence Initiative, litigants, lawyers and court users across the state benefitted from improved justice services, including more efficient case processing, significant reductions in backlogs and adoption of presumptive early ADR as an integral component of our civil case management system.

The story of last year’s State of Our Judiciary was the heroic and resilient efforts of our court family to keep the courts open and functioning in the midst of an unprecedented public health crisis. The story of this year’s State of Our Judiciary is how our judges, staff and court leaders have risen above the day-to-day pressures of the pandemic not only to resume our singular focus on achieving operational and decisional excellence but also to set their sights on historic reforms to maintain the public’s trust and confidence in our courts and the broader justice system.

Equal Justice

In this year’s State of Our Judiciary, I take this opportunity to focus on an issue that transcends all that we do as the judicial branch of government: our commitment to deliver equal justice to all.

In June of 2020, in the wake of the killing of George Floyd, I asked Jeh Johnson, a respected attorney and former United States Secretary of Homeland Security, to conduct an independent review of our court system’s policies and practices relating to issues of racial

equity and justice. I pledged to Secretary Johnson that he would have access to all corners of our house. No area would be off-limits and there would be no oversight or attempt to manage his work. We wanted a complete, authentic assessment.

Secretary Johnson accepted the mandate and issued a comprehensive report cataloging his findings. The Report commended our judges and staff for their commitment to equal justice, but identified significant issues in need of our immediate attention and reform, including a “second-class system of justice for people of color” in our high-volume courts, instances of racial intolerance within our court family and the need for greater diversity and inclusion among our ranks.

We wasted no time in embracing, adopting and implementing each of Secretary Johnson’s recommendations. We made it an urgent priority to focus our attention and resources on correcting the harmful policies and institutional practices identified in the Report and maintaining a fair and inclusive workplace that provides access and opportunity to all. This past November, we issued a report, titled “Year in Review,” that documents the work we have done to operationalize dozens of equal justice reforms, starting with the adoption of a policy of “zero tolerance” for racial bias and discrimination in the courts.

Make no mistake, the effort we have undertaken is a continuous, ongoing process that requires constant improvement and vigilance. We must be committed to and enthusiastically support meaningful reforms that give vitality to our zero tolerance policy – and we are doing so.

- We have adopted mandatory racial bias training for all judges and nonjudicial staff;
- We have adopted a “Social Media Policy” that announces clear guidelines and boundaries on what constitutes biased and prohibited conduct;
- We have refined our Human Resources interview, examination and hiring practices to make certain they reflect and effectuate our commitment to diversity and inclusion in our workforce;
- We have widely publicized, clarified and streamlined the process for filing claims of racial bias and discrimination with the Office of the Inspector General, including the appointment of an ombudsperson to promptly handle complaints;

- With respect to substantiated claims of racial bias and discrimination, we no longer resolve those matters by settlement and stipulated penalties. We now require that they be subject to a full disciplinary hearing;
- We have improved our systems to provide greater transparency and availability of data that charts our progress on diversity in the courts, and the impact of the criminal justice system on people of color;
- We have produced a new orientation video, shown to every prospective juror in the state, to educate jurors about the dangers of implicit bias and ensure fair decision-making free of biases and stereotyping;
- We have established an Equal Justice Committee in every Judicial District in the state to implement equal justice reforms at the local court level and improve our institutional culture from the ground up;
- And we have adopted a series of programs and initiatives designed to foster trust between Court Officers and the communities we serve, including the wearing of nametags by Officers who interact with members of the public on a daily basis.

Our commitment to eliminating barriers to equality will ultimately – and rightfully – be judged by our actions and ability to actually get things done. That is why I asked Deputy Chief Administrative Judge Edwina Mendelson to lead our implementation efforts. Judge Mendelson and her implementation committee of judicial leaders and court managers are doing extraordinary work to implement Secretary Johnson’s recommendations and facilitate the open, honest and sometimes difficult conversations that must be had around issues of racial justice in order to support the cultural change we strive to achieve. We are grateful to them and the many dedicated court organizations and affinity groups integrally involved in our reform effort, including the Franklin H. Williams Judicial Commission and the Office of Diversity and Inclusion. I also want to thank retired Court of Appeals Judge Carmen Beauchamp Ciparick for agreeing to serve as an Independent Monitor responsible for ensuring that we follow through on our equal justice commitments.

Our work is just beginning. We have a long way to go to meet our equal justice goals and eliminate barriers to equity embedded in decades-old structures and practices. But I am encouraged, energized and moved by the demonstrated commitment of our judges and

court staff. They are leading by example in their courthouses each and every day, working toward our shared, unshakable goal of ensuring that every individual who works for and appears in our courts is treated with the utmost fairness, dignity and respect.

And for so long as I have the privilege of serving as Chief Judge, we will not rest on nice words, pat phrases or empty platitudes. We will work tirelessly and focus all of our authority, skill, passion and energy on changing the identified institutional policies, rules and practices that perpetuate inequities in our courts.

Reforming the court system for the benefit of all New Yorkers must be our number one priority. If we are truly, once and for all, to address the harsh realities exposed again in Secretary Johnson’s Report – 30 years after then-Chief Judge Sol Wachtler first raised his voice about the treatment of people of color in our courts – we need to act comprehensively and act now. I urge you to read the Report. Secretary Johnson’s damning words describe a “second-class system of justice” and a “dehumanizing” and “demeaning” culture in our over-overburdened Housing, Family, Civil and Criminal courts. The Report paints a sad picture indeed. An absolutely unacceptable state of affairs.

As our Year in Review report documents, we are working diligently to correct each one of the identified problems that lie within our own power to fix internally but, as Secretary Johnson pointed out, some of the most profound barriers to equity are so extensive and systemic in nature that the judicial branch of government alone does not have the power to make the necessary changes. It is going to take the combined and coordinated efforts of all three branches of government to change the harsh realities confronting the low-income, unrepresented litigants of color who predominantly seek justice services in our over-burdened high-volume courts.

Court Simplification

And while there are various factors that contribute to the persistence of two justice systems in our state, there is one issue that truly stands out, and that is the reality of our being compelled to operate one of the largest and busiest court systems in the world under the constraints of what is, without question, the most inefficient, outdated, fragmented and needlessly complex trial court structure in the nation – a system with 11 different trial courts that has not been meaningfully reviewed or updated since 1962 – 60 years ago!

Anyone familiar with the challenge of running a complex organization like ours, with over 3,000 state and local judges, 15,000 nonjudicial staff and, in a normal year, 3 million new case filings heard in over 300 court locations spread throughout 62 counties – anyone with any understanding of the complexity of that responsibility knows that a rigid and fragmented operating model like ours only handcuffs and prevents us from managing our resources rationally and flexibly in order to meet the demonstrated needs of our litigants.

And while in no way intended to, our obsolete trial court structure breeds undeniable disparities: disparities in the provision of justice services, disparities in the quality of those justice services, and disparities that have exacerbated the fallout of the ongoing pandemic. These are the same disparities and inequities identified by Secretary Johnson in his Report, and they are most apparent in the high-volume courts that serve large numbers of individuals and families struggling with eviction, child custody and support, consumer debt and other incredibly important matters.

In a published piece last November, three highly respected jurists and leaders with decades of experience in our family and criminal justice systems recounted how during the pandemic the inherent disparities of our “wasteful and balkanized” system led to “radically different experiences for litigants depending on their racial, economic and geographic backgrounds.”¹ They are right in every respect. As is the recent joint report of the New York City Bar Association and the Fund for Modern Courts, which catalogs the adverse impact of COVID-19 on litigants in the New York City Family Court and urges reforms to improve court access and services, including corrective action by the Legislative and Executive branches to address underlying inequities through court simplification.²

History and experience have proven the point beyond any reasonable doubt: the worst consequences of our antiquated trial court structure fall on the backs of vulnerable families pursuing related legal issues. It is common for litigants with divorce, child custody, child support and domestic violence issues to have to appear before different judges in multiple courts, which leads to more lost workdays, more childcare and transportation expenses, more stress and frustration and, certainly, less trust and confidence in our courts and the justice system.

For the past 50 years, every Chief Judge and virtually every Governor of New York State has identified the problem: our convoluted, obsolete trial court structure. But, inexplicably, reform to streamline and modernize the courts has never been seriously advanced. In the year 2022, the need to modernize our court system has never been more urgent, not only

to remedy decades-old inequities embedded within our organizational structure but also to enable us to efficiently operationalize and give full and timely effect to the important reform policies that our colleagues in the Legislative and Executive branches of government have fought so hard to enact.

The time has come to reform the New York State courts for the benefit of all New Yorkers. While the public health crisis temporarily interrupted our progress to advance court simplification in the Legislature over the past two years, the impact of the pandemic has also heightened our sense of urgency. We must act now to ensure that we are doing what only government can do: give effect to structural reform that will simplify our statewide court system so that it works for the people. We must make good on our commitment to all New Yorkers and finally move this issue forward.

Last month, we submitted a proposal to the Legislature that would amend Article VI of the New York State Constitution to create a modern, streamlined and equitably-structured court system consisting of:

- 1) a single statewide Supreme Court into which the Court of Claims, County Court, Family Court and Surrogate's Court will be merged over a three-year period, beginning January 1, 2025;
- 2) a single statewide Municipal Court into which the New York City Civil and Criminal Courts, Nassau and Suffolk District Courts and 61 upstate City Courts will be merged, effective January 1, 2030; and
- 3) the Town and Village Justice Courts, which will not be affected by our proposal.

The consolidation of nine different trial courts into a two-tiered Supreme Court and Municipal Court structure would be accomplished without changing the means by which the judges on those nine courts are presently selected for office. The proposal also would eliminate the 97-year old constitutional cap on the number of Supreme Court Justices and authorize the Legislature to create a sufficient number of Justices to efficiently handle the Supreme Court's caseload. This would obviate the need to appoint judges of the lower courts to serve as Acting Supreme Court Justices, a longstanding practice that perennially deprives the lower courts of needed judicial resources.

Further, the proposal would authorize the Legislature to adjust the number of Appellate Division Departments – for the first time since 1894 – in order to correct the absurd caseload imbalance that exists now, whereby the Second Department alone accounts for about half of the state’s population and nearly two-thirds of the state’s appellate caseload.

Our plan is smart, it is simple and it is designed to level the playing field for all New Yorkers. Based on my experience in the community, ordinary folks quickly grasp the concept and the need for reform through simplification. For those who wish to be educated or perhaps need more convincing, the considered and favorable views of an unprecedented coalition of more than 100 judicial, bar, legal service, business and good government groups are available for study on the website of the Fund For Modern Courts <https://moderncourts.org/>. Or one can simply look to the streamlined structure of the trial courts in our comparable sister states, such as California and Illinois, each of which has a single trial court; or Florida, which has two trial courts; or New Jersey and Pennsylvania, each of which has three.

Our proposal is sound and balanced and will transform our court system into a model of efficiency and equity. But I would add that no aspect of the plan is etched in stone. We welcome and look forward to the continued input of our partners in government and the constructive suggestions and institutional concerns that members of the judiciary, the bar and our stakeholder communities may have.

We are pleased to report that a court simplification bill is being introduced in the Assembly, sponsored by the Chair of the Judiciary Committee, Assemblyman Charles Lavine, and in the Senate, sponsored by the Chair of the Judiciary Committee, Senator Brad Hoylman. We are grateful to the bill sponsors and to Assembly Speaker Carl Heastie and Senate Majority Leader Andrea Stewart-Cousins for their consideration of our court simplification proposal. We look forward to gaining their support and that of Governor Hochul.

First passage of court reform by the Legislature in 2022, followed by second passage in 2023 and a voter referendum in November 2023, would assure our state’s ability to begin transforming and simplifying our court system as early as 2025.

The timing of this proposal could not be more perfect. We are at a place in time where the leaders of all three branches of government are laser-focused on reforming justice policies and practices that have negatively and disparately impacted communities

of color. The New York State Justice Task Force, our multidisciplinary body of experts addressing root causes of wrongful convictions, has expanded its mission to examine the bases for apparent racial disparities at key stages of the criminal justice process, from arrest to sentencing. We support all manner of smart, effective policy changes to achieve equity in the justice system, including a well-functioning indigent criminal defense system; fair and adequate compensation for 18-B lawyers who represent criminal defendants, and children and parents in our Family Courts; and increased funding for legal assistance to families facing eviction.

But the questions must be asked: To what end will these reforms count if we are not able to hear and resolve the affected cases in a timely and efficient manner because of a flawed organizational model that prevents us from allocating our resources effectively? Without a court system that is organized and designed to work for the people who are the intended beneficiaries of reform, what do we accomplish? The benefits of reform will be blunted by the built-in inefficiencies and inequities of a system with 11 different trial courts whose design no longer serves, if it ever did, the people of our state, including low-income New Yorkers and communities of color that must depend on our overburdened, high-volume Family, Civil and Criminal courts for vitally important justice services.

The people of this state should not be made to wait any longer. We must move forward to amend our State's Constitution. And to our partners in government, I say on behalf of all of us: let's work together to get this done.

Access to Justice

And while nothing could be more important for the future of our justice system than providing every New Yorker with a modern, streamlined and equitably-structured court system, there is even more that all three branches of government can and should be doing to deliver on the promise of equal justice. I will focus on two of those subjects today: expanding access to civil justice for low-income New Yorkers, and increasing the rates of compensation for assigned counsel who represent indigent litigants in our Criminal and Family Courts.

The Judiciary's commitment to expanding access to justice is reflected in our budget request for the coming Fiscal Year, which includes a planned increase of \$12.6 million in civil legal services funding to support grants for providers above and beyond the current funding level, which has not been adjusted since 2017. This increase is necessary to help meet rising expenses and address an expected surge in pandemic-related legal needs, especially in the wake of the recently expired moratoria on evictions.

Over the last 23 months, the Judiciary has worked tirelessly with justice partners and stakeholders across the state to address the unmet legal needs of low-income litigants and communities adversely affected by the pandemic. Our efforts have been led by the Permanent Commission on Access to Justice, and our Office for Justice Initiatives, both of which work to ensure meaningful access to justice for all New Yorkers regardless of income, background or special needs.

A priority during the pandemic has been the need to bridge the digital divide for litigants lacking the digital technology and literacy required to access and participate meaningfully in our virtual courts. The Office for Justice Initiatives is coordinating innovative partnerships with faith-based and community-based organizations to provide unrepresented litigants with dedicated spaces where they can use digital technology to participate effectively in virtual court proceedings. Relatedly, the Permanent Commission has launched a first-in-the-nation survey of litigant experiences in our virtual courts to better inform our future efforts to ensure equitable access.

In 2020, I formed a Business Council on Access to Justice, under the auspices of the Permanent Commission, to engage leaders of the business community in our access to justice efforts. The Business Council members immediately set to work, recruiting lawyers to provide pro bono legal assistance in eviction and housing matters and participate in free legal clinics that help low-income tenants obtain emergency rental assistance funds.

Finally, looking ahead to the future, we have asked the Permanent Commission to conduct a study of the state's long-term legal service needs so that we can begin the work of strategizing to meet our responsibilities in the coming years.

Assigned Counsel Rates

I turn back now to an issue that relates to equal justice and my plea to reform our court system: the urgent need to increase the rates of compensation set forth in County Law Article 18-B for lawyers assigned to represent indigent criminal defendants as well as parents and children in our Family Courts. New York’s 18-B lawyers have not received an increase in their compensation for 18 years, not since 2004 when rates were set at \$75 an hour for felonies and family court matters and \$60 an hour for misdemeanors. By contrast, the compensation paid to assigned counsel in the federal courts has risen with inflation over the years and is now fixed at \$158 an hour.

The failure of our state’s funding scheme to keep pace with any reasonable semblance of inflation has led to a statewide mass exodus of qualified assigned counsel available to take on new assignments. The committed and dedicated lawyers who remain in the assigned counsel and attorney for the child programs are left carrying excessive caseloads, which means, of course, that they are overworked and hard-pressed to devote adequate time and resources to the clients they are representing. This situation not only impairs court operations but harms countless litigants who are subjected to delays in the assignment of counsel, repeated adjournments of their proceedings, fewer opportunities and less time to meaningfully consult with counsel, and an overall substandard quality of representation that contributes directly to the inequitable, dehumanizing conditions identified in Secretary Johnson’s Report.

Early in my judicial career, I sat by designation in Family Court and it proved to be one of the most informative professional experiences I ever had. I was able to observe first-hand how the availability of competent legal representation enables litigants and families to secure just and timely outcomes in their cases. At the risk of stating the obvious: when all parties are adequately represented, judges are better able to make timely, well-informed interventions and issue decisions that serve the best interests of children and families in crisis. This is especially true in child welfare cases, where the effective assistance of counsel protects the constitutional rights of parents separated from their children, advances the best interests of children in need of safety and permanency, fosters and speeds family reunification and enables judges to order essential services for all family members. More broadly, the provision of counsel in these matters pays long-term dividends because it reduces trauma to children, supports the stability and well-being of families and, by extension, their communities, and avoids greater financial costs to state and local government down the road.

I want to commend Senator Jamaal Bailey for championing this issue and introducing Senate Bill 3527-A, which would increase 18-B rates to \$150 an hour for representation of defendants charged with felonies as well as adults and children in Family Court, and \$120 an hour for representation of defendants charged with misdemeanors. Importantly, Senator Bailey's bill would establish a cost-of-living mechanism to offset the effect of inflation on 18-B compensation, a provision that would go a long way toward maintaining an adequate pool of qualified attorneys.

As we tackle pandemic-related backlogs in our Criminal and Family courts moving forward, an 18-B rate increase is urgently needed to replenish the assigned counsel program and support the efficient operation of those busy courts. But make no mistake, we all know and understand that this is an issue that transcends court operations and goes directly to the heart of our state's commitment to equal justice. Support of fair and adequate compensation for 18-B counsel would send a strong, clear message that the rights and interests of people of limited means are no less important than the rights and interests of financially advantaged New Yorkers. And it would send a strong, clear message that our state is committed to operating one system of justice, with equal access to quality representation for all New Yorkers, regardless of who they are or where they come from in life.

Conclusion

I conclude my remarks today by expressing how honored I am to serve as the Chief Judge of the Court of Appeals and the State of New York. Indeed, it has been an incredible privilege to lead our court system over these last 23 months and to watch our court leaders, managers, judges and professional staff step up to meet every challenge presented by the pandemic. Thanks to their dedication and professionalism, the New York State courts never faltered in our commitment to uphold the rule of law and protect the people's rights and liberties.

There are many individuals to thank and credit for what we have been able to accomplish, starting, of course, with our hard-working judges and court professionals, our folks who confronted one challenge after another with skill, grace, resilience and a positive can-do spirit of cooperation.

They have been guided and led by our tireless team of court leaders, headed by our extraordinary Chief Administrative Judge, Lawrence Marks, and our Deputy Chief Administrative Judges: Edwina Mendelson, leading our Office for Justice Initiatives; Norman St. George for the Courts Outside New York City; Deborah Kaplan for the New York City Courts; and Tamiko Amaker for Management Support of the Unified Court System; as well as all of our Administrative Judges, Supervising Judges, District Executives, Chief Clerks, court managers, professional staff and our superb uniformed Court Officers, led by our Chief of Public Safety, Michael Magliano.

And, of course, we are grateful to our four Presiding Justices of the Appellate Division, starting with Elizabeth Garry, our neighbor next door, leading the Third Department from their courthouse here in Albany; our Western New York colleague and neighbor in the Fourth Department, Gerald Whalen; and, of course, our downstate Presiding Justices, Rolando Acosta in the First Department, and Hector LaSalle in the Second Department. They have done an excellent job of meeting the operational and safety challenges in their respective courts, moving their dockets in a positive direction, responding to the needs of litigants and members of the bar and serving as colleagues on the Administrative Board of the Courts.

I add a special thank you to my Court of Appeals colleagues – starting with our three newest members: Shirley Troutman, Anthony Cannataro, Madeline Singas, and of course, Jenny Rivera, Michael Garcia and Rowan Wilson as well as our recently retired members, Leslie Stein and Eugene Fahey – for their promptness and productivity in faithfully carrying out the Court’s mission of articulating the law of our state.

And our gratitude and appreciation extends to our friends in the organized bar, especially the New York State Bar Association and President T. Andrew Brown, and Past-President Hank Greenberg and the members of our Commission to Reimagine the Future of New York’s Courts.

Warm thanks to Helaine Barnett and the members of the Permanent Commission on Access to Justice, and to the members of our Business Council, co-chaired by Kimberley Harris and Eric Grossman.

Special thanks as well to the members of the New York State Justice Task Force, including Co-Chairs Carmen Beauchamp Ciparick and Deputy Chief Administrative Judge Deborah Kaplan, and to Davis Polk & Wardwell for its excellent pro bono support.

And we thank the many stakeholders and justice partners who have supported our courts with great patience and understanding and, most of all, to great effect. On behalf of our entire court family, your many constructive contributions to our work, especially over these last 23 months, have been greatly appreciated and admired.

As I stand before you today, our court system is strong. It is stronger today than when I last addressed you 12 months ago. And it is, without question, stronger today than it was 24 months ago before the onset of COVID-19. We are present and accounted for in our courthouses, we are returning to full in-person operations and we are ready to resume the forward progress we made under the banner of the Excellence Initiative in pursuit of operational and decisional excellence and equal justice for all. Our work continues . . .

Thank you for your time today.

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- 1) Edwina Mendelson, Ronald Richter and Juanita Bing Newton, [Finally Bring Order to N.Y. Courts](#), Daily News, Nov. 16, 2021.
 - 2) New York City Bar Association and Fund for Modern Courts, [The Impact of COVID-19 on the New York City Family Court: Recommendations on Improving Access to Justice for All Litigants](#), February 4, 2022.

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