

## 2A Remote Court Appearances and the Digital Divide: A Virtual Step Forward?

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Danielle Hirsch:

Hello everyone. My name is Danielle Hirsch and I'm with the National Center for State Courts and together with a really wonderful panel of judges who we'll introduce in a minute. This is "Remote Court Appearances and the Digital Divide: A Virtual Step Forward?" In the next 50 minutes, we are going to aim to do quite a bit. So we're going to start and keep these things moving. One quick caveat that I want to apologize in advance. About 10 minutes ago, my ceiling started to leak. And so you may hear a lot of water. I've got a bucket and we're just going to make the best of it. So apologies if it sounds like it's raining, it is in my office. I'm going to start with a quick, can everybody see my slides? I want to start with a quick overview about the digital divide and some of the lessons we've learned nationally. And then we will jump into the really rich discussion that we have planned among these judges.

Again, I'm Danielle with the National Center. I want to start with a definition. Lots of people mean different things when they talk about the digital divide. When I talk about the digital divide, I think about it in three related flavors, you can have all of these or just one of them, but they all compromise the digital divide. The first is equipment, access to a computer or a smartphone. The second is broadband strength or Wi-Fi and minutes. And the third is tech savvy. So you can have the equipment, you can even have the broadband, but if you're not comfortable with the platform or with the computer or the phone, you also can suffer from the digital divide. And there's been a lot of research done from the Pew Research Foundation, along with many others that show that the digital divide is an urban, suburban, and rural issue. It's not just a rural issue. And so you'll hear themes about that throughout today, and I'm sure you have experienced it in your own practices across the state.

I want to highlight a handful of strategies that we've seen work nationally, and then dig into how it's being experienced across New York State. The first is kiosks. We've seen courts across the country, either directly loan equipment to court users, directly. Most of that on the court side, we've seen examples of this with loaded tablets in New Jersey and Texas, but that's usually for jurors, not for parties, but the models still exist. The second example that we've seen is courthouse kiosks. Those are all over the country. Usually there is some kind of office or space in a courthouse where you can come in, even if the proceeding is remote and you can participate remotely, it can solve for all three problems. Whereas the equipment can solve for the equipment and the broadband if it comes with an internet connection, but not necessarily the savvy, the courthouse kiosks can solve for all three conceivably, if there is help to get you connected.

And then we've seen really successful partnerships with community-based kiosks or locations. For example, in the District of Columbia, there are locations in job training centers and in other human services providers all over the District, in addition to the courthouse itself. Public libraries serve as an important community-based location also, and New York State's Justice for All work, kind of proves the benefit of community-based locations in public libraries and other spaces.

Another example that we've seen courts employ all over the country is tech bailiffs or what I'm calling tech bailiffs. They call them all sorts of different things, but the idea is really, this is to solve for the kind of tech savvy and to solve primarily. And it's usually to help people orient when they get onto a system to make sure they understand how to get out of the waiting room or how to speak or how to make sure they've put their name at the bottom as opposed to a phone number, so it's easier for the court staff when it comes to their case, et cetera. They've been funded and hired in a whole bunch of different manners. We've seen court employees, for example, in Vermont, they used ARPA funding to pay for what they are calling "OA's", Organizational Assistants. And those folks actually helped in the waiting room. They helped lawyers. They helped self-represented litigants. And at the beginning they helped judges. So at the beginning of every call, they would make sure people are in the appropriate room, that they know how and when to get from the waiting room into the right breakout room or the right court.

We've seen volunteers do it. For example, in Illinois, AmeriCorps volunteers are performing that function and they're both providing kind of base staff kiosks as well. They're providing the human power for the tech savvy. And then again, our community-based locations can serve this function too of helping somebody successfully get into court.

Another thing that solves for the lack of broadband for a particular person is making available where there are free Wi-Fi hotspots. We've seen, for example, the state of Hawaii published and has updated a map of locations that you can drive to or go to where there is free Wi-Fi, either in the parking lot or in the location. So you can participate and know that you're going to have a strong signal without using your minutes.

And then there's something about the really low tech of just making sure that you have information and manuals and videos, ideally in multiple languages, all of these, to help people participate in remote hearings, both on using a computer, but also importantly, using a smartphone. We know from Pew and a handful of other researchers that people are engaging with the court in remote hearings, largely using smartphones. And so you want to make sure that they understand how to get on the system and participate.

So with that, I want to turn now to a discussion with this esteemed panel of judges from across New York state. And I want to thank Rochelle Klempner

from the New York Courts for helping put this all together and bringing us together. So many things to Rochelle for this. I'm going to open this up to everyone and have you introduce yourselves rather than me introduce you. So in 30 seconds to a minute, can each of you tell us your name, what court you're in and give us a very, very high overview of how your court uses virtual hearings. And let's start with Judge Vacca.

Hon. Meredith Vacca:

Thanks, Danielle. And thank you Rochelle for organizing this and thanks to everyone for joining us. My name is Meredith Vacca. I'm a Monroe County Court Judge here in the Seventh Judicial District. Although most of my docket is criminal, I also have a civil docket. I do landlord-tenant. In the Seventh Judicial District here in Rochester, we have what's called SCIP court or "Special COVID Intervention Part," where I do most of the landlord-tenant eviction proceedings here in the Hall of Justice. So in the Superior Court. And so we have a hybrid-system. I am in-court, in-person. However, there is a virtual option and this hybrid option gives attorneys, the petitioners, the respondents, or the tenants, an option to come to court or to appear virtually or remotely. And I would say most of the people that appear remotely are tenants. And most of them call in over the phone. We can't see them, they don't have video capabilities, but we can hear them and we talk to them over the phone in court. We've had this hybrid system since the beginning of our Special COVID Intervention Part, and it seems to be working well. Thanks, Danielle.

Danielle Hirsch:

How about Judge Williams?

Hon. Lyndon Williams:

Thank you, Danielle. And let me thank Rochelle also for coordinating this because it helps us tremendously. My name is Lyndon Williams and I am in the City Court of Mount Vernon. Our court covers criminal as well as civil proceedings and I preside in both situations. Now, with respect to the civil proceedings, during the pandemic, we used virtual proceedings for most of the civil matters, including motions, conferences, settlements, hearings, trials, the like, but now as we return to normalcy, the operating protocols of the Ninth Judicial District really require that in-person proceedings be used for most civil matters. So while virtual proceedings are permitted, we more or less our focus now on, except for limited circumstances, on in-person proceedings.

Danielle Hirsch:

Wonderful. How about Judge Schneider?

Hon. Jean Schneider:

Hi, good afternoon. I'm Jean Schneider and I'm with the New York City Housing Court. We spent most of the pandemic being mostly virtual. We developed techniques for doing virtual conferences, virtual arguments of motions and eventually got pretty good at doing virtual bench trials, handling documents and so on. Our current challenge as a high-volume court is that, which is now resuming lots of in-person activity, is to figure out how to use what we've learned from technology to avoid becoming an overcrowded court again. We were one of the courts that Jay Johnson specifically singled out as a cattle call court, and we are hoping, it's a huge challenge, but we're hoping to figure out how to combine virtual and in-person in a way that maybe can take us out of that cattle call justice category.

Danielle Hirsch:

And last, but certainly not least, Judge Sullivan.

Hon. Michael Sullivan:

Hi, I'm Michael Sullivan. I'm a Family Court Judge in Chautauqua County. That's the farthest reach of New York State, just almost into Erie, Pennsylvania. We have really not gotten into the hybrid at this point. When we do our proceedings, it's one or the other, it's either in person or it's all virtual. We are slowly working in following our protocols here to, for example, right now all surrenders and all juvenile delinquent matters have their intake and first appearances in-person. We're doing almost all pre-trials totally and conferences virtually. And we are scheduling trials, all the trials that have already started, or that had already had trial dates scheduled and the people were told it would be virtual, we haven't changed those yet, but anything new is being added as in-person.

In-person's going to be nice when we get really moving because of the evidence issues that are going to be so much easier when we're back in-person with a 350-page hospital record or a social services record. But on the other hand, right now, being back in-person, we're still with masks on, and there's a lot to be learned watching the facial expressions of people. And when courtroom is full of folks that you can't see how they're reacting, sometimes it's a little difficult. I'm hoping that we get that restriction lifted soon enough, then get our in-person trials, fact-finding hearings going, but I think in the future, we're going to see particularly pretrial conferences taking place virtually. It allows the attorneys actually to be in a couple of places in a short period of time. The big problem we have out here and I'll talk about it later is distance and traveling and most of our attorneys are at least 35 minutes away from the courthouse where their offices are.

Danielle Hirsch:

Super. Just in the introductions alone, I think it's clear what a rich conversation we're going to have. I'm going to start because I'm an eternal optimist with the potential benefits of virtual hearings. And so, I'd love to start with Judge Schneider. If you can talk a little bit about bulk scheduling. And as you mentioned, trying to think about how to change the cattle call docket nature of some of the housing court dockets.

Hon. Jean Schneider:

When we started doing virtual appearances, I think we were really nervous about it. And we started out setting aside 30 minutes for every case. Then we moved it down to 15 minutes and then eventually we realized that we could put on say five cases at one time. And that enabled the Judge to move back and forth among cases. We could tell two lawyers to get off and talk something out and come back on in 20 minutes. We began to do that regularly with our two attorney cases. It's much more difficult to do with somebody that's not represented by counsel, but because of the New York City Right-to-Counsel law, we have many more two-attorney cases now than we used to. And again, we are hoping that we can use what we've learned in terms of efficient virtual calendaring to manage the two-attorney part of our caseload and keep a lot of it virtual.

Danielle Hirsch:

Oh no, Judge Schneider disappeared. Well, then we will leave her comment. Hopefully she'll be able to rejoin. Judge Vacca, can you talk about the hybrid benefits of remote hearings?

Hon. Meredith Vacca:

Sure. There are distinct, oh Judge Schneider's back with us.

Hon. Jean Schneider:

I'm having connection problems. I apologize.

Hon. Meredith Vacca:

Danielle, did you want Judge Schneider to finish her response?

Danielle Hirsch:

Sure. Judge Schneider, while we still have you, can you tell us if you want to?

Hon. Jean Schneider:

Yeah. I'm not sure where I lost you, but why don't we just move on and I'll catch up another time.

Danielle Hirsch:

So Judge Vacca, if you could quickly...

Hon. Meredith Vacca:

Sure. You know what, there are distinct disadvantages to having virtual proceedings, but overall based on my experience in my landlord-tenant court, having hybrid, virtual and in-person, I definitely believe that it's beneficial overall to have the virtual option. I think the key word is really option, because it gives the attorneys, the petitioners, the tenants, the option to come to court or to appear virtually, and every week we have people that appear virtually for a variety of reasons. And so, the benefit is that it makes our court more accessible. That is no question the biggest benefit to a virtual proceeding.

Sometimes people prefer to come in-person. Sometimes it's easier for them to come in-person. Maybe they don't have access to a phone or a computer where they can appear virtually. And sometimes the opposite, sometimes people prefer to come or prefer to appear virtually. Sometimes people aren't able to get to court. My court in particular, I handle landlord-tenant and eviction proceedings from all over Monroe County. So there are people that might live farther away. There are attorneys that appear from different cities. So it's good to give that as an option to them.

Every week there're people that are maybe not feeling well or maybe are quarantined that are up to still appearing and appear virtually. There's definitely every week there's, maybe someone has a childcare issue and they're able to appear virtually. Maybe they just started a new job and they can kind of get out of their job quickly and appear in court, but it's hard for them to get down to court so they can appear virtually. There's always different issues like transportation issues. I've had tenants and petitioners that really have anxiety to coming to court, coming downtown parking or getting there. And so, they prefer appearing virtually. And so I make it a point to always give them that option, even when it's more challenging to give that option to make court more accessible.

Danielle Hirsch:

Wonderful. We've talked a little bit about the benefits. To keep us going, I'm going to move on to another question, which is for court users that experience the digital divide. So they either lack digital literacy or they don't have access to equipment or broadband. What strategies have your courts employed either individually as courts or with community partners to provide access? And I'd love to start with Judge Williams. I'm hoping you can talk a little bit about the faith-based initiative and safe space for digital assistance.

Hon. Lyndon Williams:

Sure, Danielle. Well, at the height of the pandemic, the court operations were limited to virtual proceedings. In-person proceedings were severely restricted. Many low-income litigants could not gain access because as you indicated, Danielle, they lack the internet services. They did not have the technology and they lack the knowledge to participate in virtual proceedings. Many did not have desktop computers, smartphones, tablets, high speed internet service capable of downloading Microsoft Teams. Most of the matters that came to the civil part of the court during that time, or eviction matters or consumer debt matters, those were the predominant cases before the City Court, whether it was a residential tenant or a consumer debtor, these litigants had substantial stake in the outcome of the proceedings. It meant the families could lose their apartment, become homeless. It meant that persons who, a consumer debtor could lose his income or her income through garnishment or restraint on bank accounts due to enforcement of default judgements that were obtained by creditors years ago.

Some low-income litigants were often unrepresented and struggled to join the virtual proceedings with dated flip phones, capable of only making voice calls with limited minutes, continued disconnects, no camera, no means of effectively downloading Teams. If tenants could not join virtually, they came to the courthouse. Many of them were senior citizens living on fixed income. As judges, we were challenged to ensure that the scale of justice is balanced and that we were doing our best to provide meaningful access for those on the wrong side of the divide and finding ways to bridge the gap was essential.

The Faith-Based Court Access, the FCA program is an initiative that was designed to help bridge the digital divide. Former Administrative Judge for the Ninth Judicial District, Hon. Kathie Davidson, who is now the Dean of the New York State Judicial Institute, spearheaded a collaborative effort between the court system, county officials, city officials, and the faith-based community to establish what's called a faith-based initiative as a pilot program in major cities in Westchester County, and to be expanded to the other parts of the Ninth Judicial District. The purpose of the program is for houses of worship to provide and operate safe spaces for unrepresented persons who don't have access to personal home computers or technology to access the court system.

The program recognized that while some participants may have access to a computer in a public facility, they often lack private and confidential space, or they lack the knowledge of how to use the system. The faith-based program provided that the disadvantaged person could access the court system by visiting a comfortable space in a house of worship. And the participant then can log into the internet on a software loaded system, either a desktop or a laptop, and they can participate in their proceedings. The locations were staffed by persons who would help participants navigate the process. And the faith locations were equipped with camera ready, desktop and laptop computers loaded with the necessary software, as well as have office supplies,

printers, scanners, everything that was needed in an office in order to really participate fully in the virtual proceeding.

The program also referred eligible participants for legal service agencies or to the social service agencies. And the program, the FCA program, actually the process was one that was obviously followed strict COVID protocols, including sanitizing and social distancing, et cetera. But the bottom line is that here was a concept that really took the community, the court system and the local governments and county government to work together, to provide an alternative that would solve part of the digital divide and allow people to participate in their court proceedings.

Danielle Hirsch:

Thank you, Judge Williams. Judge Schneider, you are living the, sometimes in addition to the three kind of traditional issues with the digital divide, sometimes the internet just is spotty. So it's important-

Hon. Jean Schneider:

On a courthouse system. Go figure. Sorry.

Danielle Hirsch:

Can you talk a little bit about the court's partnership with the Department of Aging?

Hon. Jean Schneider:

Sure. The Department for Aging in New York City has a small, but kind of wonderful program to assist seniors with digital access. And it's one of the few programs I've seen that really effectively addresses the third aspect of access, which is comfort with technology. They have assigned social workers with tablets to go into the homes of seniors and help them to get online and to participate in cases virtually. And it works beautifully because it creates comfort because there is somebody who already feels comfortable with the technology to assist the senior in participating and it really has worked tremendously well, but it's very resource intensive, obviously because there's a person and a tablet traveling home by home. So it's not a very extensive program.

Danielle Hirsch:

Thank you. I want to swirl back to a topic that Judge Vacca mentioned earlier, which is that, is there a difference between court users participating on the phone versus video? And I want to start with Judge Sullivan. Can you tell us kind of your thoughts about that?



Hon. Michael Sullivan:

Well, certainly when they're on the phone, all you have to go by is a voice. Once they appear by video, depending on where they are, and in our county, the distance sometimes between the attorney's office and the person's home is prohibitive of getting them into the office for an appearance. So they'll log in from home. And the backgrounds that you see in people's homes sometimes are helpful. Sometimes they're not. Occasionally it can lead to unintended observations or conclusions by the things you see. And then you add in the unexpected cat crossing through the screen, or the dog barking in the background that won't stop. The video and having those visuals sometimes is a problem. And I know that for the attorneys, sometimes it's a problem because they really don't have a full control of what you are seeing in their client's homes, where if they're bringing their own evidence in, it's a lot easier.

I think when we're doing these, particularly we've been almost all of our initial appearances, our pre-trials, it's generally been the parties on the phone. We have a rare number that even I think, are able to meet all of the needs to get on video. But generally for those it's been by phone and it works well for those types of proceedings. But once you get to the hearing, you've got to be able to see the party. And I think until we can figure out the best way in a county like ours, where there's travel distances that are prohibitive of being able to get some sort of a uniform situation for the witnesses or for the parties when they're appearing. And that's going to be, I think the big step to get back if we're going to continue doing these in the future in any way. And I think there are some benefits even when we can get back in-person because of the distances that people have to travel in our county to get back and forth to court.

Danielle Hirsch:

Judge Williams, can you talk about kind of the flip to Judge Sullivan's coin about the benefits of seeing some people's homes, especially when it revolves around landlord-tenant cases?

Hon. Lyndon Williams:

Yes. Well sure. During the pandemic, among the issues that the courts face were complaints from tenants about uninhabitable living conditions caused by landlord's failure to make repairs. Landlords also actually raise issues about the nuisance exception to the COVID hardship rules. And that exception, landlords often alleged that tenants were creating significant damage to property or unreasonable conditions that substantially infringed on the use and enjoyment of other tenants. One of the benefits of video participation is that it allows the court to address applications of repair orders or allegations of serious building code violations by viewing the conditions remotely by way of a smartphone camera. And on how, for example, a judge could visually observe the conditions

in the tenant's apartment or could observe conditions in the whole common areas where landlord is complaining about the tenants infringing on use and enjoyment of other tenants. The court may conduct a virtual visit, let's say with the tenant, landlord, as well as council for both parties, by having the tenant take the cell phone camera from room to room and to show the areas where the alleged uninhabitable conditions exist.

The court could also observe the tenants complain of, let's say, leaking roofs and falling ceilings. As you said earlier, Danielle, you're getting a leak in your ceiling there, you can take a camera and probably show that there is a leak that's occurring. Issues of mildew and mold, broken cabinets, leaking plumbing, all of these issues are issues we deal with every day in addressing conditions in a dwelling. And so using a camera to see it was important. But one of the issues that we had to deal with was that during the pandemic, a number of the government agencies, the building departments were on limited staff, were closed. And so many of the complaints that were normally made to the building department and inspections conducted were somewhat delayed. And so here are parties before the court, arguing situations about the conditions in their dwelling.

So using a camera, a cell phone camera, I felt was very good in at least getting the parties to acknowledge that there are repairs to be done, setting timelines for those repairs, agreeing on access orders and so forth. And those were the benefits that I see I observed as a Judge in dealing with some of the issues that we had to during the pandemic.

Danielle Hirsch:

Wonderful. My last two questions before we open it up to all of the participants on today's call are what kinds of hearings should always be remote and what kinds of hearings should never be remote. And so, if we could start with what kinds of hearings should always stay remote. I'd love to start with Judge Schneider, but then really would love to hear others' thoughts. So Judge Schneider.

Hon. Jean Schneider:

I think that, for us, what has to be remote is most two-attorney appearances between the beginning and the end. Some of the attorneys who appear in housing court in the city are convinced that it's more difficult to settle a case in a remote appearance than it is to settle it in an in-person appearance. So we're trying to sprinkle in sort of an initial in-person appearance and a final in-person appearance before going to trial, but the more routine in between appearances where everybody has a lawyer are much more easily managed for everyone with a remote appearance, the attorneys don't have to travel to court. You can argue a motion perfectly well in a remote appearance.

Danielle Hirsch:

How about everyone else? This is a jump ball.

Hon. Lyndon Williams:

Oh, I agree with Schneider that civil motion arguments actually can be well conducted in remote settings. Settlement conferences, I believe if both parties are represented by counsel and really most of the agreements have been reached in terms of this position of the case, it might be something that can be done remotely also as well have as status conferences and updates and so forth. Those are matters that I believe are made more for virtual.

Hon. Meredith Vacca:

Yeah. I do the same thing. I have my attorney conferences virtual. I give the attorneys the option to come into chambers if they want to discuss something. And those aren't official court appearances. Other than that, when you need to have maybe the tenant come to court, I don't really know if any proceeding should just strictly be virtual. I think, at least from my experience, having that option to appear virtually or come in-person is important. We know that the attorneys can appear virtually, but if you're requiring one of the parties to come in, then I think it's important to give them those options.

Danielle Hirsch: Judge Sullivan?

Hon. Michael Sullivan:

Well, I know in our county, I think the more initial stage things we do remotely, the better it's going to be for the participants. Generally, first appearance, once the petitions have been sent out and people show up, it's a matter of determining if they're going to be, if they've got first a chance to go to mediation and work it out, or if they're going to be asking for attorneys. And in either case, in some cases, it's not unrealistic to be less than five minutes for those, sometimes a couple of minutes. And in order to be here and the 30-to-40-minute drive to get here, no one can take part of the day off from work. Nobody can take, most people are taking the full day off for a two or three minute appearance, where if we could get it down and use some of those techniques you mentioned at the beginning here, for example, the volunteers or the remote bailiffs that would help us to have people not have to spend all day, making sure we take care of the minutes they might have on their phone, but also not having to take a whole day for a two-minute appearance.

We then have a next appearance is the appearance with counsel. And generally we're just scheduling a pre-trial at that case, unless there's an issue that had to be resolved. Those things, if we could continue to do those remote, but find a way to have a lobby that makes it work so that we can move those cases along, those I think will go a long way. One, to ending the cattle call appearance that

the courts have been known for. And that's not just a big city issue. That's Chautauqua County, the same thing. We pack them into our little lobby out here, and we don't have enough chairs to go around and they wait for that two minutes and then when they're told it's all over, they can head home, they're shocked. If we could eliminate that, those would be great to be continuing as well as the conferences with just attorneys.

Danielle Hirsch:

Wonderful. We've got some agreement or consensus about some of the types of hearings that should be remote always. Curious whether we can identify the types of hearings that really aren't suitable. We've talked a little bit about status conferences, but Judge Vacca, I was hoping maybe you could share a little bit more as it relates to the challenges of settlement conferences or any other types of hearings that you don't think are suitable.

Hon. Meredith Vacca:

Sure. As I said earlier, every court appearance, they have that option to appear virtually, and we just make it work, even if it's not really suitable for virtual. Obviously when you're doing a hearing with testimony, having someone appear virtually is very challenging. Most of the people that appear virtually are tenants, and most of the tenants that appear virtually call in on their phone. So I can't see them. I just have a phone number that pops up on the monitor in my courtroom. And so, it's very difficult just logistically to do testimony. You have this microphone, I'm sure a lot of the courtrooms are similar and we're constantly moving it around because they can't hear. It's easier when maybe I'm just talking, but when the other attorneys are talking and asking questions, it's very difficult.

And so, those kinds of proceedings are not very suitable for remote appearances. Although I do my best to give them that opportunity to appear virtually, even though it's difficult. I can tell you that my landlord-tenant docket moves slow, and it moves slower largely in part because of the people that are appearing virtually. It's just harder. And landlord-tenant, when they're actually in court, it's pretty short. Most of the time people spend at court is talking to their attorney and trying to negotiate some sort of settlement.

And so there's back and forth between the petitioner and respondents' attorneys. And then the respondents' attorneys have to talk to their clients and vice versa, and it's hard to do that when you're remote. There's constantly calling back and forth. And so those kinds of things aren't very suitable for remote proceedings, but it takes longer and it's more challenging, especially for example, with interpreters. We have interpreters, I think every week and some of our interpreters appear virtually and some of them are in-person and that's very difficult for the attorneys to deal with, but we still do them virtually if we need to, but it definitely is more challenging.

Danielle Hirsch:

Judge Sullivan, I know that you shared an example of a litigant who ran out of minutes on a hearing. Are there types of hearings either in length or complexity or kind of matter that you think should not be suitable for remote hearings?

Hon. Michael Sullivan:

I think again, the pretrials, we schedule them at 30-minute intervals with the counsel. If people were sitting and waiting for that, it could become a problem for their minutes. I think anything that goes beyond 30 minutes, the sooner we can get those back into an in-person, the better off we're going to be, because I think you start to, the last thing you need to do is start a hearing and have somebody run out of minutes and have no backup. And now that date for a trial, that's been set aside, you've lost half a day and now you got to try to find a day to continue that. There's too many risks, I think on fact finding if we're dependent upon somebody's technology or their available plan to keep it going. It's tough.

On the other hand, we've also had yesterday, the Microsoft for the state system went down for about 35 minutes and I was in the middle. I had gotten through all of the terms of a settlement and we were just going to be asking the questions to the parties to see that they were in agreement and we lost it. Fortunately, we had their phone numbers, so we were able to call them. And I got them back on without being on the monitor and got everybody on the phone and we completed that, used a non-state computer to do the next two matters and then that system came back up. So some flexibility in that, the ability to do it, certainly you wouldn't have that problem if they were in the courtroom, but you'd be able to judge and get them back on or to have them available for those things that can be done quickly, so you're not usually worrying about them losing their time available on their phones.

Danielle Hirsch:

Judge Williams, or Judge Schneider, anything you want to add?

Hon. Jean Schneider:

The one thing I would say, I once took testimony from a witness on the telephone without video in a weak moment and I would never do that again. It was just much too difficult to really fully understand what the witness was saying and fully evaluate the witness's testimony without at least a little bit of facial expression and body language. I just felt really lost and I don't think I would do that again. I do think I find myself speaking in groups like this in favor of making sure that there is always an in-person option, because I do find that there are a significant number of people, particularly litigants without lawyers, that no matter how hard you work to make sure they have access, just don't feel comfortable enough and really, really want to come in person. And I think

it's important always to keep that in mind and to try to figure out how not to lose sight of that.

Hon. Lyndon Williams:

Yes. I believe that where you have a litigant, apparently a litigant is I would say suffering in a situation with the digital divide, where they're having difficulty in really accessing the program or participating in the virtual proceeding. I believe both parties should be in-person, because I don't believe that it's a fair process where you have one party, not able to really understand how the whole process or how the proceeding is going because they're under some kind of digital deprivation. And so in those particular situations, I ordered both sides to be in-person, particularly if you have an unrepresented party, because that makes it even more difficult when you have an unrepresented party, and that party does not have the technology on one side. In those situations, I believe that you should have, I would have in-person, both parties appear in-person. In other evidentiary hearings and trials, those should always or likely be in-person unless in the discretion of the judge, it can be held in a virtual setting.

Danielle Hirsch:

Thank you. Now we have our first question in the chat, and it is about if you have voice only. So someone is participating only via phone. How have you been verifying their identification?

Hon. Meredith Vacca:

When I come into court, we usually have a number of people online already and we can just see their phone numbers. What I do is I call out each phone number. I ask them what their name is, and then I write the phone number down. And thankfully in my court, the overwhelming majority of tenants are represented. We have attorneys from the tenant defense project, a number of them that come to court for every court appearance in our SCIP Court and meet with the tenants. And if they qualify, which they almost always qualify, they can represent them. And so, after we get their name, then we tell them, okay, you can log off and wait for a call from the attorney. And then the attorney will go outside when they have some time, give them a call, talk to them about it. And then the tenant or respondent log backs on to court, and the attorney comes in and we have our proceeding.

Hon. Lyndon Williams:

Yeah. I believe that has always been a difficult question because you will ask the parties to enter their appearance and basically the tenant or the party on the phone, oftentimes it'd be a tenant unrepresented, would state their name and address for the record. However, there is always a question of whether or not the person who says they are the party truly is, but you have that situation

also if you have a camera, because really you don't really know if a person says I am John Doe, and you don't know if that is the case. Also, you don't have any kind of identification to verify the identity by looking at a picture and determining that. And so, to some extent, you more likely have to take the word of the person who is appearing, that they are who they say they are.

Hon. Jean Schneider:

I don't know if this sounds weird or not, but what I find with people on the telephone is that I have a hard time reminding myself that I have to introduce who I am. I'm so accustomed to sitting in a courtroom where people can see me and my name plate is right out there in front of their faces, that sometimes I forget that when somebody's calling in on the telephone, all they hear is a disembodied voice. They don't know who I am when I ask who's on this telephone number. I have to remember to say who I am and why I'm there instead of just assuming that, and I think that's really important.

Danielle Hirsch:

Yeah. I think Judge Schneider, you raise a really important point, which has hybrid hearings or remote hearings take a special cognitive load because the judge and all the other actors really have to sign post what's happening.

We have about four minutes left and there is one question, but I'm going to read it and digest it. While I'm doing that, are there last bits of advice or information that you want to make sure that the legal community knows about remote hearings?

Hon. Michael Sullivan:

Well-

Hon. Meredith Vacca:

I think... Oh, go ahead. Go ahead, Judge Sullivan.

Hon. Michael Sullivan:

I just saw that one question pop up about libraries. I will tell you that I have actually had two trials where attorneys who, I mean out here, a lot of our attorneys work out of their homes. They don't have offices, their solo practices and did not have a place to meet with their client to have them on and be in the same room for a trial. So I had at least two early on where the public library was used and they had a computer there, and the attorney and the client were both at the library and were able to fully participate because of that resource that was out there. I don't remember what the question was after that one that was posted.

Danielle Hirsch:

Oh, no, that's good. Judge Vacca, do you want to say anything?

Hon. Meredith Vacca:

Yeah. I just wanted to say, I think the common themes here are accessibility and fairness. We want to make sure that whatever proceeding we're presiding over is accessible to the parties, is fair to the parties. And so, just addressing those issues, whatever that may be, making sure logistically the equipment's working. We use one Team's link for all of our court appearances. I think it just makes it easier so that the tenant appears every time virtually, they always know they can go to that same link. I think you have to really exercise patience, because it does take longer, I think, to do virtual proceedings.

I rely a lot on my court clerk who is savvier than myself with the technology, just making sure that people can hear and that people are heard, that we're able to listen to them, I think is, or just important things that as judges we don't learn about in law school, we don't necessarily learn about in our CJs or seminars, but it's important you kind of figure it out as you go.

Danielle Hirsch:

Judge Williams, you're muted. We'd love to hear what you have to say.

Hon. Michael Sullivan:

You're muted still.

Hon. Jean Schneider:

Still muted.

Danielle Hirsch:

You could be hearing...

Hon. Lyndon Williams:

Yes. I was saying that they're just two quick points I'd like to make. One is that for counsel who is representing a client that is using telephone only should really consider whether or not they should request an in-person appearance because of the deficiencies that might occur by having your client appear by telephone only. The second point is that on many virtual proceedings, as Judge Schneider indicated, there are a number of faces on the screen, but really we need to have an introduction process. We haven't had that really formalized, but maybe they should be because there are a lot of litigants who are looking and don't really know who he's talking really. You might know the judge because the judge has a robe on, but the other parties who are there it's not



clear, it's not transparent. I think that's something that we need to really kind of formalized.

Danielle Hirsch:

Well, and just quickly to answer Sue's question, there have been courts across the country that have partnered in really serious ways with public libraries, for kiosks and have developed public library training. For example, the Kansas courts worked with public librarians across Kansas to train them on how to get on Zoom for their hearings. And we've seen in Minnesota, the installation of remote kiosks and public libraries all over with how-to guides. So there are plenty of good examples.

Judge Schneider, I'm happy to give you the last word if you'd like it.

Hon. Jean Schneider:

Oh my goodness. I think that a very wise person once said that you should never let a crisis go to waste. And I think that the crisis that we've been through in the last two years has brought us into digital court kicking and screaming much faster than we ever would've gotten there on our own. And what we need to remember is that as convenient as it is for us, it's a different process from the in-person process. And that we really have to pay attention to, it requires different skills from a judge, different skills from lawyers and a different mix of communication. And that we always have to be aware of what the communication skills are that are important in each forum, whether it's in-person or digital.

Danielle Hirsch:

Well said. Thank you all four of you. And thank you all for watching. Enjoy the rest of the conference.

Hon. Michael Sullivan:

Thank you.

Hon. Meredith Vacca:

Thank you for having us.

Hon. Lyndon Williams:

Good day.

Hon. Michael Sullivan:

Bye all.