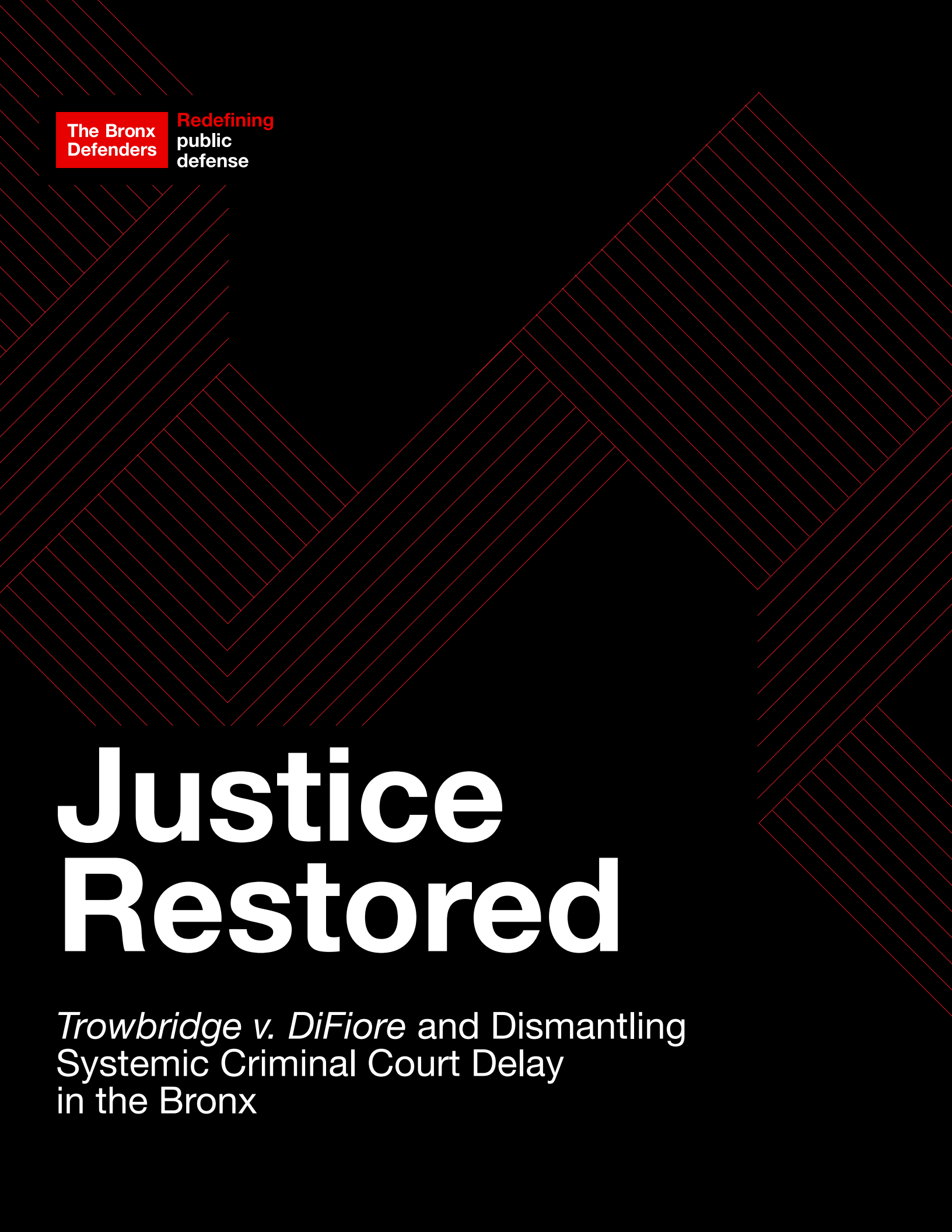




The Bronx
Defenders

Redefining
public
defense

Justice Restored

Trowbridge v. DiFiore and Dismantling
Systemic Criminal Court Delay
in the Bronx

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**The Bronx
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**MORRISON
FOERSTER**

ECBAWM
EMERY CELLI BRINCKERHOFF
ABADY WARD & MAAZEL

Justice Restored: *Trowbridge v. DiFiore* and Dismantling Systemic Criminal Court Delay in the Bronx

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Executive Summary

In 2016, the Bronx Defenders **filed a class-action lawsuit that resulted in a landmark legal decision and brought about a transformation in Bronx Criminal Court and the ability of people facing misdemeanor charges to exercise their constitutional rights.** In a first-of-its-kind case, the Bronx Defenders represented Bronx residents charged with low-level misdemeanors whose attempts to fight their charges and vindicate their constitutional rights at trial were thwarted by systemic delays and massive case backlogs. In *Trowbridge v. Fiore*, seven months after the case was filed, the federal district court for the Southern District of New York unequivocally held that:

- The plaintiffs' allegations of systemic delays plainly represented "unreasonable" trial delays;
- Federal abstention principles did not prevent the Court from exercising jurisdiction over the case; and
- Systemic court delay **can support constitutional due process and speedy trial claims** against the highest ranking administrative judges in New York

The subsequent settlement, entered by the Court in 2018, ushered in a new era in Bronx Criminal Court, reversing well over a decade of unconscionable delay in the Bronx courts. The lawsuit forced the court system to dedicate additional trial resources to the Bronx and implement long-term structural solutions. And, for the first time, the Bronx Criminal Court **adopted a formal mechanism for people to request a speedy trial.**

Together, these changes dismantled a significant barrier faced by people who wish to fight the allegations against them, meaning that the tens of thousands of people in the Bronx charged with low-level offenses no longer need to choose between moving on with their lives or clearing their names. Post-*Trowbridge*, people can rely on the opportunity to fight back without having to put their lives on hold for years.

In the two years from the filing of *Trowbridge* in 2016 until the settlement agreement in 2018, the number of 1+-year-old misdemeanor cases in the Bronx fell from 2,433 to 509 cases, a drop of almost 80%. The number of pending cases over a year old dropped to below 150 on the eve of the Covid-19 pandemic, and by the end of the *Trowbridge* settlement in 2022, there were only 213. People facing misdemeanor charges no longer have to return to court for months or years on end waiting for their day in court.

The Bronx Defenders is working to ensure that this momentum is not lost. We are continually advocating for the Court to maintain and increase appropriate staffing levels for misdemeanor jury trials. We are also working to press the courts into offering virtual options for non-essential court appearances and adopting eased standards for excusing client appearances. In this and all matters, **we are constantly working to ease the burden and harm of the criminal legal system for Bronx residents who become entangled.**

Introduction

In 2015, Bronx Criminal Court — the court that handles misdemeanors in New York State’s fifth largest county, serving a population of over 1.4 million² — all but collapsed under the weight of its misdemeanor case backlog. At the time, there were more than 2,000 cases in Bronx Criminal Court that had been pending resolution for over a year, representing almost 20% of the total pending misdemeanor cases in the Bronx on any given day. That year, Bronx Criminal Court arraigned over 45,000 new cases, but conducted only 98 misdemeanor trials.³ The average wait time for a bench trial — a trial conducted by a single judge without a jury — was 688 days. People waiting for a jury trial had to wait an astonishing 897 days on average before having their day in court, and many waited far longer. One man spent nearly three and a half years — 1,258 days and 38 court dates — waiting for his day in court before being acquitted of the misdemeanor charges at trial.⁴

Years of court congestion, persistent delays in the processing of misdemeanor cases, and case backlogs had fatally undermined due process and the right to a speedy trial for tens of thousands of people charged with low-level offenses. Echoing Malcolm Feeley’s observation of state criminal courts in the 1970s, the process had become the punishment.⁵ Previous attempts to address the problem in the Bronx had failed to make a lasting impact. Costly and disruptive experiments in restructuring the Court and the creation of “blockbuster parts” — temporary courtrooms staffed by judges tasked with “disposing” of cases quickly — did little to nothing to reduce misdemeanor backlogs in the long term.⁶

At the height of this systemic court delay, hundreds of people would daily sit in packed courtrooms for hours — sometimes all day — waiting for their cases to be called. They took the entire day off of work; they missed school and doctors’ appointments; they

2 U.S. Census Bureau, *QuickFacts, Bronx County, New York* (2021), <https://www.census.gov/quickfacts/fact/table/bronxcountynewyork/PST045221>.

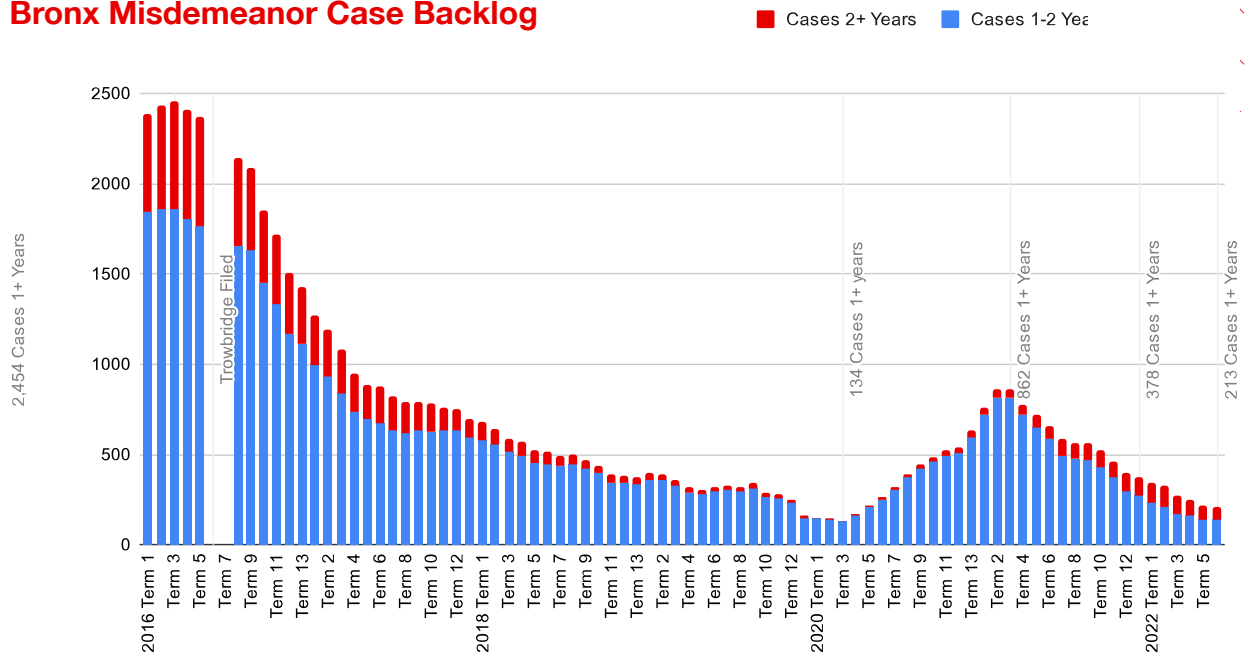
3 Unless otherwise noted, statistics pertaining to Bronx Criminal Court prior to 2016 cited in this report are drawn from: Criminal Court of the City of N.Y., N.Y. State Unified Court Sys., *Bronx County Misdemeanor Activity Report: Full Year 2015* (2015); Criminal Court of City of N.Y., *Annual Reports*, available at <http://ww2.nycourts.gov/COURTS/nyc/criminal/annual-reports.shtml>; N.Y. State Unified Court Sys., *The Bronx Criminal Division: Merger After Five Years* (2009) [hereinafter “Merger Report”], available at <https://www.nycourts.gov/publications/pdfs/BronxReport11-09.pdf>; and N.Y. State Unified Court Sys., *Press Release: State Court System Reports Dramatic Cut in Felony Case Inventory, Announces Plan to Slash the Borough’s Misdemeanor Backlog and Names New Bronx Appointment* (Dec. 11, 2013) [hereinafter “Dec. 2013 Press Release”], available at http://www.nycourts.gov/press/pdfs/pr13_14a.pdf.

4 Joseph Bermudez, a married warehouse manager with a child, waited over three years before being acquitted. Amended Complaint at ¶ 4, *Trowbridge v. Cuomo*, 16 CIV. 3455 (GBD), filed Jan. 23, 2017 [hereinafter “Amended Complaint”], available at <https://www.bronxdefenders.org/trowbridge-v-cuomo/>.

5 See Malcolm Feeley, *The Process is the Punishment: Handling Cases in a Lower Criminal Court* (1979); see also Issa Kohler-Hausmann, *Misdemeanorland: Criminal Courts and Social Control in an Age of Broken Windows Policing* (2019) (arguing that criminal process in lower criminal courts operates as a form of social control and surveillance).

6 The “blockbuster parts” were largely characterized by judges pressuring parties to reach quick plea bargains. See Ray Rivera, *Bronx Courts Trim Big Backlog, With Outside Judge at the Helm*, N.Y. Times (July 29, 2013), available at <https://www.nytimes.com/2013/07/30/nyregion/bronx-courts-trim-big-backlog-with-outside-judge-at-the-helm.html>.

The Impact of Trowbridge Litigation on Bronx Misdemeanor Case Backlog



relied on neighbors to watch their kids. When their cases were finally called, they would spend mere minutes standing before a judge, at which point the case would be perfunctorily adjourned for a later date. Adjournment after adjournment, people waited for hours to see a judge, only to be told to come back yet again another day weeks later. Months often turned into years. People's lives were put on hold as their fate hung in the balance. The promise of a trial — much less a speedy trial — was an illusion.⁷

In 2016, however, *Trowbridge v. DiFiore*, a class action lawsuit brought by the Bronx Defenders, Emery Celli Brinckerhoff Abady Ward & Maazel, LLP, and Morrison & Foerster LLP, on behalf of people charged with misdemeanors in Bronx Criminal Court propelled a significant change in the Court's trajectory. The lawsuit alleged that systemic misdemeanor court delays violated the constitutional rights to due process and a speedy trial, not only for the four named plaintiffs, but also for the tens of thousands of people prosecuted for misdemeanors in the Bronx every year.⁸

⁷ See William Glaberson, In Misdemeanor Cases, Long Waits for Elusive Trials, N.Y. Times (Apr. 30, 2013), available at <https://www.nytimes.com/2013/05/01/nyregion/justice-denied-for-misdemeanor-cases-trials-are-elusive.html>.

⁸ Four plaintiffs were named in the initial complaint: Christopher Trowbridge, Michael Torres, Ronnie Pagan, and Juan Ortiz.

Starting almost immediately after the lawsuit was filed, the Court saw a dramatic and sustained drop in its misdemeanor backlog and much improved due process and access to trials. The litigation had an immediate effect, pushing the New York State Unified Court System's Office of Court Administration (OCA) to pay attention to misdemeanor cases in the Bronx and to put in place long-term solutions, which ultimately led to significant improvements, including sustained increased trial capacity and dramatically reduced wait times for trials, where other efforts had failed. The case reached a settlement in 2018 that required OCA to share case processing data and metrics, meet regularly with defenders, prosecutors, and local court administrators and staff to discuss questions of court administration, and create a formal mechanism for people to request a speedy trial.⁹ Following the filing of *Trowbridge*, the number of misdemeanor cases pending over one year in the Bronx fell from approximately 2,400 in 2016 to just over 100 on the eve of the COVID-19 pandemic, and just over 200 in summer 2022; the percentage of "old" cases dropped from about 20% to under 5% in the same time.¹⁰ For the thousands of people prosecuted in Bronx Criminal Court every year, this meant not only greater due process, but fewer disruptions to employment, education, health care, and housing.

This report sets out to provide an overview of the conditions that led to the *Trowbridge* lawsuit and the effects that the litigation has had on Bronx Criminal Court.

9 See Settlement Agreement, *Trowbridge v. Cuomo*, 16 CIV. 3455 (GBD), so ordered Aug. 9, 2018 [hereinafter "Settlement Agreement"], available at <https://www.bronxdefenders.org/trowbridge-v-cuomo/>.

10 See Criminal Court of City of N.Y., N.Y. State Unified Court Sys., *NYC Criminal Court Executive Summary: Full Year 2016* (2016); Criminal Court of City of N.Y., N.Y. State Unified Court Sys., *NYC Criminal Court Executive Summary: Full Year 2022* (2022). Unless otherwise noted, data pertaining to Bronx Criminal Court operations from 2016 to the present are drawn from data provided pursuant to the Settlement Agreement. Pursuant to the Settlement Agreement: "Any data provided herein does not constitute an official record of the New York State Unified Court System, which does not represent or warrant the accuracy thereof. The opinions, findings, and conclusions expressed in this publication are those of the authors and not those of the New York State Unified Court System, which assumes no liability for its contents or use thereof."

Background

The “Merger”

In the years leading up to *Trowbridge*, Bronx Criminal Court had, in many respects, ceased to operate as a court at all, despite OCA’s various attempts to address the problem of court delay.¹¹ From 1995 to 2004, the number of misdemeanor cases in the Bronx rose by 40%, causing a sharp spike in the Criminal Court backlog, leaving 17 judges to adjudicate 9,030 pending misdemeanor cases, with over 50% of those cases already exceeding OCA’s stated goal of resolving misdemeanor cases within 90 days.¹² In response to the backlog, in 2004 OCA embarked on an experimental restructuring of criminal courts in the Bronx, combining Bronx Supreme Court (the court with jurisdiction over indicted felony cases) with Bronx Criminal Court (the court with jurisdiction over misdemeanors and unindicted felonies) into a single “merged” court housed in the newly constructed Bronx Hall of Justice. The “Merger” was intended to make the courts more efficient and to address the growing case backlog. It had the opposite effect. Despite an initial drop in cases, by 2005 the number of pending misdemeanor cases had begun to climb

once more.¹³ By 2009, after four years of rapid growth in the number of misdemeanor cases, the backlog exceeded pre-Merger levels by 50 cases at 9,085 pending cases, with no indication of slowing down.¹⁴

The Merger was “universally regarded as a failure” and resulted in a huge increase in the backlog of cases.¹⁵ At the beginning of the Merger in 2004, the mean disposition age of cases surviving arraignments and resolved in the Court’s All Purpose Parts, courtrooms handling the bulk of misdemeanor cases, had been 92 days. By 2013, that number had more than doubled to 186 days. In 2013, the Merger was reversed in a process that has been compared to “rearranging deck chairs on the Titanic,” revealing problems in the Bronx courts that dramatically increased court delays in misdemeanor cases.¹⁶

The Bronx Defenders Marijuana Arrest Project

In 2011, the Bronx Defenders launched the Marijuana Arrest Project (MAP), which initially set out to focus

11 Court delays in the Bronx affected felonies as well as misdemeanor cases. In 2013, the Bronx was responsible for more than half of the cases in New York City criminal courts that were over two years old and more than two thirds of the cases over five years old. 73% of Bronx felony cases exceeded courts’ own time targets. See William Glaberson, *Faltering Courts, Mired in Delays*, N.Y. Times (Apr. 13, 2013), available at <https://archive.nytimes.com/www.nytimes.com/2013/04/14/nyregion/justice-denied-bronx-court-system-mired-in-delays.html>.

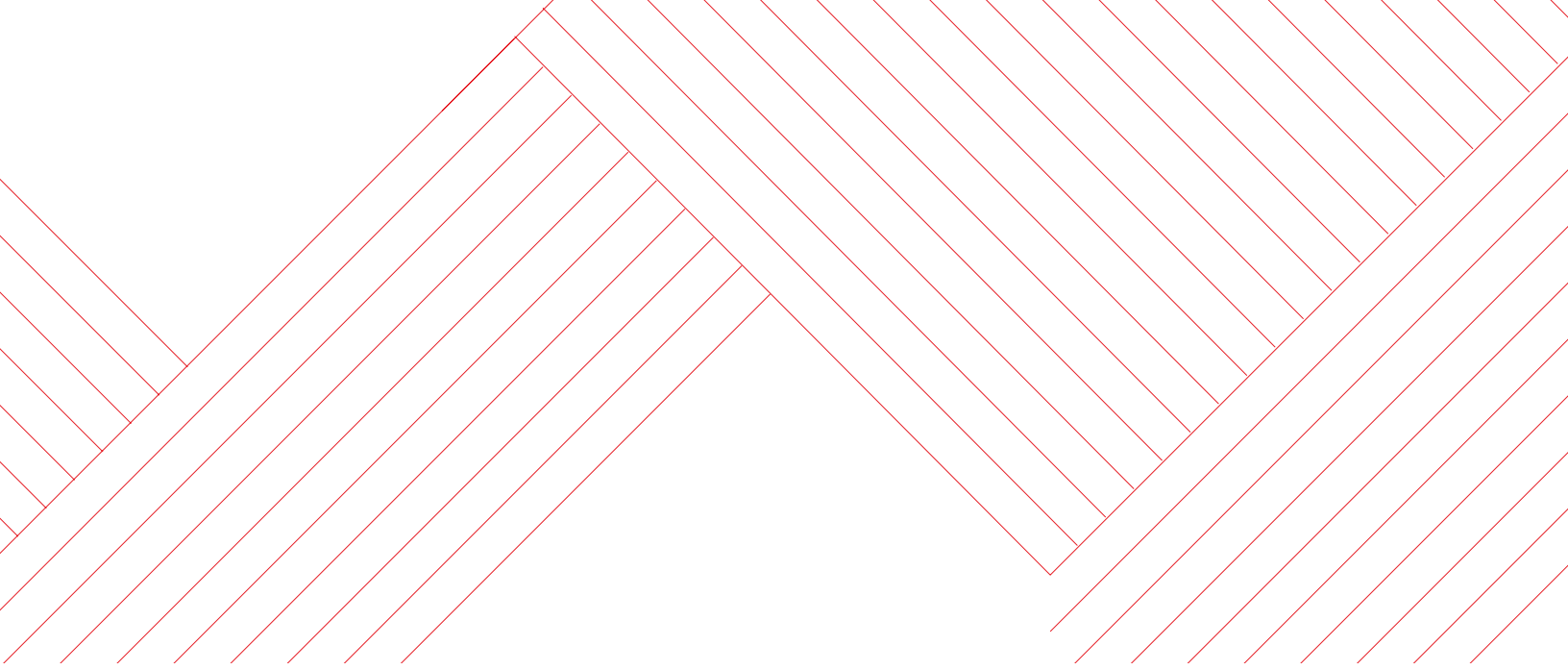
12 Merger Report at 6.

13 *Id.* at 9.

14 *Id.*

15 Glaberson, *Faltering Courts, Mired in Delays*, N.Y. Times (Apr. 13, 2013).

16 *Id.*



attention on the NYPD's unconstitutional practices in misdemeanor marijuana possession cases, but which ultimately came to form the basis of the *Trowbridge* litigation.¹⁷ Through MAP, the Bronx Defenders and pro bono attorneys from Cleary Gottlieb interviewed and represented over 500 people who had been arrested and charged with marijuana possession in the Bronx from mid-March 2011 through the beginning of March 2012. MAP then turned its attention to the representation of a group of “Fighters,” people who sought their day in court and wished to challenge the police conduct leading to their arrests, even in the face of significant delay in their cases. Of 54 Fighters who sought to fight their marijuana possession cases, not a single one obtained a trial, nor was a single evidentiary suppression hearing ever completed. In one case, Fighter Michael Torres waited 877 days over 14 scheduled court dates before his charges were dismissed.¹⁸ Extended court delays forced most of the Fighters to give up and take plea deals rather than continue waiting.

Responding to the total failure of due process in the Fighters' cases, in the fall of 2012 the Bronx Defenders created the Fundamental Fairness Project (FFP) to address the ways in which the process had become the punishment for thousands of people every year

— not just those charged with marijuana possession — caught in the web of Bronx Criminal Court. The following year, the Bronx Defenders published *No Day in Court*, a report summarizing the results of the MAP and FFP investigations and exposing the severity of the dysfunction in Bronx courts.¹⁹ The data collected through MAP and FFP became the kernel of the claims put forward in *Trowbridge*.

The New York Times Publishes a Series Addressing the Growing Case Backlog in the Bronx

In April 2013, the *New York Times* published the first article in a five-part series detailing the ongoing crisis of court delay in the Bronx. The series chronicled the “[f]ailures by nearly every component of the criminal justice system [that] have contributed to what is known inside the building as a ‘culture of delay.’”²⁰ The final piece in the series was a front-page story focused on the plight of people charged with misdemeanors in the Bronx, featuring a number of Fighters and highlighting the work and data of MAP.²¹ OCA responded with a number of measures to address the backlog, including enlisting Justice Patricia DiMango — a “celebrity” judge, famous, in part, for resolving cases quickly in

17 A comprehensive overview of MAP and FFP can be found in the Bronx Defenders Fundamental Fairness Project, *No Day in Court* (2013), available at <https://www.bronxdefenders.org/wp-content/uploads/2013/05/No-Day-in-Court-A-Report-by-The-Bronx-Defenders-May-2013.pdf>.

18 Amended Complaint at ¶ 67.

19 The Bronx Defenders Fundamental Fairness Project, *No Day in Court* (2013).

20 Glaberson, *Faltering Courts, Mired in Delays*, N.Y. Times (Apr. 13, 2013).

21 Glaberson, *In Misdemeanor Cases, Long Waits for Elusive Trials*, N.Y. Times (Apr. 30, 2013).

Brooklyn courts — and creating a “blockbuster part” designed to clear felony cases.²² Successes from these programs were limited and temporary, and the interventions almost entirely ignored misdemeanor delays. Two years later, delays in Bronx Criminal Court were worse than they had ever been.

- 538 cases in the Bronx had been pending for over two years.²⁸

With ballooning pending case numbers and extreme delays, the backlog in the Bronx was worse than ever.

Years of Neglect Lead to the Near-Collapse of Bronx Criminal Court

When the Merger ended, no other misdemeanor court in New York City experienced anything close to the degree of court delay Bronx Criminal Court experienced:

- In December 2013, the Bronx had more misdemeanors pending in excess of one year (2,106) than the four other boroughs of New York City combined — Brooklyn (657), Manhattan (594), Queens (331), and Staten Island (287);²³
- In the Bronx, 14.5% of the pending cases were over a year old, compared to 4.9% in Manhattan, 5.3% in Brooklyn, and 4.1% in Queens;²⁴
- In 2014, the average time it took to resolve a misdemeanor case in Bronx Criminal Court’s All Purpose Parts was twice the time contemplated by OCA guidelines and over 40 days longer than in Staten Island, which had the next longest average;²⁵
- During an average week in Bronx Criminal Court, the Bronx District Attorney filed more than 800 new misdemeanor cases, but fewer than two cases were resolved by trial;²⁶
- At the beginning of 2016, about 20% of open misdemeanor cases in the Bronx — 2,378 cases in all — were over one year old;²⁷ and

22 See Rivera, *Bronx Courts Trim Big Backlog, With Outside Judge at the Helm*, N.Y. Times (July 29, 2013).

23 Amended Complaint at ¶ 114

24 *Id.*

25 See *Id.* at ¶ 5; Criminal Court of City of N.Y., *Annual Report* (2014) at 40, available at https://www.nycourts.gov/LegacyPDFs/COURTS/nyc/criminal/cc_annl_rpt_2014.pdf.

26 See Amended Complaint at ¶ 6.

27 *Id.* at ¶¶ 5, 113.

28 *Id.*

Trowbridge v. DiFiore

On May 10, 2016, the Bronx Defenders, along with Emery Celli Brinckerhoff Abady Ward & Maazel, LLP and Morrison & Foerster LLP, filed *Trowbridge v. DiFiore* in the U.S. District Court for the Southern District of New York.²⁹ Four plaintiffs — Christopher Trowbridge, Michael Torres, Ronnie Pagan, and Juan Ortiz — filed suit on behalf of tens of thousands of similarly situated people, alleging that “[y]ears of persistent delays in processing misdemeanor cases, court congestion, and case backlogs . . . have fatally undermined the right to trial and the right to a speedy trial for the tens of thousands of people charged with low-level offenses in The Bronx.” The defendants included Janet DiFiore, Chief Judge of the State of New York and Chief Judicial Officer of the Unified Court System and Lawrence Marks, Chief Administrative Judge of the Unified Court System (collectively “UCS”). The complaint asserted that this system of delay resulted in the deprivation of plaintiffs’ right to due process under the Fourteenth Amendment as well as a denial of their speedy trial rights under the Sixth and Fourteenth Amendments.

Trowbridge Breaks New Legal Ground

Trowbridge presented a number of important and novel legal issues for the Court – namely, whether

the plaintiffs could bring a constitutional challenge to systemic state criminal court delay in federal court. Shortly after the complaint was filed, the UCS moved to dismiss the plaintiffs’ claims on precisely those grounds, arguing that the plaintiffs had failed to state a cognizable claim, that federal court abstention principles prevented the plaintiffs from suing state court officials in federal court, and that the plaintiffs lacked standing to bring the suit.³⁰ Following oral argument in the fall of 2016, the Court broke new legal ground, finding that the systemic court delay alleged in *Trowbridge* gave rise to constitutional violations under the Sixth and Fourteenth Amendments that could be challenged in federal court.

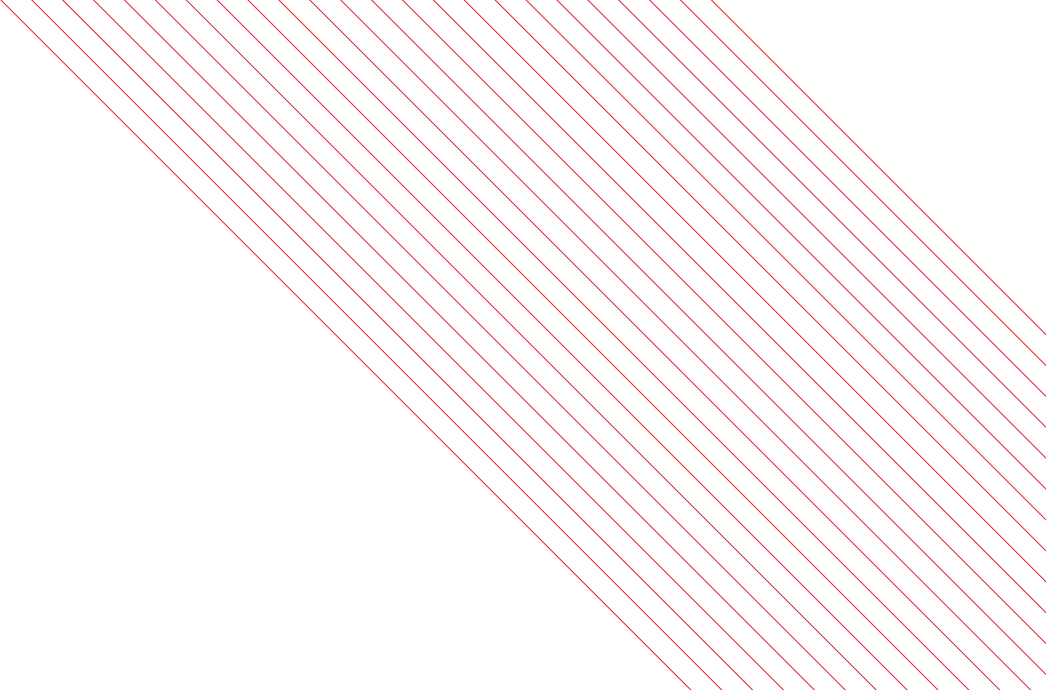
The Court’s decision, issued in late-December 2016, flatly rejected the UCS’s main argument: “Defendants’ first contention—that Plaintiffs have not alleged any unreasonable trial delays—is plainly wrong.”³¹ “Indeed,” the Court found, “Plaintiffs have articulated the dire consequences of having to appear and defend a misdemeanor criminal charge over a period of years,” holding in no uncertain terms that “[i]t is the State’s responsibility to ensure that each person accused of a crime is provided a speedy trial consistent with federal constitutional guarantees.”³² Moreover, the Court found that federal abstention principles did not

29 *Trowbridge v. DiFiore* was initially filed as *Trowbridge v. Cuomo*. Governor Cuomo’s motion to dismiss was granted in December 2016. *Trowbridge v. Cuomo*, 16 CIV. 3455 (GBD), 2016 WL 7489098 (S.D.N.Y. Dec. 21, 2016).

30 Broadly speaking, abstention doctrine precludes federal courts from interfering in state court proceedings. See generally Fred O. Smith, Jr., *Fair Use in the Time of Ferguson*, 131 Harv. L. Rev. 2283 (2018).

31 *Trowbridge*, 2016 WL 7489098, at *12.

32 *Id.* at *13 and *12.



prevent the Court from exercising jurisdiction over the case.³³ The Court's ruling broke new ground by establishing, for the first time, that systemic court delay could support constitutional claims against the highest ranking administrative judges in New York. While the Court granted the defendants' motion to dismiss on standing grounds, it paved the way for the filing of an amended complaint with new plaintiffs. The ultimate import of the Court's decision was clear: "At stake in this action are critical constitutional guarantees . . . that undergird the American system of criminal justice."³⁴

The Settlement

In January 2017, three new plaintiffs — Luis Virella, Jason Garcia, and Joseph Joshua — filed an amended complaint, beginning a period of lengthy settlement negotiations. The parties ultimately reached a comprehensive settlement, which was so-ordered by the Court in August 2018. In the stipulated agreement — widely seen as a major victory for the plaintiffs — the defendants pledged to work to decrease the number of misdemeanor cases pending for more than one year in Bronx Criminal Court, with the long-term aim of eliminating them altogether.³⁵

The principal components in the settlement included:

- A 4-year stay of litigation, during which the plaintiffs would be able to reinstate the litigation unilaterally at any time, and after which the case would be dismissed with prejudice;
- Comprehensive sharing of data regarding court delay, trial capacity, and the allocation of judicial resources in Bronx courts, provided to the plaintiffs as well as Bronx Criminal Court "stakeholders" including the Bronx Defenders, the Legal Aid Society, the Assigned Counsel Plan for the First Department, and the Bronx District Attorney;
- A series of quarterly and yearly meetings with UCS officials in which the parties were invited to raise concerns or propose remedial action for consideration by any other party; and
- A formal mechanism to request a speedy trial called "Trial Request Tracking," requiring additional data tracking and accountability measures.
- These key provisions, along with the public pressure created by a parallel media and communications effort, laid the groundwork for a sustained period of progress that continues to this day.

33 *Id.* at *11 (finding that the Court could grant "declaratory and injunctive relief that would not necessarily interfere with or restructure the state courts' lawful authority").

34 *Trowbridge*, 2016 WL 7489098, at *1.

35 The Settlement Agreement is available at https://www.bronxdefenders.org/wp-content/uploads/2018/08/FINAL-Trowbridge-Settlement-filed-8_9_18-1.pdf.

The Evolution of Bronx Criminal Court

Trowbridge ushered in a new era for people charged with low-level misdemeanors in the Bronx. In just the two years from the filing of *Trowbridge* in 2016 until the settlement agreement in 2018, the number of misdemeanor cases pending for over a year in the Bronx fell from 2,433 to 509 cases, a drop of almost 80%.³⁶ By early 2020, on the eve of the COVID-19 pandemic, there were only 149 pending cases over a year old. Prior to the filing of *Trowbridge* in 2016, there were over 500 cases over two years old in Bronx Criminal Court; by the beginning of 2020, there were only five.

Sustained Focus on Court Management and Access to Trials

Beyond the terms contained within the four corners of the settlement agreement, perhaps the most important change brought about by *Trowbridge* was the shift in the UCS's approach to the management of Bronx Criminal Court. *Trowbridge* forced the court administration to focus its efforts on creating greater trial capacity, leading to the appointment of a new Supervising Judge and staff invested in bringing about a long-term, sustainable reduction in the misdemeanor case backlog. For the first time, instead of relying on stopgap measures and temporary fixes, the UCS

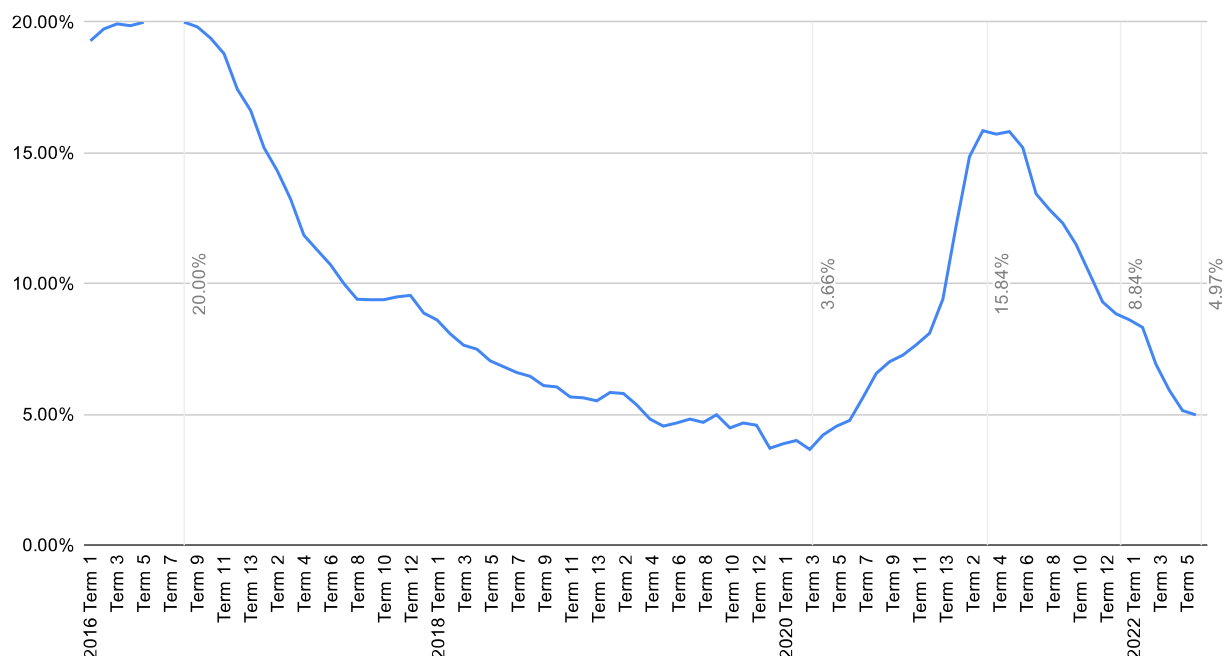
committed significant resources to ensuring that there were adequate judges and court staff available to conduct misdemeanor trials. **That is, for the first time, the court system recognized the rights of people accused with misdemeanors to a speedy trial — and put resources behind making those rights real.** Whereas before *Trowbridge* there were only one or two courtrooms available for trials — and, more often than not, none at all — in the years following the filing of *Trowbridge*, there were often as many as six courtrooms available for misdemeanor trials. All parties — prosecutors, judges, and people charged with crimes — had a **greater incentive to reach reasonable resolutions in cases with the meaningful threat of trial in the background.** And as the backlog diminished, the added capacity allowed attorneys and judges alike to identify and prioritize trial-bound cases. The progress started in 2016 continued unabated until the beginning of the COVID-19 pandemic.

Bronx Criminal Court in the Time of COVID-19

COVID-19 hit New York in March 2020, upending court functions and threatening years of progress in Bronx Criminal Court. Crowded courts and jails served as breeding grounds for the virus. Just weeks after

36 See Ali Winston, *Speedy Trials Return to a Bronx Court Known for Delays and Dysfunction*, N.Y. Times (Aug. 9, 2018), available at <https://www.nytimes.com/2018/08/09/nyregion/bronx-misdemeanor-backlog-settlement.html?searchResultPosition=6>.

Bronx Criminal Court — Percentage of Cases 1+ Years, 2016–2022



COVID-19 struck New York City, the *New York Times* reported that courts “have not quite come to a halt, but they have slowed to a crawl.”³⁷ Courts were “filled with the sound of coughing,” despite signs instructing those with symptoms not to enter.³⁸ COVID-19 swept through Rikers Island, “proportionately [becoming]

the epicenter” of the pandemic and subjecting clients, attorneys, and court staff to increased exposure risk.³⁹ About four months after the onset of the coronavirus outbreak, the backlog of pending cases in New York City’s criminal courts rose by nearly a third, to 39,200 cases.⁴⁰ By December 2020, the conditions had not

37 Alan Feuer, et al., *Coughing Lawyers. Uneasy Jurors. Can Courts Work Under Coronavirus?*, N.Y. Times (Mar. 20, 2020), available at <https://www.nytimes.com/2020/03/20/nyregion/coronavirus-new-york-courts.html>.

38 *Id.*

39 Miranda Bryant, *Coronavirus spread at Rikers is a ‘public health disaster’, says jail’s top doctor*, Guardian (Apr. 1, 2020), available at <https://www.theguardian.com/us-news/2020/apr/01/rikers-island-jail-coronavirus-public-health-disaster>.

40 Alan Feuer, et al., *N.Y.’s Legal Limbo: Pandemic Creates Backlog of 39,200 Criminal Cases*, N.Y. Times (June 22, 2020), available at <https://www.nytimes.com/2020/06/22/nyregion/coronavirus-new-york-courts.html>.

improved. State and federal courts in New York City were able to complete only nine trials in nine months.⁴¹

In Bronx Criminal Court, misdemeanor trials halted altogether in March 2020 and did not recommence in earnest until mid-2022. The complete and abrupt elimination of misdemeanor trial capacity resulted in a sharp reversal of the progress made from 2016 until the onset of the pandemic. In early 2021, cases over one year old in the Bronx court system peaked at 862 cases, or about 15.8% of the pending caseload.

In mid-2021, however, as the courts began to reopen, the number of old cases in Bronx Criminal Court once again began to trend downward. By the beginning of 2022, cases over one year old declined to 341 cases, 8.61% of the pending caseload. As of June 2022, court data showed that the decrease in the backlog had continued, with only 213 cases pending over one year, accounting for 5% of pending misdemeanor cases in the Bronx, compared to Brooklyn (2%), New York (1%), Queens (2%), and Staten Island (1%). While there is still a need for vigilance, the data gleaned from the *Trowbridge* settlement suggests that over the six years from when *Trowbridge* was filed until the end of the settlement in August 2022, there was a fundamental shift in the way Bronx Criminal Court operates and that the factors leading to the systemic pre-2016 court delay have been largely eliminated.

The Future of Bronx Criminal Court

In August 2022, even with the setbacks caused by the COVID-19 pandemic, the *Trowbridge* plaintiffs allowed the 4-year stay of litigation to expire and the case to be dismissed in light of the tremendous progress made in reducing misdemeanor case backlogs in Bronx Criminal Court. People charged with misdemeanors in the Bronx now encounter a dramatically altered court system. In 2016, there were over 2,400 cases pending over one year in Bronx Criminal Court. Six years later, that number dropped to just above 200, and the Bronx is on par with other borough courts.

The momentum created by *Trowbridge*, however, should not be lost. Though the plaintiffs allowed the 4-year stay to expire, it is critical that the Court continue providing sufficient resources to protect the tremendous decrease in case backlogs. This requires not only ensuring that there is enough court staff to continue misdemeanor jury trials at their current rate and potentially increasing that rate, but also that OCA continuously examines the lessons learned during the pandemic and over the past eight years more generally. For example, courts should offer virtual options for appearing in court and more regularly excuse client appearances in court. Measures like this will continue both to protect the right to a speedy trial and ensure that the Court's limited resources are used in the most efficient manner possible.

41 Nicole Hong & Jan Ransom, *Only 9 Trials in 9 Months: Virus Wreaks Havoc on N.Y.C. Courts*, (Dec. 3, 2020), available at <https://www.nytimes.com/2020/12/02/nyregion/courts-covid.html>.

Conclusion

While there are still countless challenges, the *Trowbridge* litigation has brought about a radical change in the day-to-day operations of Bronx Criminal Court. From reducing the number of pending misdemeanor cases from the thousands to roughly 200, to increasing access to trials, *Trowbridge* helped create opportunities for people to live their lives without

the sword of Damocles – seemingly never-ending misdemeanor cases – hanging over their heads.

For now, while that advocacy continues, *Trowbridge* has ensured that people charged with low-level offenses no longer have to weigh exercising their right to a speedy trial with placing their life on hold for years.



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