On October 14, 1974, President Gerald R. Ford signed a proclamation designating the second full week of October as NALS Court Observance Week. This proclamation established the basis for a NALS tradition of recognizing the skill and dedication to the system we serve. NALS has continued this tradition over the years by establishing an annual theme which our states and chapters promote when hosting Court Observance Week events locally.

We encourage every member, chapter, and committee to organize, publicize, and participate in an event during NALS Court Observance Week in celebration of the constitutional freedoms our courts protect. Read this year’s theme for ideas. The possibilities are limited only by your creativity and dedication. And while you’re online, take time to read the full text of President Ford’s proclamation on The American Presidency Project’s website. It’s just another reminder of the importance of your contribution to the legal community.

“The Due Process Pandemic: How Covid Seized the Wheels of Justice”
10/9/2022 to 10/15/2022

What can you do to get involved?

1. Hold a panel discussion highlighting the further slowing of already backlogged courts. Touch on the repercussions of that further slowing i.e. protracted sentences, recidivism among those awaiting trial, speedy trial, face accuser, jury of peers, lost opportunities i.e jobs and citizenship

2. Bring in a speaker to shed light on issues arising from delayed actions i.e. stale evidence, faulty recollection of witnesses and increased reluctance to testify

3. Invite vendors to discuss solutions i.e. e-discovery, e-filing, increase in bench trials/hearings

4. Discuss how the law was slow to adopt these strategies until pressed but then quick to make use of existing tech and resources
Unprecedented times.
New normal.
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Whatever we call the world now we can be certain that the times have changed and a return to pre-covid normalcy is not going to happen. This year’s Court Observance Week is all about how the new normal has affected access to justice in the brave new legal world; and how we as legal support professionals can help ease the strain.

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In December 2019 the world first heard of a pneumonia-like affliction in, seemingly far off, Wuhan China and in early January 2020 Chinese authorities identified the new strain of novel coronavirus as the cause. In mid-January the CDC arrived in Washington state to assist with contact tracing regarding the first reported domestic case of 2019-nCOV. In late January a public health emergency was declared and in Mid-March it was declared a nation-wide emergency.¹

But between January and March, amid the runs on toilet paper, hand sanitizer and disinfecting wipes; a different kind of emergency was brewing, as courts across the nation closed to the public and sent staff home in an effort to maximize social distancing and minimize person-to-person transmission of the virus we have come to know as Covid-19.

Certain steps were taken to minimize the impact of this sudden stoppage, including emergency orders and modified procedures, in an attempt to keep the wheels of justice from griding to a complete halt. “The Pennsylvania Supreme Court declared a “statewide judicial emergency” and extended filing deadlines. Virginia’s Supreme Court issued an order suspending nonessential proceedings in circuit and district courts. The Iowa Supreme Court announced that it was pushing back criminal trials, while Alabama’s Supreme Court suspended in-person court proceedings”.²

While it was not all for naught, the mitigation was not as efficacious as hoped. In King County – near ground zero for the U.S. front of the pandemic – as of July 12, 2021:

- “250 murder cases await trial
- 400 sexual assault victims have been waiting nearly two years for their day in court
- 9,000 traffic infractions await hearings, and
- Small claims and domestic matters have yet to be calendared”.³

“These backlogs are growing in spite of other efforts to reduce the flow into the system, such as law enforcement postponing arrests and citations, prosecutors declining to file charges for low-level offenses, a reduction in the issuance of warrants or the suspension of existing warrants, increases in release without bail to reduce pretrial detention, and settlements of pending cases through plea bargaining. For cases that are still in the system under the suspension of speedy trial requirements, those requirements will be reimposed and the stakes for addressing the backlog will increase even further”.⁴

When courts did re-open they used technologies like Webex and Zoom to hold hearings, moved matters from jury trials to bench trials, and based many more decisions on pleadings rather than on argument.
However, these accommodations did not translate to full-steam-ahead on hearing matters. “During the pandemic, two and sometimes three courtrooms were needed at the Seattle courthouse per criminal trial — one for the actual trial, one to serve as a jury room to avoid the cramped quarters of actual jury rooms, and occasionally a third courtroom to allow observers to watch proceedings via video stream.” Thus it was a situation of one step forward (electronic filing, for instance) and two steps back (hearing half as many cases as previously).

The pandemic did not necessarily usher in a new frontier in modernizing the justice system, but it certainly did highlight where improvement was needed. For instance, in Missouri one hundred percent of counties file cases electronically; meanwhile, in Washington electronic filing is hit-or-miss. “The COVID-19 pandemic is not the disruption courts wanted, but it is the disruption that courts needed: to re-imagine and embrace new ways of operating; and to transform courts into a more accessible, transparent, efficient, and user-friendly branch of government.”

While an exhaustive listing of the issues arising from delays in justice is near to impossible, and frankly unnecessary, a few do bear mentioning. Obviously, there are the constitutional issues such as right to a speedy trial, the right to face one’s accuser and the right to a trial by a jury of one’s peers. Then there are the procedural considerations such as spoliation/degradation of evidence, witnesses no longer available/willing to testify, and turnover in court personnel familiar with cases. Finally, there are the unintended consequences; an immigrant who cannot access services because their citizenship is caught up in the backlog (1,596,193 cases as of December 2021), a single mother who finds potential employers reluctant to hire someone with a pending misdemeanor action, or 91-year-old mesothelioma victim who knows that if they die before their case is heard their family loses all potential recovery. Each one of these cases is a real person, with a real matter, pending in the court backlog.

But what if, hear me out, we are missing the most obvious solution?

So, we are all aware that problems exist, and we all agree that problems need to be addressed. The question then becomes by whom, and how? And for that matter what are the actual problems we need to address? The elephant in the room brought along a hippopotamus, and a rhinoceros, to the party. To this point the answer has been Technology. WebEx, Zoom and Teams for everything from jury selection to mediation and depositions to hearings themselves. Electronic filing, depending on the county you practice in, whether from a purpose-built program akin to the longstanding CMECF/PACER or through file transfer protocols such as FileZilla or the FTP alternative DropBox. “Over the last 10 years, the justice tech market has grown from a handful of startups to a booming sector, according to a 2022 report titled “Justice Tech for All: How Technology Can Ethically Disrupt the U.S. Justice System” released by Village Capital and the American Family Insurance Institute for Corporate and Social Impact. According to the report, investors have poured nearly $80 million into more than 100 early-stage justice tech startups in about the last 10 years.”

But what if, hear me out, we are missing the most obvious solution? What if the solution to the most basic of human problems (denial of rights), is a human? “Technology is not a panacea. It does not and should not replace the fundamentally human character of justice. However, it provides a unique opportunity for courts to ensure that all parties to a dispute—regardless of race, ethnicity, gender, English proficiency, disability, socio-economic status or whether they are self-represented—have the opportunity to meaningfully participate in court processes and be heard by a neutral third-party who will render a speedy and fair decision.” We stand on the precipice of a truly brave new
world, an opportunity to make real, lasting, and necessary change in the justice system.

“According to the Legal Services Corporation’s 2022 Justice Gap Study, low-income Americans do not get adequate legal help for 92% of their substantial civil legal problems and the cost of legal assistance is a barrier. One way to lower the cost of legal assistance would be to open the practice of law to non-attorneys.” 10

“[…] according to the American Bar Association Center for Innovation’s Legal Innovation Regulatory Survey, Utah and Minnesota are the only states experimenting with allowing non-attorneys to provide limited legal advice through regulatory reform programs.”11 Utah instated a “regulatory sandbox” in August of 2020 that allowed individuals such as technology platforms that offer legal advice (think LegalZoom) and law firms with non-lawyer owners, that historically had not been allowed to practice law, to do so. In March of 2021 Minnesota launched a two-year pilot program allowing legal paraprofessionals, under attorney supervision, to represent clients in housing and family court matters. “States that are considering similar regulatory reform to close the access to justice gap in the U.S. include California, Oregon, Nevada, New Mexico, Indiana, Connecticut and New York, according to the Legal Innovation Regulatory Survey.”12 Meanwhile in June of 2020 just as the need for low cost legal assistance was being fully realized across the state, Washington, the first state in the nation to approve non-lawyer practice areas through its innovative Limited License Legal Technician program, voted to sunset the program entirely citing lack of interest and profitability.13

I’m not saying the answer is to flood the courthouse with even more people causing issues with social distancing, but in the end technology alone can only do so much. To quote a ‘key finding’ of a Rand study: “A justice system can respond more effectively than a group of justice organizations… Panelists discussed examples where the decisions in one part of the system affected others, and although those choices might have been unavoidable, more coordination and information-sharing might have cushioned effects throughout the system.” 14

Considering what was, and what is, what can legal support professionals do to help ease the strain? The Post-Pandemic Planning Technology Working Group of the Conference of Chief Justices/Conference of State Court Administrators has six technology-related recommendations15. Their recommendations were geared toward courts, but I think many translate well from court-centric to firm-focused:

1. Ensure principles of due process, procedural fairness, transparency, and equal access are satisfied when adopting new technologies.
2. Focus on the user experience.
3. Prioritize court-user driven technology.
4. Embrace flexibility and willingness to adapt.
5. Adopt remote-first planning, where practicable, to move processes forward.
6. Take an open, data-driven, and transparent approach to implementing and maintaining processes and supporting technologies.

For the people centric approach legal support professionals must focus on advocacy. Ensuring we advocate on behalf of our office’s clients not only in the courtroom, but in the policy realm as well. “In January, Upsolve (a consumer bankruptcy assistance nonprofit) hit New York Attorney General Letitia James with a federal lawsuit, challenging the state’s ban on free legal advice from non-attorneys as unconstitutional. A New York federal court issued a preliminary injunction in May allowing Upsolve to give legal advice to low-income debtors without fear of prosecution for practicing law without a license, ruling that the organization’s activity is First Amendment-protected speech. Sonja Ebron, co-founder and CEO of pro se litigants’ assistance platform Courtroom5 and a founding member of JTA, said that the Upsolve case proves that states are not implementing regulatory reform fast enough for legal tech companies. "If states were moving fast enough, then they would’ve adopted already the First
Amendment argument Upsolve used,” Ebron said.”

About the Author
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is a member of NALS in the NALS of Oregon Portland Chapter; and serves on the NALS Marketing Committee. Christa has been in legal service for 16 years, and is currently a paralegal for Cameo Consulting, LLC duty stationed with the Department of Energy. Christa lives on a homestead in Eastern Washington with her husband and son, and spends weekends fishing, hunting, and being a “rodeo mom.”

References
10. Id.
11. Id.
12. Id.