Equal Justice For More: Putting Intermediaries In Courtrooms

By Ali Fraerman and Connor Haseley, Roosevelt @ Columbia

Thesis
Intermediaries who provide direct person-to-person intervention in courtroom procedures for the benefit of those most vulnerable to coercion, those with cognitive disabilities, would progress the justice system towards a greater standard of equality.

Background Analysis
According to The Advocate’s Gateway, a UK organization providing guidance on vulnerable individuals in court, vulnerable individuals face disadvantage at the hands of the justice system because they “may not give complete, coherent or accurate testimony and, in the case of the defendant, they may also be unable to follow or participate effectively in the hearing.”1. Innocent people are sometimes convicted because of their inability to effectively take the stand, and guilty people sometimes walk free because their victims and witnesses cannot effectively testify.

For the purposes of our proposed policy in New York, we subscribe to the definition in a toolkit used by the UK program, defining ‘vulnerable’ as “those who are young, have experienced trauma, have attention-deficit hyperactivity disorder, autism spectrum disorder, mental health needs, specific learning difficulties and deafness, as well as older people and those with physical disabilities or health conditions which may negatively affect their ability to effectively participate in the trial process.”2

Just as in the UK, we propose the intermediary’s function to be “to communicate to the vulnerable witness, ‘questions put to the witness, and to any persons asking such questions, the answers given by the witness in reply to them, and to explain such questions or answers so far as necessary to enable them to be understood by the witness or person in question.”3

Talking Points
• Shows like Making a Murderer have exposed the coercive nature of the US justice system, this policy actively combats this by giving trained third parties the access and the ability to mitigate coercion.
• The intermediary system in the UK has proved successful. A review of the intermediary program found that “Intermediaries for vulnerable people in the justice system are in high demand because of the benefits they bring in ascertaining the best evidence.”
• With Jeff Sessions in charge of the DOJ, successful policy in local courts in more important than ever. This program is already functioning in the United Kingdom, it can function here as well.

KEY FACTS
➢ 77% percent of wrongful convictions are attributed to perjury/false accusation, mistaken witness identification, false confession, or official misconduct, which could all take root in coerced or inaccurate statements by a vulnerable witness or defendant. By improving the accuracy of the courtroom process, intermediary services will lead to a reduction in the number of wrongful convictions.4
➢ 40% of inmates in Rikers Island have some sort of mental disability.5 Intermediary services are specifically designed to serve this particular population.
Policy Idea
Create legal parameters within the New York State Courts allowing licensed mental health care workers to become intermediaries in court proceedings to assist vulnerable victims, witnesses, and defendants. Intermediaries would be registered in a New York State database and accessible when state psychologists deem it necessary.
Create standards to qualify the intermediaries and the need of the victims, witnesses, and defendants accompanied by an easy to use database. Implement a pilot program in New York State with idea of expansion nationwide.

Policy Analysis
As it stands, courtroom procedure in the United States is not designed to account for vulnerable individuals’ unique needs. As has been shown in the UK, intermediaries whose sole job is to ensure the proper functioning of the justice system are effective at patching this design flaw. The fact that the UK system has been in place for so long allows a similar system in the US to avoid the growing pains the UK system endured while building off its successes. The UK government recently doubled its funding for intermediaries with great fanfare, showing that such a policy can attract broad political support across party lines.4

The bottom line is that making courtroom procedure fair for the most vulnerable people in our society bolsters the integrity of the justice system and is a step towards the progressive realization of the principle of equal protection under the law. Since prosecutors’ racial bias often affects courtroom interactions, the use intermediaries not affiliated with prosecutors should be able to especially benefit vulnerable people of color.5

As best as can be ascertained, in the UK it costs around $115 million annually to provide intermediary services to a population of 64 million such that 95% of requesters were matched with an intermediary.67 We see no reason for costs to be substantially higher per capita were a similar policy introduced in New York State.

Next Steps
Our first step is to define and pass into law the parameters to allow intermediaries to have the capacity to clarify questions and processes to witnesses and defendants in court, we need to write a bill and pass it in the New York State Legislature to implement our policy. We have a relationship with New York State Senator Daniel Squadron, ranking Democrat in the Senate Codes Committee. We can have Senator Squadron’s office help us write and lobby a bill in the State Senate, and use his contacts in the State House of Representatives to lobby it there.
In New York City, we will pitch the idea to the office of our City Councilman Mark Levine, who we have worked with before. He can help us contact the District Attorney and Public Defender offices in the five boroughs, as well as prominent judges, and get their support for our policy.

End Notes
<http://www.theadvocatesgateway.org/intermediaries>.


7 Cooper, Penny. Ten Years of Registered Intermediaries in England and Wales. Rep. London: 

8 "Exonerations Contributing Factors By Crime." The National Registry of Exonerations. THE 
UNIVERSITY OF CALIFORNIA IRVINE NEWKIRK CENTER FOR SCIENCE & SOCIETY, 
UNIVERSITY OF MICHIGAN LAW SCHOOL & MICHIGAN STATE UNIVERSITY 

9 Winerip, Michael, and Michael Schwirtz. "For Mentally Ill Inmates at Rikers Island, a Cycle of 
of-jail-and-hospitals.html>.