



YOU'RE STILL MUTED

ACCESS TO JUSTICE BARRIERS IN
MASSACHUSETTS' VIRTUAL SMALL CLAIMS COURT

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YOU'RE STILL MUTED:
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I. EXECUTIVE SUMMARY

Overview

Debt collection is on the rise, and has only exacerbated the challenges faced by people of color and other marginalized communities during the ongoing COVID-19 pandemic. Nationally, and across Massachusetts, nearly 20% of residents in white communities had a debt in collection, but that percentage rises to nearly 40% in communities of color.¹ As Chief Justice Paula Carey noted to the authors of this report, “Debt collection cases often disproportionately involve vulnerable members of marginalized communities, including the poor, disabled, people of color, and persons with limited English proficiency.”² The economic vulnerability of debtors is exacerbated when they are taken to court, as they almost universally do not have legal representation to protect against adverse outcomes. In these suits, plaintiffs (from the debt collection industry) almost always have attorneys while defendants (consumers) have legal representation in less than 10% of cases.³

With the onset of the COVID-19 pandemic, the entire debt collection ecosystem became remote and courthouses closed their doors to the public. Once it became clear the pandemic would continue for some time, Massachusetts courts began to conduct business solely virtually. Individual courts and clerks were given significant discretion to determine when to schedule and how to conduct trials in small claims debt collection matters—cases involving claims of under \$7,000. This change, coupled with a stark digital divide which falls, unsurprisingly, along racial and socioeconomic lines, led to an inequitable technology gap that disproportionately impacted communities of color, underserved populations, and those of low and modest means who already face so many hurdles to accessing justice.⁴

This digital divide has had a significant impact on the court user, particularly for self-represented litigants who often must navigate not having the necessary hardware, a lack of access to consistent broadband/wi-fi, and barriers understanding how to use the relevant digital platform properly. This led to a number of observed issues, including default judgments being

¹ *Debt in America: An Interactive Map*, URB. INST., https://apps.urban.org/features/debt-interactive-map/?type=overall&variable=pct_debt_collections&state=25 (Mar. 31, 2021). These percentages are only likely to increase as the COVID-19 pandemic “metastasis[s] into a debt collection pandemic.” Pamela Foohey, Dalié Jiménez & Christopher K. Odinet, *The Debt Collection Pandemic*, 11 CALIF. L. REV. ONLINE 222 (2020), <https://www.californialawreview.org/debt-collection-pandemic>; Jacquelynne Bowman & Richard Dubois, *Warning: Debt Collection Tsunami Coming*, COMMONWEALTH (Nov. 10, 2020), <https://commonwealthmagazine.org/opinion/warning-debt-collection-tsunami-coming/>.

² Telephone Interview by Ben Golden with Hon. Paula M. Carey, Chief Just. of the Trial Ct., Commonwealth of Mass. (July 30, 2021).

³ PEW CHARITABLE TRS., *HOW DEBT COLLECTORS ARE TRANSFORMING THE BUSINESS OF STATE COURTS* 13 (2020).

⁴ *See* ALL. FOR DIGIT. EQUITY, *THE DIGITAL DIVIDE AND CHALLENGES TO DIGITAL EQUITY* 4 (2021), <https://drive.google.com/file/d/1AWVeMCV6bw6E8MC7yRFYtvDRp9lpjf1R/view>.

entered against individuals who were on their virtual Zoom hearing session but experienced technical difficulties (like being unable to unmute), challenges navigating how to call in or connect with Zoom, and people being stuck in waiting rooms or leaving altogether after experiencing technical difficulties (like dropping off the call or exiting a breakout room).

This research study was conducted to explore the access to justice implications of virtual small claims proceedings for self-represented litigants in Massachusetts, and for legal assistance programs (such as “Lawyer for the Day”) attempting to support this population. Such insight is particularly timely as the Trial Court, according to Chief Justice Paula Carey, is “evaluating whether certain types of cases, including small claims cases, may be conducted virtually in the future. To make an informed choice, we need to understand the experience of the litigants and attorneys who participated in virtual hearings during the pandemic.”⁵

Three key research questions guided this study: 1) What types of court notices generate the best appearance rates for virtual small claims debt collection cases in Massachusetts?; 2) How effectively are defendants in these cases able to participate in a virtual hearing?; and 3) How are Lawyer for the Day programs operating virtually in these cases?

Data was gathered from volunteer law students who observed 21 small claims sessions between December 2020 and March 2021 and conducted interviews with self-represented litigants who attended the virtual hearings observed by the students. While it must be acknowledged that more than a year has passed between these initial observations (during a time in which virtual proceedings were extremely novel) and the publication of this report (in which the Trial Court has had an additional time to develop virtual processes), this research is still vital given that virtual court practices remain, are still a relatively new phenomenon, and require greater examination should they become a permanent fixture of our justice system.

This research resulted in two key sets of findings: 1) a lack of standardization across virtual small claims sessions; and 2) various technological barriers that inhibit access to justice for many self-represented litigants. Each finding is briefly summarized below, along with several concrete recommendations that the Court should consider implementing forthwith.

Findings

1. Lack of Standardization Across Virtual Small Claims Sessions

Our research suggests that a lack of standardization with respect to the introductory remarks of a small claims session, variations in default issuances or treatment of all parties, and

⁵ Telephone Interview by Ben Golden with Hon. Paula M. Carey, *supra* note 2.

the participation of Lawyer for the Day programs, all may have a significant impact on the ability of small claims litigants to achieve access to justice.

This study observed lack of standardization relating to small claims in:

- Introductions: Some clerks begin their virtual sessions by conducting a roll call through their docket, others ask litigants to introduce themselves, and in two of the 21 sessions observed, clerks took the extra step of changing litigants' screen name on Zoom, to correct them being listed by their phone number, a wrong name, or a nickname.
- Instructions: Most clerks provided brief, non-substantive instructions about how the session will be run, yet one clerk took the time to provide legal information—not legal advice—about the law relating to exempt income.
- Default Issuances: Variance was noted among default issuance at all six courts that were observed for this study, and there were significant differences in the way courts addressed the lack of attendance from plaintiffs, as compared to defendants. For example, during one virtual session all defendants were defaulted immediately if their name was called and they were not in attendance, yet only after a plaintiff during that same hearing had still not arrived 45 minutes later, was the plaintiff's case dismissed.
- Lawyer for the Day (LFD) Programs: Our data suggests that certain decisions made by court clerks may have a significant impact on the percentage of defendants who are likely to use LFD services at any given session, including: 1) how the LFD program was introduced, 2) whether or not the litigants were individually asked if they wanted to work with the LFD program, and 3) any active encouragement of the program. These three variables were shown to have a profound effect, impacting the LFD participation rate by as low as 14-17%, to as high as 47-54% throughout the December 2020-March 2021 observation period. (On average, across all 16 sessions with an LFD program, approximately 35% of defendants requested to work with a Lawyer for the Day. The highest percentage of LFD use at any session was approximately 75%, while the lowest percentage of LFD usage was zero percent. For reference, by March of 2022, some LFD programs now report 75-100% participation.⁶) Our research also found that those who took advantage of a Lawyer for the Day Program in this virtual context consistently described these programs as “helpful” and that their case outcome was fair.

⁶ For example, the Lawyer for the Day program in the Springfield District Court, run by the Center for Social Justice at Western New England University School of Law, initially struggled to connect with defendants in the virtual environment, but more recently has achieved participation rates of “75-100% of every single court session.” Interview with Jessica Marcellino, Staff Att’y, Ctr. for Soc. Just. at W. New Eng. Univ. Sch. of L., in Springfield, Mass. (Jan. 24, 2022).

2. Technology Barriers

Our research found that half of small claims litigants attended their sessions via video, and about half of litigants were unable to (potentially due to a lack of technological capacity) or chose not to do so (potentially due to a challenge of presenting a “court appropriate” background or limited minutes available for data usage). This suggests the importance, from an access to justice perspective, of making virtual small claims court as equitable as possible for litigants attending without video (often through their phone).

Our report also notes concerns with jurisdictions that are conducting all small-claims hearings strictly telephonically. One of the key difficulties with calling into a session is that dial-in participants are never able to tell who is speaking at any given time. The struggle of knowing who is speaking is not only faced by litigants, but also by court clerks themselves. During one dial-in hearing, a clerk had to continually ask “Who is on the line?” every time someone new joined the hearing.

Additional technological concerns of virtual hearings became apparent, as small claims sessions in every court observed were plagued with problems related to poor volume and difficulties muting and unmuting. Audio problems were noted frequently throughout our observational survey results. In more than half of all sessions, distractions, confusion, or other problems due to muting and unmuting were reported. Furthermore, our observational surveys indicate that multiple litigants attended their virtual small claims hearings from work, or from their car, which could have significant implications regarding access to justice. During at least a quarter of the 21 sessions observed, survey respondents could hear, and were distracted by, session participants’ background noises, further indicating that a significant number of litigants may lack a quiet and private space to attend virtual court.

While at a minimum, virtual hearings from non-professional locations, or without private/quiet space diminish the solemnity of a physical courtroom, a defendant’s camera angle, video quality, “non-professional” background, or technological delays could also trigger implicit biases by those in attendance.⁷ This can mean factors unrelated to the merits of the defendant’s case, and over which the defendant does not have control, can impact the outcome of their case.⁸

⁷ Vazquez Diaz v. Commonwealth, 487 Mass. 336, 361 (Kafker, J., concurring); see Susan A. Bandes & Neal Feigenson, *Virtual Trials: Necessity, Invention, and the Evolution of the Courtroom*, 68 BUFF. L. REV. 1275, 1302–03 (2020); Treadway Johnson & Elizabeth C. Wiggins, *Videoconferencing in Criminal Proceedings: Legal and Empirical Issues and Directions for Research*, 28 LAW & POL’Y 211, 222 (2006).

⁸ Bandes & Feigenson, *supra* note 7, at 1329.

Recommendations

To address the identified access to justice concerns related to both a lack of standardization and technology barriers for self-represented litigants in virtual hearings, we urge the consideration of these recommendations:

1. Recommendations to Improve User Experience and Court Efficiency

- a. Given the significantly high default rate of defendants in remote debt collection small claims hearings, more protective notice(s) should be given to defendants of their pending cases.
- b. All notices for remote hearings should include clear, plain-language instructions on how to participate by phone or video.
- c. Opportunities should be provided for litigants to learn more about the process of their virtual hearing—both at the beginning of the session and before the session starts.
- d. Court staff, magistrates, and judges should be specifically trained on how to best support litigants participating in remote hearings.
- e. At least one court staff member in addition to the clerk magistrate should attend all remote hearings.
- f. The Trial Court should track and make available case data, including the number of small claims debt collection cases filed each year, case outcomes, and the percentage of defendants that fail to appear for trial in small claims debt collection cases.

2. Recommendations to Improve Trial Court Standardization

- a. All clerk magistrates should be required to introduce themselves and explain their role at the beginning of every court session.
- b. The Trial Court should work with legal aid organizations and non-profits to develop a bench card that standardizes the instructions clerk magistrates provide litigants at the beginning of every session.
- c. When a litigant is unable to fully participate in their remote hearing for technological reasons—such as being unable to hear or accidentally dropping off the call—the clerk magistrate should be required to re-schedule the hearing in a manner that allows for full participation (whether remote or in-person).
- d. The Trial Court should standardize how clerk magistrates enter default judgments against litigants who appear late to a remote session or do not appear at all, and how they treat absent parties.

3. Recommendations to Support Lawyer for the Day Programs

- a. All courts that do not currently have a Lawyer for the Day (LFD) program should be encouraged to contact local legal service providers and inquire whether they would be interested in establishing an LFD program.
- b. Court locations with Lawyer for the Day programs operating virtually should ensure that after the majority of litigants have joined the session, LFD program staff are able to introduce themselves and explain their services.
- c. Court locations with LFD programs operating virtually should allow LFD programs to frequently re-introduce themselves (in English, as well as any languages required so that all attendees can access the information in their native or preferred language(s)) as new litigants join the session.
- d. Clerk magistrates running sessions with LFD programs present should explicitly ask each defendant if they want to work with a LFD once their case is called and before soliciting further information.
- e. The Court should allow continuances for litigants who wish to retain a LFD program, if requested by the pro se litigant.
- f. The Court should adopt a proposed Consumer Debt Standing Order related to LFD, which includes: court docket consolidation, space for LFD programs to operate in courthouses (or the virtual equivalent), and collaboration with LFD programs to maximize the number of litigants served.

II. SMALL CLAIMS DEBT COLLECTION IN MASSACHUSETTS

Small claims courts are now, more than ever before, consumer debt collection machines. The Massachusetts Trial Court does not track the number of small claims debt collection cases filed each year. However, the limited data it does collect establishes that small claims cases make up a significant percentage of the total number of cases filed in Massachusetts each year. In fiscal year 2019 alone, more than 72,000 small claims cases were filed in the District Court, representing the largest number of cases for any single civil case type, more than double that of any other civil case type;⁹ and an additional nearly 7,000 small claims cases were filed in the Boston Municipal Court, with nearly half of those cases being filed in the Central and Dorchester divisions.¹⁰ These cases are dominated by nine large debt buyers, who represented 43 percent of civil and small claims caseloads in 2015.¹¹

To address the rise in these cases, in recent years many district courts in Massachusetts have dedicated one or two sessions per week (or more) to hear small claims debt collection matters—often scheduling between five and 40 cases in the morning or afternoon on specific days of the week or month. Based on observational data and conversations with clerks, it appears that scheduling decisions generally are animated by concerns related to effective case flow management, capacity of court personnel, and the needs of the litigants and counsel. Accordingly, the timing of when cases are scheduled for hearing depends on the particular court in which they are filed. It should be noted that given the number of cases that are scheduled per session in some small claims courts, if all litigants were to appear, the court would not be able to hear each of their cases because the time necessary to conduct the hearings would far exceed the time allocated for the session. Essentially, the entire Massachusetts debt collection system is premised on the understanding that many litigants will fail to appear.

The Trial Court does not track the percentage of defendants that fail to appear for trial in small claims debt collection cases. However, it is well known that, for a variety of reasons, the “vast majority” of defendants in these cases fail to appear, i.e., “default.”¹² The result of a defendant’s default is nearly always the entry of a default judgment for the plaintiff, which may expose the defendant to “significant and irreparable harm apart from the amount of judgment, including reduction of their credit rating, diminished access to future credit, and current or future loss of rental housing or employment.”¹³

⁹ PUB. INFO. OFF. OF THE SUP. JUD. CT., ANNUAL REPORT ON THE STATE OF THE MASSACHUSETTS COURT SYSTEM FISCAL YEAR 2019 48 (2020), <https://www.mass.gov/doc/fy-2019-annual-report-for-the-court-system/download>.

¹⁰ *Id.*

¹¹ PEW CHARITABLE TRS., *supra* note 3, at 12 fig. 7.

¹² MASS. UNIF. SMALL CLAIMS R. 7(d) (noting entry of a default judgment is discretionary and listing eight (8) “circumstances” the court “shall examine” prior to entry of a default judgment); CONFERENCE OF CHIEF JUSTICES/CONFERENCE OF STATE COURT ADMINISTRATORS, RESOLUTION 4 IN SUPPORT OF RULES REGARDING DEFAULT JUDGMENTS IN DEBT COLLECTION CASES (2018).

¹³ CONFERENCE OF CHIEF JUSTICES/CONFERENCE OF STATE COURT ADMINISTRATORS, *supra* note 12.

In Massachusetts, small claims trials—and the provision of automatic defaults—are generally presided over by clerks, not judges.¹⁴ The Supreme Judicial Court allows the clerk presiding over a small claims case “wide discretion” when conducting a hearing or trial.¹⁵ The only publicly-available guidance for the exercise of this discretion is found in Standard § 6:08, which provides in totality:

BEFORE A TRIAL BEGINS, THE COURT SHOULD EXPLAIN THE PROCEDURE TO THE LITIGANTS. THE COURT SHOULD CONDUCT SMALL CLAIMS TRIALS IN AN INFORMAL MANNER WHILE MAINTAINING ORDER AND PROTECTING THE DUE PROCESS RIGHTS OF THE PARTIES.¹⁶

Neither Standard § 6:08 nor its commentary says anything about what information the clerk should include in their instructions to the litigants, nor what actions the clerk should take to protect the due process rights of the parties, most of whom are unrepresented. This lack of guidance became exacerbated when the COVID-19 pandemic led small claims proceedings to be conducted in a virtual environment.

III. FINDINGS

Methodology

To explore the access to justice implications of the shift to virtual small claims proceedings, three key research questions guided this study: 1) What types of court notices generate the best appearance rates for virtual small claims debt collection cases in Massachusetts?; 2) How effectively are defendants in these cases able to participate in a virtual hearing?; and 3) How are Lawyer for the Day programs operating in these cases?

Two research methods were employed to answer these questions. First, between December 2020 and March 2021, 16 volunteer law students (herein called “students”) from Western New England University School of Law observed virtual small claims sessions in various divisions of the District Court and Boston Municipal Court (BMC) departments of the Massachusetts Trial Court, including in Springfield, BMC Central, Worcester, East Boston, Somerville, and Dorchester. All students were trained on small claims proceedings in the context of debt collection in Massachusetts prior to beginning their observations.

The students submitted 33 observational surveys for 21 small claims sessions (totaling 27.6 hours). Nineteen of these 21 sessions were conducted via Zoom, while two sessions (both

¹⁴ See *White v. Chief Just. of the Bos. Mun. Ct.*, 482 Mass. 1022, 1023 (2019), and statutes and cases cited therein.

¹⁵ *McLaughlin v. Mun. Ct. of the Roxbury Dist. of Bos.*, 308 Mass. 397, 403 (1941).

¹⁶ SMALL CLAIMS STANDARDS § 6:08 (MASS. TRIAL CT. COMM. ON SMALL CLAIMS PROCS. 2001).

observed in East Boston) were telephonic hearings. The number of surveys submitted (33) and the number of sessions observed (21) diverge as in some cases up to three students observed the same session. Students submitted their observational surveys through a Google Form, and the survey questions can be found in *Appendix A* of this report.

In addition, this report relies on interviews with key stakeholders, including self-represented litigants who attended virtual hearings observed by the students. Interviews with self-represented litigants were structured interviews; students were trained on interview facilitation and provided with a script and questions to ask. Answers to the questions were recorded through a Google Form that were submitted at the close of the interview. Some of the questions asked depended on whether the litigant had received notice about their case, and whether they had attended their hearing. The interview questionnaire can be found in *Appendix B* of this report.

To conduct these interviews, students were instructed to cold-call litigants utilizing phone numbers listed on the statements of small claim from their cases. Students were provided with docket information for 254 litigants from Springfield and BMC Central. Out of those 254 litigants, 123 (48.43%) did not have affiliated phone numbers on the statement of small claim, and 131 (51.57%) had affiliated phone numbers. Twenty-nine of these 131 litigants had cases in BMC Central, while 102 had cases in Springfield.

When calling each of the 131 litigants above, students were instructed to keep track of the date and time of day they called. If they received no answer, they were instructed to call at least two additional times at different intervals and record the dates and times of these attempts. Of the 131 litigants with phone numbers, 28 numbers were invalid or not in service and six were wrong numbers. Ultimately, out of the 97 correct numbers available, 24 litigants answered students' calls; 15 of that group declined to be interviewed, while nine agreed to be interviewed, resulting in a positive response rate of 9.28% out of litigants with phone numbers listed. When reviewing the findings contained in this report, this limited sample size should be considered.

Additionally, the sample is skewed because all self-represented litigants who were interviewed attended their hearing, as only defendants that had received a notice of their hearing and were able to attend their hearing agreed to be interviewed. It is important to note that students' overall inability to reach litigants who did not attend their hearings suggests that a significant portion of litigants may never have received notice of their hearing in the first place. As a result of this reality, we were unable to use interview data to answer our first research question evaluating the effectiveness of various notices, and instead relied upon the default rate from student observations to evaluate notice effectiveness, which can be found later in this report.

After collecting the above data, the Massachusetts Appleseed research team conducted affinity mapping¹⁷ and generated a final data analysis that was reviewed by all project directors. In addition, for each session students observed, the following four key quantitative data points were calculated:

1. The total number of defendants that attended the session
2. The total number of defendants who defaulted (i.e., did not attend the session)
3. The way litigants appeared digitally at the session—i.e., by video on Zoom, without video on Zoom, or by telephone (not on Zoom)
4. The number of defendants who worked with a Lawyer for the Day program at that session.¹⁸

As with the phone interview data, the calculations stemming from the observational data are limited by sample size. While approximately 163 litigants were observed over 21 small claims sessions, the attendance of each individual session ranged from 1-21 litigants. Across the 16 sessions in which MassCourts recorded the default rate, the average default rate was 39% and the median was 45%. The default rate for each of these sessions observed can be found in *Appendix C*. This significant lack of attendance across all virtual sessions limits our ability to make conclusions about self-represented litigants who were either unaware, unable, or unwilling to attend their session. However, this data does provide a window into the potential percentage of unsuccessful notices provided to small claims litigants and the value of re-assessing how such notices are provided in this era of virtual hearings. The final limitation of our data is that this study was unable to control for how long an individual small claims court had been operating virtually before observations began—given that different courts opened remotely at different phases during the pandemic.

Despite the limitations detailed above, the data collected from the observational surveys and phone interviews with self-represented litigants generated two key sets of findings: 1) a lack of standardization across virtual small claims sessions, and 2) various technological barriers that inhibit access to justice for many self-represented litigants. The details of these findings are broken down below.

¹⁷ Also known as “affinity diagramming” or “insight mapping.” This process entails pulling key insights out of a data set and matching related findings into clear categories for later analysis.

¹⁸ Student observers were asked to identify the three values above during every session they attended. When multiple students attended the same session—as was the case for nine of the 21 sessions observed—conflicting results for each data point were averaged together. (In seven of these nine sessions, two students observed the same session. For two out of these nine sessions, three students observed the same session.) The purpose of such averaging was to calculate a single numerical answer to each of those three data points across the nine sessions with multiple observers. When one student attended a given session—as was the case in 12 of the 21 sessions observed—only their recorded values were utilized in identifying the three data points above for those 12 sessions. The results of these calculations can be found in *Appendix C* of this report and were utilized in identifying larger trends detailed later in this report.

Lack of Standardization Across Virtual Small Claims Sessions

While our original set of research questions sought to utilize observational data to understand the experience of defendants involved in virtual small claims debt collection cases across the Commonwealth, surprisingly, our key findings reveal a lack of standardization in the administration of virtual sessions. At the outset of this project, we hypothesized that our observational survey results would primarily reveal technological challenges and feelings of frustration that litigants—and in particular, defendants—experience due to the virtual platform, and that we would then identify and recommend strategies to address those frustrations. Yet, when analyzing the data, it became apparent that, while technology is to be considered—and is addressed later in this report—divergent approaches to running virtual small claims sessions may have an even greater impact on litigants’ ability to fully and equally participate in their hearings.¹⁹ Ultimately, our research suggests that a lack of standardization—with respect to the introduction of a small claims session, variations in default issuances or treatment of all parties, and the participation of Lawyer for the Day programs—may have a significant impact on the ability of small claims litigants to achieve access to justice.

Before evaluating the variability with which small claims sessions are run in Massachusetts, it is helpful to explore the overall perception of the particular clerks running the sessions that we observed. It should be noted that 18 out of 33 student observers provided feedback on an individual clerk’s overall friendliness and demeanor. In 12 of these 18 responses, representing 66% of the clerks whose demeanor was recorded, clerks were perceived as kind, friendly, or patient. Four clerks were regarded as neutral, fair or respectful, while only two clerks were described with somewhat more negative connotations.²⁰ Despite the limited sample size, this breakdown is helpful in contextualizing the lack of standardization across how various clerks run virtual small claims sessions that will soon be detailed below. As a majority of clerks were regarded by the students as kind, friendly, patient and respectful, this suggests that the consequences due to the lack of standardization among them, detailed below, are unintentional and thus avoidable. Furthermore, clerk-related observations within this report are not the product of “bad” clerks. The issues identified below—primarily a lack of consistency among all Massachusetts small claims courts—are systemic issues, made clear only by analyzing the actions of individual Trial Court staffers, and must be addressed accordingly.

Introductions and Instructions

Our observational surveys concretely revealed the variety of ways that clerks make initial introductions in virtual small claims sessions. While some clerks begin their virtual sessions by

¹⁹ At least for those litigants who were successfully able to attend and navigate a virtual court session.

²⁰ The exact date, time, and location of each of these observations has been redacted to prevent the sharing of personally identifiable information.

conducting a roll call through their docket, in one session a clerk asked participants to introduce themselves individually and opened up the session for questions before beginning to call each case.²¹ Similarly, in two of the 21 sessions observed, clerks took the extra step of changing litigants' screen name on Zoom to correct them being listed by their phone number, a wrong name, or a nickname. These differences may seem minor; however, the court recognizing a litigant's name and personhood could go a long way towards increasing the amount of respect a litigant feels while involved in a small claims session. Similarly, allowing litigants to introduce themselves and ask questions before the session may aid their overall comprehension of the small claims process, which in turn increases session efficiency and decreases the number of defaults because all parties and processes are known.

Our observational surveys also revealed the different ways clerks explain how a virtual small claims session will be conducted. The majority of clerks were noted as providing brief, non-substantive instructions about how the session will be run, opting to give instructions focused on remaining muted and waiting to speak until a litigant's name was called.

However, there was one clerk in particular who took time during their session to explain very clearly the details of "exempt income" which is certain income that is protected, and therefore exempt from any court payment order.²² By sharing such information—legal information, not legal advice—this particular clerk was able to equip the litigants with important knowledge about how they may or may not be required to pay off their debts. Meanwhile, litigants who were not lucky enough to attend a session with this clerk never received this information and may have unknowingly planned to pay or paid off their debts with exempt income.²³

Ultimately, without standardization during the early stages of a virtual small claims session, litigants' feelings of fairness, comprehension of the small claims process, or ability to present viable defense—all crucial components of creating a fair civil justice system—are not guaranteed.

²¹ This was noted during an observation at the following session: 2/26/2021, 10:00:00 AM, Springfield.

²² This was noted during an observation at the following session: 3/4/2021, 10:00:00 AM, Somerville. In Massachusetts, income that is received from public assistance and benefit programs is exempt from any court small claims payment order. This type of exempt income includes unemployment benefits, workers' compensation benefits, social security benefits, and Transitional Aid to Families with Dependent Children (TAFDC) benefits, among others. *E.g.*, MASS. GEN. LAWS ch. 151A, § 36; MASS. GEN. LAWS ch. 152, § 47; 42 U.S.C. § 401; MASS. GEN. LAWS ch. 118, § 10.

²³ Massachusetts Trial Court, *Serving the Self-Represented Litigant: A Guide for Massachusetts Court Staff*, MASSLEGALSERVICES (June 30, 2010), <https://www.masslegalservices.org/content/serving-self-represented-litigant-guide-massachusetts-court-staff>

Variations in Default Issuances

Student observations pointed to a lack of standardization, not only in the early stages of a virtual small claims hearing, but also in how various courts addressed the high percentage of defaults within these cases.²⁴ In addition, observations pointed to a high level of deference towards plaintiffs at risk of a dismissal, compared to defendants, who were often not provided the benefit of the doubt when facing a default.

Variations in the substantive provision of automatic defaults—defaults that are issued automatically by the court upon learning that a defendant is not present—have been brought to the Trial Court’s attention recently in a letter from Greater Boston Legal Services (GBLS), which detailed observational findings of virtual small claims proceedings in East Boston. While our study’s observations of small claims proceedings are entirely separate from GBLS’ investigation, this study has found that some of GBLS’ observations in East Boston have been similarly occurring in other small claims courts across the state. GBLS found that BMC-Central and BMC Charlestown had not been defaulting defendants if they did not appear on their first scheduled dates, or they had only been issuing conditional defaults which would automatically be vacated if the defendant appeared on the next scheduled date. Comparatively, GBLS’ observations of East Boston identified that the court was issuing almost instantaneous defaults on a litigants’ first scheduled date.²⁵

This study’s observations identified a similar lack of consistency among various courts when administering defaults. For example, in addition to confirming that defaults were issued automatically in East Boston,²⁶ students observed the substantive provision of automatic defaults issued in Worcester,²⁷ Somerville,²⁸ and Dorchester.²⁹ Conversely, students noted that in BMC Central³⁰ and Springfield,³¹ defaults were issued frequently; however, instead of issuing a default automatically if a defendant did not answer when their name was called, clerks would inquire what the plaintiffs preferred course of action was, and should a default be requested, many (but not all) clerks would grant the request immediately thereafter.

²⁴ Survey questions asking whether defendants were defaulted automatically during a given session were added into the questionnaire—found in *Appendix A*—halfway through the observation period.

²⁵ Letter from Nadine Cohen et al., Greater Boston Legal Servs. to Hon. McDonald, Jr. et al., Mass. Trial Cts. (May 21, 2021) (on file with Greater Boston Legal Servs.).

²⁶ This was noted during an observation at the following sessions: 3/2/2021, 2:00:00 PM, East Boston; 3/9/2021, 2:00:00 PM, East Boston.

²⁷ This was noted during an observation at the following session: 3/2/2021, 9:00:00 AM, Worcester.

²⁸ This was noted during an observation at the following session: 3/4/2021, 10:00:00 AM, Somerville.

²⁹ This was noted during an observation at the following sessions: 3/11/2021, 11:00:00 AM, Dorchester; 3/11/2021, 2:00:00 PM, Dorchester.

³⁰ This was noted during an observation at the following session: 3/4/2021, 2:00:00 PM, BMC Central.

³¹ This was noted during an observation at the following session: 3/5/2021, 2:00:00 PM, Springfield.

In addition to identifying this variance among defaults at all six courts that were observed for this study, there were significant variances with which these courts addressed the potential lack of attendance from plaintiffs, as compared to defendants. For example, during one virtual session, it was observed that all defendants were defaulted automatically if their name was called and they were not in attendance. Yet when a plaintiff did not arrive initially during that same hearing, the clerk provided the plaintiff with more time to join the Zoom in case they had technical difficulties. Only after the plaintiff had still not arrived 45 minutes later was the plaintiff's case dismissed.³² This type of deferential treatment towards plaintiffs should simply not be allowed—all litigants, both plaintiffs and defendants—are now navigating the unprecedented difficulties of virtual hearings and should be treated the same.

“Lawyer for the Day” Programs

Just as the Massachusetts Trial Court and its staff had to transition the routine of small claims court to a virtual format during these unprecedented times, free legal clinics that previously operated inside state courthouses were forced to make a virtual transition as well. In the small claims context, this meant programs in which attorneys and law students offer same-day, free limited assistance representation to otherwise unrepresented defendants—often referred to as “Lawyer for the Day” programs (LFD)—that used to set up shop with a folding table and a friendly face outside of the courtroom, were now confined to the digital space of a Zoom screen and breakout room. Consequently, the ability for a LFD volunteer to interact organically with individual defendants, to introduce themselves and explain their services on their own terms, is now lost in a virtual setting. All opportunities to interact with an LFD now flow through the clerk themselves rather than existing alongside the business of the court, as they had been when in-person. Furthermore, while the intrapersonal impact of this change is significant, the practical implications of the virtual transition on these programs cannot be understated. LFD programs were designed to meet litigants as they arrived at the courthouse, but with no physical space to make initial client connections, programs were completely reconfigured to force upstream attempts at communication. Even once routine tasks, such as signing documents, now have varying technological barriers depending on device limitations and realities of the digital divide—such as disparities in equipment, internet, and digital proficiency³³—which can significantly delay a case moving forward.

Regardless of these newfound difficulties, the potential positive impact that working with a lawyer could have on small claims defendants is enormous. Despite the moniker suggesting that the sums of money at stake within such hearings are “small,” self-represented defendants in small claims court are largely low-income court users facing credit card debt. As a result, paying off even a seemingly “small” debt often results in significant financial hardship. Without

³² This was noted during an observation at the following session: 3/4/2021, 10:00:00 AM, Somerville.

³³ See ALL. FOR DIGIT. EQUITY, *supra* note 4, at 18.

knowledge of their legal defenses and protection for exempt income, these litigants might agree to unsustainable or even improper payment plans simply due to lack of counsel.

Responding to the above scenario, various legal clinics run by organizations including the Volunteer Lawyers Project (VLP), Greater Boston Legal Services (GBLS), and the Western New England University School of Law's Center for Social Justice in Springfield, have stepped in, offering free legal advice to defendants who qualify for their programs.³⁴ We conducted several phone interviews with defendants who attended virtual small claims sessions where such LFD services were offered. Those who took advantage of a Lawyer for the Day Program consistently described these programs as "helpful." One interviewee—Behzad Samini, who attended his hearing from a friend's computer as he did not have his own—went so far as to say that the program was "extremely helpful" and reported to our interviewer that:

"He wishes to be an advocate and be used as an example about how the program helps people. He is disabled with three disabled children and lives in poverty. Without the help from [a Lawyer for the Day], he was not sure what to do."³⁵

The services that Mr. Samini described as "extremely helpful" were offered in 16 of the 21 small claims sessions observed by the students. On average, across all 16 sessions, approximately 35% of defendants requested to work with a Lawyer for the Day (LFD). The highest percentage of LFD use at any session was approximately 75%, while the lowest percentage of LFD usage was zero percent.³⁶

When evaluating the data above, both our small sample size and our method of calculating the percentages themselves must be taken into account. With reference to sample size, the number of defendants who attended each of the 16 sessions where a Lawyer for the Day Program was present ranged from approximately two to 21, based on student reports. With regard to calculating the percentage of defendants that worked with a Lawyer for the Day, it should be noted that when multiple students observing a single session reported conflicting numbers of defendants who appeared in that session, or conflicting numbers of defendants who worked with an LFD, the averages of each of those two data points were taken. Utilizing those two data points for each of the 16 sessions, the percentage of defendants who accepted LFD services in each session was calculated, and then the average of each of those 16 percentages was taken, which totaled 35%. All data utilized to calculate such percentages can be found in *Appendix C* of this report.

³⁴ Each program has unique qualification criteria for participation in its programming. For example, VLP helps clients who are low-income and the Center for Social Justice has no disqualifying criteria and will help any defendant in need regardless of income or immigration status.

³⁵ Telephone interview with Behzad Samini (Feb. 24, 2021).

³⁶ See *Appendix C* for more information.

Even with the limited sample size taken into account, our data suggest that, at a minimum, approximately 35% of defendants are likely to use LFD services across the observed small claims courts in Massachusetts. Indeed, more recent data indicates that the percentages of defendants using LFD services in virtual small claims sessions have increased during the pandemic.³⁷ Interestingly, the student observers noted key differentiations in the way in which clerks interacted with these LFD programs, which may have an impact on how high or low that percentage is at any given session and is explored below.

Across all 16 small claims sessions observed for this study, there were a number of key variations when it came to how clerks interacted with Lawyer for the Day Programs. Chart 1 below places each of these variances along a spectrum of influence that clerks may have over the likelihood that defendants will ask to work with a Lawyer for the Day during a small claims session.

Continuum: Influence of the Clerk on Litigant Use of LFD

Chart 1

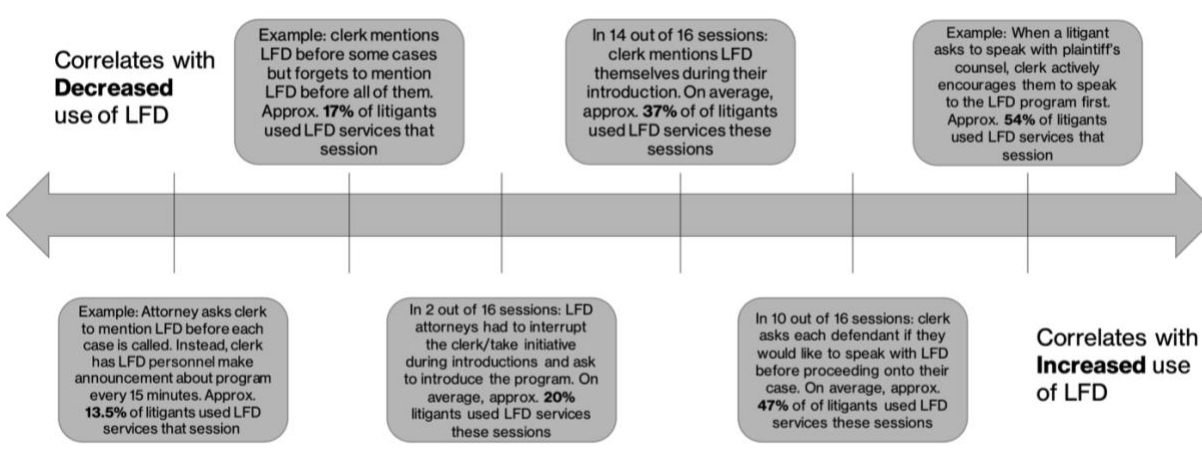


Chart 1 details six scenarios that demonstrate ways in which clerks may impact the percentage of defendants who work with a Lawyer for the Day during a virtual small claims session. Each of these six scenarios falls into one of these three categories: 1) LFD Program Introductions, 2) Clerk Questioning, and 3) Clerks' Active Encouragement.

³⁷ Interview with Jessica Marcellino, *supra* note 6.

1) LFD Introductions

In 14 of 16 sessions where an LFD program was present, the clerk introduced the Lawyer for the Day Program when explaining the procedure of the session,³⁸ thereby including the LFD program within the virtual court's own ecosystem and legitimizing the services that Lawyer for the Day offers. Across these 14 sessions, 37% of litigants worked with the LFD program—two percentage points higher than the overall average. Conversely, across the two sessions where the LFD program was not introduced by the clerk, approximately 20% of potential litigants used LFD services. Ultimately, and not surprisingly, this data suggests that if clerks leave out the existence of an LFD program during their initial introduction of a small claims session, defendants may be less likely to request or work with volunteer lawyer services.

2) Clerk Questioning

In 10 out of the 16 sessions during which a Lawyer for the Day program was operating, the clerk would ask each defendant individually, once their case was called, whether they wanted to speak with a Lawyer for the Day before proceeding with their case.³⁹ Across these 10 sessions, approximately 47% of litigants used LFD services, compared to the general average in which 35% of defendants across all sessions worked with the LFD program. By comparison, during one session in particular, a clerk asked some litigants if they wanted to speak to a lawyer before their case proceeded, but forgot to ask that question of all litigants; during this same session, only 17% of litigants opted to work with the Lawyer for the Day program.⁴⁰ Finally, the left side of Chart 1 shows the impact of not asking individual litigants if they want to work with a Lawyer for the Day at all. During one session in particular, the attorney running an LFD program asked the clerk if they would be willing to mention the option of working with the LFD program before each litigant's case was called. The clerk took the suggestion under advisement but instead decided to have LFD personnel make an announcement of the program offering every 15 minutes. During this same session, only 13.5% of litigants asked to work with the LFD program.⁴¹ These findings suggest that the likelihood of a defendant requesting to work with a Lawyer for the Day program may be greatly influenced by whether a clerk asks them directly if they want to work with the LFD program.

3) Active Encouragement

While the above scenario represents clerk activity that has the potential to dissuade court users from working with the LFD program, there was one particular session—found at the very

³⁸ The two sessions observed when the clerk did not mention the Lawyer for the Day Program during their inductions were: 1/7/2021, 11:00:00 AM, BMC Central; and 3/11/2021, 11:00:00 AM, Dorchester.

³⁹ The sessions observed during which the clerk asked each defendant individually, once their case was called, whether they wanted to speak with a Lawyer for the Day were: 1/8/2021, 2:00:00 PM, Springfield; 1/15/2021, 2:00:00 PM, Springfield; 2/26/2021, 10:00:00 AM, Springfield; 2/26/2021, 2:00:00 PM, Springfield; 3/2/2021, 9:00:00 AM, Worcester; 3/4/2021, 2:00:00 PM, BMC Central; 3/5/2021, 10:00:00 AM, Springfield; 3/5/2021, 2:00:00 PM, Springfield; 3/11/2021, 2:00:00 PM, Dorchester; and 3/14/2021, 2:00:00 PM, Springfield.

⁴⁰ This was noted during an observation at the following session: 1/15/2021, 2:00:00 PM, Springfield.

⁴¹ This was noted during an observation at the following session: 1/15/2021, 10:00:00 AM, Springfield.

right of Chart 1—during which a clerk recommended that a litigant meet with the LFD program before continuing onto their case.⁴² In that instance, when a defendant asked to speak with the plaintiff’s counsel directly, the clerk actively encouraged the defendant to speak with a lawyer first. During this same session, approximately 54% of litigants asked to speak with a lawyer from the Lawyer for the Day program. As such, this finding reflects the potentially powerful impact when clerks encourage the utilization of LFD lawyers.

Despite the statistical limitations detailed earlier within this section—namely the small sample size—which make it difficult to establish a concrete correlation between the examples presented and use of a Lawyer for the Day’s services, such findings do present an area of grave concern from an access to justice perspective.

These findings also beg the question: Did this lack of standardization also occur during in-person small claims sessions? And if so, why is this suddenly a cause for concern now that small claims sessions are virtual?

As to the first question, there was similarly a lack of standardization across in-person small claims sessions before the pandemic. However, the impact was perhaps lessened with in-person Lawyer for the Day programs that were able to intervene in the process on the ground. When in-person, LFD volunteers could approach any person to offer free legal services and build a level of credibility and trustworthiness through action. By contrast, this lack of standardization is compounded in a virtual setting as clerks now stand as the singular hosts of these Zoom sessions, with the discretion to decide if, how, and when 1) LFD programs are introduced and presented to litigants, 2) whether defendants are explicitly offered the opportunity to work with an LFD before their own case is called, and 3) whether usage of a Lawyer for the Day’s services are subtly—or not so subtly—encouraged or discouraged.

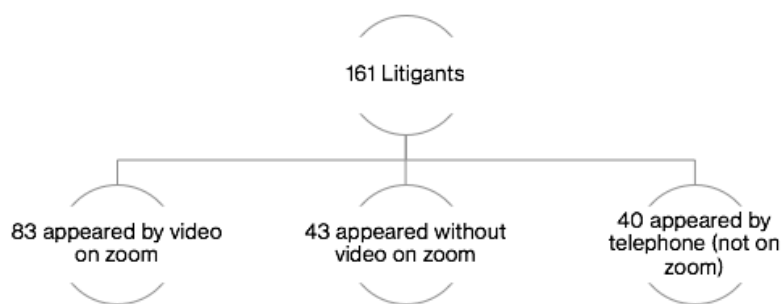
The ability for a Lawyer for the Day volunteer to interact organically with individual defendants, to introduce themselves and explain their services on their own terms, is lost in a virtual setting. As all opportunities to interact with an LFD program now flow through the clerk themselves—rather than existing alongside the business of the court, as they had been in-person—the variances listed above all may have an extremely significant impact on whether a low-income defendant does indeed receive advice about their case from an attorney. The consequences of not receiving such advice could result in thousands of dollars of debt for low-income court users, along with the other potentially devastating collateral consequences described above.

⁴² This was noted during an observation at the following session: 3/2/2021, 9:00:00 AM, Worcester.

Technology Barriers

One of the key research questions for this study was: How effectively are small-claims debtors able to participate in a virtual hearing? We were particularly interested in obtaining concrete evidence as to what potential technological barriers may be inhibiting a small claims defendant from effective participation.

In order to assess what technological barriers may be inhibiting full participation in virtual small claims courts, and thus inhibiting access to justice, it was first necessary to identify the types of technology litigants used to attend these sessions. Out of approximately 161 litigants who attended the 21 small claims sessions that were observed as part of this study, 83 (51.5%) appeared with their video on Zoom, 43 (26.7%) appeared without video on Zoom,⁴³ and 40 (24.8%) appeared by telephone, not connected to Zoom at all.⁴⁴



When analyzing these statistics however, it should also be noted the general difficulty of assessing whether a litigant is, or is not, using video while on Zoom. As one student observer reflected:

“I had a hard time counting the number of defendants that appeared by phone or Zoom and if they were on the video or not. Many litigants called in at first only appeared by phone. The [clerk] then did not hear the case and instead did a roll call of the docket, and then when the [clerk] did hear the case many defendants turned on their camera or switched off their phone and used regular zoom. Because of this I had trouble keeping track of the ways defendants appeared in court.”⁴⁵

⁴³ The survey question used to collect data on the number of litigants who appeared without video on Zoom was edited for clarity halfway through the observation period.

⁴⁴ As with the statistics utilized earlier in this report, all numbers reported here are approximate. When multiple students observing the same session had conflicting reports on the number of litigants who used various forms of technology, the average of their reported numbers was taken.

⁴⁵ This was noted during an observation at the following session: 1/8/2021, 2:00:00 PM, Springfield.

Despite this variability, our survey results reflect the ultimate finding that while half of small claims litigants attend their session via video, about half of litigants were unable to (potentially due to a lack of technological capacity) or chose not to do so (potentially due to a challenge of presenting a “court appropriate” background or limited minutes available for data usage).

The phone interviews conducted with small claims court users pointed to similar technologically related insights. All interviewees had a smartphone, but only five had a computer or tablet. Furthermore, with reference to how such interviewees attended their virtual small claims hearing, we found that one interviewee (12.5%) attended with their own computer, one interviewee (12.5%) used a friend’s computer, two interviewees (25%) used tablets, and four interviewees (50%) used a smartphone. This data, taken in conjunction with the findings above that over half of small claims defendants observed were not attending via video, suggests the importance—from an access to justice perspective—of making virtual small claims court equally accessible to litigants attending without video, most often through their phone, rather than through a computer.

Unsurprisingly, however, our observational survey results indicate that there exists serious access to justice concerns associated with strictly calling into a small claims session. One of the key difficulties with calling into a session is that dial-in participants are never able to tell who is speaking at any given time. One student observer noted that when they attended a session by dialing-in:

“It was extremely difficult to hear and follow what was going on. I’m afraid that if I were a plaintiff or defendant, I could have missed my opportunity to speak up.”⁴⁶

Such concerns are relevant for litigants calling into Zoom-based hearings but are even more concerning for entirely dial-in hearings. With reference to the example of entirely telephonic hearings, the struggle of knowing who is speaking is not only faced by litigants, but also by court clerks themselves. During one dial-in hearing, a clerk had to continually ask “Who is on the line?” every time someone new joined the hearing.

In addition to difficulties litigants faced when calling into a session, small claims sessions across the board were plagued with problems related to poor volume and difficulties muting and unmuting. Audio problems were noted frequently throughout our observational survey results. In one particular example, a litigant’s case was continued (i.e., postponed) due to audio issues.⁴⁷ It should also be noted that these volume problems did not only impact litigants; in one session all attendees had such trouble hearing the clerk that the clerk instructed everyone to leave the Zoom,

⁴⁶ This was noted during an observation at the following session: 3/2/2021, 2:00:00 PM, East Boston.

⁴⁷ This was noted during an observation at the following session: 3/4/2021, 2:00:00 PM, BMC Central.

and return five minutes later so that they could address their own volume issues. Audio concerns were not limited to volume though; confusion around muting and unmuting was one of the key technological findings from our observational surveys.

In more than *half* of all sessions, distractions, confusion, or other problems due to muting and unmuting were reported. Importantly, six of these 11 (54.5%) sessions during which muting problems were particularly pronounced were also sessions during which the clerk emphasized staying on mute within their initial instructions, suggesting that these types of instructions are not sufficient to address this issue. Furthermore, muting and unmuting difficulties were often directly related to audio feedback problems—instances where, because a litigant was not on mute, there was a distracting echo with their sound. During one particular session, a litigant had such a bad feedback problem that they had to be muted during the entirety of the session and had to wait until the very end of session to participate in their case.⁴⁸ Being placed essentially on standby/hold for the entirety of a session then requires litigants to have not only obtained the right technology, Wi-Fi, and internet access to attend their session, but further places a burden of time and resources—potentially monetarily if someone is utilizing minutes to call into the session—onto litigants as well.

As with the audio complications, further technological problems during virtual hearings were not limited to litigants. For example, during one of the 21 sessions observed, a clerk was unintentionally kicked out of their own Zoom briefly.⁴⁹ During a separate session, two litigants became engaged in a verbal altercation and the clerk was unable to intervene due to internet connection issues.⁵⁰

While the issues described above caused complications, our observational surveys noted that in many of these scenarios, most clerks were found to be responsive and helpful in addressing technological issues that both they and the litigants were experiencing. One notable instance occurred when a litigant explained that they were on a break from work to attend their session, and that their phone was about to die. As a result, the clerk allowed them to have their case heard quickly.⁵¹ This example—a litigant faced with a dying phone—reflects not only the average litigants potential technical difficulties and stresses associated with virtual hearings, but also the *environmental* difficulties associated with virtual court, as they were attending this session while at work.

⁴⁸ This was noted during an observation at the following session: 1/8/2021, 2:00:00 PM, Springfield.

⁴⁹ This was noted during an observation at the following session: 1/15/2021, 10:00:00 AM, Springfield.

⁵⁰ This was noted during an observation at the following session: 3/2/2021, 2:00:00 PM, East Boston.

⁵¹ This was noted during an observation at the following session: 1/8/2021, 2:00:00 PM, Springfield. We do also want to note that while this was very considerate of the clerk, rushing this litigant's hearing could have potentially had a negative consequence as well.

Our observational surveys indicate that multiple litigants attend their virtual small claims hearing from work, or from their car, which could have significant implications regarding access to justice. While at a minimum, virtual hearings from these locations diminish the solemnity of a physical courtroom, a defendant's camera angle, video quality, "non-professional" background, or technological delays could also trigger implicit biases by those in attendance.⁵² This can mean factors unrelated to the merits of the defendant's case, and over which the defendant does not have control, can impact the outcome of their case.⁵³ In the small claims context, such potential biases may play an unconscious part in the significant variability with which virtual small claims sessions are run, as detailed above. Judicial officials in Massachusetts have acknowledged the need for caution in such scenarios. In a decision from May of last year, the SJC noted that defendants in virtual hearings require extra protection. In Justice Kafker's concurring opinion, he explained, "My main reason for writing separately is to emphasize that, as virtual hearings become a fixture of the judicial process, judges must be keenly attentive not only to the proper functioning of the technology, but also to the ways the virtual setting subtly influences all participants — including themselves."⁵⁴

In addition to these environmental difficulties associated with attending virtual court, during at least a quarter of the 21 sessions observed, survey respondents could hear, and were distracted by, session participants' backgrounds, further indicating that a significant number of litigants lack a quiet and private space to attend virtual court. Two particular examples are noteworthy: during one session, a dog could be heard barking in the background;⁵⁵ and during a different session, a student observer noted hearing children, profanity, and a toilet flushing in the background.⁵⁶ Once again, despite the fact that these concerns may seem immaterial to the functioning of a virtual small claims session, a lack of quiet space to attend these hearings—hearings which are often confusing for average individuals facing fewer distractions in-person—can create serious access to justice concerns relating to overall comprehension and successful navigation of the civil legal system.

Results from our observational survey bolster these concerns relating to lack of comprehension. In particular, litigants, or the law student observers themselves, were noted as experiencing confusion during at least a quarter of the 21 sessions observed.⁵⁷ One survey

⁵² See *Vazquez Diaz v. Commonwealth*, 487 Mass. 336, 361 (Kafker, J., concurring); Bandes & Feigensohn, *supra* note 7, at 1302–03; Johnson & Wiggins, *supra* note 7, at 222.

⁵³ Bandes & Feigensohn, *supra* note 7, at 1329.

⁵⁴ *Vazquez Diaz*, 487 Mass. at 369.

⁵⁵ This was noted during an observation at the following session: 3/2/2021, 9:00:00 AM, Worcester.

⁵⁶ This was noted during an observation at the following session: 1/15/2021, 10:00:00 AM, Springfield.

⁵⁷ Litigants, or the law student observers themselves, were noted as experiencing confusion during the following sessions: 12/18/2020, 10:00:00 AM, Springfield; 1/8/2021, 2:00:00 PM, Springfield; 3/2/2021, 9:00:00 AM, Worcester; 3/2/2021, 2:00:00 PM, East Boston; 3/5/2021, 10:00:00 AM, Springfield.

respondents' experience stood out as capturing this issue: "My impression from the session was that it was chaos."⁵⁸

IV. RECOMMENDATIONS

1. Recommendations to Improve User Experience and Court Efficiency

- a. Given the significantly high default rate of defendants in remote debt collection small claims hearings, more protective notice(s) should be given to defendants of their pending cases.

As set forth above, the disparity in representation between plaintiffs and defendants in debt collection cases leads to significantly unequal attendance in small claims court; while represented plaintiffs have continued to appear (via their lawyers) for virtual hearings, our observations showed that defendants in debt collection cases (almost all of whom are self-represented) have not necessarily. Almost half of all defendants were recorded as defaulting in the sessions we observed, and this number is commonly reported to be 70% or higher.⁵⁹ LFD programs in Massachusetts have reported similar statistics. For example, The Center for Social Justice at Western New England University School of Law reported that prior to their program's involvement in the court, the average default rate was 74% with up to 82% in one zip code.⁶⁰

In addition, Massachusetts is largely unique in allowing notice from the court clerk by first-class mail ⁶¹ (to an address supplied by the plaintiff), which does not ensure that the defendant received notice. To illustrate the flaws with this system, in 2006, Boston Globe reporters sent 100 letters to the same person at incorrect addresses across the state by first-class mail. Only 52 were returned—the other 48 went missing.⁶² To be valid, these notices should require proof that the defendant received actual notice, such as return receipt certification, or personal service in line with the requirements of Massachusetts Civil Procedure Rule 4(d). In addition, the Court should consider alternative methods, such as the notice system for jury duty across the

⁵⁸ This was noted during an observation at the following session: 1/8/2021, 2:00:00 PM, Springfield.

⁵⁹ TESTIMONY OF THE LEGAL SERVICES CENTER OF HARVARD LAW SCHOOL, MASSACHUSETTS LAW REFORM INSTITUTE, AND NATIONAL CONSUMER LAW CENTER, ON BEHALF OF ITS LOW-INCOME CLIENTS 6, 6 n.22 (2017), https://www.nclc.org/images/pdf/debt_collection/credit-card-debt-comments-2017.pdf; PEW CHARITABLE TRS., HOW DEBT COLLECTORS ARE TRANSFORMING THE BUSINESS OF STATE COURTS 16 (2020), <https://www.pewtrusts.org/-/media/assets/2020/06/debt-collectors-to-consumers.pdf>.

⁶⁰ Center for Social Justice at Western New England University School of Law, CDI Training for WNE 3.23.21, 11 (Mar. 23, 2021) (unpublished PowerPoint presentation) (on file with author).

⁶¹ MASS. UNIF. SMALL CLAIMS R. 3(a).

⁶² The Globe Spotlight Team, *Dignity Faces a Steamroller*, BOS. GLOBE (Aug. 22, 2017, 1:17 PM), <https://www.bostonglobe.com/metro/2006/07/31/dignity-faces-steamroller/SoK0TBVHzOzjLEpNqNrVYN/story.html>.

Commonwealth (which, among other things, provides a reminder ten days before the summons date), and explore whether technological advancements such as SMS/text messaging could improve notice and reduce defendant default rates. This recommendation could be enforced or supported by, at a minimum, requiring the plaintiff to provide proof of actual notice when they file a claim.

- b. All notices for remote hearings should include clear, plain-language instructions on how to participate by phone or video.

Many litigants do not know how to use Zoom, and even litigants who are familiar with the platform may not know how to use the functions most relevant for participating in virtual hearings. Thus, this information should be included in clear, plain-language instructions on all notices for remote hearings. All printed notices should include this information in English and in Spanish (with an option for translated copies provided to Limited English Proficient litigants in their preferred language). This could be accomplished either through a link in electronic documents, or a scannable QR code to the Trial Court's website which would host the additional notices in all relevant languages. The same information should also be available on the Mass.gov website, in both written and visual and/or video forms, to increase accessibility for all parties. These online materials should similarly have the option for translation into other languages and be optimized for mobile devices as well as assistive technology. The notice should also include simple instructions on how to use Zoom such as hit *6 to unmute yourself if you are on a telephone rather than the Zoom application.

- c. Opportunities should be provided for litigants to learn more about the process of their virtual hearing—both at the beginning of the session and before the session starts.

Because remote hearings are new to the Massachusetts judicial system, there are few resources for litigants to learn about and prepare for them. For that reason, it is important to provide litigants with the opportunity to ask questions at the very beginning of a session. This creates a valuable opportunity for litigants to understand and engage more fairly in their own cases. For example, one clerk magistrate we observed began the session this way and received questions from several litigants. In addition, virtual sessions should be opened a half-hour early for litigants to ask questions of the clerk magistrate or other court staff. Pro bono attorneys and attorneys from legal aid organizations could also be enlisted to provide the same service. Additionally, the court staff could play a video, presented in both English and Spanish (with an opportunity for Limited English Proficient litigants to receive instructions in their preferred language), on a loop before the session begins, which would answer Frequently Asked Questions about the small claims process. A similar process is used by the Trial Court to screen jury duty participants.

- d. Court staff, magistrates, and judges should be specifically trained on how to best support litigants participating in remote hearings.

As remote hearings are now standard practice across the jurisdiction, every effort must be taken to ensure the outcome of a case is based on its merits and not a litigant's technological skills or comfort. While the Court's creation of Zoom rooms is a necessary step in this direction, and such initiatives should be expanded, providing increased access to technology is not sufficient to address this issue. To address disparities in technological literacy, court staff, magistrates and judges should be trained on how to assist litigants needing help participating in remote hearings. This could include the Court Service Center staff as well, who have expertise in working with the self-represented litigant population. Of import is a focus on the Zoom functions necessary for litigants to identify themselves, listen and be heard, navigate entering and leaving breakout rooms and presentation of evidence. The training for clerk magistrates should be developed in partnership with the Clerks Association and the contents of these trainings should be publicly accessible.

- e. At least one court staff member in addition to the clerk magistrate should attend all remote hearings.

Remote hearings currently are typically presided over by a single clerk magistrate without any additional support staff. That leaves the clerk in charge of a number of tasks to carry out simultaneously: calling cases, putting litigants into breakout rooms with Lawyer for the Day attorneys, and mitigating tech issues, among others. Clerk magistrates are also under pressure to manage high-volume dockets and focus on the cases and legal issues at hand. The outcome of a litigant's hearing should not be affected by the difficulty inherent in performing these various tasks, which is significant enough to realistically include the work of multiple people. Thus, clerk magistrates presiding over remote hearings should have another court staff member present to divide the responsibilities of conducting the hearings and addressing any process or technological issues which may arise.

- f. The Trial Court should track and make available case data, including the number of small claims debt collection cases filed each year, case outcomes, and the percentage of defendants that fail to appear for trial in small claims debt collection cases.

At present, the Trial Court does not track or make publicly available the above data points. However, understanding the exact quantity of small claims cases within our court system in conjunction with the rate of default are necessary first to highlight why reforming the small claims system must be prioritized, but second and most importantly, so that this data may be used as a tool to track progress as new reforms and programs are implemented to support self-represented litigants.

2. Recommendations to Improve Trial Court Standardization

- a. All clerk magistrates should be required to introduce themselves and explain their role at the beginning of every court session.

The majority of clerk magistrates we observed introduced themselves at the beginning of a session; however, not all did. Such introductions should not be a voluntary practice, but instead, a requirement. A lack of identification could otherwise create significant confusion for self-represented litigants, as many are unfamiliar with the court process and do not understand the role of the clerk magistrate. This confusion is compounded by the virtual court environment, where the clerk magistrate appears on the computer screen the same in size as any other individual. Requiring clerk magistrates to introduce themselves and explain their role at the hearing would mitigate confusion and promote fairness.

- b. The Trial Court should work with legal aid organizations and non-profits to develop a bench card that standardizes the instructions clerk magistrates provide litigants at the beginning of every session.

Small claims courts were intended to be a mechanism for people who are not represented by lawyers to settle small-dollar disputes.⁶³ Despite this history, they are now predominantly used by corporate plaintiffs with legal representation to sue self-represented litigants with little to no legal knowledge. When the simplified small claims process is used by an experienced attorney against a self-represented litigant, the fundamental goal of access to equal justice in the courts is defeated. Because the landscape of small claims courts has changed, so too must the responsibilities of the clerk magistrates and other court staff. The Trial Court should provide a bench card with specific information that clerk magistrates are required to announce, in both English and Spanish (and an explanation that Limited English Proficient litigants have a right to hear these instructions in their own language), at the beginning of each court session. At a minimum, the bench card should require that the clerk magistrate: (i) explain the small claims process in clear, plain-language and the rights, roles, and responsibilities of each party; (ii) explain and provide examples of exempt income status; and (iii) ask if any litigant needs an interpreter and wait to start the session until all interpreters are present.

Additionally, if the plaintiff is represented, clerk magistrates in sessions where a Lawyer for the Day is present should ask the defendant if they would like to meet with the Lawyer for the Day before getting into any substantive elements of the case. This information would have the potential to meaningfully increase access to justice in small claims courts. However, for any such

⁶³ HUM. RTS. WATCH, RUBBER STAMP JUSTICE: US COURTS, DEBT BUYING CORPORATIONS, AND THE POOR 50 (2016) (“The relatively informal nature of these courts is intended both to allow for the more efficient adjudication of small claims and to make the courts more accessible to ordinary people without lawyers.”).

bench card to be effective, the Trial Court must ensure the needs of the community are actually being met. Thus, the content of the information provided via the bench card should be determined by soliciting community feedback, testing with end-users, and working with local legal-aid providers and non-profits. It is crucial that the individuals for whom the bench card is intended are central to the process of creating it.

- c. When a litigant is unable to fully participate in their remote hearing for technological reasons—such as being unable to hear or accidentally dropping off the call—the clerk magistrate should be required to re-schedule the hearing in a manner that allows for full participation (whether remote or in-person).

When any technological issue arises that impedes a litigant’s full participation in their hearing, the clerk magistrate should, on their own and without waiting for a request, re-schedule the hearing, unless both parties affirmatively state that they prefer to continue with the current hearing. Litigants should not be required to attend remote hearings when they do not have the capacity to do so, and in-person hearings should always be an option. Requiring clerk magistrates to reschedule hearings in this way will prevent unjust outcomes and better protect all parties’ rights. It is important, however, that in doing so, clerk magistrates take care to avoid any unintended penalties such as the accumulation of interest while the matter is pending the rescheduled date.

- d. The Trial Court should standardize how clerk magistrates enter default judgments against litigants who appear late to a remote session or do not appear at all, and how they treat absent parties.

During our observations, clerk magistrates were inconsistent in the ways in which they dealt with default judgments. Some would not enter defaults until the second or third missed court date, in apparent recognition of the novel challenges and unfamiliarity with virtual court, while others would enter defaults upon the first call of the list. Further, clerk magistrates were observed treating defaults for defendants differently from plaintiffs, particularly when plaintiffs had representation—allowing up to 45 minutes in one case for the plaintiff to appear before defaulting them—compared to the almost instantaneous default of defendants. There should be a standardized practice across all small claims sessions in the state with respect to defaults, and data on defaults should be collected and published to provide accountability for this standardization. Further, when a default judgment is entered following a remote session, the relevant court should contact the defendant in their preferred language to provide information about how to vacate the default and reschedule the hearing. As with other court communications, this information should be provided in clear, plain language, be available in multiple languages, and be as accessible as possible (e.g., include visual cues, contact information for local legal aid or Lawyer for the Day programs, and be optimized for screen readers and mobile devices).

3. Recommendations to Support Lawyer for the Day Programs

- a. All courts that do not currently have a Lawyer for the Day (LFD) program should be encouraged to contact local legal service providers and inquire whether they would be interested in establishing an LFD program.

LFD services are programs offering free legal aid to litigants that help address the power imbalance of business-to-consumer lawsuits in small claims courts. From answering specific legal questions to explaining the small claims process to representing litigants, LFD attorneys provide invaluable support to litigants and courts. For Trial Court locations that currently have LFD programs, information about the availability of this service should be specified in the notice provided to litigants, as some but not all courts already do. However, as noted above, many court locations have no LFD programs at all. Those court locations that do not currently have free legal services programs should be identified and urged to institute one in partnership with their local legal services or nonprofit communities. In the event those efforts are unsuccessful—or ideally, in addition to those efforts—the courts should be encouraged to consider implementation of non-lawyer navigator programs or other creative access to justice solutions that help bridge the gap in access to justice. Further, all court locations—even if they do not yet have LFD programs—should intentionally partner with their regional Court Service Center to ensure that essential information about the small claims process is provided to self-represented litigants. Additionally, once court locations have LFD programs, cases should be scheduled in coordination with the administrators of those programs.

- b. Court locations with Lawyer for the Day Programs operating virtually should ensure that after the majority of litigants have joined the session, LFD program staff are able to introduce themselves and explain their services.

As detailed above, based on our observations, it appears that having the clerk magistrate allow representatives of LFD programs to introduce themselves likely legitimizes these programs and may increase self-represented litigants' usage of LFD attorneys and volunteers. Thus, given the significant impact that LFD programs can have, it is important that announcements of the programs occur after most litigants have joined the session, rather than before they join.

- c. Court locations with LFD programs operating virtually should allow LFD programs to frequently re-introduce themselves (in English, as well as any languages required so that all attendees can access the information in their native or preferred language(s)) as new litigants join the session.

Litigants who do not hear the LFD announcement at the beginning of the session may not know the services exist and thus cannot practically access the services the LFD programs provide. In

addition to making the announcement after most litigants have joined the session, clerk magistrates should allow LFD programs to be re-introduced throughout the session. This is especially important for large sessions that run for multiple hours where it is more likely that not all litigants joined in the beginning. In these instances, re-introduction would allow litigants who joined later in the session to have access to the same services as those that joined earlier and thus provide for all litigants to have an equal opportunity to realize the benefits of these services.

- d. Clerk magistrates running sessions with LFD programs present should explicitly ask each defendant if they want to work with a LFD once their case is called and before soliciting further information.

Our findings showed that asking defendants directly if they want to utilize LFD services likely increases the percentage of litigants that decide to do so. A litigant who is not familiar with the hearing process may hesitate to request LFD services after the program is announced because they do not want to interrupt, they do not want to miss their case being called, or they do not understand how to ask for it. To ensure that any litigant who would like to use LFD services may actually do so, the clerk magistrate should explicitly ask each defendant if they want to speak with a Lawyer for the Day before soliciting any further information about the case. Asking each defendant as their case is called both legitimizes Lawyer for the Day services and ensures that every defendant has access to this critical resource.

- e. The Court should allow continuances for litigants who wish to retain a LFD program, if requested by the pro se litigant.

LFD programs have different eligibility criteria for representation, depending on the organization that is running the LFD program. For example, Legal Services Corporation (LSC) funded programs cannot provide legal assistance to litigants with income above 200% of the federal poverty level. When hearings are held virtually, it can be time-consuming for the LFD program to perform an intake with the litigant during the session. Therefore, when cases are heard virtually, the Court should allow a continuance for the litigant to contact the LFD program for an intake. Allowing a continuance in these situations also allows the LFD program to work with creditor's counsel to potentially settle the case and have it resolved before the continuance date.

- f. The Court should adopt a proposed Consumer Debt Standing Order related to LFD, which includes: court docket consolidation, space for LFD programs to operate in courthouses (or the virtual equivalent), and collaboration with LFD programs to maximize the number of litigants served.

The Massachusetts Access to Justice Commission's Consumer Debt Committee Working Group has drafted a proposed Consumer Debt Standing Order for consideration by the District and Municipal Courts. This Standing Order (which is similar to the existing Housing Court Standing

Order 1-01: Lawyer for a Day Program⁶⁴), reflects the collective insight of practitioners, key stakeholders, and consumer advocates across the state as to what is needed for LFD programs to operate. It also takes into consideration the impact of COVID-19 and ongoing virtual court environment which present additional operational challenges for LFD programs. As demonstrated in this Report, a supported LFD program is essential to improving access to justice for those who need it most. Once finalized, this Standing Order should be quickly adopted and endorsed across the Commonwealth.

⁶⁴ Housing Court Standing Order 1-01 (2001), <https://www.mass.gov/housing-court-rules/housing-court-standing-order-1-01-lawyer-for-a-day-program>.

APPENDIX A: COURT OBSERVATION QUESTIONNAIRE

Thank you for volunteering to be a part of this study! Your participation in this study will help to determine the challenges and successes of the courts' adaptation to remote participation during the COVID-19 pandemic.

Take the time to read this form in its entirety before beginning the observation.

If you are unable to answer a question, please indicate that in the answer box if applicable, or else in the last question of this survey. Please do not guess the answer to a question if you are unsure.

These questions are intended to guide you, but feel free to note anything that isn't in this questionnaire that you think might be important (especially within question 34).

* Required

1. Name of Student Observer:

2. Date of Observation:

3. Which court are you observing?

- BMC Central
- Springfield
- Worcester
- East Boston
- Somerville
- Woburn
- Dorchester

4. What device are you watching the session on?

- Computer
- Tablet
- Smartphone
- Other:

5. Was the link to your session posted on the Court's website?

- Yes
- No

6. Describe any difficulties you had getting access to the session:
7. What time were you let into the session?
8. Name of the clerk:
9. Did the clerk introduce themselves?
- Yes
 - Maybe
 - No
10. Did the clerk's name appear on the screen?
- Yes
 - No
11. What instructions (if any) did the clerk give to the parties at the beginning of the session?
12. Did the clerk or anyone else give any introductions or instructions in Spanish?
- Yes: Clerk
 - Yes: Lawyer for the Day program
 - No
 - Other:
13. What time did the clerk start calling cases?
14. Was a Lawyer for the Day (LFD) program available during the session?
- Yes
 - Maybe
 - No
15. If you answered Yes to availability of the LFD program, did the clerk inform parties of its availability? If so, what did the clerk say?
16. Did the clerk ask each litigant, when their case was called, whether they wanted to meet with the LFD program?
- Yes
 - No
17. If you answered Yes to availability of the LFD program, did the LFD program introduce itself? If yes, what did they say?

18. If you answered Yes to availability of the LFD program, which program was running the LFD program?
19. If you answered Yes to availability of the LFD program, how many attorneys with the program were present?
20. If you answered Yes to availability of the LFD program, how many non-attorney volunteers with the program were present?
21. How many litigants asked to work with the LFD program?
22. Out of the number of litigants that asked to work with the LFD program, how many did in fact work with the LFD program?
23. Were litigants who asked to work with the LFD program sent to a breakout room?
- Yes
 - No
 - Other:
24. Describe any technical difficulties you had while observing the session:
25. Describe any difficulties other participants, including the clerk or litigants, had during the session (e.g., audio/video issues, nonparticipants present on screen, dark backgrounds, noise/voices in the background):
26. If other participants had difficulties during the session, what, if anything, did the clerk do in response?
27. What time did the session end?
28. Were interpreter(s) used during the session?
- Yes
 - No
29. If you answered Yes to the question above, which language(s) service was necessary?
- Spanish
 - Other:
30. Were there any litigants that stated they needed an interpreter but one was not available? If yes, please explain.

31. How many defendants appeared by video on Zoom?
32. How many defendants appeared without video on Zoom?
33. How many defendants appeared by telephone (not on Zoom)?
34. Please describe any other impressions you had during the session. You could consider things such as friendliness and demeanor of the clerk, opportunities for litigants to self-advocate, litigants' confusion/understanding, or any other issues or reflections.*
35. Were there any questions you could not answer? If yes, why?

APPENDIX B: SELF-REPRESENTED LITIGANT INTERVIEW

Section 1 of 11: Initial Script

“Answers” script:

Good morning/afternoon, is this _____? [If no, please ask for SRL]

My name is _____ and I am a law student at Western New England University Law School.

I am calling about a court hearing that was scheduled on _____.

Would you be willing to speak with me about your experience?

[if they agree or want more information]

The purpose of this interview is to learn about the experience of people without an attorney who had virtual hearings scheduled in small claims debt collection cases in Massachusetts. I just want to hear your opinions and experiences. There are no right or wrong answers.

Your participation in this interview is voluntary, and your responses and identity will remain confidential unless I have your permission for them to be shared. You don’t have to answer any question that you don’t feel comfortable answering, and you may stop the interview at any time. Do I have your permission to begin?

Thank you.

“Voicemail” script:

Good morning/afternoon. My name is _____ and I am a law student at Western New England University Law School.

I am calling because I’d like to ask you some questions about a court hearing that was scheduled on _____.

If you are willing to speak with me about your experience, please call _____.

Thank you, and I hope to hear from you soon.

Section 2 of 11: Socio-Demographic Information

I'm going to start by asking you some socio-demographic questions.

Can you spell your full name?

What is your date of birth?

What is your address?

When did you begin living at your current address?

Do you have difficulty receiving mail at your current address?

- Yes
- No

What is your email address, if you have one?

What is your primary language?

How would you describe your race?

What is your gender?

Do you have children living in your home? If yes, how many?

Do you identify as having a disability?

- Yes
- No

Are you working? Part time or full time?

- Yes- full time
- Yes - part time
- No

If working, how much do you earn per month?

Do you receive: (ask each one)

- Cash Assistance
- Food Stamps/SNAP

- Social Security
- Disability
- Mass Health
- Veteran's benefits

Section 3 of 11: Appear or Not Appear

Now I would like to talk to you specifically about the court hearing you were scheduled for.

Did you know you had a court date on_____ [insert date]?

- Yes [*go to Section 4 (Appearance)]*
- No [*go to Section 10 (Resources)]*

Section 4 of 11: Appearance

Did you attend your court date?

- Yes [*go to Section 5 (Pre-Court Contact)]*
- No [*go to Section 8 (resources)]*

Section 5 of 11: Pre-Court Contact

Now I'd like to ask you some questions about the information you received about your hearing from the court, and any people you spoke to before the hearing.

Did you receive a notice from the court before your hearing? Do you still have it?

- Yes
- No

If you received a notice, approximately how long before the hearing did you receive it?

Did the notice include the:

- Date and time of the hearing
- Zoom link or call in number for the hearing

On a scale from 1-5—with 1 being very unclear and 5 being very clear—how well did you understand the instructions for how to attend the hearing?

Did you have any questions about attending the hearing that were not answered by the notice?

- Yes

- No

If yes, what questions did you still have?

Did any paperwork you received from the court mention the availability of a free Lawyer for the Day program? If yes, did you reach out to the LFD program?

Did you contact any of these people or organizations before the hearing to discuss your case?

- Court
- Debt Collector
- Friend
- Family member
- Other:

If yes to any of the above, what did you discuss?

Section 6 of 11: Technology

Now I'd like to ask you a few questions about your access to technology and how you attended the hearing.

Do you have any of the following: (ask each one by one and check off all that apply)

- Computer
- Tablet
- Telephone (smartphone)
- Telephone (non-smartphone)

Do you have internet access:

- In your home
- Somewhere other than your home
- Other:

If you frequently access the internet somewhere other than your home, where?

How many minutes per month do you have for your phone?

Where were you during the hearing?

- Home
- Public space
- Work

- Other:

What device did you use to attend your hearing?

- Computer
- Tablet
- Telephone (smartphone)
- Telephone (non-smartphone)
- Other:

Describe any difficulty you had getting access or signing to the hearing, if any:

Describe any difficulties you had with the audio and/or video during the hearing, if any:

Section 7 of 11: Experience at the Hearing

Now I'd like to ask you some questions about your experience during the hearing itself.

Did the clerk give instructions on how the hearing would be conducted?

- Yes
- No

If the clerk did give instructions, what were the instructions?

Did the clerk inform you or anyone else of the availability of an interpreter?

- Yes
- No

Did the clerk inform you or anyone else of the availability of a Lawyer for the Day program?

- Yes
- No

Were you represented by an attorney during your hearing? Was it through Lawyer for the Day?

- Yes
- No

If you worked with the Lawyer for the Day program, how and where did you do that? For example, did they put you in a separate breakout room?

Was the Lawyer for the Day program helpful? If yes, please explain how.

Did you submit evidence to the Court?

- Yes
- No

If you submitted evidence, how? (for example, via email)

If you did not submit evidence, why not?

Did you feel like you got a good chance to explain yourself during the hearing—why or why not?

Can you describe your experience at the hearing in your own words?

What were the challenges (if any) you had with the remote hearing?

Were you confused about anything that happened during the hearing?

Did you find anything frustrating about the process of the hearing?

What could have made the experience better?

Do you feel like you were treated with respect at the hearing?

Did the outcome seem fair to you?

- Yes
- No
- Other:

Would you like these answers to remain anonymous, or are willing to have your name and answers in a public report about this research?

- Anonymous
- Yes to name and answers

[Submit Form]

Section 8 of 11: Resources

I don't know the result of your case, but you can call the court and ask them. Here is the number you should call (give them the number based on where their case was)

Springfield Clerk's Office: 413-748-8600

BMC Central Clerk's Office: 617-788-8600

You may also want to contact a legal aid program that may be able to help you:

Springfield: 413-796-2103

BMC: 617-603-1700

I have a few final questions about the notice you received from the court, and about your access to technology.

Section 9: Pre-Court Contact

Now I'd like to ask you some questions about the information you received about your hearing and any people you spoke to before the hearing.

Did you receive a notice from the court before your hearing? Do you still have it?

- Yes
- No

If you received a notice, approximately how long before the hearing did you receive it?

Did the notice include the:

- Date and time of the hearing
- Zoom link or call in number for the hearing

On a scale from 1-5 –with 1 being very unclear and 5 being very clear– how well did you understand the instructions for how to attend the hearing?

Did you have any questions about attending the hearing that were not answered by the notice?

- Yes
- No

If yes, what questions did you still have?

Did any paperwork you received from the court mention the availability of a free Lawyer for the Day program? If yes, did you reach out to the LFD program?

Did you contact any of these people or organizations before the hearing to discuss your case?

- Court
- Debt Collector

- Friend
- Family member
- Other:

If yes to any of the above, what did you discuss?

Why did you not attend the hearing?

[go to Section 11 (Technology)]

Section 10: Resources

I don't know the result of your case, but you can call the court and ask them. Here is the number you should call (give them the number based on where their case was)

Springfield Clerk's Office: 413-748-8600

BMC Central Clerk's Office: 617-788-8600

You may also want to contact a legal aid program that may be able to help you:

Springfield: 413-796-2103

BMC: 617-603-1700

I have a few final questions about the notice you received from the court, and about your access to technology.

Section 11: Technology

Do you have any of the following: (ask each one by one and check off all that apply)

- Computer
- Tablet
- Telephone (smartphone)
- Telephone (non-smartphone)

Do you have internet access:

- In your home
- Somewhere other than your home

- Other:

If you frequently access the internet somewhere other than your home, where?

How many minutes per month do you have for your phone?

Would you like these answers to remain anonymous, or are willing to have your name and answers in a public report about this research?

- Anonymous
- Yes to name and answers

APPENDIX C: OBSERVATIONAL DATA

Note: Observations within the same black border and shaded in gray represent the nine sessions that were observed by more than one law student. Rows in white represent the 12 sessions that were observed by only one law student.

Observation Submission Number	Date of Session	Time of Session	Session Location	Defendants Attend by Video on Zoom	Defendants Attended Without Video on Zoom	Defendants Attended by Telephone (Not on Zoom)	Total Number of Defendants who Attended Session (calculated by research team)	Percentage of Defendants who Defaulted (according to MassCourts)*	Total Number of Defendants Who Asked to work with a Lawyer for the Day	Was a Lawyer for the Day Program Present?	Percentage of Defendants who Asked to Work with a Lawyer for the Day
1	12/18/2020	10:00:00 AM	Springfield	6	2	0	8	MassCourts had no information	4	yes	50%
2	12/18/2020	2:00:00 PM	Springfield	18	2	1	21	3%	4	yes	19.05%
3	1/7/2021	11:00:00 AM	BMC Central	0	2	1	3	65%	0	yes	0%
4	1/7/2021	11:00:00 AM	BMC Central		2	0	2	65%	0	yes	0%
5	1/7/2021	2:00:00 PM	BMC Central	0	4	4	8	45%	n/a	no	n/a
6	1/8/2021	2:00:00 PM	Springfield	5	6	7	18	0% **	7	yes	38.89%
7	1/15/2021	10:00:00 AM	Springfield	2	6	6	14	100% ***	1	yes	7.14%
8	1/15/2021	10:00:00 AM	Springfield	1	4	0	5	100% ***	1	yes	20%
9	1/15/2021	2:00:00 PM	Springfield	2	8	0	10	47%	2	yes	20%
10	1/15/2021	2:00:00 PM	Springfield	4	1	10	15	47%	2	yes	13.33%
11	1/21/2021	11:00:00 AM	BMC Central	0	1	0	1	57%	0	yes	0%
12	2/26/2021	10:00:00 AM	Springfield	2	0	0	2	79%	1	yes	50%
13	2/26/2021	2:00:00 PM	Springfield	10+ (interpreted as 10)	1	1	12	MassCourts had no information	4	yes	33%
14	3/2/2021	9:00:00 AM	Worcester	7	2	0	9	45%	3	yes	33%
15	3/2/2021	9:00:00 AM	Worcester	3	1	0	4	45%	3	yes	75%
16	3/2/2021	2:00:00 PM	East Boston	0	0	2	2	19%	n/a	no	n/a
17	3/2/2021	2:00:00 PM	East Boston	0	0	3	3	19%	n/a	no	n/a
18	3/2/2021	2:00:00 PM	East Boston	0	0	8	8	19%	n/a	no	n/a

19	3/4/2021	10:00:00 AM	Somerville	6	2	1	9	41%	n/a	no	n/a
20	3/4/2021	10:00:00 AM	Somerville	5	1	1	7	41%	n/a	no	n/a
21	3/4/2021	2:00:00 PM	BMC Central	7	0	0	7	47%	3	yes	42.86%
22	3/4/2021	2:00:00 PM	BMC Central	3	0	0	3	47%	3	yes	100%
23	3/4/2021	2:00:00 PM	BMC Central	4	0	0	4	47%	3	yes	75%
24	3/5/2021	10:00:00 AM	Springfield	2	4	3	9	0% ****	2	yes	22.20%
25	3/5/2021	10:00:00 AM	Springfield	7+ (interpreted as 7)	2	2	11	0% ****	3-5 (interpreted as 4)	yes	36.36%
26	3/5/2021	2:00:00 PM	Springfield	4	1	3	8	0% ****	6	yes	75%
27	3/5/2021	2:00:00 PM	Springfield	6	8	7	21	0% ****	not recorded	yes	not recorded
28	3/9/2021	2:00:00 PM	East Boston	0	0	all	n/a	57%	n/a	no	n/a
29	3/11/2021	11:00:00 AM	Dorchester	2		2	4	MassCourts had no information	1	yes	25%
30	3/11/2021	11:00:00 AM	BMC Central	2	2	1	5	23%	n/a	no	n/a
31	3/11/2021	2:00:00 PM	Dorchester	4	1	0	5	MassCourts had no information	2	yes	40%
32	3/14/2021	2:00:00 PM	Springfield	3	2	2	7	MassCourts had no information	3	yes	42.86%
33*****	3/10/21	n/a	Woburn District Court Observation	n/a	n/a	n/a	n/a	MassCourts had no information	n/a	n/a	n/a

* This default rate includes cases in which both parties failed to appear. Additionally, cases that are rescheduled (continuances) are included in the denominator of the fraction.

** Vast majority “Not Held But Resolved”

*** Only 1 case can be found on MassCourts and it resulted in “Defendant Defaulted”

**** 7/9 of the cases this day were “Reschedule of Hearing”

***** Report from the student who attempted to attend a small claims session at Woburn District Court on 3/10/21: “On Wednesday, March 10, 2021, I attempted to observe small claims court proceedings beginning at 2:00pm. I logged into Zoom at approximately 1:45pm and received a message that the host had not yet started the meeting. I waited until 2:05pm ... I called the court and spoke with a (very nice!) court officer, who informed me that there was a delay because two issues had popped up around 2pm and needed to be prioritized. He said if the host didn’t start the meeting within 20 minutes, to call back. I called back after about 30 minutes and spoke with someone else--not the initial court officer--who first asked me for docket number(s). I explained that I did not have docket numbers, and she said there was nothing scheduled for that afternoon, and there may have been a schedule change. At the beginning of each phone call, I identified myself, my affiliation with WNE School of Law, and purpose for observing court.”