



Dear Secretary Johnson and Ms. Petty,

Thank you for meeting with my colleagues and me on June 30, 2020. As we described during our conversation, Brooklyn Defender Services (“BDS”) has witnessed firsthand how structural racism and inherent biases have become deeply entrenched in the Unified Court System. Far too often, these systemic deficiencies not only impede access to justice, but dehumanize and traumatize New Yorkers and their legal representatives as they navigate the state’s criminal, family, and civil legal systems. We are all too familiar with the pattern of conduct – often uninformed or misguided, but sometimes purely vile and cruel – that disproportionately impacts New York’s Black and brown communities and targets people based on their socioeconomic status, sexual orientation or gender identity, health conditions or disabilities. We commend you for undertaking a thorough analysis of these problems and hope to serve as a resource and partner as we work to debias the court system and ensure a more equitable, accessible, humane institution. To that end, enclosed here please find additional information regarding trends, examples of specific encounters and harassment, and recommendations as you complete your process.

### **THE UNIFIED COURT SYSTEM ENVIRONMENT**

In criminal, family, and civil proceedings in New York’s Unified Court System, litigants and their representatives appear before judges who are often unprepared and ill-equipped to address systemic bias and the impacts of a government system that fails to mitigate the harms caused by structural, inherent racism. Many have little exposure to communities of color, and no familiarity with the life circumstances that face the litigants before them.

Even before reaching the courtroom, litigants encounter overwhelmingly white male court staff who regularly engage in a wide variety of offensive behavior, from shouting at individuals, demeaning them, calling them names and even resorting to physical violence rather than basic humanity. Court staff and judges are neither appropriately trained nor held accountable for a wide variety of bad behavior. Procedures in the courts, use of space, and the culture of the courts are permeated with bias, dehumanization, and crippling inefficiency. Unchecked implicit bias within the judiciary works in tandem with a value system that prioritizes protecting itself over being fair and just and which uses policies and procedures to deny due process to individuals on a regular basis. There is a further pernicious policy that also contributes to the racism in the courts, which is the fact that the Unified Court System regularly assigns unqualified judges to criminal and family courts, leaving the most important decisions, such as bail and family separation, to individuals who have no experience in these urgent and essential proceedings for the mostly poor people of color whose very lives depend on their rulings.

## **BDS STAKEHOLDER EXPERIENCES**

Each year, hundreds of BDS attorneys and staff members (social workers, paralegals, and clerks) represent nearly 30,000 New Yorkers, primarily Brooklynites, in legal proceedings in criminal, family, and housing court.<sup>1</sup> Overwhelmingly, the people we serve are people of color. Many live with mental illness or cognitive impairments. To qualify for our services, they must fall below certain income thresholds. They are represented by a cadre of legal professionals from diverse racial, ethnic, gender, sexuality, and religious orientations. Together, they seek to access justice in Unified Court System courthouses and courtrooms throughout Brooklyn.<sup>2</sup> Troublingly, they regularly report that they and the people they represent are ostracized, targeted, or otherwise singled out because of race, ethnicity, gender identity, sexual orientation, disability, or socio-economic status.

### **I. BDS Clients**

The New Yorkers that BDS serves in the criminal, family, and civil legal system overwhelmingly draw from low-income communities of color. They have often experienced a lifetime of offensive and harmful interactions with a deeply flawed government system that is paralleled and compounded in encounters with the Unified Court System: children that the Administration of Children’s Services seeks to remove from their parents’ homes have been literally ripped from their mothers’ arms by court officers; youth who have been criminalized in schools for normal adolescent conduct are presumed guilty, labeled gang members, and treated with overt aggression; people from heavily policed communities are taunted with racist epithets by court officers; especially-vulnerable people are intentionally harassed or dehumanized and made to feel like little more than numbers on a docket sheet; tenants who are routinely denied public services are forced to choose between waiting for a tardy landlord’s attorney and attending other outside obligations, including medical or employment appointments; litigants—largely people of color—who have been systematically excluded from halls of power are forced to wait in long lines and pass through a metal detector to access the court while staff and attorneys—often white—are able to skip the line; parents overcome with emotion at a judge’s ruling are perceived as mentally unstable and unfit, which can lead to family separation; and the cycle repeats. These harms are felt even more acutely by people with health conditions or disabilities and those who identify as LGBTQI+.

#### *Family Court*

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<sup>1</sup> BDS also represents people in various administrative proceedings and in federal court as appropriate, but the patterns described in this letter and the recommendations offered specifically address court appearances for Unified Court System appearances.

<sup>2</sup> The majority of BDS’s representation in Unified Court System proceedings is through Brooklyn Supreme Court (320 Jay Street), Brooklyn Criminal Court (120 Schermerhorn Street), the Red Hook Community Justice Center, Brooklyn Family Court (330 Jay Street), and Brooklyn Housing Court (141 Livingston Street).

Race and poverty are defining characteristics of the foster care system. In New York City, Black children are 13 times more likely than white children to be placed in foster homes.<sup>3</sup> Outside the City, Black children make up a substantially higher percentage of the children in every stage of the foster system,<sup>4</sup> and Black children are five times more likely to be placed into foster homes as compared to white children.<sup>5</sup> Black children also historically stay in foster care much longer than children of other races.<sup>6</sup> In New York City, reports to the State’s Central Register of Child Abuse and Maltreatment (“SCR”) are more likely against Black and Latinx families.<sup>7</sup> And the list goes on.

Over 90 percent of the people BDS represents in family court are people of color living in poverty, often raising their children in homeless shelters or public housing, and in highly policed neighborhoods. Over 90 percent of the people BDS represents in family court are charged with allegations of neglect (rather than child abuse). Most of these neglect cases are poverty-related, alleging poor housing conditions, lack of adequate childcare, or children not attending school. Any interaction with one of New York’s legal systems can lead to family separation. For instance, school attendance interrupted by a vindictive landlord can result in an investigation by the Administration for Children’s Services (“ACS”) and land the family in court. When these families enter Family Court, they are greeted by metal detectors, armed court officers, long lines, and a punitive, confrontational system that fosters tension rather than rehabilitation or assistance.

Families are dehumanized from the moment they cross the courthouse threshold. Basic human dignity is denied: parents cannot carry snacks for toddlers, and nursing mothers have no private option to breastfeed their children.<sup>8</sup> In a system that deeply disempowers people, sharing one’s truth can be one of a very few ways to impact the tribunal, yet litigants are routinely silenced. Court officers, attorneys, child protective staff, and judges routinely refer to parents as “birth mom” or “respondent.” Court staff and officers are routinely rude, insensitive, and impatient with litigants and regularly reprimand parents for expressing emotion or speaking out of turn. Far too often these same parents suffer negative legal consequences because their natural, emotional response (whether grief or anger) to a threat to their family’s integrity is interpreted as evidence of instability or a danger to their children. Parents who choose to testify are often perceived as self-

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<sup>3</sup> Vajeera Dorabawila & Nicole D’Anna, N.Y. State Office of Children and Family Servs., Disproportionate Minority Representation (DMR) in Child Welfare and Juvenile Justice Systems, at 7 (Dec. 2015), [https://ocfs.ny.gov/main/bcm/DMR\\_Section%20Seven%20of%20Grant%20RFP\\_2015.pdf](https://ocfs.ny.gov/main/bcm/DMR_Section%20Seven%20of%20Grant%20RFP_2015.pdf).

<sup>4</sup> Vajeera Dorabawila, N.Y. State Office of Children & Family Servs., Racial and Ethnic Disparities in the Child Welfare System: New York City Compared to Rest of State (Outside of NYC) 2009 Compared to 2010 and Comparison of Selected Counties, at 7 (July 13, 2011), <https://ocfs.ny.gov/main/recc/Exec%20Staff%20DMC%20presentation%20child%20welfare%20color%20070911.pdf>.

<sup>5</sup> Disproportionate Minority Representation (DMR) in Child Welfare and Juvenile Justice Systems, *supra* note 3, at 7.

<sup>6</sup> U.S. Gov’t Accountability Off., GAO-07-816, African American Children in Foster Care, at 4 (2007), <https://www.gao.gov/new.items/d07816.pdf>.

<sup>7</sup> Disproportionate Minority Representation (DMR) in Child Welfare and Juvenile Justice Systems, *supra* note 3, at 7.

<sup>8</sup> *See id.*

serving, while the government’s law enforcement or agency witnesses are presumed credible. Judges frequently disregard parents’ personal experiences, seeking information about families from the government’s attorneys and witnesses rather than asking the parents themselves.

Court appearances largely serve as an extension of the surveillance that poor families of color experience outside the courtroom. Judges and court attorneys cast parents’ compliance with court orders and service plans as a sign of “good parenting” or a parent’s ability to keep a child safe. Parents are regularly judged on their ‘insight,’ an assessment that is rife with the possibility and implementation of implicit bias. The Family Court system ignores the context of historical and systemic racism that has resulted in communities of color struggling to gain equal access to housing, medical care, education, and employment opportunities when assessing any individual family’s struggles. In fact, it is our experience that family court judges and other staff punish children and families for their lack of access to the resources, rather than playing the appropriate and necessary role of identifying and providing resources that would keep families together. As an interdisciplinary defense office, we try to fill the gaping holes in services for our clients. Yet there is little we can do to address serious gaps in understanding and humanity. Nor can we convince most of the judges and court attorneys that separating families is not a “safer” route, that children suffer horrible trauma when they are separated from their parents. Foster care is not always safer either. We have seen horrible injuries and even death of our clients’ children in foster care, including in cases where the parent shared with the court concerns regarding improper treatment of their child.

Under the pretext of maintaining order and protecting children, armed court officers respond to emotional parents as though they pose threats to safety, including, as depicted in the attached video at Exhibit A, with physical violence in response to verbal emotion. The assault captured on Ex. A – an unprovoked, unjustified physical attack that included kicking and punching an unarmed, defenseless man pushed to the courthouse floor – is unfortunately not unique. Instead, the court officers’ approach regularly carries into courtrooms, as judges meet parents’ anger and frustration with the system as evidence of danger to their children’s safety. Heavy presence of armed officers and routine calls for “backup”—even where there is no evidence of a threat—exacerbates already tense situations and endangers entire families.

The results are egregious, devastating, and traumatic: court officers notified that a child may be removed from her parents often separate a family before the court’s ruling, allegedly to “maintain” order while disregarding the emotional needs of children and parents; armed court officers physically removed a newborn baby from [its] mother’s breast; and ten armed officers took a teenage child, upset by the judge’s decision, from his mother’s custody in the courtroom directly into the Department of Corrections section of the courthouse. Despite a unified request from parent representatives, child advocates, and ACS, the Kings County Family Court refused to collaborate on a protocol to allow parents and children to say goodbye before family separations.

Unfortunately, once a family is involved in the Family Court system, matters regularly take months or years to resolve. Meanwhile, families wait for service plans, referrals, and court appearances that will determine the fate of their family unit. The decrease in the number of children in foster care is mostly due to the social work and legal services provided by organizations like ours, while court caseloads remain chronically high and courts are so over-burdened that families stay apart for months longer than necessary. The impact on those families may never be repaired, yet the Unified Court System consistently fails to streamline or otherwise prioritize these essential matters.

The Family Court Act (“FCA”) requires that hearings be conducted immediately in the event that the government has removed, or seeks to remove, a child on an “emergency basis.”<sup>9</sup> Nonetheless, “emergency” hearings regularly take weeks or even months to complete, leaving children to languish in foster care while their parents wait helplessly. Trials themselves are no better, as calendars are backlogged and fact-finding trials are often adjourned months at a time, in a process critics term “trial by teaspoon.”<sup>10</sup> Though purportedly intended to protect children from abuse or mistreatment, removals and the drawn-out process that follows often causes more harm, as children separated from parents remain on high alert, endure prolonged and severe toxic stress on their bodies, and suffer interruptions in the brain’s development in reason, learning and emotional development.<sup>11</sup> Delays only compound and exacerbate these traumas.

Despite these chronic delays, parents are expected to appear in court, regardless of work or other commitments. Although most of our working clients are not paid when they miss a day of work, they often do so and appear in court, only to find that the ACS worker has neither appeared nor provided a report and the case is adjourned without a chance to speak with a judge or court attorney. This double standard—penalties for parents who are unavailable or late, yet no accountability for ACS workers—undermines the Court’s commitment to “fairness, equity and inclusiveness.”

### *Criminal Courts*

While all the legal systems that comprise the Unified Court System disproportionately impact people of color and those of lower socio-economic status, perhaps none do so more than the criminal legal system. In Brooklyn, the people BDS represent largely live in communities where heavy police presence is normalized, excessive force is routine, and a presumption of guilt or malevolence far too often replaces due process. Entering the courthouse brings little reprieve and

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<sup>9</sup> FCA § 1027 requires that hearings begin the day after a removal, FCA § 1028 requires hearings begin within three days of the application and not be adjourned once commenced.

<sup>10</sup> Abigail Kramer, *Is there Hope for the ‘Saddest Place in New York?’*, The New School: Center for New York City Affairs, <http://www.centernyc.org/family-court-reform>.

<sup>11</sup> Laura Santhanam, *How the toxic stress of family separation can harm a child*, PBS, Jun. 18, 2018, <https://www.pbs.org/newshour/health/how-the-toxic-stress-of-family-separation-can-harm-a-child>.

is generally devoid of real justice. Systemic racism and unequal exclusion are baked into everyday court operations from architectural barriers<sup>12</sup> to seemingly mundane instructions.<sup>13</sup>

Unfortunately, aggression and intimidation are a hallmark of the criminal courts, as court officers and other staff routinely antagonize people who are attempting to access the courts, escalating cases into physical violence on some occasions. In one case, a BDS attorney witnessed a violent, physical assault on a man after court officers physically confronted him and two friends—including one, represented by BDS, who identifies as a Moorish sovereign citizen—when they refused to stand as the court was called to order. The sergeant demanded the group leave the courtroom because they were allegedly causing a disturbance. When one officer tried to physically force them out of the courtroom, the three voluntarily left. The officers refused to provide their names and badge numbers upon request. Instead, additional officers arrived on the scene and one pushed the BDS client back towards the courtroom while the sergeant pushed the other two towards the elevator. The attorney, who was following her client back towards the courtroom, heard a commotion and turned to witness officers pushing one person to the ground and slamming his head on the floor as they hog tied him and dragged him on his stomach into the staff elevator vestibule. The attorney overheard the sergeant caution “wait, let’s make sure no one is recording us” and was then confronted by the sergeant who tried to physically remove the phone from her hand. Although BDS reported the incident, the court initially accused the BDS attorney of wrongdoing before ultimately claiming that security cameras weren’t working. Subsequently, BDS received reports that not only did security footage exist, but it confirms the attorney’s account. The sergeant remained on the job but was later suspended for racial posts on social media during Black Lives Matter marches following George Floyd’s murder.

In another case, a BDS attorney witnessed court officers flooding the hallway and corralling a group of young people into the elevator. When the attorney entered the elevator with the young man she represented, a white sergeant tried to force her to leave. Throughout the elevator ride, the sergeant tried to instigate an argument with the young people, calling them “hood rats,” and “little pieces of shit.” As the young person was exiting the elevator, the sergeant quipped “Keep running your mouth – you’ll always be a n\*\*\*er.” The attorney put herself between the young person and the sergeant to prevent a physical confrontation.

Unfortunately, these attacks are not unique, and verbal assaults are far too common in the criminal courts. In one situation last year, a white sergeant ejected a young Black man from the courtroom after the rope separating the courtroom well and the audience fell. The sergeant followed the man out of the courtroom, yelling and cursing, calling him a “disrespectful piece of shit” and “an asshole,” and commenting that he needed to pull up his pants. In another case, a white male sergeant antagonized a man we represent by following him out of the courtroom while chest bumping him, cursing, and screaming that he needed to show respect. Although the man responded

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<sup>12</sup> For example, the counsel booths in Brooklyn Supreme are not wheelchair accessible.

<sup>13</sup> For instance, there is a sign posted at the defendants’ table in Brooklyn Supreme instructs “sagging pants are not allowed.”

calmly that the court officer needed to act professionally and a BDS attorney tried to intervene, the man was arrested by court officers.

“Specialized parts,” allegedly designed to ensure more just results, have not alleviated the problems that plague Brooklyn criminal courts. For example, before the Brooklyn Treatment Court convened one day this past February, a court officer yelled at a Black man for “starting” before ejecting the man from the courtroom. Although a BDS staff member was initially able to de-escalate the situation by accompanying the man out of the courtroom, when they reentered, the same officer again berated the man.

#### a. YOUTH PART

New York’s Raise the Age (“RTA”) legislative effort was a recognition that young people are especially vulnerable and require extra protections as they navigate the criminal legal system. The “Youth Part” in Kings County Supreme Court aimed to address these enhanced needs by ensuring that the judge presiding over the Part is fluent in both criminal and family law proceedings, and that staff working with these young people affirmatively choose to do so. Nevertheless, youth entering the courtroom are presumed guilty and treated like criminals. Court staff make no effort to hide their feelings: BDS staff and the people we represent have overheard clerks referring to young people as “animals.” In one case, in a courtroom filled with parents and friends, a BDS attorney heard a clerk refer to two teenagers in custody as “bodies.” The clerk did not apologize or even acknowledge the attorney’s response that “bodies are in the morgue, these are children.”

Court officers demand compliance, and any word or action out of turn is met with aggression. Even where the requests are reasonable, the responses are abrasive and menacing. For instance, one court officer yelled at a 16-year-old boy, who is a person of color, for wearing a hat in the courtroom while waiting for his case to be called. When the boy let out a sigh while removing his hat, the officer ordered him to exit the courtroom, yelling and coming within inches of the boy’s face as he did. The boy remained silent until an attorney intervened. One officer escalated a situation outside the youth part where a young person repeatedly walked into and out of the courtroom. The officer responded by first cursing at the youth, then threatening to fight him and a friend, called one of them “a little bitch,” and assaulted one of the youth by slamming him to the ground. In another situation, BDS represented one young boy, also a person of color, who was charged alongside a friend. After his appearance concluded, he wanted to wait for his friend, who was also his co-defendant, and his attorney told him he could. An officer observing the situation demanded the boy leave the public courtroom and chastised the attorney. The officer followed the boy and his attorney out of the courtroom, reprimanding the attorney throughout.

People of color who are in the courthouse as a member of the public are hardly immune: court staff regularly react with hostility and even violence to innocuous conduct by people of color, assuming they are gang members or criminals. For instance, one young person of color was physically assaulted and shoved out of the crowded courtroom by two court officers after he did not remove his headphones quickly enough upon entering the courtroom. In a different case, an armed court officer physically dragged a 16-year-old girl out of the courtroom and handcuffed her.

Her alleged offense was not putting her phone away quickly enough. The aggressive treatment and disproportionate consequences extend to adults as well. In one case, court officers ejected the mother of one incarcerated child from the courtroom after accusing her of using her cell phone. Although the mother, who is a person of color, explained that she was turning the phone off, she was removed from the courtroom by angry officers.

#### b. HUMAN TRAFFICKING INTERVENTION COURT

Although the same concerns related to race, mental illness, aggression, and barriers to justice detailed throughout this letter exist in the Human Trafficking Intervention Court (“AP8”), this court has a particularly high incidence of dehumanizing individuals based on gender identity. . AP8 exists specifically to address offenses related to sex work (prostitution, loitering, massage, etc.), and staff are supposed to receive specialized training regarding the specific vulnerabilities of people appearing in that courtroom. Yet staff, particularly court officers, are not only ill-equipped but also notoriously cruel when interacting with many of the people who appear in the part. Specifically, BDS represents many transgender women with cases in AP8 whose name on official paperwork—including the arrest report and criminal complaint—is their birth name rather than their chosen name. In some cases, this misgendering may be inadvertent, but is still traumatizing to the women. In far too many instances, though, misgendering is intentional, as we witness officers pointing, laughing, and mocking these women. The impacts are devastating: women are traumatized and upset, often not wanting to appear in court to avoid being called the wrong name and ridiculed. And the remedies are few and far between; in limited cases, in response to begging by BDS staff, court officers have agreed to call cases by a docket number rather than a name.

#### Housing Court

Many of the same oppressive policies, practices, and procedures that infuse other courts in the Unified Court System also tarnish New York City housing courts, particularly in Kings County, and are sewn into the fabric of eviction proceedings. During the past three years, tenants living in majority-Black zip codes in New York City were more than three times as likely to be evicted as tenants living in majority-white zip codes, as “development” displaces families, communities and neighborhoods. Unsurprisingly, the system purportedly designed to fairly adjudicate eviction disputes is rife with inequities: landlords are far more likely than tenants to be represented in proceedings, court staff and judges routinely treat litigants inequitably, and systemic inequality presents a significant hurdle for anyone seeking to access justice in the court. These problems are exacerbated by physical barriers and unprepared staff who are unable or unwilling to help litigants navigate the system.

Housing court is largely defined by the imbalance in power and access between predominately white landlords and their attorneys, and tenants, who are predominately people of color. More than 99% of landlords are represented by counsel in eviction proceedings, while only approximately 32% of tenants are represented.<sup>14</sup> This disparity is fundamentally race-based: The majority of

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<sup>14</sup> This number has expanded exponentially since 2013 because of New York City’s Right to Counsel in eviction proceedings. Specifically, the City currently provides counsel in eviction proceedings for tenants in certain zip

tenants sued in eviction proceedings are people of color, while the vast majority of landlords, lawyers, and judges are white.

This power differential begins the moment litigants arrive at the building, when tenants are forced to wait on long lines and pass through a metal detector as court staff and attorneys—including landlords’ attorneys—pass the line by waving a pass, similar to the process of entering the other court buildings in Brooklyn. Once inside, the court system is designed to cater to the needs of landlords and their attorneys, while ignoring comparable needs and requests of tenants. The results are troubling: tenants are not provided an actual, accurate time for their proceedings and are frequently forced to forgo healthcare or employment obligations to appear in court, only to discover that the landlord’s attorney appeared late or the hearing is rescheduled. Tenants who attempt to raise their scheduling conflicts with the court are dismissed and told they have no choice but to wait for the landlord’s attorney or even, on occasion, “you should have thought of that before you decided to stop paying your rent.”

Similarly, tenants who inadvertently fail to check in, or who appear merely a few minutes late, are “defaulted,” meaning their case is scratched from the docket and they must navigate the system to restore their case or face potential eviction. By contrast, landlord’s lawyers who appear late or forget to check in are rarely penalized. One court officer recently quipped that she was doing a BDS attorney a “favor” by defaulting a landlord who failed to appear. Tenants are rarely provided such leeway.

Landlords themselves rarely appear in the court, instead relying on attorneys to conduct business in their stead. These attorneys rarely enter the courtrooms, instead holding coercive settlement negotiations with tenants in the hallway, inches from other litigants. These conferences are one-sided, with little opportunity for tenants to propose terms or present defenses, and no accountability or check on the accuracy of information. When not roaming the hallways, landlords’ attorneys often remain in the court-provided private “lounge” containing workstations and couches, while tenants are relegated to crowded, stifling court rooms. When a case is called, tenants, their attorneys, and even court staff are sent to “go find them,” with no negative repercussions on the landlord’s attorney.

Once before the court, Black tenants and other people of color are routinely subjected to heightened standards by judges and court attorneys who assume they are “repeat players” with a history of not paying rent. Parents who bring their children to court are shamed by court staff and antagonized by opposing counsel. One landlord’s attorney told a BDS attorney that her client, a person of color, should be sterilized before receiving any public assistance to pay arrears. This unequal treatment is similarly stark for people with limited English proficiency, who routinely wait hours to access one of the few available interpreters, who typically speak only the most common languages.

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codes. who make 200% or less of the Federal Poverty Guidelines. The City aims to expand this counsel nationwide by 2022.

Absent an interpreter, judges often ask Spanish-speaking landlord's attorneys to interpret for the tenant, disregarding the blatant conflict of interest.

The courtrooms are disturbingly inaccessible for people with medical conditions or disabilities, who must overcome additional barriers to access justice from the moment they arrive at the court. Upon entering the building, they must navigate small, narrow hallways to reach the courtroom, where they are expected to stand in hallways, waiting for their case to be heard.<sup>15</sup> Poor ventilation and cooling make the court dangerous for people with respiratory issues, and overcrowded and poorly functioning elevators pose a serious risk to tenants with certain medical conditions.

The hurdles facing tenants with mental illness are similarly serious, as judges and court officers are unprepared to deal with the reality of mental illness, and the court lacks social workers or mental health professionals. Instead, BDS staff have witnessed judges and court staff mocking people with mental illness. The results are devastating: mentally ill tenants are ejected from courtrooms, disregarded, or even assigned a court officer or police escort. In one example, a mentally ill tenant, for whom a referral to Adult Protective Services was pending, repeatedly told the judge that he wanted to exercise his Fifth Amendment rights. Rather than providing assistance or even treating him with dignity, the judge berated the man for not understanding the nature of the proceedings and allowed the landlord's attorney to continue presenting damaging evidence.

## II. BDS Attorneys and Staff

These troubling patterns are not limited to treatment of litigants. While the people BDS represent often suffer the harms most acutely, BDS staff are regularly traumatized, objectified, and dehumanized in the courts. Across all Kings County courts, attorneys and staff who are people of color are regularly presumed to be litigants or members of the public, even when the attorney identifies themselves or is wearing a suit. This is particularly prevalent when Black and brown staff enter court buildings and court officers insist on closely inspecting Secure Passes that grant preferential access to the building – by contrast, white staff are not similarly scrutinized. In some cases, judges and court staff have gone so far as to question attorneys of color or instruct them to move away from the attorney area and towards the public section of the courtroom. Court officers automatically address one Latina social worker in Spanish, without knowing anything about her (or her language skills). In housing court, one judge selectively enforces a blazer-required dress code for Black women. In Brooklyn Supreme Court, the court officers question Latina social workers, but not white social workers, who request access to conference rooms. Opposing counsel, free from fear of any retribution, has license to exacerbate inequities, making suggestive, reprehensible, and racist remarks, accompanied by aggressive behavior. A few particularly egregious incidents include:

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<sup>15</sup> Last year, wooden benches lining the hallways were removed without notice and litigants were left with no seating options. After multiple complaints, plastic chairs—far too few for the number of litigants on any given day—were placed in the hallway.

- Late in 2019, a sergeant in Brooklyn Supreme Court accused a Black social worker of trespassing and stealing from a white BDS staff member when the sergeant, presumably assuming the social worker was a litigant, observed the social worker going into a BDS briefcase;
- In early 2020, another court officer demanded that another Black social worker who was carrying a BDS briefcase provide her title at BDS and instructed her to wear a nonexistent “BDS badge” when in court; and
- Before in-person court operations were suspended in March 2020, a white male sergeant accused a black female social worker in Supreme Court of recording inside the courtroom. Although the social worker showed her phone to prove nothing had been recorded, he continued to berate her until another BDS social worker, a white man, intervened. This same officer had previously accused a different Black female social worker of violating court rules, assuming she was a litigant.

This conduct is rarely checked or policed by judges or court staff.

## RECOMMENDATIONS

These challenges, while significant, are not insurmountable. Dedicated court staff who pull together all the stakeholders can develop an effective strategy to improve culture and access in the courts. Unfortunately, such change will not happen overnight, but rather requires consistent participants who share a commitment to making the Unified Court System a more equitable, accessible place for all New Yorkers. Any remedy must start with continuous robust training, effective supervision, meaningful accountability, and mandated transparency across all levels of the Unified Court System that considers the experiences of those who navigate the courthouses daily. A comprehensive program must include specific attention to the following policies:<sup>16</sup>

- Implement an ongoing intensive anti-racism training program focused on uprooting and undoing racism for all judges and court staff, with a targeted curriculum designed to prioritize different skills and information based on particular roles;
- Launch a multi-faceted mandatory educational program addressing the anti-Black history of the legal and policing systems that all court staff are required to complete;
- Assign judges to courts where they have previous experience;
- Develop an accountability system that provides a mechanism for attorneys, social workers, and the public to file grievances and raise issues, ensures independent investigations, identifies and addresses trends, mandates remedial measures, and protect against retaliation;

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<sup>16</sup> This list is not comprehensive.

- Prioritize transparency mechanisms, including public reporting on disaggregated data on grievances and incident reports, that ensures the public can understand and hold the court system accountable;
- Review all signage and messaging in and about the courts to identify and revise messages with racist overtones or intent;
- Provide litigants in all courthouses with a time-certain court appearance to ensure judicial efficiency and to prevent litigants from languishing in the courthouse;
- Invest in social workers and other mental health staff who are readily available to litigants in each courthouse and can provide assistance navigating the court or accessing resources;
- Ensure litigants and their attorneys are able, but not required, to appear by phone or video if they so choose;
- Remove armed officers from Family Courts that serve children and families;
- Revise Family Court building rules, including allowing food and drinks in designated, easily-accessible areas, to ensure it is a safe and healthy place for children;
- Implement a trauma-informed approach that prioritizes safety, collaborative practice, voice and choice, and empowerment throughout Family Court, from the moment litigants enter the courthouse through their time before a judge;
- Require Family Court to hear emergency applications for the return of a child on an emergency basis, within the time frame mandated by statute;
- Mandate a process to ensure that no litigants are misgendered by court officers calling cases by creating a process that allows cases to be called by docket number or chosen name, beginning implementation in the Human Trafficking Intervention Court;
- Create wheelchair accessible counsel booths in Brooklyn Supreme Court;
- Cease using 141 Livingston Street for housing court and instead identify a space that ensures people can safely appear for their proceedings;
- Vocally support the expansion of New York City’s Right to Counsel program in housing court; and
- Provide the tenants’ bar with space in housing court and meaningful opportunity to screen and prepare clients.

## CONCLUSIONS

Brooklyn’s courts, and courts throughout the Unified Court System, are plagued by an equality crisis, and there is significant work ahead to identify barriers to access in the courts, address racial inequities, and begin to build towards a better future. As public defenders, we are committed to

partnering with the courts to overcome those obstacles and work towards a better future in our court system. It is not easy work, but it is necessary – quite literally the fate of thousands of New Yorkers rests on our success. We applaud you for building the foundation.

If we can be of further assistance, please reach out to our Executive Director, Lisa Schreibersdorf at 917-593-0078 or [lschreib@bds.org](mailto:lschreib@bds.org). Thank you or your consideration.

Sincerely,



Lisa Schreibersdorf  
Executive Director  
Brooklyn Defender Services