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## Remote Justice & Domestic Violence: Process Pluralism Lessons From the Pandemic

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# REMOTE JUSTICE & DOMESTIC VIOLENCE: PROCESS PLURALISM LESSONS FROM THE PANDEMIC

By: Andrea Kupfer Schneider,\* Heather Hlavka, Sameena Mulla, Erin Schubert, and Aleksandra J. Snowden

## I. INTRODUCTION

As the world faced a global pandemic in 2020, governments imposed various restrictions and urged everyone to keep their distance from other people and stay home.<sup>1</sup> Schools, workplaces, courts, and social service providers went remote within a matter of days in a social and technological transformation that was both stunning and painful. While people everywhere grappled with the fear of getting sick, with children home from school for months at a time and the difficult challenge of the “new normal,” it became clear rather quickly that staying at home to increase safety in light of a deadly, infectious disease introduced other perils into the lives of many.

In Wisconsin, the Stay-at-Home emergency orders were called “Safer-at-Home” orders. A stark juxtaposition emerged between the name of the orders and what actually happened on the ground during their implementation, as the homicide rate from 2019 to 2020 jumped. Some data has suggested that domestic violence-

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\*© 2022, All rights reserved. Professor of Law and Director of the Kukin Program for Conflict Resolution, Benjamin N. Cardozo School of Law. This Article is based on the research project “When Safer-At-Home Is Not Actually Safe” supported through a Marquette University President’s Challenge Grant and by the Institute for Women’s Leadership at Marquette University. The co-PIs, in addition to myself, were Sarah Camp (IWL Coordinator), Dr. Heather Hlavka (Associate Professor, Marquette University), Dr. Sameena Mulla (Associate Professor, Emory University), Dr. Erin Schubert (Director of Outcomes and Evaluation, Sojourner Family Peace Center), Dr. Aleksandra J. Snowden (Director of Undergraduate Studies and Associate Professor, Marquette University) and Dr. Jennica Webster (Co-Director of IWL and Associate Professor, Marquette University).

1. See Laurel White, *Evers Administration Issues ‘Stay-At-Home’ Order for Wisconsin*, WIS. PUB. RADIO (Mar. 24, 2020), <https://www.wpr.org/evers-administration-issues-stay-home-order-wisconsin>.

related homicides also increased, particularly in Wisconsin.<sup>2</sup> We sought to understand whether the shift to remote court access potentially contributed to increased lethality in domestic violence-related cases. In partnership with the Milwaukee County Court system and the Sojourner Family Peace Center (“Sojourner”), the state’s largest provider of services for domestic violence survivors, our team of researchers conducted an eighteen-month phone survey and interview study of survivors and service providers regarding remote court access.<sup>3</sup> We also were given access to court data from 2019 through 2021 regarding restraining orders to analyze the impact of the pandemic further.

In response to the pandemic, courts around the world shifted to remote processes. In Milwaukee,<sup>4</sup> this shift was done in two ways regarding domestic violence. All filings and decisions regarding temporary restraining orders (“TROs”) became electronic only. Materials, attestations, evidence—and then the decisions themselves—were to be filed online. Neither parties, advocates, nor the court commissioners met face-to-face or on video (although phone hearings and support were occasionally used) at the TRO phase. On the other hand, the next stage of the process, an injunction hearing to determine whether a long-term restraining order would be issued, stayed in person throughout the

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2. “The homicide rate in the United States saw a massive increase of 30% between 2019 and 2020, according to the Centers for Disease Control and Prevention. In 2020, there were 7.8 homicides per 100,000 people, an increase from 6 homicides per 100,000 people in 2019.” Madeline Fitzgerald, *These Are the States with the Highest Homicide Rates in 2020*, U.S. NEWS & WORLD REP. (Nov. 12, 2021, 5:59 PM), [https://www.usnews.com/news/best-states/articles/2021-11-12/cdc-report-states-with-the-highest-homicide-rates-in-2020#:~:text=The%20homicide%20rate%20in%20the,per%20100%2C000%20people%20in%202019](https://www.usnews.com/news/best-states/articles/2021-11-12/cdc-report-states-with-the-highest-homicide-rates-in-2020#:~:text=The%20homicide%20rate%20in%20the,per%20100%2C000%20people%20in%202019.). “Provisional data from CDC’s National Center for Health Statistics indicate that the homicide rate for the United States increased 30 percent from 2019 to 2020, the highest ever recorded in modern history.” Nat’l Ctr. for Health Stat., *New CDC/NCHS Data Confirm Largest One-Year Increase in U.S. Homicide Rate in 2020*, CTRS. FOR DISEASE CONTROL & PREVENTION (Oct. 6, 2021), [https://www.cdc.gov/nchs/pressroom/nchs\\_press\\_releases/2021/202110.htm](https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2021/202110.htm).

3. The research is based on survivor interviews conducted by Emma Backe, MMA (Ph.D. Candidate, GWU), Allison Bosley (MU ‘21), Casey Campos (MU Law ‘21), Ian Clark (MU Law ‘22), Naomie Kweyu (MU Law ‘21), Calista Lopez (MU ‘21), Veronica Lopez (MU ‘21), Bre Marchan (MU ‘20 & ‘22), Yaidelise Neris (MU ‘21), Andrea Ortiz Hernandez (MU ‘21), Olivia Possley (MU ‘21), Elizabeth Reinowski (MU Law ‘21), Olivia Russo (MU ‘21), Essence Scott (MU ‘21), and Sydney Shaffer (MU Law ‘22). Advocate interviews were conducted by Dr. Heather Hlakva and Dr. Sameena Mulla. With much appreciation to Sojourner Family Peace Center and the Milwaukee County Court System for their collaboration. And I am particularly grateful to the survivors in our community who elected to participate in this research.

4. We worked with the Milwaukee County Court system, which entails the City of Milwaukee plus a few other small communities.

pandemic, requiring parties to show up at the courthouse. The use of video conferencing was not implemented at either stage of the proceedings for domestic violence cases in Milwaukee.

To assess the impact of the shift among Milwaukee courts to remote and online processes, we use the framework of process pluralism. The concept of process pluralism—the idea that the justice system should have multiple ways of resolving disputes<sup>5</sup>—can be applied to the processes developed during the pandemic to assess what has worked and what needs to be improved in order to provide justice. While the pandemic forced all courts to go remote rapidly, this shift had already started in different contexts and jurisdictions over the last twenty years. Moreover, the recognition that new processes should be assessed is not new. In particular, as courts and dispute resolution processes have been shifting online, creating the field of online dispute resolution (“ODR”), scholars in the field have developed a framework for analyzing these evolving processes.<sup>6</sup> As Professor Orna Einy wrote, “[p]rocess pluralism serves both as a descriptive lens in observing the dispute resolution landscape, and as a normative prism through which various procedural schemes can be evaluated and according to which the contours of procedural reform can be devised.”<sup>7</sup> First, the descriptive lens points out that court systems now have multiple choices for how to resolve disputes. With the advent of dispute resolution in the courts as an alternative to litigation, the legal system had already begun shifting to provide processes in which, as Professor Carrie Menkel-Meadow has noted: “new forms of hybridity, variation and mixed processes may enhance human problem solving, increase creativity and flexibility in outcomes and dispute prevention, as well as resolution—and, hopefully, strengthen both peace and justice in their different forms.”<sup>8</sup> The choices of process provided by the legal system are ultimately dispute system design choices in which the impact on stakeholders

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5. Frank E. A. Sander & Stephen B. Goldberg, *Fitting the Forum to the Fuss: A User-Friendly Guide to Selecting an ADR Procedure*, 10 NEGOT. J. 49, 50 (1994); Carrie Menkel-Meadow, *Hybrid and Mixed Dispute Resolution Processes: Integrities of Process Pluralism*, in COMPAR. DISP. RESOL. 405, 418–21 (Maria Moscati ed., 2020).

6. Orna Rabinovich-Einy, *The Past, Present, and Future of Online Dispute Resolution*, 74 CURRENT LEGAL PROBS. 125, 128 (2021); Orna Rabinovich-Einy & Ethan Katsh, *The New New Courts*, 67 AM. U. L. REV. 165, 171 (2017); ETHAN KATSH & ORNA RABINOVICH-EINY, DIGITAL JUSTICE: TECHNOLOGY AND THE INTERNET OF DISPUTES 3 (2017).

7. Orna Rabinovich-Einy, *Process Pluralism in the Post-Covid Dispute Resolution Landscape*, 10 TEX. A&M L. REV. (forthcoming 2022).

8. Menkel-Meadow, *supra* note 5, at 407.

will vary. These “procedural arrangements determine whether we can effectively access and use avenues of redress, and different design choices will leave a different group of people outside the reach of specific dispute resolution processes because of such features as their cost, complexity, location, jurisdiction, and language employed.”<sup>9</sup> These choices then impact how parties experience these processes in terms of perceptions of fairness and legitimacy. Moreover, the process choices can also impact the substantive outcome.

Using four principles of process pluralism, we can assess what is needed moving forward.<sup>10</sup> This Article outlines and applies these principles to the remote filing system for domestic violence: (1) context—recognizing that since domestic violence survivors are a unique set of court participants and present specific challenges, processes need not and should not be the same across types of cases, parties, and courts; (2) process plurality—encouraging the use of different and hybrid technological options while considering party access to technology and advocate support, court efficiency, and the benefits and costs of synchronous versus asynchronous modes as well as video/face-to-face interactions; (3) imagination—the need to evolve and create new process options to meet the needs of particular contexts; and (4) justice—ensuring that processes are both procedurally and substantively just: providing voice, legitimacy and fair outcomes to participants. This Article reviews each of these principles as applied to the domestic violence processes in the Milwaukee County court system using the feedback gathered from our research.

Like many court systems, Milwaukee likely will never go back to being fully in person for all procedures in conjunction with domestic violence. The evolving hybrid choices could facilitate access to justice or could create additional barriers to the legal system and needed social services. Understanding the current situation, the stresses and strains of the legal system as it evolves past the pandemic shutdown, and the best practices going forward will support domestic violence survivors and better serve justice for them.

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9. Rabinovich-Einy, *supra* note 7.

10. Rabinovich-Einy, *supra* note 7.

## II. WHEN SAFER AT HOME IS NOT ACTUALLY SAFE—THE DOMESTIC VIOLENCE CONTEXT

This Part provides a scoping look at domestic violence in the United States, first reviewing pre-pandemic trends, then assessing the impact of the pandemic on survivors, and then outlining how restraining order processes changed—both temporarily and permanently—in light of the pandemic.

### A. Domestic Violence Pre-Pandemic

Domestic violence (“DV”) is one of many terms used to characterize intimate partner violence (“IPV”).<sup>11</sup> These terms are often used interchangeably and describe a pattern of abusive behaviors through which a current or former partner or spouse exerts power and control over another person. Intimate partner violence takes many forms, including physical, sexual, and emotional abuse, as well as other coercive behaviors like isolation, surveillance, and financial control.<sup>12</sup> In the United States, upwards

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11. Wisconsin statutes define domestic violence broadly, going beyond intimate partner, including all adult family members, and any other non-related adult cohabitants. WIS. STAT. § 968.075(1)(a) (2021).

12. The list of tactics can be divided as follows: (1) Physical Abuse Tactics: pushing, kicking, slapping, punching, scratching; pulling or ripping out hair, strangling, biting; throwing objects at or near partner, subjecting partner to reckless driving; using objects as weapons or threatening with weapons; (2) Emotional Abuse Tactics: ridiculing, continually criticizing, or humiliating partner; taking away car keys, cell phone, or other means of communication; regularly threatening to leave or threatening to hurt themselves, their partner, or another family member; not allowing access to basic needs (toiletries, medication, etc.); threatening to kidnap children; abusing, torturing, or killing pets; manipulating or gaslighting partner; stalking in person or online; destroying furniture or appliances, punching walls; (3) Sexual Abuse Tactics: birth control sabotage or reproductive coercion; forcing partner to perform sexual acts; forcing partner to become a sex worker or prostitute; subjecting the partner to unwanted touching; sexually assaulting a partner; (4) Financial Abuse Tactics: having all bank accounts in the abuser’s name; controlling how, when and where money is spent; denying a partner the right to work outside the home or to make any financial contribution to the family; controlling all or most of the finances; forcing partner to sign documents against their will; (5) Workplace Interference Tactics: interfering with a partner’s efforts to go to work or perform work-related responsibilities; looking through or monitoring the partner’s phone, iPad, computer, or other electronic devices used for work without permission; sending harassing messages, phone calls, or making social media posts that distract from work-related responsibilities; engaging in or threatening to engage in behaviors, including posting on social media or sending emails or texts, that would make the partner look bad to their coworkers; using current living conditions, children, or family members to prevent a partner from being able to do their job. See *Fast Facts: Preventing Intimate Partner Violence*, NAT’L CTR. INJ. PREVENTION & CONTROL, DIV. OF VIOLENCE PREVENTION (Nov. 2, 2021),

of 36.4% (43.5 million) of women reported experiencing sexual or physical violence or stalking by an intimate partner, according to a 2015 population survey.<sup>13</sup> This survey also showed that three in ten women and one in ten men experience severe intimate partner physical violence, intimate partner sexual violence, and/or intimate partner stalking.<sup>14</sup> The effects of domestic violence ripple throughout communities. For example, one in every fifteen children is exposed to IPV each year, and 90% of these children are eyewitnesses to this violence.<sup>15</sup>

Moreover, domestic violence has disproportionate effects on communities of color and other marginalized groups.<sup>16</sup> Around 50% of all non-Hispanic Black, American Indian/Alaska Native women, and multi-racial women have experienced domestic violence at some point in their lives.<sup>17</sup> Young women, especially young women of color, experience domestic violence at higher rates than any other group.<sup>18</sup>

However, many people who experience domestic violence do not seek help or even report it. National data shows that very few (2.1%) report their violent experiences to law enforcement or seek help<sup>19</sup> for reasons including, but not limited to, fear and structural

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<https://www.cdc.gov/violenceprevention/intimatepartnerviolence/fastfact.html>;  
VLADYSLAVA SNYDER ET AL., INST. FOR WOMEN'S LEADERSHIP, MARQUETTE UNIV., A GUIDE TO BETTER UNDERSTANDING AND SUPPORTING DOMESTIC VIOLENCE SURVIVORS IN OUR WORKPLACE 22 (2022), [https://www.marquette.edu/womens-leadership/documents/iwl\\_wsahinas-employ\\_2022-04-26\\_wrefpgs.pdf](https://www.marquette.edu/womens-leadership/documents/iwl_wsahinas-employ_2022-04-26_wrefpgs.pdf).

13. SHARON G. SMITH ET AL., NAT'L CTR. FOR INJ. PREVENTION & CONTROL, THE NATIONAL INTIMATE PARTNER SEXUAL VIOLENCE SURVEY: 2015 DATA BRIEF—UPDATED RELEASE 8 (2018), <https://www.cdc.gov/violenceprevention/pdf/2015data-brief508.pdf>.

14. MICHELE C. BLACK ET AL., CTRS. FOR DISEASE CONTROL & PREVENTION, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2010 SUMMARY REPORT 2 (2011), [https://www.cdc.gov/violenceprevention/pdf/nisvs\\_executive\\_summary-a.pdf](https://www.cdc.gov/violenceprevention/pdf/nisvs_executive_summary-a.pdf); see JENNIFER L. TRUMAN & RACHEL E. MORGAN, NONFATAL DOMESTIC VIOLENCE, 2003–2012, at 1 (2014), <https://bjs.ojp.gov/content/pub/pdf/ndv0312.pdf>.

15. SHERRY HAMBY ET AL., U.S. DEP'T JUST., CHILDREN'S EXPOSURE TO INTIMATE PARTNER VIOLENCE AND OTHER FAMILY VIOLENCE 1 (2011), <https://www.ojp.gov/pdffiles1/ojdp/232272.pdf>.

16. Megan L. Evans et al., *A Pandemic within a Pandemic—Intimate Partner Violence during Covid-19*, 383 NEW ENG. J. MED. 2302, 2302 (2021), <https://www.nejm.org/doi/pdf/10.1056/NEJMp2024046?articleTools=true>.

17. SHARON G. SMITH ET AL., CTRS. FOR DISEASE CONTROL AND PREVENTION, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY (NISVS): 2010–2012 STATE REPORT 3 (2017), <https://www.cdc.gov/violenceprevention/pdf/nisvs-statereportbook.pdf>.

18. *Id.*

19. BLACK ET AL., *supra* note 14, at 54.

barriers,<sup>20</sup> cultural factors,<sup>21</sup> distrust of the police,<sup>22</sup> and/or their doubts about the ability of police to prevent violence.<sup>23</sup> In addition, only 34% of people who are injured by intimate partners receive medical care for their injuries.<sup>24</sup>

Milwaukee County is no exception to the national crisis in domestic violence. In Milwaukee County in 2018, there were in total 10,320 DV incidents reported to the police, with 10,750 victims, 80% of whom were females (8,636), and 65% of whom were Black victims.<sup>25</sup> In 2019, there were fifty-two domestic partner homicides in Wisconsin.<sup>26</sup>

### B. The Pandemic's Impact on Domestic Violence

This Part of the Article will discuss the impact of the pandemic on DV and IPV survivors in three parts: how the pandemic potentially heightened the risk of IPV and DV; how our study sought to assess this phenomenon; and what we learned from survivors.

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20. Michael P. Johnson, *Domestic Violence: The Intersection of Gender and Control*, in GENDER VIOLENCE: INTERDISCIPLINARY PERSPECTIVES 257, 257–68 (Laura L. O'Toole et al. eds., 2d ed. 1997); Sandra Walklate, Kate Fitz-Gibbon, & Jude McCulloch, *Is More Law the Answer? Seeking Justice for Victims of Intimate Partner Violence Through the Reform*, 18 CRIMINOLOGY & CRIM. JUST. 115, 121 (2017).

21. Cynthia F. Rizo & Rebecca J. Macy, *Help Seeking and Barriers of Hispanic Partner Violence Survivors: A Systematic Review of the Literature*, 16 AGGRESSION & VIOLENT BEHAV. 250, 261 (2011).

22. Shaquita Tillman et al., *Shattering Silence: Exploring Barriers to Disclosure for African American Sexual Assault Survivors*, 11 TRAUMA, VIOLENCE, & ABUSE 59, 64 (2010); see also Isabella Voce & Hayley Boxall, *Who Reports Domestic Violence to Police? A Review of the Evidence*, AUSTRALIAN INST. CRIMINOLOGY: TRENDS & ISSUES CRIME AND CRIM. JUST., Sept. 2018, at 1, 2, [https://www.aic.gov.au/sites/default/files/2020-05/ti\\_559\\_250918.pdf](https://www.aic.gov.au/sites/default/files/2020-05/ti_559_250918.pdf).

23. Carolyn Hoyle & Andrew Sanders, *Police Response to Domestic Violence*, 40 BRIT. J. CRIMINOLOGY 14, 14 (2000).

24. TRUMAN & MORGAN, *supra* note 14, at 8.

25. *Domestic Abuse Data*, WIS. DEP'T JUST., <https://www.doj.state.wi.us/dles/bjia/domestic-abuse-data> (last visited Oct. 16, 2022) (follow the link to the domestic abuse data; scroll down the page till you see the homepage tab underneath the fourth paragraph; click on the law enforcement tab for statistics; under the county tab drop down menu select Milwaukee).

26. Kaija L. Zusevics & Sara Krall, *Wisconsin Domestic Violence Homicide Report: 2019 Homicides and a Review of 20 Years of Data*, END DOMESTIC ABUSE WIS. 9 (Sept. 2020), [https://edaw-webinars.s3.us-east-2.amazonaws.com/wp-content/uploads/2020/09/24101634/FINAL\\_2019-Wisconsin-Domestic-Violence-Homicide-Report\\_revised\\_9\\_21\\_2020.pdf](https://edaw-webinars.s3.us-east-2.amazonaws.com/wp-content/uploads/2020/09/24101634/FINAL_2019-Wisconsin-Domestic-Violence-Homicide-Report_revised_9_21_2020.pdf).



### 1. COVID-19 and “Safer-at-Home/Stay-at-Home” Emergency Orders

On January 30, 2020, the World Health Organization declared COVID-19 to be a public health emergency.<sup>27</sup> By early March, state and local governments in the United States formulated their own responses to COVID-19, such as social distancing, mask-wearing guidelines, and Safer-at-Home orders. In Wisconsin, Governor Tony Evers directed state health officials to issue a Stay-at-Home order for all of Wisconsin to begin on March 25, 2020,<sup>28</sup> and the City of Milwaukee issued its own Stay-at-Home around the same time.<sup>29</sup> The governor’s order required that everyone in Wisconsin stay at home or in a place of residence except in limited circumstances, and all non-essential travel was prohibited to combat the spread of COVID-19.<sup>30</sup>

Both in the United States and globally, those working in the world of IPV and DV response raised concerns that a possible consequence of lockdown policies could be an intensification in domestic violence against partners and children.<sup>31</sup> Lockdown conditions provided increased potential for controlling behaviors such as limiting social interactions to only household members, reducing mobility, and therefore increasing surveillance and monitoring of the behaviors and movements of partners and children. COVID-19 also presented multiple health and financial stressors and strains such as unemployment, food and shelter

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27. *CDC’s Global Resources Pivot to Address COVID-19*, CTRS. DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/globalhealth/resources/reports/annual/2021/global-resources-pivot.html> (last visited Oct. 16, 2022).

28. White, *supra* note 1.

29. Mary Spicuzza, *Milwaukee’s Stay-at-Home Order in Place—Bars Cannot Open and Public Gatherings Prohibited, Says Mayor Tom Barrett*, MILWAUKEE J. SENTINEL (May 14, 2020), <https://www.jsonline.com/story/news/politics/2020/05/13/milwaukee-safer-home-order-still-place-bars-not-open-coronavirus-mayor-tom-barrett-stay-home/5188268002/>.

30. Andrea Palm, *Emergency Order #28: Safer at Home Order*, WIS. DEP’T HEALTH SERVS. (2020), [https://content.govdelivery.com/attachments/WIGOV/2020/04/16/file\\_attachments/1428995/EMO28-SaferAtHome.pdf](https://content.govdelivery.com/attachments/WIGOV/2020/04/16/file_attachments/1428995/EMO28-SaferAtHome.pdf). Exceptions were made for “essential workers,” such as hospital staff and grocery store employees. The Wisconsin emergency order was overturned May 13, 2020, about two weeks before it was set to expire, but all public and private K–12 schools remained closed for in-person schooling for the remainder of the school year as did non-essential businesses, group sports, playgrounds, and many parks. *Wis. Legislature v. Palm*, 942 N.W.2d 900, 906 (Wis. 2020).

31. Ashri Anurudran et al., *Domestic Violence Amid COVID-19*, 150 INT’L J. GYNECOLOGY & OBSTETRICS. 255, 255 (2020); *see also* Mansi Vora et al., *COVID-19 and Violence Against Women*, 53 ASIAN J. PSYCHIATRY (2020).

insecurity, loss of childcare and schooling, and damaged emotional well-being. Economic insecurity is a well-known stressor associated with IPV,<sup>32</sup> as are periods of forced proximity.<sup>33</sup> Research indicates that stressors like these elevate the potential for child abuse and neglect,<sup>34</sup> and are also associated with intimate partner violence.<sup>35</sup> COVID-19 “Safer-at-Home” orders—combined with the economic crisis that characterized the onset of the pandemic—thus unintentionally intensified the risk of IPV, trapping at-risk families and partners together while simultaneously disrupting access to social services and other resources for help.<sup>36</sup>

## 2. Studying the Impact on Survivors and Service Providers

We recruited two populations for the study. Our primary dataset included a group of ninety-two English or Spanish-speaking individuals over eighteen years of age seeking services from the Sojourner for assistance with domestic violence.

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32. Frederick Buttell & Regardt J. Ferreira, *The Hidden Disaster of COVID-19: Intimate Partner Violence*, 12 PSYCH. TRAUMA: THEORY, RSCH., PRAC., & POL'Y S197, S197 (2020); Amber Peterman et al., *Pandemics and Violence Against Women and Children 6* (CTR. FOR GLOB. DEV., Working Paper No. 528, Apr. 2020), <https://cgdev.org/sites/default/files/pandemics-and-vawg-april2.pdf>.

33. Deniz Ertan et al., *COVID-19: Urgency for Distancing from Domestic Violence*, 11 EUROPEAN J. PSYCHOTRAUMATOLOGY 1, 2 (2020).

34. Robert Agnew et al., *A General Strain Theory Approach to Families and Delinquency*, in 2 FAMILIES, CRIME & CRIM. JUST. 113 (Greer L. Fox & Michael L. Benson, eds. 2000).

35. BLACK ET AL., *supra* note 14, at 4; see Annmarie Cano & Dina Vivian, *Life Stressors and Husband-to-Wife Violence*, 6 AGGRESSION & VIOLENT BEHAV. 459–80 (2001); Deborah M. Capaldi et al., *A Systematic Review of Risk Factors for Intimate Partner Violence*, 3 PARTNER ABUSE 231, 244 (2012); Andrea L. Roberts et al., *Adulthood Stressors, History of Childhood Adversity, and Risk of Perpetration of Intimate Partner Violence*, 40 AM. J. PREV. MED. 128, 128 (2011).

36. Emily Leslie & Riley Wilson, *Sheltering in Place and Domestic Violence: Evidence from Calls for Service During COVID-19*, J. PUB. ECON., Sept. 2020, at 1, 7 (finding a 10% increase in calls between March and the end of May 2020); see Lin-chi Hsu & Alexander Henke, *The Effect of Sheltering in Place on Police Reports of Domestic Violence in the US*, 27 FEMINIST ECON. 362, 363 (2021) (finding a 6% increase in calls for March and April 2020); Lin-chi Hsu & Alexander Henke, *COVID-19, Staying at Home, and Domestic Violence*, 19 REV. ECON. HOUSEHOLD 145, 145 (finding an increase in domestic violence by over 5% between March and the end of May 2020); Alex R. Piquero et al., *Domestic Violence During the COVID-19 Pandemic: Evidence from a Systematic Review and Meta-Analysis*, 74 J. CRIM. JUST. 128 (2021).

Sojourner has operated as a provider of DV/IPV services since 1975 in the City of Milwaukee.<sup>37</sup>

This sample was recruited from DV survivors referred to Sojourner through multiple avenues: utilizing Sojourner's emergency shelter, calling the 24/7 hotline, calling the police, or filing a restraining order between June 20 and October 1, 2020.<sup>38</sup> Participants were asked about their living situation, mental health, experience with the courts and employment, as well as demographic questions.<sup>39</sup>

The second study population included Milwaukee area domestic violence and legal service providers. A sample of twelve service providers, legal advocates, and court commissioners completed in-depth, semi-structured interviews. Interviewees were asked to reflect on changes they had experienced post March 2020 across a range of topics. The service providers interviewed were from Sojourner and three other agencies that support survivors of domestic violence and interface with the court system.<sup>40</sup>

The overwhelming sentiment expressed by advocacy staff and agency directors was that Milwaukee was in the middle of a "crisis within a crisis": a public health emergency erupting within a crisis of interpersonal violence. In 2020, Sojourner made 61,902 contacts with 9,907 women, children, and men in Milwaukee County.<sup>41</sup> Of

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37. In November 2015, Sojourner's offices moved to a 72,000 square foot facility shared with 13 other co-located agencies. Court, police, and social service agencies are co-located for the purpose of working more effectively together to collaboratively serve families impacted by violence, allowing them to get multiple service needs met in a single location. Sojourner follows the national Family Justice Center (FJC) model designed to co-located services and strengthen the relationship between service providers caring for DV survivors and their families. Casey Gwinn et al., *The Family Justice Center Collaborative Model*, 27 ST. LOUIS U. PUB. L. REV. 79, 119 (2007).

38. The ninety-two individuals in the study sample represented 1.8% of total service seekers utilizing those Sojourner services during that time period. VLADYSLAVA SNYDER ET AL., *supra* note 12, at 6; *see* HEATHER R. HLAVKA ET AL., UNDERSTANDING DOMESTIC ABUSE RESTRAINING ORDER PROCESS IN MILWAUKEE COUNTY'S COURTS AFTER COVID-19: WHEN SAFER-AT-HOME ISN'T SAFE (forthcoming 2022) (manuscript at 2) (on file with authors).

39. HLAVKA ET AL., *supra* note 38 (manuscript at 2).

40. Those agencies are not named to maintain the confidentiality of the interviewees. While some clients seek services from multiple agencies at once, others work exclusively with one agency. There is some coordination between the different agencies, and it should be noted that the client population served by each agency often gets different levels of intervention and advocacy.

41. SOJOURNER, ANNUAL REPORT (2020), [https://static1.squarespace.com/static/5d39f654dfc553000198b222/t/60dc7ca0ca63fc646e4d3c6f/1625062589292/Sojourner+Annual+Report+2020\\_final\\_print-friendly.pdf](https://static1.squarespace.com/static/5d39f654dfc553000198b222/t/60dc7ca0ca63fc646e4d3c6f/1625062589292/Sojourner+Annual+Report+2020_final_print-friendly.pdf).

these contacts, 15,089 calls came through the 24-hour hotline.<sup>42</sup> Domestic violence survivors, community members, and law enforcement officers initiated these calls to the hotline. Sojourner provided 13,314 nights of shelter to 625 people leaving domestic violence environments (a 21% increase from the previous year).<sup>43</sup> Additionally, 3,564 people seeking restraining orders received support, 619 survivors received help visiting the District Attorney's Office and navigating the criminal court system, while 4,618 survivors of a law enforcement-involved domestic violence incident received follow-up support from a Sojourner advocate.<sup>44</sup> There was an eight percent increase in the number of DV/IPV survivors served by advocates who were co-located at police districts throughout Milwaukee in 2020.<sup>45</sup>

In response to the state and local Stay-at-Home orders, in March 2020, DV and IPV service providers in Milwaukee County rapidly implemented policies that would shift most day-to-day services from in person to virtual options. This required on-the-ground improvisation, the development of plans and infrastructures that did not previously exist, and new approaches to the management of risk to clients who now faced challenges of navigating IPV as well as increased risk of financial vulnerability and risk of infection and illness.

### *3. The Impact of COVID-19 on Survivors*

The COVID-19 pandemic had devastating effects on many of the participants in the study. As previous research demonstrates, social isolation, unemployment, and financial instability are significant risk factors for domestic violence, particularly for families who have already experienced violent incidents in the past. Participants in our study confirmed these previous findings and described COVID-19 and "Safer-at-Home" orders as precursors to considerable financial and emotional stress. Most study participants reported major physical and mental health concerns including increased depression and anxiety, fear of contracting the virus with pre-existing health conditions, increased frequency or intensity of IPV, increased social isolation

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42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

and economic instability, and intensified parental responsibilities at home given the closing of daycares and schools.

The onset of this new combination of stressors occurred over a very short period of time. Immediate loss of employment or reduction in work hours led to decreases in income and wages.<sup>46</sup> Many participants reported an increase in domestic violence, citing strain and stress from financial instability that led to increased mental health conditions such as depression, anxiety, and substance abuse. For some participants, COVID-19 “aggravated the [abusive] situation”;<sup>47</sup> they felt desperate given their financial situations, or they felt manipulated and guilty into taking care of their partner due to health situations, job loss, or housing insecurity. In many cases, COVID-19 and the consequent isolation, fear, financial ruin, and, in some cases, debilitating health problems and family deaths became reasons to remain with an abusive partner.

Similarly, other participants disclosed that COVID-19 itself was used as a mechanism of abuse and control. One participant explained that she was in a year-long custody battle with her abusive ex-partner who lived out of state: “I feel like COVID was a catalyst of one of the worst years of my life. Not only did I get COVID, but because of COVID my ex used that as a shield to not bring my children back.”<sup>48</sup> A few participants reported a distinct change in the type of coercive control and abuse experienced, citing cyberstalking through Facebook and email.<sup>49</sup>

We note this impact as we now turn to the assessment of the process through which survivors receive protection and social

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46. “Unfortunately, we have three clients now we do not know what to do and how to meet them because even now the [agency with whom we partner that] has a much bigger budget than we ever did, they have cut the amount of people we are allowed to refer them to basically zero. And now what do we do? And we have had clients because we have been unable to get them temporary housing and there are things . . . going on with their budget, they will not accept shelter, and they have now gone back to the husband and they will say that is the only reason they have no choice and we do not have the budget for housing, we can pay for emergency motels for a few days but that isn’t a long-term solution.” Advocate interviewers, *supra* note 3, interview with Service Provider # 411.

47. Survivor interviewers, *supra* note 3, interview with Client # 1747.

48. Survivor interviewers, *supra* note 3, interview with Client # 5127.

49. As one participant shared, social media was used to increase social isolation as well as to track participants whereabouts: “He’s been reaching out to Facebook friends that he knows that he talks to, and he’s in-boxing them . . . it’s a bunch of mess and crap, I’m trying to stay away from it as much as possible. I know he’s trying to get my attention, and he wants to talk to me . . . he doesn’t want me to have any friends. He doesn’t want me to move on. And I’m fighting to move on. He’s never backed off.” Survivor interviewers, *supra* note 3, interview with Client # 2742.

services, which are both crucial to successfully responding to trauma.

### III. PROCESS PLURALITY

The concept of process plurality asks us to understand and then utilize different technological options to accomplish the goals of the legal system.<sup>50</sup> This Part of the Article investigates the processes implemented by the courts up to today in the shift from a fully in-person experience to a hybrid one.

As explained below, the Milwaukee County Court responded to COVID-19 restrictions by immediately shifting all TROs to electronic filing, while staying in person for hearings pertaining to long-term restraining orders. Essentially, the court system used either the process it had before (face-to-face) or went fully online with forms and decisions made in an asynchronous manner. Because no video conferencing communication system was added to the TRO process, this meant that there was no simultaneous communication between the courts and the petitioners (or respondents) until the in-person hearing for a long-term restraining order.<sup>51</sup> The implications of this dramatic shift are discussed below.

#### A. Pandemic Changes to the Domestic Abuse Restraining Order Process in Milwaukee, Wisconsin

Other counties in the state of Wisconsin began offering an option to e-file for a TRO in 2016,<sup>52</sup> but Milwaukee County was among the last counties to transition to an e-filing system, and this

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50. Carrie Menkel-Meadow, *From Legal Disputes to Conflict Resolution and Human Problem Solving: Legal Dispute Resolution in a Multidisciplinary Context*, 54 J. LEGAL EDUC. 7, 7 (2004); Carrie Menkel-Meadow, *Regulation of Dispute Resolution in the United States of America: From the Formal to the Informal to the "Semi-Formal,"* in REGULATING DISPUTE RESOLUTION: ADR AND ACCESS TO JUSTICE AT THE CROSSROADS 423 (Felix Steffek et al. eds., 2013). Again, previous assessments of ODR and online options can be useful here. See also Andrea Kupfer Schneider, *Hold the Phone: Choosing Among Modes of Communication*, in NEGOTIATION ESSENTIALS FOR LAWYERS 99 (Andrea Kupfer Schneider and Chris Honeyman eds., 2019).

51. Confirmed by Chief Judge Mary Triggiano as of August 24, 2022.

52. E-filing is mandatory only for attorneys, not for *pro se* individuals, who can still file on paper. WIS. STAT. § 801.18 (2021).

change was only adopted fully because of the pandemic.<sup>53</sup> Prior to March 24, 2020, all injunction hearings and advocacy support took place in person at the Milwaukee County Courthouse. Before the pandemic, advocates were available to speak to TRO petitioners in person prior to their hearing, and to offer moral support, as well as tips and reminders about court procedures and legal statutes. Also, if the petitioner desired, advocates were available to sit next to them during the proceedings. This type of in-person support at a court hearing has been widely seen as critical to the petitioner's ability to effectively navigate court proceedings, given that the vast majority of petitioners are pro se or not represented by an attorney at injunction hearings.

With the shift to remote and online processes, all ex parte TROs moved to e-filing, and court commissioners began to review paperwork filed by petitioners. They either granted or denied the request based on the electronic filing, replacing the in-person hearing. For petitioners seeking to electronically file for a TRO, there are many technical requirements, including registering for an eCourts account, providing an active email address, and having reliable internet access, up-to-date web browsers, and software capabilities.<sup>54</sup>

Those who file a TRO are termed *petitioners*, while the parties against whom they file applications are termed *respondents*. If the TRO is not sufficient and the petitioner wishes to file and receive a restraining order after the TRO expires, the petitioner must participate in a two-step process: first, the petitioner must file and receive the initial TRO, valid for up to fourteen days, and then must request an injunction hearing to determine receipt of a longer-term order. Prior to March 24, 2020, Sojourner advocates met with petitioners in person on the seventh floor of the Milwaukee County Courthouse for the initial application for a TRO. Pre-COVID, the two-to-three-hour TRO process involved a Sojourner advocate conducting an in-person client intake, developing a safety plan, providing referrals to additional support

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53. As Chief Judge Mary Triggiano put it, "the Milwaukee County Courts have always believed it is important to provide victims applying for domestic violence TROs or injunctions with the Cadillac approach—in-person hearings, procedural due process, and timely decision-making. The introduction of e-filing TROs has negatively impacted our approach in countless ways."

54. *Circuit Court eFiling: Electronic Filing in Wisconsin Courts*, WIS. CT. SYS., <https://www.wicourts.gov/ecourts/efilecircuit/tech.htm> (last visited Oct. 22, 2022); WIS. STAT § 801.18.

and resources, and assisting the client in completing application documents. Then, clients met with a Family Court Commissioner in person for a hearing to determine if the TRO was granted or denied. If granted, the injunction hearing was scheduled for approximately fourteen days later. In person, the client had the opportunity to answer questions from the court commissioner if necessary. E-filing for a TRO post-COVID-19 eliminated the possibility for a conversation between the commissioner and the petitioner.

Injunction hearings, which are needed to determine whether a longer-term order will be granted, must occur no more than fourteen days after a TRO filing. In the intervening fourteen days between the initial TRO filing and the injunction hearing, respondents are served, alerting them of the filing against them and of the date and time of the injunction hearing. If a respondent is unable to be served during that time, the injunction hearing does not proceed, and the order is dropped. Lay petitioners often do not understand the importance of providing an accurate address for the respondent to be served. Therefore, advocate support at the TRO phase often includes advising the petitioner to provide multiple reliable ways to find the respondent, so as to avoid the sheriff's office being unable to serve the respondent in the intervening fourteen days.<sup>55</sup> The inability to serve respondents is a common reason for the halting of restraining order proceedings, both prior to the pandemic and during the pandemic.

### *1. Limited Advocacy Support*

Though Sojourner's courthouse office closed, some limited capacity for in person assistance in filing TROs remained throughout the pandemic for those who came to Sojourner's main offices. Most advocacy, however, took place via the phone, which began with safety screening and planning. Then advocates provided referrals for resources and support, before turning to assistance with TRO e-filing. They explained how to establish an email account, how to register for an eCourt account, and how to create and submit the correct documents for the TRO. The level of support that advocates provided varied. Some clients elected to file on their own, with verbal feedback from the advocate. Other clients

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55. Housing instability within vulnerable communities can further complicate service.



relied on the advocate to set up their email account and e-file on their behalf while they provided the necessary information to the advocate over the phone. In these cases, the advocate listened and wrote out the documents, then read back the inputs to the petitioner for final approval. On average, the pandemic-era process lasted approximately one hour per e-filing as compared to three to four hours for the in-person TRO filing. Additional advocacy follow-up was conducted via phone, text, and/or email to ensure the petitioner understood the next steps, the e-filing results, and, when applicable, the long-term injunction hearing dates.

In the pandemic-era scenario, Sojourner provided all support for any in-person injunction hearing via phone in the courthouse. Court staff would offer petitioners the option to dial an advocate into the proceedings, allowing the advocate to listen to the hearing via phone. One of the smaller service agencies negotiated with the courts to maintain their in-person advocate during restraining order hearings, arguing that telephone advocacy would introduce more challenges for their clients who were often non-English speaking and faced an array of complex immigration issues that impacted how they participated in restraining order hearings. But the large majority of petitioners only had the option to receive support through the phone. After June 7, 2021, Sojourner's Restraining Order advocates resumed stationing an advocate at the Milwaukee County Courthouse office to provide in-person injunction hearing support, while also maintaining the telephone access to legal advocacy for electronic filers.

Milwaukee County is unique compared to other counties in Wisconsin because, due to the high volume of cases, it uses dedicated family court commissioners to hear restraining order cases. Because commissioners rule on the cases, petitioners (and respondents) have the right to request a *de novo* hearing if their petition is denied. In short, either party can ask for the case to be reheard by a judge rather than a court commissioner.

## *2. Elimination of Certain Procedural Options*

Hampered by technological requirements and a lack of synchronous communication, commissioners had fewer options for how to resolve cases during the pandemic. For example, Milwaukee County statute allows a commissioner to deny a TRO if the petitioner does not meet the evidentiary burden on paper, at

which point that commissioner may then grant an in-person injunction hearing. However, the e-filing system process adopted during COVID does not allow for that possibility. Rather, it requires the petitioner to initiate an electronic request for the hearing following the initial denial of an electronically filed TRO. Similarly, prior to the pandemic, the court commissioner could issue an order of “No TRO, Hearing Only” if they believed the client may have grounds to receive a long-term order, but was not in imminent danger of physical harm. Post-COVID, this option was also eliminated during e-filing because of the requirement to use a state-run software system.<sup>56</sup>

Thus, in some cases, commissioners expressed a sense of feeling forced to grant a domestic violence TRO when they otherwise would have denied it.<sup>57</sup> Conversely, they were troubled that they sometimes denied a TRO despite feeling that there was indeed a risk to the petitioner. Working from an electronic file, their decisions were based on petitioners’ limited ability to provide the evidence in the formal filing process, a concern that normally would be addressed through testimony during in-person hearings. Moreover, with fewer filers receiving assistance from Sojourner advocates at the TRO phase, it appeared as though more filers inadvertently left out vital evidence that would have otherwise supported the granting of the order. In person, they could have provided testimonial evidence, or moved quickly to a *de novo* hearing. The e-filing system does not allow for either option.

As previously noted, there is no easy way for a petitioner to request a *de novo* hearing in the filing software, a problem that impacts petitioners in Milwaukee County alone.<sup>58</sup> This too requires a new filing. Like commissioners, advocates also noted that *de novo* hearings were often requested in person pre-COVID when hearings could be face-to-face, increasing efficiency and decreasing confusion by petitioners. When in person, petitioners could receive

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56. The option of not granting the TRO but granting a hearing for a longer-term injunction had been a Milwaukee County innovation. With the requirement to use the state-created software for the e-filing system that had already been rolled out in other counties, Milwaukee no longer had control over the outcomes that commissioners could grant. The Milwaukee Family Court Commissioners and Wisconsin state officials are working to resolve this issue, but the complications remain outstanding.

57. HLAVKA ET AL., *supra* note 38 (manuscript at 6).

58. The software filing is done through the CCAP (Consolidated Court Automation Program) of the state. *Consolidated Court Automation Program (CCAP)*, WIS. CT. SYS., [wicourts.gov/courts/offices/ccap.htm](http://wicourts.gov/courts/offices/ccap.htm) (last visited Oct. 17, 2022).

advocacy services in the courthouse both before and after filing for a TRO. Court personnel also lamented that through e-filing, they did not have the ability to delay a proceeding and reschedule it easily or to talk to the petitioner face-to-face and figure out what was going on before deciding. And, despite the statutory requirement that allows a petitioner a hearing, this has been variably interpreted and is impossible to fulfill given current technological limitations. Thus, without the ability of the commissioner to ask questions in person, TROs that were denied had to be refiled by the petitioner if they wanted to introduce more evidence to their case. One common cause of denial of TROs was that electronic filers had filed for the wrong type of TRO. Interviewees most commonly applied for either a domestic abuse order or a harassment order, and these orders had different statutory requirements. Providers and court personnel explained:

When petitioners are going to the court website, the difficulty for the petitioner is knowing- “What do I need to file? Do I file harassment? What’s the difference between a harassment and domestic abuse order for example?” Or, “What’s the difference between child abuse and a juvenile or an individual at risk?” So, they are now making this analysis on their own and then choosing off the form, and often when that form is e-Filed and it comes to the commissioners, I can tell from what they’re saying that was not their intent. So, then I have to deny their TRO and I put instructions that says, “I believe you intended to file a juvenile harassment, so this is the wrong form here.” And, in every communication I say, “Please call Sojourner for further assistance and guidance” and I provide the phone number. So, it’s like a mini conversation of what I would be telling them in person, except that [before] they probably had already met with Sojourner.<sup>59</sup>

And e-Filers without Sojourner support, are filing for the wrong statutes, filing the incorrect paperwork. There is lots of re-filing that didn’t happen before with in-person hearings. And there are implications with de novos; now, you get a de novo review for every case that is denied for substance. The petitioner has to arrange a date for court, so that necessitates more proactive behavior on the part of the petitioner.<sup>60</sup>

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59. Advocate interviewees, *supra* note 3, interview with Service Provider # 413.

60. Advocate interviewees, *supra* note 3, interview with Service Provider # 407.

An additional procedural issue with TRO e-filing was that changing or adding an attorney to a previously e-filed case necessitated a hearing.<sup>61</sup>

#### IV. IMAGINATION

The concept of imagination under process pluralism pushes us to recognize the importance of creativity and flexibility throughout the entire dispute resolution process.<sup>62</sup> In Milwaukee County, the court system is trying to evolve its online and remote processes but is hampered by state law, funding, infrastructure, and the massive size of the enterprise. These forces are not necessarily locally determined, but instead are dependent on a statewide system. In contrast, the smaller, local, and more agile DV service provider, Sojourner, has implemented different technologies across the board for each stage of filing and hearings. Imagination in the pandemic came from urgency and desperation as both the court and service providers were overwhelmed. Service providers knew that more help was needed but, at least initially, knew they had limited ability to deliver. What emerged, and will likely continue to emerge, is a casebook example of necessity being the mother of invention.

Initially in the pandemic lockdown, directors and supervisors at Sojourner described an overwhelming number of calls to their TRO assistance phone-line. Rather than being able to walk into Sojourner or to the Milwaukee County Courthouse in person, clients seeking advocacy and legal support services had to call the

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61. This was especially inefficient when clients were referred between agencies. For example, one agency initiated e-filing on behalf of a client and then referred the person to another agency for legal representation. Technically, attorneys were unable to add themselves to the file in process. Rather, they were required to schedule a hearing, potentially delaying and complicating the restraining order process. For this reason, some agency-based advocates expressed a preference to delay initiating any electronic filing until an attorney was in place to help mitigate the labor, confusion, and stress of their clients and service providers alike. TRO and injunction hearings are typically pro se with either one or both parties lacking legal representation. Some service providers reminded us, however, that even through COVID-19 related budget constraints and unemployment, many abusive partners often had more resources and more legal representation than survivors navigating the courts.

62. Carrie Menkel-Meadow, *Aha? Is Creativity Possible in Problem Solving and Teachable in Legal Education*, 6 HARV. NEGOT. L. REV. 97, 98–99 (2001); see also Andrea Kupfer Schneider & Natalie Fleury, *There's No Place Like Home: Applying Dispute Systems Design Theory to Create a Foreclosure Mediation System*, 11 NEV. L. REV. 368, 368–69 (2011) (discussing the use of creative DSD options to protect those most vulnerable in the legal system).

main phone line between working hours. In addition, many survivors left messages after hours, requiring staff to return those phone calls in the morning. Sojourner's goal was to return phone messages to clients within twenty-four hours, which meant that staff were not always able to reach clients when they were available and "ready" to speak with advocacy staff.

Many social service agencies had to dramatically shift job responsibilities, staffing, and infrastructure changes to comply with CDC protocols and safety measures. Advocates and other staff required training in technology and e-filing protocols, and teams needed to quickly assess staffing demands and client requests for services. When the Milwaukee County Courthouse closed, logistical pressures ensued, including the need for laptops, cell phones, overtime, and advanced technologies for remote work. With no increases to staffing, advocates and staff put in additional time serving survivors and reconfiguring support processes, causing stress and strain on resources and agency capacity.<sup>63</sup>

Again, restraining order support and advocacy services were almost all in person prior to the pandemic. Post-pandemic, however, each stage of the restraining order process has benefited from technological innovation and variety. Petitioners are no longer required to show up to court to file—they can now access filing help by calling and having an advocate walk them through the process filing over the phone. Petitioners can set up an appointment for this assistance via text messaging, and they can be put in a waitlist queue for both legal and social advocacy assistance. Creating this "process plurality" has taken technological innovation, but, more importantly, it has required significant labor.<sup>64</sup> The largest challenge has been in the staffing. What used to be an in-person office in the courthouse responding to thirty to forty walk-in appointments per day must now do far more. Sojourner needed to add more staff to not only respond to

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63. Additionally, the shift to remote work impacted mental health and feelings of isolation experienced by advocates and court personnel. Many interviewees discussed the importance of compassion and care for one another in DV/IPV work so that staff would have the mental energy and support needed in the long-term. Oftentimes, that care work is done in person through supportive conversations, sharing smiles, laughter, and resources to get through difficult cases. Interviewees overwhelmingly pointed to the importance of virtual meetings to see each other and increasing time for advocate and staff debriefing and sharing sessions to stay connected and supportive in times of isolation and stress in order to combat burn-out.

64. Although technological advancements have been crucial, the adaptation of medical technology used for managing appointments into social services was key.

the thirty to forty messages left for them overnight, but also to respond to the actively calling and texting survivors during business hours to assist them with filing. All of these challenges are just at the TRO filing stage and do not take into account the additional needs of the long-term restraining order stage.

Sojourner recognized the need for more staffing on the TRO side and decided to spend more money (correctly assuming that their donors and the government would provide more financial support for this increased staffing). After mid-August 2020, restraining order advocates began staggered schedules to extend support for clients in e-filing restraining orders. Staffing went from 9:00 AM–5:00 PM to staggered shifts where advocates came earlier to respond to messages left overnight and stayed later. This meant that advocates worked from 8:00 AM–4:00 PM and from 10:00 AM–6:00 PM on a rotating basis to extend support services to clients e-filing TROs. There was an additional scramble for the necessary technology. Texting for TRO filing support began in May 2021, and online appointment software launched in February 2022. In addition, working with law firms and the pro bono clinic at the local law school, Sojourner launched a standby pro bono lawyer program through which lawyers helped people on the waitlist with filing.

## V. PROCEDURAL AND SUBSTANTIVE JUSTICE

The questions concerning justice in our legal system and in any reform efforts are twofold—how do petitioners respond to the process (procedural justice),<sup>65</sup> and what are the actual outcomes with the shift to remote processes during the pandemic?

### A. Procedural Justice—Voice, Fairness, and Access

To assess procedural justice in terms of voice and fairness, we look to the perspectives voiced by domestic violence and legal service providers, as well as clients' perceptions of court and social

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65. Nancy Welsh, *The Thinning Vision of Self-Determination in Court-Connected Mediation: The Inevitable Price of Institutionalization*, 6 HARV. NEGOT. L. REV. 1, 7–8 (2001); Leonard Riskin & Nancy Welsh, *Is That All There Is: The Problem in Court-Oriented Mediation*, 15 GEO. MASON L. REV. 863, 928 (2007); Bobbi McAdoo & Nancy Welsh, *Look Before You Leap and Keep on Looking: Lessons from the Institutionalization of Court-Connected Mediation*, 5 NEV. L.J. 399, 400 (2004); Orna Rabinovich-Einy, *The Legitimacy Crisis and the Future of Courts*, 17 CARDOZO J. CONFLICT RESOL. 23, 49–50 (2015).

service personnel. Out of the total Sojourner clients contacted in the study (n=92), twenty-eight said they had filed for a domestic abuse TRO with the Milwaukee County Courts. Of those, seventeen, or slightly more than half, indicated that they connected with an advocate from Sojourner while filing (fourteen over the phone; three in person). Eleven clients filed without assistance. When asked about prior contact with the courts, eleven clients had previously filed for a TRO. For seventeen clients, it was their first time filing. We asked clients how the TRO filing process during COVID-19 compared to the filing process pre-COVID. Overall, participant responses were mixed.

### *1. Advantages of an E-filing System for Restraining Orders*

For some participants, the e-filing system (and concurrent access to service providers over the phone) was a net positive. Survivors appreciated being able to call Sojourner advocacy services or file for a TRO online whenever it fit their schedule rather than having to fit into the court's schedule. For these clients, they appreciated that the online process was "more convenient"<sup>66</sup> and "quicker."<sup>67</sup> Clients' stated reasons for this preference included not having to miss work to go to the courthouse in person, not having to navigate childcare to go to the court, nor juggling transportation issues, and finally, not experiencing the fear and anxiety about facing one's abuser in person. In addition, some participants added that because of health concerns and pre-existing conditions, they would have feared the risk of getting sick from COVID-19 if they had to go to the courthouse in person.

Several clients noted that the ability to attend the injunction hearing online rather than in person was preferable to trying to obtain an injunction in person. Interestingly, it seemed that in several cases the online "mute" function was advantageous when it came to filtering out or limiting the participation of the petitioner and respondent during the injunction hearings. For example, one participant noted: "My biggest concern was meeting with the person that was causing the problems—the outbursts, the over-talking, but [the commissioner] was able to mute him online."<sup>68</sup>

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66. Survivor interviewers, *supra* note 3, interview with Client # 3348, 1848, 1861.

67. Survivor interviewers, *supra* note 3, interview with Client # 1100.

68. *Id.*

## *2. Concerns with the E-filing System*

On the other hand, for survivors, advocates, and court personnel, there were numerous concerns with a fully online system. Commissioners faced filings laced with mistakes and, as noted above, had more limited options to respond. Petitioners navigating the electronic filing system on their own began uploading copious attachments, not knowing what evidence would pertain to their cases, and court clerks and commissioners had to wade through paperwork that would have previously been vetted by one of Sojourner's advocates. The addition of such extensive files, particularly in light of the volume of cases in Milwaukee County, overwhelmed the court as it sought to address each case as efficiently and quickly as possible. Overall, concerns with the new system can be categorized into five broad categories, each of which will be addressed below:

- a. Face-to-face connection and synchronous communication are lost;
- b. Narrative composition of legal documents for DV filings is less effective;
- c. Limited access to technology and/or internet services and related privacy issues meant that filings were not done or completed;
- d. Understanding of legal forms and jargon, always challenging, was even harder over the phone (or when petitioners did not receive support in filing). This concern was compounded for non-English speaking petitioners for whom language barriers sometimes made filing harder or impossible to complete; and
- e. Potentially losing face-to-face contact and support also meant that survivors were less likely to be connected with on-going support and social services.



a. Lack of Face-to-Face Connection with Advocates and Court Personnel

For some petitioners, a virtual process felt “too quick, almost unreal.”<sup>69</sup> Many called Sojourner’s hotline, left messages, and played “phone-tag” with advocates: “They’ve called back every so many days—It’s that loophole, and I don’t think they can help. I know they want to.”<sup>70</sup> Some clients preferred to talk in person, rather than on the phone or virtually with advocates and court commissioners. They reported feeling more comfortable in person, and better able to express the seriousness of the matter, and to share their concerns and have their needs addressed: “when online, you cannot see how serious the matter is. It is important for the judge and higher authorities to see body language and expressions between both parties.”<sup>71</sup> Others concurred with this sentiment:

The authorities get more of an understanding on what’s going on [when in person] and it [the TRO] is granted the same day rather than waiting three days online.<sup>72</sup>

In person, one would have the ability to ask more questions and have a better understanding of the process. Communication would have been better in person.<sup>73</sup>

It would be better because I probably would have the restraining order already if it was in person. Trying to get a restraining order over the phone has been extremely difficult.<sup>74</sup>

Some clients much preferred to go through the process in person rather than over the phone or online with a Sojourner advocate. In person, the client did not have to worry about the abusive partner at home or that the partner had or might obtain access to the client’s phone and email messages. Some clients made calls from a friend’s phone if they did not have an unmonitored device of their own.

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69. *Id.*

70. Survivor interviewers, *supra* note 3, interview with Client # 2398.

71. Survivor interviewers, *supra* note 3, interview with Client # 1100.

72. Survivor interviewers, *supra* note 3, interview with Client # 1106.

73. Survivor interviewers, *supra* note 3, interview with Client # 1396.

74. Survivor interviewers, *supra* note 3, interview with Client # 1908.

As mentioned previously, court personnel also noted that the volume of files increased with e-filing. When e-filing, clients often were left to make evidentiary choices on their own without the assistance of an advocate. Without guidance from experienced advocates, petitioners often submitted legally irrelevant materials, ranging from nude pictures, text message transcripts, medical records, and even love letters. Commissioners noted that this change dramatically impacted the Office of the Clerk, as the growth in the size of case files required more staffing.<sup>75</sup> Court commissioners and judges also had to wade through the lengthy files to come to a decision on the TRO petition.

Moreover, sorting through these copious materials was more challenging without the benefit of being able to ask the petitioner or the respondent specific questions in person. One commissioner indicated that:

It's much easier as a judicial officer to make a decision about the validity of a restraining order when you have the petitioner in front of you. You can get some context. You can get some sense of credibility. You can flesh out what you need to know in order to make the best possible decisions.<sup>76</sup>

On the other hand, the injunction courts are not equipped for virtual hearings nor are their transcription personnel. If allowed to appear remotely, the petitioner appears by phone; thus, they are unable to provide or show the commissioner additional evidentiary documents.

#### b. TRO Narrative Composition and Face-to-Face Support

Similarly, providers expressed concern over potential qualitative differences between TRO petitions done with and without advocacy assistance, and petitioners experienced very

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75. Court personnel also commented on the rise of “reciprocal” cases—those in which both parties had filed injunction cases against each other. Commissioners attributed this increase to the twenty-four-hour access and ease of e-filing for some parties, noting that in some cases a single petitioner may have filed harassment orders cases against multiple individuals. All these cases would hit the system at the same time. For example, one petitioner filed for harassment injunctions against multiple family members, and another against their whole neighborhood. This phenomenon seemed relatively new to Milwaukee court personnel, and it stands to reason that when TROs were only completed in person, these types of filing anomalies might be contained or limited by either Sojourner advocates or court commissioners.

76. Advocate interviewers, *supra* note 3, interview with Service Provider # 407.

different processes based on their use of advocacy resources. A central factor to the outcome of TRO filings is whether they meet the legal requirements necessary to convince a court commissioner that the petitioner was abused or has a reasonable fear that abuse will occur by the respondent. The filing laws contain rules about narrative composition: dictating what can be written, by whom, how it is written, when it can be filed, and so forth. The petitioners may also file supplemental evidentiary documents like police reports, phone or medical records, and pictures. Whether the narrative includes clear, relevant information and supporting documents likely affects whether the TRO is granted or not. Some service providers worried that without advocacy support, petitions may have lacked essential details about what happened, when, where it happened, who was there, and additional details that could have been ascertained in person. One advocate with legal expertise opined:

It seems like the domestic abuse restraining orders are kind of lacking in some of that detail that they might get when the somebody's in person, which can be a safety issue that if you're not granted that initial order and kind of complicates the process, now you are looking to either refile or have a hearing on that temporary order.<sup>77</sup>

Often, storytelling is not a sequential process; narrating a story of abuse does not always occur in chronological order. This challenge has been studied by Professor Shonna Trinch, who shows how legal advocates learn to record, arrange, and, in some cases, translate, the testimony of domestic violence survivors in the courts.<sup>78</sup> Stories are shared, piece by piece, sometimes including dates and times, but often not. Service providers thus need to be good at interviewing, listening, and understanding the narrative conventions that the service seeker employs in relating the harms they have experienced. As this process moved from face-to-face to a phone interaction, many survivors found the experience off-putting compared with in-person services:

The challenge for the advocate, I would say, is about how do you continue to engage people over the phone? You can't read

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77. Advocate interviewers, *supra* note 3, interview with Service Provider # 402.

78. SHONNA L. TRINCH, *LATINA'S NARRATIVES OF DOMESTIC ABUSE: DISCREPANT VERSIONS OF VIOLENCE* 2 (2003).

someone over the phone like you can in person, right? I can't ease you, or see that you're anxious, or see that you're getting upset with the conversation or what's been going on with you. In person, you can manage all those things. Over the phone, the challenge that I think advocates have, is how to engage every caller so that it doesn't feel mechanical—that it doesn't feel like I'm just checking this person off my list.<sup>79</sup>

The remote nature of TRO filing, and its reliance on telephonic and internet systems, generated a different process and, potentially, a different outcome for petitioners.

### c. Technological Barriers to Filing

The technological challenge for many socioeconomically disadvantaged users of the legal system was a national one.<sup>80</sup> Survivors may not have access to computers, reliable internet service, private and unmonitored email addresses, private cell phones, or even private spaces from which to e-file. Unemployment increased during the pandemic, particularly impacting women, who might have relied on workplaces for access to such technology and privacy from abusive household members to access said technology.<sup>81</sup> Multiple service providers reported having to plan for

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79. Advocate interviewers, *supra* note 3, interview with Service Provider # 406.

80. CAL. COMM'N ON ACCESS TO JUST., REMOTE HEARINGS AND ACCESS TO JUSTICE DURING COVID-19 AND BEYOND 7 (2020), [https://www.ncsc.org/\\_data/assets/pdf\\_file/0018/40365/RRT-Technology-ATJ-Remote-Hearings-Guide.pdf](https://www.ncsc.org/_data/assets/pdf_file/0018/40365/RRT-Technology-ATJ-Remote-Hearings-Guide.pdf); *see also Internet Broadband Fact Sheet*, PEW RSCH. CTR., <https://www.pewresearch.org/internet/fact-sheet/internet-broadband/> (last visited Oct. 22, 2022) (presenting data on bandwidth use in the U.S. across demographics); THE PEW CHARITABLE TRUSTS, HOW COURTS EMBRACE TECHNOLOGY, MET THE PANDEMIC CHALLENGE, AND REVOLUTIONIZED THEIR OPERATIONS 2 (2021), <https://www.pewtrusts.org/-/media/assets/2021/12/how-courts-embraced-technology.pdf> (finding that “litigants without legal representation, especially those with other accessibility needs, faced significant disadvantages, even when systems were technically open to them”); *id.* at 13–14 (stating that “in a review of nearly 10,000 court documents 14 from all 50 states and D.C., between February and October 2020, researchers from Wesleyan University found that only 253 documents mentioned language access and just 154 contained information for people with disabilities. In total, less than 3% of the documents referenced access for people with limited English proficiency, less than 1.5% mentioned the needs of people with disabilities, and none specifically addressed technology accommodations for these populations”).

81. N.Y. DEP'T OF LAB., WOMEN IN THE WORKFORCE: WORKFORCE GUIDANCE AND INFORMATION FOR WOMEN EVALUATION REPORT 2021, at 2 (2021), [https://dol.ny.gov/system/files/documents/2021/12/women\\_in\\_the\\_workforce\\_nysdol\\_2021\\_0.pdf](https://dol.ny.gov/system/files/documents/2021/12/women_in_the_workforce_nysdol_2021_0.pdf); N.Y.C. ECON. DEV. CORP., A CRISIS FOR WORKING WOMEN AND MOTHERS MAKING THE

clients to come to use phones and computers at agency sites. The e-filing system worked on a range of devices including tablets, smartphones, and computers, but at least one service provider noted that a computer was preferable to a smartphone, as the small screen of the smartphone made the e-filing process unwieldy. Several frustrated clients of one service provider came into her agency to use the computer after being unable to file using a smartphone.

Even if filers had access to devices, some did not have email addresses, which agencies would help them to establish in order to facilitate the e-filing process. Some agencies had to get consent to check client's email accounts on their behalf, as advocates might require access to the information stored there. Each communication carried with it concerns about privacy. The e-filing system requires a significant amount of time spent on the computer or smart phone, which was made even more difficult during COVID-19 lockdowns when partners and other family members may be together in the home. Abusive partners often track their victim's internet and/or cell phone usage and may demand the victim share passwords in order to access email accounts, putting the survivor in increased danger.<sup>82</sup>

It is important to note that process plurality does not rest entirely on the infrastructures of courts and service providers, but also embedded in local technological ecologies. Our study conducted a separate analysis to understand the technological barriers to accessing services and filing. Sojourner's clients who participated in this study primarily came from zip codes that were part of Milwaukee County, and more frequently the City of Milwaukee.<sup>83</sup> Figure 1 below shows the variation in the number of Sojourner's clients who participated in this study across Milwaukee's census tracts (geographic areas that approximate

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CASE FOR CHILDCARE AT THE CORE OF ECONOMIC RECOVERY IN NYC 2 (2021), [https://women.nyc/wp-content/uploads/2021/05/2021-ChildcareInnovation-SOTE\\_report.pdf](https://women.nyc/wp-content/uploads/2021/05/2021-ChildcareInnovation-SOTE_report.pdf) (“[A]lmost twice as many women as men in NYC had dropped out of the labor force by May 2020.”).

82. Cindy Southworth & Sarah Tucker, *Technology, Stalking and Domestic Violence Victims*, 76 MISS. L.J. 667, 667 (2007).

83. Milwaukee's ZIP code 53218 was home to ten of Sojourner's clients who participated in the study, and the ZIP codes 53204, 53206, 53208, 53210, 53216, and 53233 are each home to at least five or more Sojourner's clients who participated in the study. Taken together, the Sojourner's clients primarily come from the northwest side of Milwaukee, Wisconsin.

neighborhoods). These patterns suggest that Sojourner's clients came from some of the poorest neighborhoods in the city.<sup>84</sup>

### Concentrated Socioeconomic Disadvantage

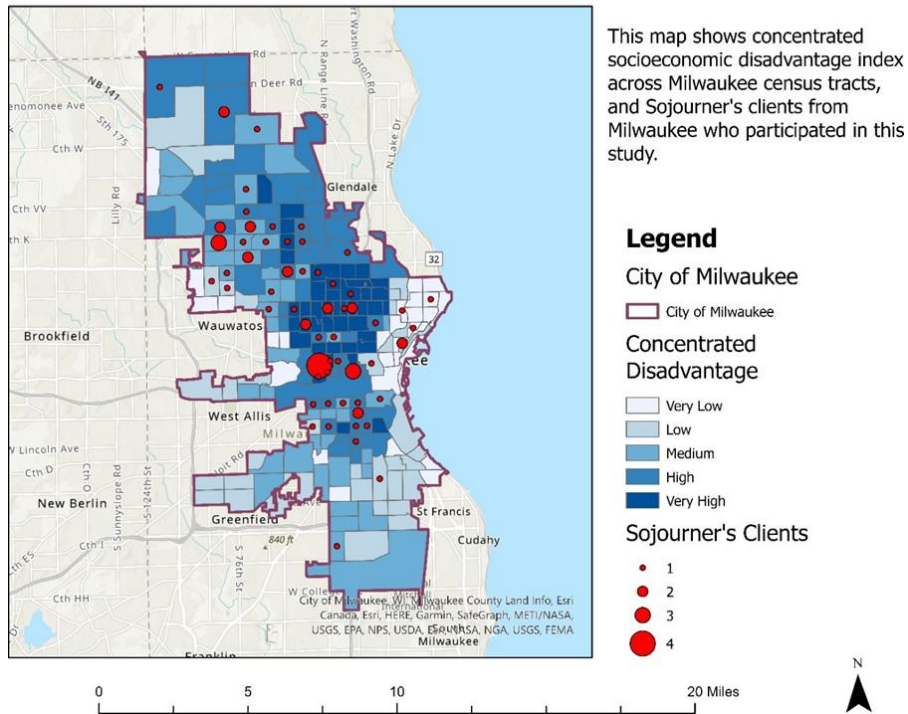


Figure 1. Concentrated socioeconomic disadvantage and Sojourner's clients from Milwaukee, WI displayed by census tracts.<sup>85</sup>

Across Milwaukee census tracts, we also evaluated access to computing technology and compared that to the location of study participants. Access to computing technology, including computers (desktop or laptop), smartphones, and tablets, across Milwaukee census tracts is shown below in Figure 2. Areas that have the lowest access to computing technology are found in the near south side and the near north side, with between 28.91% and 40.70% of households having no access to the technology.<sup>86</sup> These are some of

84. ALEKSANDRA SNOWDEN, SOJOURNER CLIENTS AND ACCESS TO TECHNOLOGY: A GEOSPATIAL ANALYSIS (forthcoming 2022) (manuscript at 23) (on file with authors).

85. *Id.*

86. *Id.*

the same areas where we also found high rates of concentrated socioeconomic disadvantage. Not only do some of Sojourner's clients who participated in this study live in socioeconomically underserved neighborhoods, but their neighborhoods also lack computing technology access. Ergo, a remote justice system that relies on participants to have access via technology will fail those in need.

### Computing Technology Access

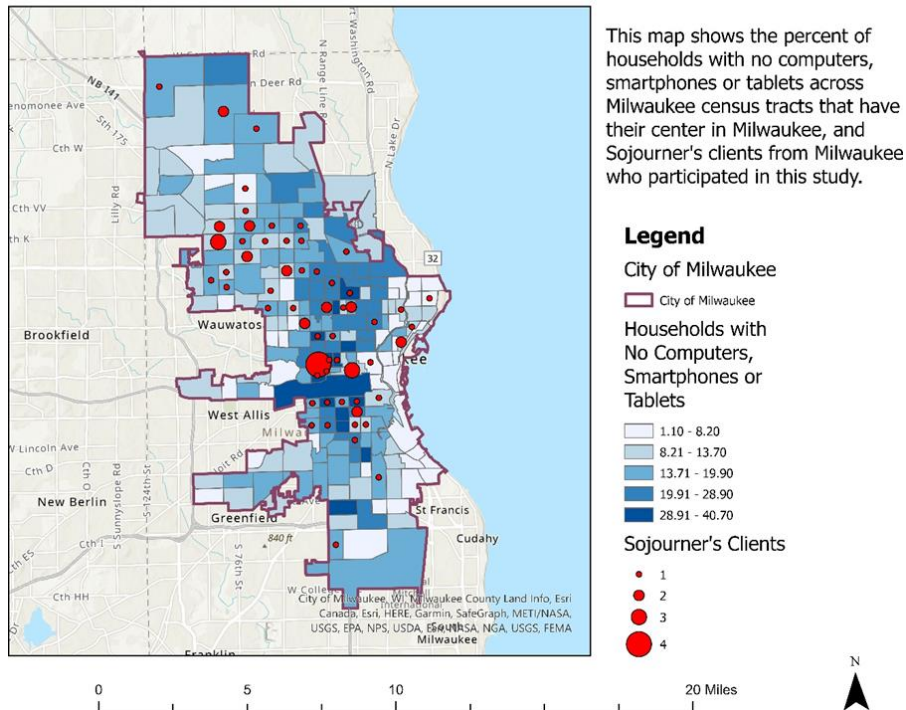


Figure 2. Computing technology access and Sojourner's clients from Milwaukee, WI displayed by census tracts.<sup>87</sup>

Expanding broadband coverage in communities most impacted by domestic violence will help to serve not only those for whom online filing of TROs is required, but also will help to improve health and equity for all community members.<sup>88</sup> Although Wisconsin state law currently prohibits municipalities to directly

87. *Id.* (manuscript at 21).

88. ADIE TOMER ET AL., DIGITAL PROSPERITY: HOW BROADBAND CAN DELIVER HEALTH AND EQUITY TO ALL COMMUNITIES 3, 18, 29 (Feb. 2020), [https://www.brookings.edu/wp-content/uploads/2020/02/20200227\\_BrookingsMetro\\_Digital-Prosperity-Report-final.pdf](https://www.brookings.edu/wp-content/uploads/2020/02/20200227_BrookingsMetro_Digital-Prosperity-Report-final.pdf).

provide (or even subsidize) broadband internet service to community residents,<sup>89</sup> there is some preliminary evidence that suggests expanding internet coverage in underserved communities is a recognized need in the city and a goal for the future.<sup>90</sup>

#### d. Legal Jargon and Language Barriers

Filings for restraining orders are filled with legal terminology that petitioners often get wrong. Most notably, petitioners struggle to discern whether to apply for a domestic abuse order versus a harassment order, as mentioned earlier in this Article. Court personnel raised concerns that e-filers without advocacy support were potentially filing for the wrong type of TRO. As each type required a different form of evidence, even checking an incorrect box or choosing from the wrong item on a drop-down menu could result in an order being denied.

With the additional burden of language or literacy barriers, many survivors could be discouraged, stressed, and confused, and might even abandon the restraining order process:

The concern is that when you have to initially write the reasons why you need that TRO, you have to really assist clients to put those words together and to be able to be very clear about why they're seeking that. If they're doing it on their own, we're dealing with people who have very limited - maybe they can't read or they can't write in English and their literacy level is [low], so those are the concerns that people are having to file on their own or depend on somebody.<sup>91</sup>

Marginalized and vulnerable populations, like immigrant or refugee populations, may be new to the United States court system

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89. WIS. STAT. § 66.0422(2) (2021).

90. In fact, in April 2021, the City of Milwaukee announced its goal to provide free Wi-Fi access in ten additional parks, resulting in availability of free Wi-Fi service in twelve public parks to date; the earliest efforts of this kind were implemented in 2003 in two parks: Pere Marquette and Cathedral Square. Certainly, using public Wi-Fi service could present difficulties for accessing domestic violence resources and reporting on sensitive and private topics in a public setting, but the implementation of public Wi-Fi in communities may serve as a template for future expansion of Wi-Fi in all parts of the state. *City Unveils Open-Access Wireless Internet in Ten Milwaukee Parks: Project to Provide Citywide Access to Underserved Areas*, CITY OF MILWAUKEE (Aug. 28, 2022), <https://city.milwaukee.gov/mayorbarrett/News/2021-News/City-Unveils-Open-Access-Wireless-Internet-in-Ten-Milwaukee-Parks>.

91. Advocate interviewers, *supra* note 3, interview with Service Provider # 409.



and tend to be more isolated in their communities.<sup>92</sup> Milwaukee County utilizes a LanguageLine Solution system to assist non-English speakers. However, many service providers working with marginalized survivors have found the translation process over the phone very difficult or incomplete for languages such as Burmese or Rohingya. One provider explained that she has witnessed things getting “lost in translation” during a complicated procedure where the survivor was speaking one language, the advocate spoke another, and LanguageLine interpreted for the advocate to record the narrative in English: “there are many language issues that come up there.”<sup>93</sup> Another advocate explained:

[D]epending on where a person comes from, and you know, their life experience and cultural experiences, even translating this system into their native tongue doesn't necessarily work or mesh right because “injunction” doesn't exist in that language potentially, so that's definitely a challenge- that we do our best to try to find ways to use a different language or find ways to explain things in different ways.<sup>94</sup>

Indeed, service providers fear that much is lost without face-to-face contact:

[T]here is a lot to be said about being in person, or at least being able to see somebody face-to-face you know, like through video or something, to get an idea of those nonverbal cues and to make sure that everyone is on the same page with what the story is and what the events were, and those kinds of things.<sup>95</sup>

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92. *E.g.*, Stephanie R. Montesanti et al., *Enabling the Participation of Marginalized Populations: Case Studies from a Health Service Organization in Ontario, Canada*, 32 HEALTH PROMOTION INT'L 636 (2017); Margaret E. Adams & Jacquelyn Campbell, *Being Undocumented & Intimate Partner Violence (IPV): Multiple Vulnerabilities Through the Lens of Feminist Intersectionality*, 11 WOMEN'S HEALTH & URB. LIFE 15 (2012).

93. Advocate interviewers, *supra* note 3, interview with Service Provider # 404.

94. *Id.*

95. In another instance, a survivor came to court for a criminal domestic violence case, and the language interpreter who was present spoke the wrong language because assumptions had been made about her language based on her nationality. The survivor did not have legal support during her appearance in court. The case was subsequently dismissed (or “no processed”) by the prosecutor's office when the survivor did not appear at her next court date. A lawyer reviewing her case after it had been no processed later determined that the error in language interpretation resulted in the survivor not understanding any of the hearing, including when to return for the subsequent hearing. Advocate interviewers, *supra* note 3, interview with Service Provider # 402.

Thus, some e-filing procedures fall short of the goals of fairness, accessibility, and equity.

e. Lack of Connection with Social Services

Many survivors are concerned about the potential consequences of filing a restraining order, like not receiving child support, and having food, transportation, and safe shelter. Service providers acknowledged they felt more comfortable navigating such issues with survivors in person, as they were able to immediately problem-solve, and make referrals. The process of filing a restraining order is intimidating, and providers pointed out the importance of advocate support throughout—not only for the legal proceedings, but also for basic needs—especially for marginalized and uniquely vulnerable populations. As discussed below, the connection of restraining order petitioners with Sojourner advocacy support dropped significantly during the pandemic, meaning that these survivors did not have the same access to the array of support that the community could provide. And these connections can be life-saving—domestic violence survivors have a 99.94% survival rate when they are connected with Sojourner or similar agencies in the city.<sup>96</sup>

B. Substantive Justice

For the last part of our study, we analyzed three years of data, collected between 2019 and 2021, to examine all TRO and injunction hearing filings and results; the data is shown in Figure 3 below. Considering both substantive justice and actual court outcomes, the shift in processes that occurred in response to COVID-19 is troubling in several senses. First, the overall number of filings dropped dramatically and has not yet recovered, leading us to conclude that this was not a temporary decline due to the pandemic, but rather a longer-term public disconnect with court proceedings and the ability to file. While the number of harassment TROs filed has gone up slightly (now averaging 200 per month as compared to 191 per month prior to the pandemic), the domestic abuse filings have dropped from a monthly average of 209 to 164.<sup>97</sup>

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96. See generally SOJOURNER, *supra* note 41.

97. See HLAVKA ET AL., *supra* note 38 (manuscript at 4–5).

<b>Total Restraining Orders Filed</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>
<b>Domestic Abuse</b>	2,564	2,069	1,903
<b>Harassment</b>	2,317	2,261	2,439

Figure 3: Restraining Order Filings in Milwaukee County from 2019 to 2021.

On average, there are forty-five fewer domestic abuse TROs filed per month, a 22% decrease from pre-pandemic numbers, which indicates a significant and concerning pattern.<sup>98</sup>

There are two interrelated hypotheses to help explain the increase in harassment filings and the decrease in domestic abuse filings. First, the findings suggest a pattern of increasing harassment following the onset of the pandemic, perhaps due to the increase in remote work and school, increased disagreements with neighbors, tenant-landlord disputes over rent and evictions, and/or stress and anxiety from the pandemic. Second, the findings might indicate that pro se e-filers misidentified the category-type in the dropdown menu, selecting harassment rather than domestic abuse. This explanation fits with the experience and concerns of advocates and court personnel alike. It also reflects prior studies and advocate experiences, which suggest that domestic violence is often unnamed by survivors especially in legal proceedings that require statutory definitions and identifications. Sometimes the survivor may even be convinced by the person abusing them that they are not in an abusive relationship.<sup>99</sup>

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98. *Id.*

99. See Amy E. Bonomi et al., "Meet Me at the Hill Where We Used to Park:" *Interpersonal Processes Associated with Victim Recantation*, 73 SOC. SCI. & MED. 1054, 1058 (2011).

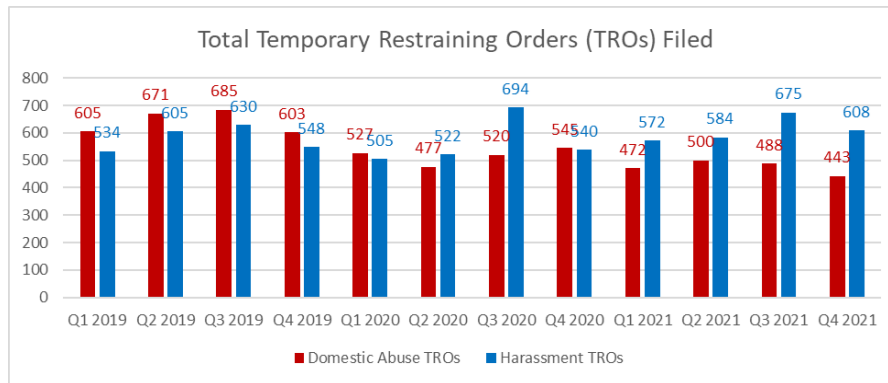


Figure 4. Quarterly Milwaukee County TROs filed between 2019 and 2021.<sup>100</sup>

In addition, we hypothesized that at least some of the decrease in domestic abuse filings is due to the fact that fewer petitioners were able to connect with advocacy services to help manage the complexity of the filings. From January 1, 2019, through March 13, 2020, over 95.3% of all domestic abuse petitioners in Milwaukee County were connected to Sojourner for advocacy support in filing their restraining order.<sup>101</sup> Between March 14, 2020, and December 31, 2021, this number dropped to 77.9%.<sup>102</sup> While this is still impressive in terms of providing support to the majority of those who needed it, this drop also means that a significant percentage of petitioners were managing this process without advocacy services. Moreover, this difference was not being made up by lawyers. At the long-term restraining order injunction hearings, the rate of legal representation dropped from 10.6% pre-pandemic down to 5% after the onset of the pandemic.<sup>103</sup>

More distressingly, the success in achieving a TRO has also dropped as shown in Figure 5 below.<sup>104</sup> Since March 2020, TRO filings were more likely to be dismissed, more likely to be denied without a hearing, and rarely denied but given a hearing (as this option was not permitted through the default state-run court software).<sup>105</sup>

100. HLAVKA ET AL., *supra* note 38 (manuscript at 5).

101. *Id.* (manuscript at 15).

102. *Id.*

103. *Id.* (manuscript at 8).

104. *Id.* (manuscript at 6–7).

105. *Id.*

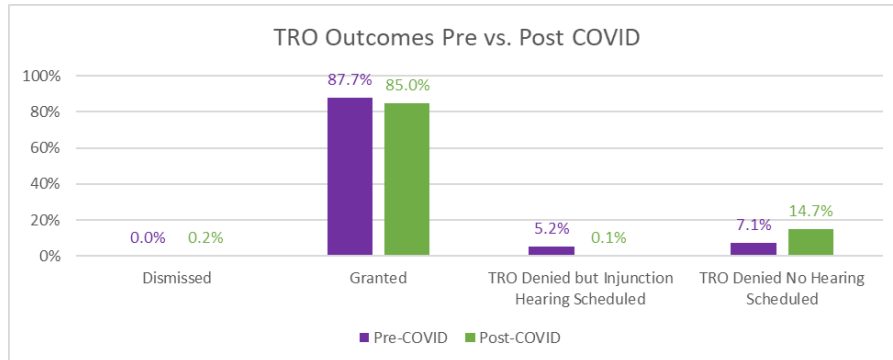


Figure 5: TRO Outcomes 2019 to 2021.

Injunction hearings to determine whether a long-term restraining order would be granted were also less successful for petitioners after the onset of the pandemic with some interesting findings on representation as shown in Figure 6 below. After March 14, 2020, petitioners were more likely to be unrepresented at injunction hearings. They were also less likely to show up. These hearings were held in person over the entire duration of the pandemic without a remote option, which might have increased the likelihood of participation, as seen in other jurisdictions and in other contexts.

At the same time, respondents were more likely to have lawyers at the long-term restraining order injunction hearing, with the proportion of pro se respondents dropping from almost 39% to 31%.<sup>106</sup> However, not showing up was also an issue for respondents in these hearings, with a slight increase from 58.4% to 61.5%.<sup>107</sup>

106. *Id.* (manuscript at 8).

107. *Id.* (manuscript at 7).

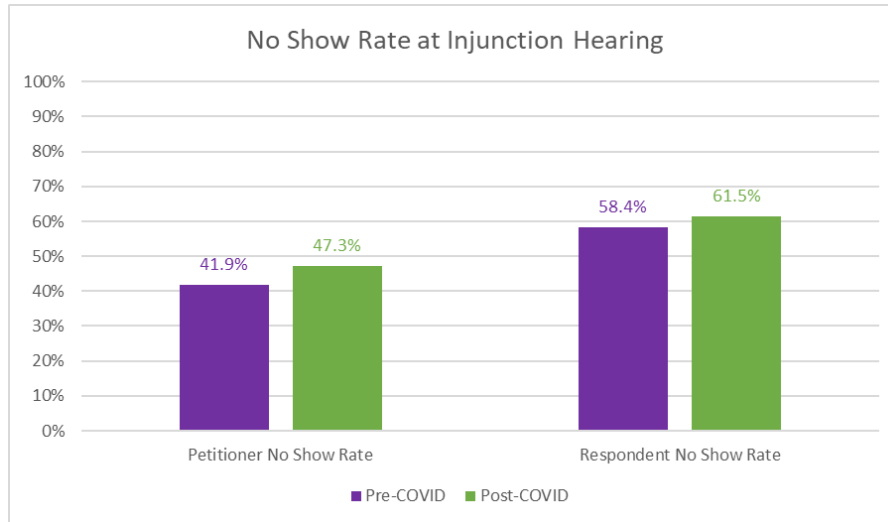


Figure 6: No Show Rate at In Person Long Term Injunction Hearings 2019 to 2021.

More importantly, dismissals rose from 50.4% to 52.5%.<sup>108</sup> These dismissals often occurred because the respondent was not served successfully with legal paperwork in the two weeks between initial TRO filing and the injunction hearing. There was a slight increase in the percentage of cases that proceeded to de novo hearings (from 3.8% to 5.5%) and respondents at this stage were far more likely to have legal representation post COVID—more than doubling from 21% to 44%.<sup>109</sup>

## VI. CONTEXT MATTERS

The principles of process pluralism can focus us on the needs of domestic violence survivors, as well as the desire of city leaders, social service agencies, and survivors themselves to reduce violence. Domestic violence survivors are far more likely to survive and thrive when they are connected with DV advocacy and support, so any process that reduces the ability or likelihood of a survivor to connect with those services puts them at higher risk for future harm. Given that the majority of DV or IPV victims never even reach out to law enforcement, let alone file a restraining order, it is imperative that institutions like the courts, the city, and the state understand the benefit of providing multiple pathways to

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108. *Id.* (manuscript at 9).

109. *Id.*

justice. There are three main reforms that we suggest, each of which is discussed below. First, survivors need to have the choice of e-filing or filing for a TRO in person. Second, the court needs to provide synchronous communication (preferably via video conferencing if not in person) at the TRO stage. This will help court efficiency by reducing filing mistakes and the need for re-filing while assisting survivors to more effectively get the protection they need. Finally, the state and city need to address the crucial social service support provided by Sojourner and other agencies. Process pluralism can expand access to justice—if those using the court system are properly assisted through whichever process they choose. Expanding advocacy services, hours, and resources takes staff and money.

#### A. Relying on E-filing Reduces Filing Overall

As outlined by the Pew Charitable Trusts study, *How Courts Embraced Technology, Met the Pandemic Challenge, and Revolutionized Their Operations*, for many courts during the pandemic, the shift to remote processes ended up being mostly positive.<sup>110</sup> The forced technological revolution, which added remote and online processes to many courtrooms, further accelerated innovation.<sup>111</sup> E-filings and e-notarizations increased. More impressive, participation in the courts increased, as defendant participation in contexts as varied as debt collection,<sup>112</sup> eviction proceedings,<sup>113</sup> and child welfare<sup>114</sup> all increased. The addition of online and remote processes has furthered access to justice.<sup>115</sup>

Yet the Pew study also noted that for those without lawyers, the system remained challenging. These challenges included lack of internet access or experience with computers and lack of English proficiency.

Sojourner and other Milwaukee agencies serve a population that shares these disadvantages outlined in the Pew study. This population experiences limited internet and smartphone access,

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110. THE PEW CHARITABLE TRUSTS, *supra* note 80, at 1, 4, 16.

111. *See id.* at 1.

112. *Id.* at 8.

113. *Id.* at 9.

114. *Id.*

115. J.J. Prescott, *Improving Access to Justice in State Courts with Platform Technology*, 70 VAND. L. REV. 1993, 1993–94 (2017).

low computer proficiency, low socio-economic standing, and high violent crime rates in their communities. They also require better translation and interpreters.

What do these challenges mean in the domestic violence context? The urgency of DV situations is different from those in other contexts. If there is a delay in debt collection (or even a delay in evicting renters), those delays are not life-threatening. The ability to refile or reschedule is a sufficient remedy. In DV and IPV, the delay in filing and getting the restraining order is significant. Rather than increasing access to justice, the lack of success in TRO filings seems to indicate the opposite.

#### B. Options Need to Include a Synchronous Communications System

A second lesson concerns the technological innovations and processes themselves. This study demonstrates the importance of distinguishing between remote hearings (seemingly more successful in providing access to justice) and online filings. Each technology brings advantages yet, without remote proceedings in the DV context, it appears that filers in Milwaukee had *less* access to the courts rather than more.

“Safer-at-Home” orders sent most court personnel home while the rest remained in crisis-management mode. Sojourner closed its in-person offices in the courthouse. Smaller service agencies could not pivot to online only modes and navigated the risks of COVID to maintain their in-person services. TROs were all migrated to an e-filing system in Milwaukee County, while injunction hearings remained in person. “The Office of State Courts purchased approximately 500 Zoom licenses statewide [(but not for the domestic abuse TRO processes)], and remaining staff worked on transitioning TROs to the e-filing system.”<sup>116</sup> Significant hurdles included the lack of laptops available for court personnel to do remote work, employee access to high-speed internet to conduct Zoom meetings, and steep learning curves.<sup>117</sup>

Court personnel are now growing more accustomed to e-filing and seeing some of the benefits for petitioners, especially regarding decreased barriers to filing for some. A hybrid system of e-filing

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116. HLAVKA ET AL., *supra* note 38 (manuscript at 17).

117. *Id.*



and in-person TROs continues to require extensive resources given the time, labor, and need for interagency coordination. The high volume of cases in Milwaukee County has created obstacles, but not impossibilities. For example, given the strict statutory time limits to holding an injunction hearing within fourteen days of a granted TRO, respondents need to be served and have the opportunity to access the court and attorneys as well. Providing a video option may help decrease default and no-show rates given how many petitioners and respondents did not show up for their injunction hearing.<sup>118</sup>

Reflecting on the importance of public safety and what has already been accomplished since March 2020, one commissioner noted:

We should be able to say to people, look, if you really want to come into the courthouse physically and have your hearing because that's the easiest thing for you to do and that's the way you want access to justice, we should be able to do that. But if you want to stay e-filing because that's easier for you, we should be able to do that too [ . . . ] and hybrid hearings. It's somewhat difficult but not necessarily not doable. We didn't think any of this was doable, but we've had to create an atmosphere of public safety with keeping the footprint low and keeping the pandemic out of the courtrooms to keep people safe.<sup>119</sup>

For our courts handling domestic violence, it is clear that hybrid processes are here to stay. E-filings, already in existence around the state of Wisconsin before the pandemic, will likely continue to exist in Milwaukee County. Courts could focus on two clear innovations that would add to the process pluralism. First, video conferencing abilities should be given to commissioners so that parties, commissioners, and advocates can choose to go through the process together. This would reduce mistakes like filing the wrong type of order and would likely save time and money for the courts in the long-term. Moreover, it would reduce the likelihood that commissioners get it wrong—granting TROs where they are not needed and denying TROs that should be given. In addition, if e-filing is truly here to stay, the software needs to be updated to provide those options already granted by statute—denying a TRO

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118. *See id.* (manuscript at 7).

119. Advocate interviewers, *supra* note 3, interview with Service Provider # 403.

but granting a hearing<sup>120</sup>—to gather information as needed and to protect survivors. Finally, the court should also ensure that only commissioners and judges with expertise in intimate partner and domestic violence will hear such cases.

### C. Choice Provides Voice

Process pluralism could increase access to justice, increase party participation, and improve outcomes. The potential for improvement is tantalizing—and the opportunity to use process innovation to meet the needs of DV survivors could be realized. We have seen that, like the expansion of ADR and ODR in other contexts, many survivors want process choices. Most service providers supported a hybrid-system that provided survivors the choice between in-person and virtual services. Yet, this can be effective only if agencies are able to adequately staff both in-person and virtual services. Sojourner and other social service agencies face an urgent need to expand staffing and training—to provide support via telephone, text, in person, and video—and to be able to provide these services at expanded hours in both the TRO and injunction hearing phases. This resource-intensive need will take more than independent fundraising but rather a city, county, and state commitment to expand funding for these positions.

For remote justice to provide true justice to domestic violence survivors, they need more voice, increased acknowledgment of their circumstances, and better support throughout the process.<sup>121</sup> The courts cannot provide procedural justice to survivors when filings are difficult to understand, challenging to access online, and survivors lack either counsel or social service advocates to assist with the TRO and injunction hearing process.<sup>122</sup> Mirroring the focus on providing lawyers to tenants across the country facing

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120. WIS. STAT. § 813.125(2m) (2021); *CV-449: Notice and Order for Injunction Hearing When Temporary Restraining Order Is Not Issued (Harassment)*, WIS. CT. SYS., <https://www.wicourts.gov/formdisplay/CV-449.pdf?formNumber=CV-449&formType=Form&formatId=2&language=en> (last visited Oct. 2, 2022).

121. Avital Mentovich et al., *Are Litigation Outcome Disparities Inevitable? Courts, Technology, and the Future of Impartiality*, 71 ALA. L. REV. 893, 970–71 (2019); Tania Sourdin et al., *Court Innovations and Access to Justice in Times of Crisis*, 9 HEALTH POL'Y TECH. 447, 452 (2020).

122. Jean R. Sternlight & Jennifer K. Robbennolt, *In-Person or Via Technology?: Drawing on Psychology to Choose and Design Dispute Resolution Processes*, 71 DEPAUL L. REV. 701, 714–15 (forthcoming 2022) (analyzing the different implications various mediums can have on parties, society and the realization of procedural values and goals).

eviction, offering TRO petitioners lawyers and advocates could fill in some of the existing gaps for supporting DV survivors. Currently, survivors are less connected to the array of services available including shelter, advocacy support, job training, childcare, and counseling. Petitioners struggling to meet their basic needs are even less likely to be able to prioritize court filing. This decline in access to services will harm survivors in the long-term, making their recovery more challenging.

## VII. CONCLUSION

The concept of process pluralism recognizes that the legal system is most effective when it has multiple ways of resolving disputes. These process choices are themselves choices of dispute system design and the effect on stakeholders will vary with each of these choices. As noted at the outset of this Article, each feature of a process choice—its level of complexity, the language used, and location—in turn determines whether people can effectively access the remedies that the legal system is supposed to provide and what those outcomes might be.

When examining the current state of the restraining order process in Milwaukee County, the lack of process choice (e.g., in person vs. virtual) and procedural justice also results in a lack of substantive justice. Contrary to other contexts that use hybrid court processes, in the DV/IPV context, online processes have not yielded better outcomes. Comparing monthly and quarterly data from the period before the pandemic with the data after the pandemic processes were implemented, filings are down, parties are less likely to show up, and the success rate of obtaining restraining orders has also dropped. The total result is that far fewer survivors have restraining orders against their attackers—a deeply troubling situation.

This Article examined four principles of process pluralism to the remote filing system for domestic violence restraining orders adopted by Milwaukee County during and after the pandemic. We have argued that each of these principles is crucial. First, we must recognize that domestic violence survivors are a unique set of court participants and present specific challenges to which the system must respond. Second, process plurality should be encouraged, recognizing that party access to technology and advocate support is required in both face-to-face and remote process choices. Third,

we applaud the imaginative and innovative responses that social service agencies have had during the pandemic to meet the needs of DV survivors—and hope that the infrastructure needed for these services continues to be built. Finally, we urge that justice continues to be at the forefront of the legal system—ensuring that processes are both procedurally and substantively just and that they provide voice, legitimacy, and fair outcomes to participants.

Moving forward, can we provide multiple processes for filing TROs? Can we add technology to the courts to provide synchronous communication between petitioners and the court commissioners during filing and hearings? Can we improve access to advocacy and social services to support victims more effectively throughout the process? These are the challenges of process pluralism. Domestic violence survivors are counting on the court system to meet them.