

Helaine M. Barnett:

We now turn over to our opening plenary, "Issues at the Forefront", and it's my pleasure to welcome our moderator, Sal Curran. Sal, take it away.

Sal Curran:

Thank you so much Helaine, and thank you as always for your leadership. I also want to thank Chief Judge Wilson for your comments. I know I speak on behalf of the whole legal aid community when I say we're grateful for your commitment to access to justice and we really look forward to working with you. Welcome to our session on Issues at the Forefront. It is my honor to be the moderator for this opening plenary where we are going to touch on several issues that are central to access to justice. These issues are already at our doorstep and raise major challenges for those seeking access to justice in the courts as well as the many stakeholders who seek to assist them. Our local committees have a unique opportunity to provide collaborative approaches, drawing in the courts, legal services providers, government and social services providers, and more to help to address these challenges.

First, we'll hear from Judge Joseph A. Zayas, the Chief Administrative Judge for the New York Courts who will be delivering a report from the Office of Justice Initiatives on behalf of Judge Richardson-Mendelson, the Deputy Chief Administrative Judge for Justice Initiatives who had a conflict arise this morning. Then we'll hear a more national perspective from Danielle Hirsch, Managing Director of the National Center for State Courts. Danielle will discuss innovative approaches to access to justice being implemented throughout the country, including diversion initiatives. Then we'll move into discussing medical debt, a topic that dramatically impacts low income and vulnerable New Yorkers throughout the state. And as somebody in Central New York -I'll say particularly in Central New York- that's true. Anna, Staff Attorney for the National Consumer Law Center will discuss key issues including her important work around nursing home debt.

And finally, Keith Porcaro will give us a primer on artificial intelligence, including the future that AI can play in access to justice. Keith is the Reuben Everett Senior Lecturing Fellow and Director of the Digital Governance Design Studio at Duke Law School. The presenters' full bios are available on the website for this conference and I encourage all to take a moment to review those. I now invite Judge Zayas to take the virtual mic.

Hon. Joseph A. Zayas:

Good morning, everyone. First let me say that Judge Richardson has a very good reason to not be able to be here today and I know so many of you know her. Her daughter is in the process of giving birth as we speak. So, before I read Judge Richardson-Mendelson's remarks, let me as the new Chief Administrative Judge for the state of New York, take a moment to thank the Chair and the Commission for its important work. We are the ultimate beneficiaries of all of the work that the Commission does and we certainly owe a debt of gratitude to all of you. So let me get to my friend's remarks, which I will attempt to deliver with the natural excitement which Judge Richardson always exudes and which I know you're all familiar with when she talks about access to justice. It is a pleasure to appear before you today and this is Judge Richardson's remarks.

Moments ago we had the privilege of being greeted by our new Chief Judge, Rowan D. Wilson. Serving alongside Chief Wilson are his administrative leadership team: Chief Administrative Judge Joseph Zayas, First Deputy Chief Administrative Judge Norman St. George, Deputy Chief Administrative Judge for New York City Trial Courts Deborah Kaplan, Deputy Chief Administrative Judge for Courts Outside of New

York City, James Murphy. Obviously, along with Judge Richardson, as well as our Administrative and Supervising Judges and court managers across the state, I am deeply gratified to have this opportunity to continue to serve the cause of justice with our new leadership team. I begin by describing the work of the office I have been privileged to lead for six years, the Office of Justice Initiatives.

The promise of access to equal justice for all is deeply embedded in all that we do at my office. To best undertake our work, we operate in a structure of five subject-matter divisions, staffed by hardworking professionals. The Access to Justice Division's mission is to ensure people of all backgrounds, incomes and abilities can have fair and just court encounters. We support pro bono attorney programs, self-help services, technological tools and other measures to meet our critically important mission. The Judiciary Civil Legal Services Division increases meaningful access to justice by providing a permanent and stable source of funding for the delivery of civil legal services to low-income New Yorkers. My office provides programmatic oversight of the now close to \$100 million in the Court System's budget, earmarked specifically to fund essentials-of-life legal services. With the aid of this funding, which recently increased by 3%, 82 legal services grantees helped individuals and families to resolve dire legal issues related to their homes, family stability, healthcare, education, subsistence, income and more, in approximately 500,000 cases.

The Child Welfare and Family Justice Division includes the work of our federally funded and mandated Court Improvement Project, which is meeting its mission to promote safe and permanent housing for the abused and neglected children and meaningful support for their families, and provides supportive resources including those fostering technological access to justice improvements throughout the state. The Youth and Emerging Adult Division offers criminal justice policy and programming support primarily related to ongoing implementation of the Raise the Age Law. The Policy and Planning Division is where we oversee our 340+ problem-solving, accountability and community courts. Our Policy and Planning Division also engages in other access to justice system improvement endeavors such as our work to promote a fair and solid court process throughout the state in foreclosure matters, guardianship and elder justice. I am also honored to lead our implementation of the recommendations contained in Special Advisor, Secretary Jeh Johnson's 2020 Equal Justice Report, examining racial bias in the courts, and the court-based recommendations of the Judicial Committee on Women in the Courts to enhance gender fairness in the New York State courts.

Collectively, these endeavors meaningfully promote meaningful access to justice for New Yorkers. I'm gratified that so many people from throughout our court system are interested in the topics of the day and choose to attend this important program. I thank the Permanent Commission on Access to Justice led by Helaine Barnett by gathering us today for their great work to enhance access to justice and for their contributions to making New York State a national leader in this area. Courts in every region of New York State are actively engaged in work to enhance access to justice. If we were to have the format of past years' meetings, our Administrative Judges would be here to present to you with great pride, the many local access to justice endeavors going on in their regions and under their impactful leadership throughout the state.

These range from faith leader court and community events, careers in the courts, school outreach events and visits, mentoring and teaching students, school staff and educators about courts, court tour programs, court navigator and greeter programs, development expansion of virtual court access networks, use of courthouse therapy dogs, establishing and strengthening health centers, working with and learning from creation, promoting programming to enhance gender and fairness and racial equity

diversity and inclusion in court operations, local bar associations and law school engagement, increasing pro bono program programming, producing informational videos on court processes, expansion of computer kiosks for public use, expanding access to petition filing and other court support for those victimized by intimate partner violence, use of QR codes to ease communication with and provide information about courts and to survey court user experience, creating community organization staff by connection desks in the courthouses, leading community court observation projects, working with community organizations to draft more, resource informational manuals and directive directories and so much more.

These endeavors are happening throughout our state and are expertly led by our court leaders in collaboration with community organizations. The role of my office is to support these various endeavors and assist in any way we can. Today I've been asked to highlight a few themes of our ongoing access to justice work and I'm happy to do so. When we meet next year, I expect all our courts in every region and their local Access to Justice Committees to be supported by newly employed and deployed Access to Equal Justice Coordinators. Their role will be to support continuous quality improvement in the delivery of justice services. Access to Equal Justice Coordinators will serve to connect our courts with individual stakeholders and promote local access to justice endeavors.

It is our priority to develop strategies to address the rural and digital divide in New York State. One of our important tools to address this justice gap is to create and support Virtual Court Access Networks, otherwise known as VCAN. The goal of VCAN is to help those who may not have access to a computer and/or the internet or don't have the skill to use devices optimally and or unable to get to the physical courthouse for any reason, including distance, lack of transportation, childcare needs or personal safety. VCAN sites- that is, using community-based settings like libraries, community centers or houses of worship, create a friendly, safe and secure space for community members to get their court needs met within the comfort of an easier access to their own community. The Rural Justice Working Group was originally convened to discuss opportunities to positively impact rural justice challenges using alternative dispute resolution, also known as ADR.

And then came 2020 and we experienced the pandemic and its impact on our courts and communities. This group quickly pivoted to plan and promote remote access to courts via VCAN sites. They inventoried the different programs in place, then engaged with district stakeholders to meet, collaborate, problem solve, share ideas and resources and assist one another as more districts seek to establish new VCAN sites and strengthen and grow their current sites in operation. The workgroup created a best practices guide for operating VCAN sites as well as a memorandum of understanding for sites utilizing court computer equipment. Twenty-seven VCAN sites are currently operating in New York City and in the 3rd, 5th and 9th Judicial Districts with many more areas of the state in active planning stages. As an example of their great impact- on May 9th, Herkimer County had its first court user for their rural court access site in Old Forge, New York.

That court user reported to their appearance in Herkimer Family Court and spoke of their gratitude at not having to travel approximately 65 miles each way to appear in person because they had transportation issues. That court user said they would continue to utilize the rural virtual court services going forward. I earlier mentioned the Child Welfare Court Improvement Project, who together with the UCS, importantly, the Division of Technology and Court Research, created a process for judicial districts to apply for one-time grant funding to address needs stemming from the COVID-19 public health emergency. Judicial Districts throughout the state receive funding for local initiatives ranging from

attaining equipment to open Virtual Court Access Network (VCAN) sites or to strengthen the technology in our local courthouses and support training for court staff on conducting virtual appearances. In New York City, funds were used to retrofit courthouses with Network Device Interface, NDI, technology enabling them to better handle remote and hybrid proceedings. These technological advances heightened user experience and facilitate evidence viewing and presentation.

Considering the importance of collaboration, all applicants partnered with their local Departments of Social Services to ensure virtual sites are meeting the needs of local families involved in the child welfare system. Importantly, one local district is partnering with multiple tribal nations to bring them virtual access.

Offices for Self-Represented, now referred to as Help Centers, have been in place in New York State since 1997. Over time they've expanded in scope and geographic reach and thanks to technological advances and partners with legal service providers, there are different Help Center models available to serve the public.

Some are located with individual courts to assist court users with matters before that specific court. Others are physically situated in one or more counties and provide remote services in multiple counties across the Judicial District, such as the model used in the 6th and the 9th Judicial Districts. And yet others assist court users in multiple courts across a single county such as the model in Erie County in the 8th Judicial District. There has also been the expansion of Help Centers to additional public access libraries located in the 3rd, 4th, and 6th Judicial Districts. I'm pleased that we will be hearing from Sue Ludington, our wonderful Chief Law Librarian who I'm sure will speak of our public access libraries. Help Centers help our court users and they help our courts. They enhance the efficiency of our court operations and contribute to positive perceptions of and experiences with the courts.

Importantly, they also serve as a way for the courts to learn about the court user experience and needs. In 2022, Help Centers across the state received and addressed over 123,000 inquiries. The number does not include the thousands of people who are also assisted by the New York City Family Court Help Centers.

The program... The Office for Justice Initiatives supports the development and implementation of volunteer attorney programs throughout the state including the Attorney Emeritus Program. The Attorney Emeritus Program is a pro bono attorney endeavor for "senior attorneys." I must note that "senior" is defined as my age three years ago, that's Judge Richardson's age three years ago, and I happily embrace my senior status. My office has committed dedicated staff to support this important program. Ralph Wolf now serves as director of the AEP for the Unified Court System. Recognizing that access to justice and equal justice are inextricably intertwined, the Attorney Emeritus Program continues to develop and support racial justice pro bono model practices for their host organizations and volunteers.

They are launching a new website where information about AEP will be available. We're happy to support this important mechanism of closing the justice gap and commit to provide meaningful support to the program, their host legal services organizations, volunteer attorneys, and the communities they proudly serve.

The final program I will discuss is the Housing GAL Program. In operation in New York City Housing Court for many, many years, the program recruits, trains and provides Housing Court Judges with a pool of GALs whose goal is to safeguard the rights and prevent the eviction of some of New York City's most vulnerable people. GALs advocate and collaborate with social justice agencies to help resolve the Housing Court action. They assist in securing needed entitlements or grants to pay for arrears, assist with re-certification programs and arranging for deep cleaning of the homes when that is an issue of concern. They also advocate for repairs.

In 2022, my office convened a Statewide GAL Landlord/Tenant Working Group. This group serves as a think tank to support expansion of the program beyond New York City. Where there is great opportunity, there's often great challenge, including the fact that funding sources for each jurisdiction differ, and defense and indemnification is embedded in law covering New York City only. This must be considered and navigated as new programs are created.

I am hopeful about the ability to expand support for vulnerable court users experiencing eviction cases in our courts and gratified by the interest throughout the state on these critically important issues. The Office of Justice Initiatives recently issued our annual Law Day report highlighting the various endeavors in the Office of Judicial Initiatives, as well as a review... a Year in Review of our equal justice work for 2022. Those reports will be made available to you all. Thank you all for what you do to promote justice for all in our work. Please know that I hope that you're enjoying this informative and impactful program. Thank you very much for giving me a moment to say a few words.

Sal Curran:

Thank you so much Judge Zayas. I want to thank you again for joining us today and really, for stepping in to present on such short notice. And I do want to say again that on behalf of the legal aid community, I want to say how much we're looking forward to working with you going forward on access to justice issues. Congratulations. All right, I now invite Danielle Hirsch from the National Center for State Courts to speak with us about national access to justice developments. Danielle?

Danielle Hirsch:

Thank you so much Sal and I hope you guys can see my screen. I'm really thrilled to be here and want to thank Barbara and Barbara and Rochelle again for having me. In my remarks, what I'm hoping to do is actually zoom out a little bit and think about more conceptually, what does it mean when we talk about civil access to justice and why. And I have three themes, so here goes nothing.

Okay, so before we get into the nitty gritty, those of you who know me know I love a metaphor and so I want to think about access to justice in terms of a children's story and a Chinese parable about a frog in a well, and you might know it. I'm going to reduce it very much. There's this frog in a well and it lives in the well and it looks at the sky and it thinks the sky is round because that's what the frog can see from inside the well. And then one day the frog is curious, "Maybe I'll go up and see if I can touch the circular sky." And the frog leaps out and it turns out that the sky is much beyond the vantage point from inside the well. It's got all sorts of different things that weren't visible from the well and there are hills and trees and mountains and all sorts of other things.

And I tell you this because to me, the really interesting trend over the past 10-15 years within the access to justice space is really thinking beyond the courtroom itself and thinking to how users of the court system or people who have unmet legal needs experience the system and informing all of the service

delivery around that as opposed to thinking about what happens when people come into the court. And that paradigm shift of jumping out of the proverbial well really sits with me. So that's what I'd like to do in the next few minutes is really think about beyond what we normally think of, which is when self-represented litigants or otherwise vulnerable people come into court.

So, I get a lot of this thinking from Professor Rebecca Sandefur at Arizona State University. She did some seminal research in the early 2010-2014-ish time period about civil justice problems. And she found that about a hundred million people across the United States had civil justice problems and those involved basic human needs like housing, financial issues, family law needs, and that the majority of those problems were not taken to see lawyers or to go to court. In fact, about 14% ended up in court and about 25% made any contact with lawyers of any kind. So that put another way, if you think about it like an iceberg, the part of the system that we see if we think about courts and lawyers, is really about one fifth of the whole totality of experienced justice problems.

And so in order to really think about the needs of everyone, not just the people who come into our systems, we need to think about the people who come to court self-represented or they visit a self-help center or they talk to a civil legal aid lawyer or a pro bono lawyer. But we also importantly need to think about people who know that they have unmet legal needs but they don't take any action or they get stuck somewhere or they don't know their problem is legal at all. And how do we get to those people in addition to serving the people who come to courts better?

And so let me start another... I promise I'm going to get to substance in a second, but here's a personal tangent for you to bring this iceberg back to life a little bit. So, this is a picture of my Uncle Brian. He lives in Florida. I would say this was probably 15 years ago now, he called my mom because he knew that my dad and I are both lawyers and he said, "I want to get divorced and what should I do?" And my mom made this flippant comment. She said, "Brian, I wish you were in Chicago because Danielle or Austin," my dad, "could help you." And so three days later my uncle got in his car, drove from Florida to visit my mom, knocked on the door and was like, "I'm here. I'm ready to get divorced." Without any appreciation of personal jurisdiction or logistics at all. And it really made me think about the importance of what we think is really clear that you should take legal action in the place that you live is not necessarily true for others. And he ended up going back to Florida and ended up getting divorced.

But it just reminded me at a really deeply human level that this issue is about connections and about who you trust and how you get information. So in my limited time left, I want to highlight three strategies that expand access to justice that all of your local communities do and can think about more as a takeaway. The first is making sure that people have access to information that is written in plain language and that is easily understandable and easily found. The second is it's process simplification-rethinking procedures and requirements. And I'd like to focus on diversion programs in particular and some high-volume case types. And then the last is really community connections and partnerships in more concrete ways. So clear communication.

When we are the frog in the well, we often write things that we think are really clear and are not clear. So in the instance of my uncle's example, when he reviewed some documents, his idea of a lot of different things was different than mine. I looked at it from legal training and so things seemed really clear to me, whereas he did not. And so if we write in legalese that works for us or we reference rule numbers, but you need conceptual information. Sometimes it can cause real issues.

So without besmirching any jurisdictions, if you see on the left, you'll see a list of forms. So this jurisdiction had a list of forms and then another jurisdiction on the right just provided a list of definitions. These things aren't terribly useful to a person who is trying to figure out, do I have a problem that is legal in nature? If you don't know, seeing a list of forms is probably not the way to get an idea of help. And in the same way a legal glossary is a lovely idea, but if that is not accompanied by some plain language, easily understandable information that puts some of this in context, it can really lose its meaning.

This is an example of something I built in Illinois when I worked for the Illinois Courts, that tried to provide an overview for people who wanted to get divorced who had children. And this document was blown up and the idea was that we would laminate it and give it to clerk's offices across the state and self-help centers and that people could come into court and easily and visually understand where they were on the potential timeline of a divorce. So it provides very limited information, but I would argue it's the big picture that makes all the then detailed substance have more meaning. So you can see where you are on the journey.

Ultimately, a divorce is about a couple different things. Were the documents given to both sides? Did people respond? In Illinois, you're required to go to a parenting class. And then there are five big issues that the couple needs to decide and they can decide them or they can have a judge decide them or both. And then there's a hearing or a trial. And then what we liked to indicate was what costs money and what doesn't so that you could really understand and prepare. And again, this is not the totality of what one would need, but we also wanted to give people a general sense of what the process was. So if you were filing initial paperwork, we wanted to indicate this was probably going to take you between six months and two years, so you should expect that. It's not going to happen all today.

And then I'm a big fan of plain language forms that explain what you need, but they also think about process simplification too. So these are two examples of forms where different states required for fee waivers in those jurisdictions. If you received certain kinds of public benefits, you would automatically receive a fee waiver... require a hearing. So in these instances it's very clearly trying to ask you that information. And if that's it, you get to stop and so you don't have to fill out all the rest of it. And it's a way to prevent people from having to constantly provide a lot of voluminous information that may slow them down, that may or may not be necessary. And then all of the forms in the world are great, but if you can't find them and you don't have the context, it won't work. So here are two examples of court systems that I think have done a great job in really clearly calling out in an easy, identifiable way what you're going to need to take action and what the initial steps are.

Okay, trend number two is diversion programs. What I mean by diversion programs are programs that provide both sides with time, information and resources to resolve a dispute in a non-traditional way. And so we have an eviction diversion program that the National Center funds in 12 places, including in Brooklyn and in Long Island, where we're funding court facilitators to actually help implement eviction diversion in those places. And so the off-ramps for the eviction diversion program can take place pre-filing or post-filing. And in both instances, they're providing space for access to legal aid, to mediation, to housing counseling, to credit counseling, to try to prevent trial and to try to get both sides as close to what they want and need as possible.

I think eviction diversion programs do two things really well. They help resolve the immediate problem, which is giving people access to legal aid, to mediation, to financial assistance, but more importantly,

they're also trying to prevent a future crisis. So trying to make sure tenants and landlords are stable when they leave this interaction. Are they finding additional housing? Do they get access to financial counseling? Are there other wraparound services that might make them less vulnerable in a future situation?

Another example of a diversion program is in family law, and that would be in the Alaska courts, but there's also one in Washington State and in a few other places too. But it's an early resolution program and it's aimed at family law cases. Kids, no kids, they have some screening material, some screening that's done by the court staff, but they're very liberal about who is allowed into the program. The court staff reviews the pleadings on both sides and then sets a ticket, I call it the 'Willy Wonka golden ticket', a hearing where it is a longer set period of time. There are sometimes legal aid lawyers, there are mediators, and the judge often acts as mediators, and the idea is really to get the parties to settle as many of the issues as possible on that first date. I think the most important step for the Alaska diversion program is that the court staff calls the parties before the hearing a day or two before and explains what this opportunity is, explains the importance of why parties should participate, and it's led to really remarkable results.

Again, same kind of thing- it identifies consensus quickly and it prevents future crises and really models collaboration, which is necessary in family law. This is the picture of Peeps, which were founded in Lancaster, Pennsylvania. We've recently found out about a consumer credit card diversion program, which I think is useful when we think about Anna's presentation coming up. But it's a program where the court really requires pleading requirements for credit card companies to ensure statute of limitations and chain of title are appropriate and won't allow a case to proceed until those steps have been verified. And about 40% of cases have either been resolved by lack of pleading requirements or by this diversion mediation payment plan opportunity.

And the last thing that I'll leave you with is the importance of community connection. So again, if we think about that iceberg, people or my uncle, people go to people they trust. So making sure that your communities are partnering with their law libraries, food banks, hospital social workers, and other groups to make sure that you're allowing for community-based resources. And there are myriad examples that we can point to of courts, including ones across New York State that are really doing a fabulous job of situating court services or court annex services in communities. So with that, I'm going to turn it back to Sal, but thank you for the opportunity.

Sal Curran:

Thank you so much, Danielle. That was a wonderful presentation. I wish we had more time to hear more especially about that plain language initiative. I'm going to now hand it over to Anna Anderson from the National Consumer Law Center.

Anna Anderson:

Hi. Thank you everyone. I am really grateful to be here today. As many of you know, I am at the National Consumer Law Center now. However, for 13 years prior to being at the National Consumer Law Center, I worked in legal services including 10 years as a legal aid attorney at Legal Assistance of Western New York, where I actually founded the consumer unit. So I have a lot of experience dealing with consumer debt cases and unfortunately, a growing number of medical debt cases. And that is what I'm here to talk about with you today. Medical debt cases are quite different from your standard consumer debt collection cases in that most people who are dealing with medical debt, it is not something that they

have planned for. You cannot just go and shop around for better rates when you are seeking a doctor's services or other medical help, as many of these services are sought during a time of crisis or an emergency.

And when consumers even do try to take that extra step and maybe have a little bit of time to plan their medical services and they get pre-approvals and they go through the process with their providers and get a list of charges in advance, in reality, those numbers and pre-approvals often do not match what they are ultimately billed for. So consumers are facing a complex billing system here where it is unfortunately not uncommon to receive inaccurate or erroneous bills. And even with people who have health insurance, we are seeing that those folks are also impacted by the medical debt crisis and the collection actions that come along with that as insurance and billing departments often fail to communicate with each other and they don't make it easy for consumers to adequately resolve their bills before they are turned over to aggressive collection agencies.

Medical providers really devote too few resources to prevent, identify and correct these billing mistakes. And this is leading to what the Community Service Society in New York has reported to be a 64% increase in medical debt cases in New York alone, which is just shocking. And I highly recommend that anyone who is interested in learning more about this issue, that you review the 2020 Community Service Society report called "Discharged into Debt", as that really provides a more thorough understanding of how these cases come about and what the state of crisis is here in New York today. So importantly, I just want to mention that medical debt collection actions, they're not just about the financial consequences here. They also have a significant impact on the health and wellbeing of New Yorkers. A high percentage of people with medical debt report regularly skipping doctor's visits and getting their prescriptions refilled for fear of getting into more debt even if they have insurance coverage.

And we know that down the road this just leads to even further medical debt issues as ignored health problems just become something that unfortunately leads to hospitalization and even worse outcomes for patients. The racial disparities in these cases are real, too. And for example, I just want to note the findings from a review of cases in Onondaga County as Sal mentioned, where it is particularly problematic. The average rate of people facing medical collections in New York is just 8%, but for communities of color in Onondaga County, the rate is much higher. It's actually 41%. That is something that we simply cannot ignore when we are talking about access to justice issues. We have to acknowledge and understand the racial disparities that folks are experiencing here and we need to make sure that we are doing something to address this. So I'm very grateful that we are spending the time here to talk about this and I am hopeful that together we can come up with some ideas to make sure that these outcomes are changed.

So what exactly are we dealing with when we are talking about medical debt cases? Medical debt cases can involve a wide variety of issues. They can involve hospital bills, out-of-network services such as ambulance and anesthesiologist bills, which are, unfortunately, very costly. We can be talking about nursing home debt and laboratory work. There are a number of different types of medical services that we see that result in medical debt collection cases in the New York Court System. And I want to make sure and point out that in New York State, all hospitals are subject to the Public Health Law. They're all nonprofits, and these hospitals receive over \$1 billion each year to provide financial assistance to patients who can't afford medical care. Yet alarmingly, there is a significant disconnect here and many patients who are eligible for financial assistance never receive or are even made aware of the fact that this help is available.

Between 2015 and 2020, hospitals in New York sued over 50,000 people for medical debt and the average lawsuit was just around \$1,000 dollars, but the default rate in these cases is shocking. It is 98%. So despite the fact that hospitals receive state funds to provide assistance to patients, consumers are still being harassed, sued, and forced into costly judgments that are impacting their daily lives. Consumers are almost never represented by an attorney in these cases, which means that the important protections that were passed recently in New York State such as pleading requirements, key statute of limitations provisions and prohibitions on judgment liens and wage garnishments in medical debt cases are not being enforced. Even consumers who have defenses to cases and try to fight them on their own get discouraged by the hurdles of proceeding in complicated litigation without representation. And they often just give up.

Diversion programs like the ones that Danielle mentioned can be helpful, but having pleading requirement standards alone is not enough to ensure that consumers are protected in these types of programs. If only the plaintiff has legal representation in these cases, the power imbalance is just too severe and consumers are pressured into settling even when they have significant defenses with the little funds and the resources they have, which impacts their ability to afford housing and ongoing medical care. I also want to note because I know that this is something that is of particular interest to a lot of folks on this call, but it's also something that is particularly concerning to me and it's something in my last few years at Legal Assistance of Western New York I worked on quite a bit, and that is the issue involving nursing home debt collection. Why this is particularly troubling is the fact that these cases, we're not talking about bills for \$1,000, we're talking about bills for \$100,000-\$200,000. This is the type of debt that can ruin people's lives. It can force people into bankruptcy and it can tear families apart.

What is especially alarming about these nursing home collection cases is that nursing homes and law firms often pursue third parties such as families and friends to recoup these debts, even though federal law prohibits nursing homes from holding these parties, who are often just trying to take care of their loved ones, personally liable for these debts. But sadly, no good deed goes unpunished. And this continues to ring true here in New York in these cases. Without additional attention and focus on medical debt in New York Courts, including funding for legal services attorneys in these cases and ensuring better enforcement of existing protections in these cases, the outcomes for low-income and vulnerable New Yorkers will just continue to languish and will result in significant financial and medical harm that will burden not only the courts but the state at large. I just want to say thank you again for allowing me the opportunity to speak with you all and hope I get to speak with you about this more going forward. And with that, I'll turn it back over to Sal.

Sal Curran:

Thank you so much, Anna. I am personally so grateful for the work that you and your team at the National Consumer Law Center do. You have amazing resources and it's been really great to hear from you here today. I am now going to hand it over to Keith Porcaro to speak about that which either excites us all or terrifies us most, artificial intelligence. Thank you, Keith.

Keith Porcaro:

Thanks very much. All right let's see. Okay, hey everybody, I'm Keith. I work at Duke Law School. I have the unenviable task of explaining large language models like ChatGPT in about 10 minutes. So my goal today is not to describe a multiverse of possible futures. Instead, I want to plant a better metaphor in your head for these tools as they exist in the present because a good metaphor will help you think more clearly about where and how these tools can be useful. And I think the metaphors that you've been

hearing from companies with things to sell you are unhelpful. The robot lawyers, fax machines that can think and feel, even the term artificial intelligence is more hype or hope for the future than help for the present. And they don't really reflect how these tools actually work under the hood. So the metaphor I want to submit to you is that large language models like ChatGPT are actually something closer to the world's most expensive roulette game.

What I mean is that they're using real data, words, some statistical analysis and a dash of randomness to make convincing fake sentences, sequences of words. And this generative function is actually something that computers are quite good at and do all the time. And so I want to show you a toy example that you can do at home except instead of fake sentences, we'll get back to that, don't worry, I want to show you how we can use real data and randomness to generate, say, convincing fake criminal defendants. Don't worry, this isn't a presentation about criminal law. And why would we generate fake criminal defendants? Because it turns out that generated fake data is actually pretty useful.

So to tell you a story, a few years ago, my friend Jason and I built a simulation for teaching students about pretrial risk assessments. Students played the role of a judge and were presented with fake criminal defendants that they could decide to detain or release. And these defendants that you're seeing here were all fictional, but they weren't stored in a database beforehand. The simulation actually generated defendants on the fly -- names, ages, genders, lead charges. This meant we could make something really engaging. There are millions and millions of possible defendants and nobody who ran the simulation would ever get the same output twice. So the challenge that we had was how to generate some convincing-looking population of defendants that looked more or less like what a judge might see. So we couldn't have, say, 40 murderers in a row. So we need some data. And the question that we might ask is if somebody's arrested, what would they likely be charged with?

As it turns out, we can get that data on lead charges from the Bureau of Justice Statistics, and we can use that data to make a little roulette wheel except instead of all the wedges being the same size, they're bigger, smaller, based on how frequent or rare the crime is. We can give it a little spin. And so we can use this real data to come up with some simple fake data like a lead charge. But what if we want more? What if we want, instead of one crime, we want a sequence of crimes, a whole charge sheet and a criminal history, like this one: A couple of burglary charges, a couple of felony thefts. So what we need is more data. So there's a Miami-Dade County data set with about 3 million cases and about 5.7 million unique charges. So just think how many little roulette wheels we can make from that.

Let's start the same way that we did before with the roulette wheel that helps us make a lead charge. We give it a spin. All right, the lead charge is burglary. And then we do another roulette wheel. This time we're only using cases where people are charged with burglary and we ask, what's the next thing in the sequence? What's the next charge? So we'll give it a spin. Okay, so now it's theft. So we do- you guessed it, one more roulette wheel. And this time we're only looking at people who are charged with theft, and we give it a spin to find the next charge. And it turns out we're at the end of the sheet. And actually, if you think about it, this isn't the only wheel we could use here. We could make a wheel from any case where anybody has a theft charge and we could make a third wheel from the cases where somebody is charged with burglary and theft. So even though we're using data, there's some art in picking and choosing which wheels to spin and testing how well our choices work.

But really, that's what we're doing. We're building a sequence of charges, one roulette wheel spin at a time. And our generator for fake criminal defendants has dozens and dozens of little wheels. And so you

might be thinking, "Okay, when is he going to explain how large language models work?" And the answer is, I just did. This blend of statistical analysis data and randomness that we use to generate fake charge sheets is the same general approach that large language models use. Of course, they use way more data. The list of sites for some of the large data sets that large language models like ChatGPT are trained on, are all over the place. From Wikipedia to Google Patents to social media, like Reddit and Live Journal to fanfiction websites like "Archive of Our Own", to at least 10 sites that sell dumpsters and they use way more computing power. It costs about \$700,000 a day to run ChatGPT using hardware that costs millions of dollars because language is way more complicated than just a simple charge sheet.

And so you need to spin lots of little roulette wheels to help the system determine what word or what part of a word or what chunks of words comes next. But really, truly, at the end of the day, that's what it's doing. Using a ton of data, a little bit of randomness and a bunch of tweaking and little choices to decide what sentence or paragraph or word or chunk of word or tokens comes next. Now, you might be thinking this sounds a lot like autocomplete and in fact, similar large language models also power autocomplete in search engines, on your phone or your computer. Okay, so it's the world's most expensive roulette game. Does that mean it's a waste of time?

No, but here are three things that I want you to take away. First is that the data matters. Remember, this is not a brain. At the end of the day, these systems reflect the data they're trained on. For example, a recent paper found that 90% of the time, ChatGPT actually just repeats the same 25 jokes if you ask it for one. But if you think about all the weird and chaotic corners of the internet, like all of the fan romance stories and confessionals and journals people keep, that data is in there too. So if you tell a large language model like ChatGPT to tell me a secret, and it's analyzing all of the data from the internet, is it any surprise that "I love you. Leave your wife." is a statistically likely answer?

Large language models generate, if you'll forgive the word, bullshit. And I mean that in the academic sense, which is outputs that have no relationship with the truth. Remember, language isn't knowledge and these models are generating language without checking whether or not that language is right or wrong. And the third thing is that people are using these tools and finding them useful. They can help with brainstorming or rephrasing or coding, and they really excel at analyzing and explaining focus sets of documents.

So the question here that I want you to take away is not "AI is good", "AI is bad", but if and when you use large language models, whether it's built into your office applications or ChatGPT, is what error correction are you going to need to build into your workflow? Because the errors that these tools can produce and induce are just so different from the errors that a human might produce. And so working with large language models is going to ask us to develop different skills as we ask people to cover parts that computers just aren't good at. So I'm not saying ignore large language models. By all means, please give these tools a spin. But just know what kind of game you're playing when you do. Thanks very much.

Sal Curran:

Great, thank you so much. Keith. I'll have you stay on screen because I'll ask you a follow-up question right away, which is, looking from a best-case scenario, can you identify at least one access to justice issue that would really benefit from these large language models?

Keith Porcaro:

Yeah, I think to piggyback on something that Danielle talked about, which is plain language and making court documents more accessible. I think two things that large language models really, really excel at. One is rephrasing text that it's given, and two is summarizing a limited scope of documents. And I think those two things together are a really powerful combination for making court information more accessible. And I think I'll say for the plain language, there's really nothing stopping courts from today, right now, after this presentation, going and using the consumer tools that are available like ChatGPT to start rephrasing their website copy into plainer language. So, I think I'm really excited about that.

Sal Curran:

Wonderful. Thank you so much. I'm going to hop it over to Danielle now for a follow-up question since we have enough time for a few. Danielle, I was wondering what do you see as the most pressing challenge to access to justice right now in the aftermath of the pandemic?

Danielle Hirsch:

So for me, well that's a tough question, Sal. I guess I would say for the moment, the answer I think is making sure that we keep all of the spirit of innovation and all of the advancements with using technology without just going back to what business as usual was pre-pandemic, while thoughtfully figuring out what improvements we can make on the system that we started during the pandemic. I personally was amazed by the speed with which courts embraced technology and various process improvements, and like in New York State, reducing the need for notary public for certain things. Just big and small improvements that were made out of necessity. And I think the challenge now is there are a lot of courts that are really eager to go back to what they're comfortable with, and so making sure that we don't lose some of that innovation as we go.

Sal Curran:

That's wonderful. Thank you for that. Okay, I'm going to hop over to Anna now and ask Anna, you talked a lot about the incredibly high default rates in medical debt matters. What can our local access to justice groups and local committees do about the problem or how can we help raise awareness about the problem and the resources that are available to help defend against medical debt collection?

Anna Anderson:

I think that's a great question and I will say very quickly, I think there are really three big issues here when it comes to the high default rates that we're seeing in all consumer debt collection cases, but also very particularly with medical debt collection cases. And those three issues are problems with service. This is something that we have known about for years. Consumers are not getting served properly with court papers, which is what leads to a significant number of these default judgments. We also are dealing with a large issue of folks who are just unrepresented in these cases. If people cannot find a lawyer to help them respond to the court papers, then they will default. They don't necessarily know how to go about doing it themselves. I will also say that I think that the third big issue here is that even if someone wants to go about responding to these papers, they just don't know that they actually have to do this in writing, that they have to file an answer with the court.

Most people who have dealt with the court system, it's usually in a pretty limited fashion such as family court or maybe dealing with a traffic ticket. And in all of those cases, you get a court date, you get a date that says you have to be here at this time, and then you can tell the judge what your problem is and what your potential defenses are. That is just not the case in consumer debt collection and in medical

debt collection cases, consumers are actually required to file a physical answer with the court and serve it on the other party before a court date is even set. So, I think that without addressing the issues related to improper service, the lack of legal representation, again, it's less than 2% in these cases, and without providing an easy way for folks to get into the court system to make sure that they're heard by a judge, then I think that these high default rates are going to continue.

So local committees should consider pilot programs where they may have a mandatory court date. So folks are given the ability to address these papers in person and at that court proceeding, they may be connected with a legal services attorney who can assist them and help them address their issues with improper service or other defenses that they can raise here, such as not being given the opportunity to access the financial assistance and charity care protections that we have for folks in medical cases. This is something that I think that there's a lot of room here for judges and attorneys to get creative and figure out ways to address these problems. And we've seen in other consumer debt collection programs and pilot projects where even making these small improvements does have a significant impact on the default rate.

Sal Curran:

Wonderful. Thank you so much. All right, I'm going to jump back over to Keith. Keith, there were a few questions in the chat and I'm going to summarize two of them. One was, is there concern that each spin of this roulette takes us just mathematically further away from the truth? And then how do we address the bias that is inherently built into the data that answers are being drawn from so that we make sure that when we use ChatGPT and other tools for plain language or other access to justice initiatives that we're not further exacerbating the bias that exists?

Keith Porcaro:

Yeah, no, they're both good questions. I think with the first one about the spin taking us further or closer from the truth, what I might say is that it's not really thinking about a core, ground truth in the dataset. What it's trying to do is identifying patterns that exist in the dataset. So each spin could result in something that might be in the dataset or it might not be. But I think what I want to emphasize is separate this model and how it works from the idea of truth. What it's really doing is just reflecting what's in the data set that it's given.

And I think that dovetails nicely into the next question, which is yes, it's absolutely a huge concern. There are already lots of well-documented examples about large language models generating biased outputs. And I think that frankly, if anything, it's a call to be more measured and more supervised about how and where these tools are deployed. So I don't think that it's suitable right now for unsupervised advice-giving and unsupervised use. But for something like plain language where you're trying to move from an existing documentation, and existing prose that frankly, may already be biased and you're trying to just generate ways to simplify it, but you're still putting a human in the loop and making sure that you're building in the types of bias reduction work that you need to be doing anyway, I think my argument is that tools like this, in the best case scenario, can be one tool in the toolkit, but they certainly aren't a replacement for the anti-bias work that we need to be doing continuously, and they may not even help here.

Sal Curran:

Thank you so much. That's, I think, a really helpful reflection on how these tools can be used and the caution we need to take. So I just want to thank each of the presenters again. This was a wonderful

overview of the issues at the forefront, and I know we really could spend the entire conference diving deeply into these discussions, but it's now time to move on to our first break of the day. Please stay with us for our next panel, the Importance of Community Engagement to Identify and Address Unmet Local Needs, which will begin here at 10:30. Thank you again.