

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a bold, serif font, centered between two horizontal blue bars.

**NEW YORK
CITY BAR**

**REMARKS FOR THE CHIEF JUDGE'S STATEWIDE 2021
CIVIL LEGAL SERVICES HEARING**

**SEPTEMBER 13, 2021
COURT OF APPEALS
20 EAGLE STREET
ALBANY, N.Y.**

**NEW YORK CITY BAR ASSOCIATION
BY SHEILA S. BOSTON, PRESIDENT**

Chief Judge DiFiore, Judge Marks, Presiding Justices and State Bar President Brown, thank you for inviting me to testify today and thank you, Chief Judge DiFiore, for your steadfast support of civil legal services. My testimony will be in three parts: first, a discussion of the City Bar Justice Center's pro bono legal services work and its focus on racial justice; second, housing as a racial justice issue; and third, the digital divide and the importance of bringing WiFi to homeless shelters in New York.

I. PRO BONO LEGAL SERVICES ADVANCE RACIAL JUSTICE

The City Bar Justice Center provides free, high quality civil legal services that each year benefit over 24,000 New Yorkers struggling with poverty and other forms of socioeconomic vulnerability and exclusion. As the largest division of the New York City Bar Association's charitable affiliate, known as the City Bar Fund, the Justice Center furthers access to justice by mobilizing law firms, corporate legal departments, and other legal institutions to provide pro bono legal services; educating the public on pertinent legal issues; and impacting public policy.

Thanks in part to support from Judiciary Civil Legal Services funding, nonprofit legal services providers like the City Bar Justice Center have a critical role to play in advancing racial justice. As a statistical matter, anywhere from a modest majority to upwards of three-quarters or more of the clients served by each of the Justice Center's twelve civil legal services projects are New Yorkers of color. But I must pause there – and *we* must ask, as leaders in our community, why that is so. And the answer, we believe, is that the types of needs met by the Justice Center – and by so many other legal services providers – well, those needs *reflect* endemic, race-based exclusion from our society's socioeconomic benefits, including in our legal system. Addressing pre-pandemic data, and employing a Supplemental Poverty Measure alternative to NYC.gov or Census Bureau measures, the "Poverty Tracker" published by Robin Hood Foundation and Columbia University's Center on Poverty and Social Policy, reported that while White Non-Hispanic Adults in New York City faced a 13% poverty rate in 2018, the rate was markedly higher for other racial/ethnic groups: 23% for Black Non-Hispanics; 24% for Asian Non-Hispanics; 27%

for Hispanics; and 22% for those claiming Other/Multiracial identity.¹ Meanwhile, foreign-born New Yorkers experienced a 25% poverty rate versus 17% for those born in the U.S., and women experienced a 24% poverty rate versus 17% for men.²

Not only have New Yorkers of color faced even greater risk of experiencing poverty; but as we all know, the pandemic worsened these realities as thousands upon thousands of food service, hospitality, and retail jobs held by New Yorkers already burdened by systemic socioeconomic barriers, vanished overnight. Robin Hood/Columbia have concluded that “roughly 55 percent of Black workers and 59 percent of Latino workers lost employment income because of COVID-19, compared to 43 percent of white workers. Of those who lost employment income, 29 percent of Black workers, 25 percent of Latino workers, and 15 percent of white workers were already living in poverty.”³ This devastation has manifested in even greater need for civil legal assistance addressing unemployment and other public benefits; small business dislocation; landlord/tenant and other housing issues; and consumer credit problems. In short, the pandemic confirmed both the need for nonprofit civil legal services like those provided by the City Bar Justice Center and other providers – *as well as* the importance of cross-leveraging subject matter expertise to creatively address new needs.

So, how *are* we responding? First and foremost, the Justice Center serves as many New Yorkers as it can by leveraging the talent and resources of the private bar. In this past remarkable year, we recruited, trained, and deployed roughly 2,000 attorney volunteers to provide legal assistance to Justice Center clients. The more services that providers like the Justice Center can deliver, particularly by leveraging the pro bono impulse of the New York legal community, the better we can hope to address racial disparities that manifest in the need for nonprofit legal services.

Second and related, however, is the importance of addressing underlying wounds. The Justice Center leverages policy and advocacy resources of the New York City Bar Association to address systemic issues – from reforming New York’s heirs property law to counteract race-based exclusion from homeownership benefits and the intergenerational wealth development and transfer that can come from homeownership, to bridging the digital divide especially for those experiencing homelessness – two topics I’ll address in more detail further in my testimony.

But in addition to direct client services and advocacy initiatives that support racial justice, nonprofit legal services providers like the Justice Center also have a role to play in the mindset change that makes legal services more culturally sensitive and that makes advocacy more thoughtfully informed by grass-roots work. For example, the Justice Center (as like other providers, I am aware) has instituted a standing Diversity, Equity, and Inclusion (or “DEI”) Committee, which has a mandate to advance the organization’s commitment to DEI principles in its mission and work. This includes conforming organizational policies and operations to DEI principles, as well as implementing DEI best practices in stakeholder and institutional contexts –

¹ Poverty Tracker, Feb. 2020 Report at 9. 13., https://www.robinhood.org/wp-content/themes/robinhood/images/poverty-tracker/pdfs/POVERTY_TRACKER_REPORT19.pdf (all websites last visited Sept. 3, 2021).

² *Id.* at 13.

³ *Id.* at 21.

particularly by providing DEI- and racial justice-focused pro bono attorney trainings. The Justice Center now offers two different trainings to enhance pro bono lawyer understanding of structural racism and bias, and is updating training materials for pro bono attorneys and stakeholder communications to best respect client identities and perspectives and to share deeper thinking about how structural racism has created such great need for nonprofit civil legal services.

Finally, we cannot lose sight of the importance of enhancing the diversity pipeline into the legal profession, a top priority of the City Bar's Office of Diversity and Inclusion. This priority will continue to guide the City Bar's work in all respects.

II. EVICTIONS, RACIAL DISCRIMINATION AND RIGHT TO COUNSEL

I'd like to shift now to discuss our work in the area of housing, something of particular importance to me. Because we're talking about one's home, where we gather with friends and family / where our kids go to school / and where we lay our heads at night. How we come to live where we live; how some people - especially people of color, people of less economic means, and people with criminal records - face barriers to housing; the mental health impacts of being forcibly evicted from one's home or, on the other hand, the mental health benefits of stable housing; the economic fallout of COVID-19 and the impending eviction crisis; and, finally, the positive access to justice and rule of law implications when the eviction playing field is leveled by making sure respondents have legal assistance even if they can't afford it.

In this regard, I would be remiss if I didn't mention the impact of Secretary Jeh Johnson's "Equal Justice" Report, and I thank the Chief Judge for appointing Secretary Johnson to this task and for wholeheartedly accepting his recommendations. The City Bar has established a Working Group on Racial Equity in State Courts and they are very engaged on this topic, speaking with stakeholders, making recommendations and contributing in ways that can help to bring about the real and significant change that Secretary Johnson's report calls for. As we think and talk about these issues, I believe that we should all be guided by this comment in the report: "The sad picture that emerges is, in effect, a second-class system of justice for people of color in New York State."⁴ This is particularly so with respect to New York City Housing Court.

In our view, legal representation of tenants in Housing Court that meets the highest standards of our profession is a powerful response to evictions, racial discrimination, and the challenges identified in Secretary Johnson's report. This is a cause that the City Bar will continue to stand behind 100% and we will advocate both for its expansion statewide and for a modification of the current income cap so that greater numbers of tenants will qualify.⁵

⁴ Jeh Johnson, *Report from the Special Advisor on Equal Justice in the New York State Courts*, STATE N.Y. UNIFIED CT. SYS., 3 (Oct. 1, 2020), <http://www.nycourts.gov/whatsnew/pdf/SpecialAdviserEqualJusticeReport.pdf> [hereinafter Johnson Report].

⁵ At the local level, we have supported increasing right to counsel's income eligibility level from 200 percent to 400 percent of the federal poverty level. *See* Report on Legislation, NEW YORK CITY BAR (March 2020), <https://www.nycbar.org/member-and-career->

Why? Because we know that NYC’s right to counsel law, passed in 2017, is working. According to annual reporting by NYC’s Office of Civil Justice, tenant representation is going up, evictions are going down, default judgments against tenants have dropped, and tenants with counsel are far more successful in being able to retain their homes (with 86% able to remain). It is a game-changer. It’s leveling the playing field in Court, giving people a fighting chance to assert their legal rights, and sending a message that the lives and homes of all New York City households are entitled to be treated with dignity and respect.

Indeed, prior to passage of the right to counsel law, we saw the court and a high-stakes legal process being used to the consistent disadvantage of unrepresented litigants: that is, high numbers of eviction filings and unacceptably high numbers of default judgments against largely unrepresented litigants of color living in rent-regulated housing in New York City. Proceedings, if they happened at all, were conducted in quick order, or settlements were “negotiated” and produced in hallways. We cannot go back to that system of injustice.

Bar associations need to collaborate and work together with many other stakeholders in support of this right to counsel – that means the state court system, community-based organizations, legal services organizations, government agencies, and the private bar (particularly through law firm pro bono programs).⁶ This collaboration is critical to our success. Our Task Force on Civil Right to Counsel, led by Andy Scherer and Alison King, will continue to guide us, as both a convener and a witness. We’ll continue to look at ways to expand right to counsel; the physical conditions of Housing Court facilities in NYC; the use of remote proceedings – if done right – as a way to put an end to the “hallway justice” model of Housing Court; the need to connect tenants with their lawyers as early in the eviction process as possible; and, finally, how to ensure that the E-Rap program is a success. We all should advocate for the creation of a permanent federal funding stream that can be used by municipalities that want to create a right to counsel law and have emergency rental assistance programs. We need to ensure that the E-Rap and similar programs are run correctly and, if so, they will help to avoid evictions, preserve affordable housing, and help to get money to landlords to cover their expenses.

III. THE JUSTICE CENTER’S HOMEOWNER STABILITY WORK SUPPORTS GENERATIONAL HOMEOWNERSHIP BY NEW YORKERS OF COLOR

I will now pivot from tenants to talk about homeowners of color and, in particular, the City Bar Justice Center’s Homeowner Stability Project (HSP).⁷ This project engages in direct

[services/committees/reports-listing/reports/detail/expanding-right-to-counsel-for-tenants-in-new-york-city-housing-court.](#)

⁶ See, e.g., Maldonado, King and Scherer, *Universal Access Hearing Nov. 2018 Written Statements*, NYC.GOV, 56-59 (Nov. 15, 2018), <https://www1.nyc.gov/assets/hra/downloads/pdf/universal-access-hearing-nov-2018-written-statements.pdf> (statement of Roger Juan Maldonado on behalf of the New York City Bar); *Right to Counsel: The Nationwide Movement to Fight the Eviction Crisis*, STOUT (Oct. 14, 2019), <https://www.stout.com/en/insights/article/right-to-counsel-nationwide-movement-fight-eviction-crisis>.

⁷ See City Bar Justice Center, *Homeowner Stability Project*, <https://www.citybarjusticecenter.org/projects/homeowner-stability-project/>.

representation, public education, and law reform work to advocate for individuals and families of limited economic means who possess heirship interests in intergenerationally-owned homes, often in areas of New York City with rapidly increasing home values. The vast majority of New Yorkers served by this advocacy belong to communities historically denied equal access to homeownership benefits due to structural racism in housing and lending policies. Without services like those provided by HSP, many such members of our community face the loss of longtime family homes (and often substantial home equity) following mortgage and tax lien foreclosure – or, especially, predatory partition actions brought by third-party investors who purchase heirs’ partial interests in the homes and then sue to force a sale, displacing the heir occupants. Awareness of these issues led both the Justice Center and the City Bar to take a leading role in a law reform movement culminating in New York’s passage of the Uniform Partition of Heirs Property Act (UPHPA), which expanded state legal protections for heirship property owners. Armed with the tools of this reform, HSP has secured recent wins in partition actions staffed by pro bono attorneys.

What we typically see in these cases is that the home in question is owned by a family of color that first bought the property when race-based redlining prevailed, and that also likely had unequal access to credit, also on account of race. Against this backdrop, taking on homeowner stability matters connects us (and pro bono partners) to the *greater* mission of nonprofit legal services – a mission that connects concrete cases and clients to the type of mindful, thoughtful advocacy that begets systemic change. That is what New York needs more pro bono partners to do with us, more deeply. To take these cases on, *as* pro bono legal services work, *as* racial justice work, *as* the work that preserves and strengthens our diverse communities.

This work shows the importance of pro bono-supported civil legal services models that engage broader systemic issues.

IV. THE WORK OF THE CITY BAR IN SUPPORT OF EFFORTS TO CLOSE THE DIGITAL DIVIDE, PARTICULARLY AS IT AFFECTS PEOPLE WHO ARE EXPERIENCING HOMELESSNESS.

When efforts to keep people in their homes are not successful, then the opposite result often occurs: homelessness. Here, I want to focus on the digital divide in this space. New York has long been a leader in ensuring that its individuals experiencing homelessness have access to shelter, yet thousands of residents in temporary housing lack basic internet access. The consequences of this stark digital divide on the lives of New Yorkers experiencing homelessness is devastating. These individuals and families are unable to search and apply for permanent housing and jobs, participate in remote schooling, apply for government benefits, stay connected to friends and family, access basic entertainment, or obtain necessary medical care. The statistics are staggering, but here’s one I want to focus on: nearly 1 in 10 children enrolled in NYC district or charter schools were identified as homeless in the 2019-2020 school year. Over 110,000 children.⁸

⁸ Advocates for Children, Dec. 3, 2020, *New Data Show Number of NYC Students who are Homeless Topped 100,000 for Fifth Consecutive Year*, <https://www.advocatesforchildren.org/node/1675>

The COVID-19 pandemic has significantly exacerbated the barriers resulting from the digital divide, raising the stakes to literally life-or-death. The need to use internet-based applications is vital, as in-person access to everything from city offices and classrooms to real estate listings is accessible almost exclusively online, and such online access is preferred given the continuing public health risks of unnecessary in-person contact. This is also a racial justice issue, as Black and Hispanic New Yorkers are disproportionately represented among those experiencing homelessness and disproportionately impacted by COVID-19.

The Justice Center has documented this problem in a report “Homeless Need Internet Access to Find a Home: How Access to Internet and Technology Resources can Support Homeless Families Transition out of Homeless Shelters”.⁹ This report and its recommendations have been endorsed by a wide range of organizations, including law firms, legal services providers and community groups.

The City Bar will continue to press this issue, by issuing reports, supporting legislation and through the Justice Center and supported by pro bono counsel, representing the needs of individuals experiencing homelessness. Of necessity, our work here is collaborative with other organizations, particularly community based organizations. We look forward to the day when the state requires and funds all local social service districts to provide internet access for all individuals residing in temporary housing. This means family shelters, shelters for adults, domestic violence shelters, runaway and homeless youth shelters, or safe houses for refugees.

I thank you very much for your consideration of these important issues and am happy to answer any questions.

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⁹ Available at <https://www.citybarjusticecenter.org/wp-content/uploads/2020/05/Homeless-Need-Internet-Access-to-Find-a-Home-2020-Report.pdf> (May 2020); See also *#Wifi for Homeless, a Movement to Close the Digital Divide* (August 2021), <https://www.citybarjusticecenter.org/wp-content/uploads/2021/07/Wifi4Homeless-2021-Report.pdf>.