

# Access to Justice

Naitasia V. Hensey

The United States Institute of Peace defines “access to justice” as “the ability of people to seek and obtain a remedy through formal or informal institutions of justice for grievances in compliance with human rights standards ... support[ing] sustainable peace by affording the population a more attractive alternative to violence in resolving personal and political disputes.”<sup>1</sup> Further, “access to justice involves normative legal protection, legal awareness, legal aid and counsel, adjudication, enforcement, and civil society oversight.”<sup>2</sup> When COVID-19 arrived in the United States, access to justice was severely affected. The illness and the response by communities to contain and protect the spread had the triple impact of compounding access to justice issues that already existed. This created new barriers to access and placed access to justice matters at the forefront of public discourse.

Nine individuals across the Massachusetts legal community were interviewed to better assess the scope of COVID-19’s impact on access to justice.<sup>3</sup> These interviewees raised concerns about COVID-19’s impact on access to justice, changes to the legal practice in light of the pandemic, and their workplace’s preparedness for a fall or winter resurgence of COVID-19 cases. Ultimately, findings point to a larger theme – that there can be “no access to justice where citizens (especially marginalized groups) fear the system, see it as alien, and do not access it; where the justice system is financially inaccessible; where individuals have no lawyers; where they do not have information or knowledge of rights; or where there is a weak justice system.”<sup>4</sup>

Interviewees noted that COVID-19’s impact on access to justice is both obvious and latent: legal proceedings that are held electronically via video call are not accessible to those who do not have video or similar means of electronic communications. Similarly, due to pandemic measures, there has been a rise in cases of violence between the police and those with mental illness, as well as those who are or who became homeless as a result of COVID-19; because they have been without access to services they use to survive. Services such as Alcoholics and Narcotics Anonymous were no longer accessible; shelters closed or limited their capacity. Interviewees were also concerned about the aftermath of the impending removal of the stay of eviction and similar measures. Interviewees explained that, at the outset, the removal of the stay of eviction measures would harm many low-income clients who would need this kind of protection, because once the stay is lifted the clients still would not have been able to work to come up with the funds to make up for the three month “grace period.” . The demographics that tend to fall under the low-income umbrella are differently abled persons, people of color, women, immigrants, and other marginalized groups. These are the very same groups that are often without normative legal protection, which access to justice works to solve.

Interviewees had been forced to change their work practices to adopt new technologies to better serve their clients during the pandemic, noting that this was a burden on their practice. Although a majority of interviewees believed they were equipped to tackle these new demands – with cell phones with video capabilities, access to Zoom, and access to WIFI or private space – their clients could not say the same. One interviewee had a client who did not have access to WIFI in their home and typically relied on the public library for access to the Internet – a library that was closed due to the pandemic.

---

1 United States Institute of Peace, *Necessary Condition: Access to Justice*, 7.8.1 (last visited Aug. 24, 2020), available at <https://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/rule-law/access-justice>.

2 *Id.*

3 These interviewees included attorneys and legal professionals, six of whom operate in the greater Boston area and three of whom elsewhere in Massachusetts. Of the nine experts, five work in the private sector and four work in the public sector. All interviewees asked to remain anonymous. Two interviews were conducted in April, and the rest were conducted in stages two and three of re-opening.

4 *See supra* note 3.

Interviewees also had to balance the pandemic's effect on their work and home lives. As schools were closed, one interviewee, a parent, became a full-time teacher to their child in addition to their job as a full-time attorney. The interviewee had to balance the client's lack of access to technology with deadlines and teaching their child. Maneuvering this work consumed a great deal of the client's and interviewee's time – and this was not the interviewee's only client. Other interviewees had similar experiences.

Despite these challenges, all interviewees agreed that the legal community, as a whole, has reacted well to COVID-19's effects on their lives. However, some interviewees expressed a desire for the legal community to use the power of its voice in a more assertive manner. Interviewees also spoke positively of early governmental actions in response to COVID-19, but expressed concerns about the reopening plan, specifically the broad plan for the whole Commonwealth of Massachusetts, although different regions across Massachusetts are being impacted differently by the pandemic. For example, the congestion issue that the Boston Metro Area has is nary a concern for Western Massachusetts. Only three interviewees had regular court contact in their practice and felt that courts did their best to communicate the COVID-19-related operational and procedural changes.

With respect to workplace preparedness for a fall or winter resurgence of COVID-19 cases, interviewees from the private sector concluded that they anticipated many of the same challenges that they are currently facing, and shared concerns about returning to the office and not wanting to catch COVID-19 or expose their clients, co-workers, and families. On the other hand, public-sector interviewees were worried about a lack of funding, how COVID-19 would affect staffing and the people they service in a second wave, and an inability to reach populations they serve if there is a resurgence and more severe measures are put into place and the harm that may cause.

The interviewees suggested five recommended changes that the legal community should consider undertaking in the wake of COVID-19. Electing, promoting and retaining more diverse people in governing, legislative, advisory, and judicial roles to help write the emergency laws that go into effect during a time such as a pandemic. By doing so, many angles can be represented to ensure that as many voices are heard as possible in designing laws, legislature, and emergency protocols; including the marginalized groups that access to justice is meant to serve; and then we don't end up hurting those it was meant to help. For example, with the stay of eviction. Another interviewee suggested creating an accessible hotline for people to contact to assist them in accessing information as it changes, including court changes, city closures, if and where any legal services have been diverted, etc. (At the time of this interview, the interviewee who made this suggestion was not aware of the Massachusetts Covid website.) There was also an emphasis on cultivating a conversation in the legal community about boundaries as many are now in a work from home environment.

Additionally, the interview subjects suggested re-thinking the bar exam. Now that we know the Massachusetts Bar Exam can be done online perhaps it is time for a conversation as to what other changes could be made.

Finally, firms should budget for electronic support for their clients who cannot afford the tools needed to participate in their legal matter; the Commonwealth should also budget for this same purpose for the court system.

***The Leadership Development Fund of the Boston Bar Foundation provides critical support for the Public Interest Leadership Program. For more information on the BBF or this fund, please contact Erica Southerland at [esoutherland@bostonbar.org](mailto:esoutherland@bostonbar.org) or (617) 778-1930.***