

REMOTE JUDGING SURVEY:

TOWN AND VILLAGE – THE COURTS CLOSEST TO THE PEOPLE

THIRD REPORT - OCTOBER 2021

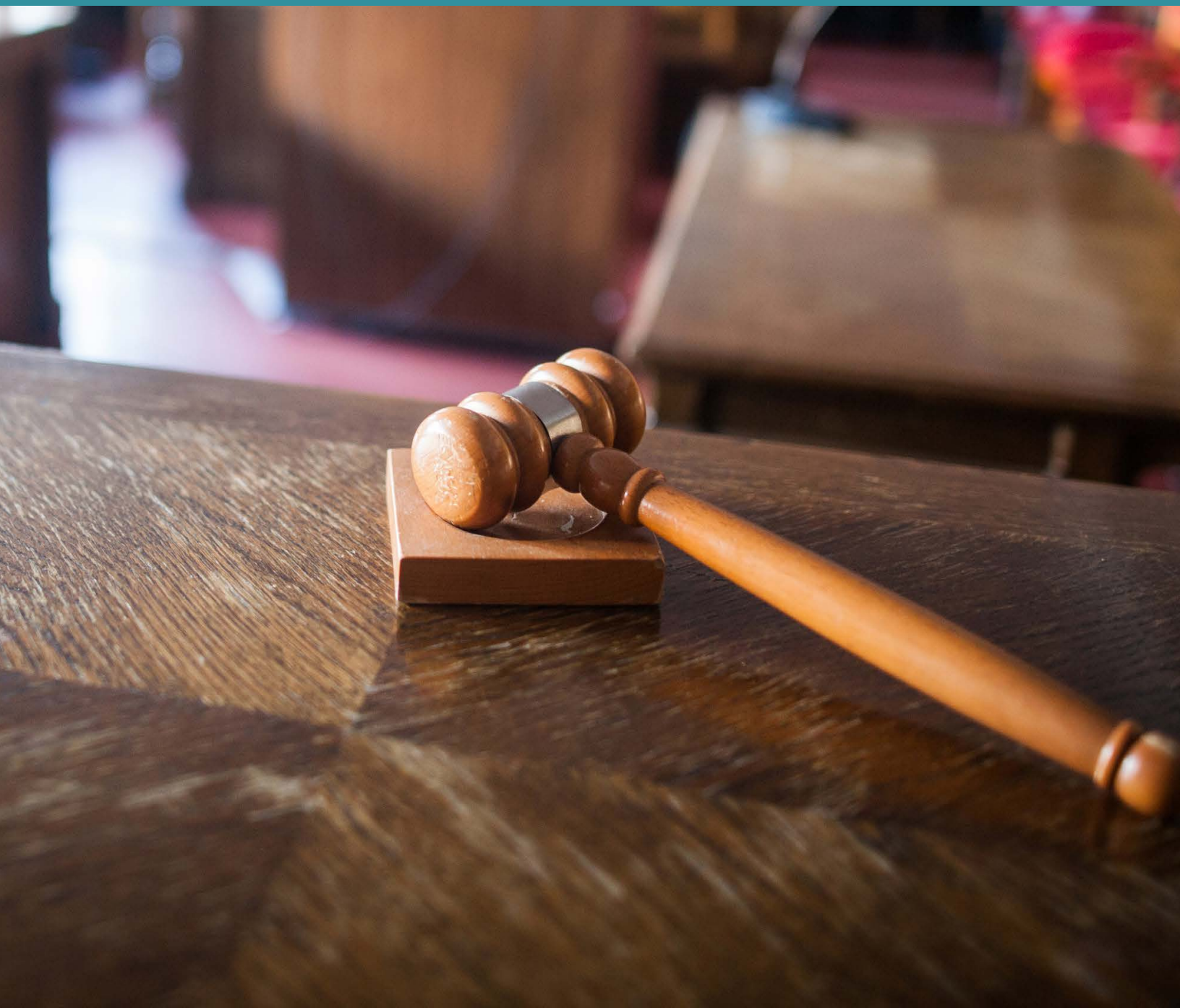




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INTRODUCTION

This Third Report (the “Third Report”) of the Technology Working Group (“Working Group”) of the *Commission to Reimagine the Future of New York’s Courts* (the “Commission”), in part predicated on the Working Group’s Survey of the entire New York Judiciary, addresses issues concerning the holding of virtual court appearances by New York State Town and Village (“T&V”) Justices, as well as the use of technology by them, their Court Attorneys and Non-Judicial Staff (collectively, the “T&V Respondents”).

It supplements the Working Group’s First and Second Reports. As noted in the First Report, T&V Respondents overwhelmingly use UCS-issued laptops and face issues different from those of the other Respondents. This Third Report, therefore, addresses areas where Survey statistics and responses reflect material differences between T&V Respondents and the other Respondents who completed the Survey¹ as well as unique issues experienced by T&V Judges/Respondents.

As noted at <https://www.nycourts.gov/courts/townandvillage/>, there are almost 1300 locally-funded Justice Courts located throughout New York State, outside of the cities. These courts have jurisdiction over a broad range of matters, including vehicle and traffic matters, small claims, evictions, civil matters and criminal offenses. Thus, these courts, traditionally referred to as “the courts closest to the people” experience a lot of foot traffic from the public. Chief Administrative Judge Lawrence Marks and the Administrative Judges for the various Judicial Districts have continually updated operational protocols and procedures for these courts, along with those of other courts, through the pandemic and as it ebbs.

EXECUTIVE SUMMARY

While during the pandemic more than sixty-one percent (61%) of T&V Judges use UCS-issued laptops to conduct virtual proceedings and work remotely, the Survey data indicate that the number who actually conducted virtual proceedings lagged behind the other Respondents. Because of the timing of the Survey, some of those statistics could result from the nature of pandemic-restricted operations of those courts and their jurisdictions and the possibly higher number of virtual proceedings conducted from home by T&V Judges.²

1 Unless otherwise indicated, the defined terms used in the Third Report adopt the definitions used in the First and Second Reports. In addition, this Third Report assumes familiarity with the First and Second Reports.

2 Criminal Procedure Law 182 provides:

Notwithstanding any other provision of law and except as provided in section 182.30 of this article, the court, in its discretion, may dispense with the personal appearance of the defendant, except an appearance at a hearing or trial, and conduct an electronic appearance in connection with a criminal action pending in [27 enumerated counties], provided that the chief administrator of the courts has authorized the use of electronic appearance and the defendant, after consultation with counsel, consents on the record. Such consent shall be required at the commencement of each electronic appearance to such electronic appearance.

By Executive Order, dated March 12, 2020, CPL 182 was expanded to all counties and Executive Order, dated May 7, 2020, suspended certain limitations of CPL 182 and authorized certain virtual appearances. Then, on Jun 24, 2021, Executive Order 210 rescinded previous COVID-19 emergency orders impacting the justice system. Thus, now consideration needs to be given to amending CPL 182 to allow all courts, including the T&V Courts, more flexibility in conducting remote, virtual criminal proceedings.



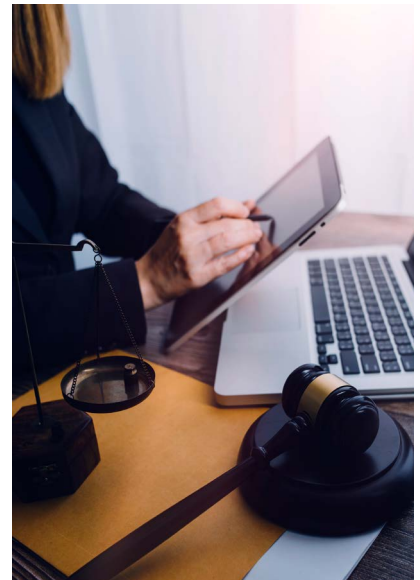
T&V Judges should all be encouraged to use UCS-issued laptops to ensure that the T&V Courts can efficiently operate virtually. Concomitantly, T&V Respondents need to reduce their dependence on their personal devices to work remotely and/or virtually, and they need to conduct court business solely on UCS-issued mobile devices. T&V Respondents like the other Respondents surveyed also need to be better educated in encrypting data.

Sixty-five percent (65%) of T&V Judges had expressed less of a comfort level with technology than other judges surveyed and would like “live” assistance in conducting virtual appearances. The data indicated that ninety-three percent (93%) of T&V Judges (compared to sixty-five (65%) percent of others) would be willing to utilize technology that could digitally record a court proceeding without the need for a court reporter than other categories of Judges. The above statistics comport with the fact that the majority of T&V Courts have long been utilizing UCS-issued digital recorders to record proceedings. In addition, a SharePoint site recently has been implemented for T&V Courts that will enable the Courts, as well as litigants, easier access to the digital recordings, removing the need to have the recordings copied to a DVD and sent by mail to be transcribed.

Also, eighty percent (80%) of T&V Respondents would use a feature that would allow them to sign an order electronically securely without having to physically print it out and would use a program that would allow them to mark up and sign a PDF document that already had been e-filed without having to rescan the document.

Notwithstanding the virtual efficiencies embraced by T&V Respondents, T&V Respondents remain in the paper world. Most T&V Courts are not “paperless”, and T&V Judges do not want to become “paperless.” Only twenty-nine percent (29%) want to be paperless. They continue to require hard copy of motion papers and ninety-five (95%) percent of T&V Respondents continue to use faxes to communicate with attorneys.

In sum, the future of the T&V Courts to work efficiently in our virtual world requires all T&V Judges to have and use UCS-issued laptops to work virtually and remotely, securely, and to eliminate reliance on “paper.”



CASE MANAGEMENT BY T&V COURTS

In 2018, OCA purchased the CourtRoom Program (CRP) case management system used by many of the T&V Courts. As such, T&V Courts statewide collect data consistently, are supported consistently, and benefit from the OCA’s centralization improvement. There currently exists a text messaging system for notifying parties when their court appearance is about to occur. There is centralized support so all T&V Courts can use the UCS Help Center phone number and email to request assistance. In addition, the UCS has implemented centralized data backups for T&V Courts.



The subset of data from the CRP required to provide dispositional data to external agencies, such as Division of Criminal Justice Services (DCJS) and Department of Motor Vehicles (DMV), is stored in a centralized database. This data includes both the core identifying information needed for these partnering agencies to “tie-out” these dispositions to their own systems (fingerprint ID, arrest number, ticket number, etc.), but also the data from CRP to ensure court staff are able to use this information for internal reporting and resolving errors with the dispositions sent to these agencies. Adding the ability for CRP to perform automated transmission of criminal

disposition reporting for the T&V Courts has resulted in timelier reporting and reduced errors in disposition reporting of criminal matters (rap sheets). These improvements provide the public with a higher degree of accuracy in case data, resulting in improved enforcement of sentencing terms, fewer instances of someone being inadvertently “picked up” on a vacated warrant, and more generally helps assure that law enforcement has access to the most recent criminal disposition data when interacting with the public at large.

In addition to the advantages of the statewide disposition reporting to these agencies, centralized access to the CRP data by all Courts allows County Courts to perform a search of all criminal cases issued by County Courts, including the T&V cases. This capability enables consistency across the court types when cases are transferred from T&V Courts to the County Court level.

A further expansion in the use of the CRP data is also underway, which allows for a consistent link between data from CRP and WebDVS (“Domestic Violence System”). This extension to both the CRP and WebDVS systems would provide courts with the ability to pass the case data from CRP directly to WebDVS, ensuring the case identifiers, demographics, and charges are the same between the two systems. The immediate benefits of this change will be the elimination of duplicative data entry and the ability to directly link Orders of Protection to the active cases in each court. This linking will be particularly helpful to court staff, as they currently need to perform this “look-up” manually when vacating Orders of Protection due to the completion of an Adjournment in Contemplation of Dismissal (ACD) or an early termination of sentence conditions. Further, this will assist T&V Court staff in transmitting completed Orders of Protection to the central eJustice Portal (a statewide system used by Law Enforcement, Corrections, and the Courts) in a more timely manner for use by law enforcement. This work is scheduled to be completed by December 31, 2021.

Many T&V Courts also can now access Presentence Investigation Reports from their E-Justice portal. Unfortunately, however, such use by a T&V Court is dependent on each individual county’s use of same. Additionally, in coordination with DCJS, the E-justice portal can be utilized to produce “Certificates of Relief from Disabilities.”

T&V RESPONDENTS' BANDWIDTH ISSUES

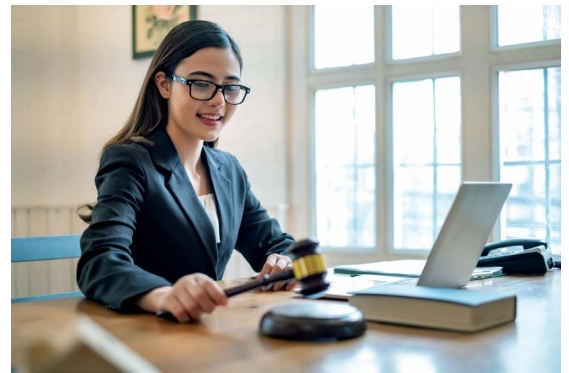
Consistent with the data collected from all Survey Respondents, more T&V Judges' laptops utilized Wi-Fi to connect to the Internet as opposed to using a wireless data plan. The Survey data indicated that T&V Judges and T&V Court Attorneys had the fewest “connectivity” problems of any court type surveyed.

T&V RESPONDENTS' DEVICE USAGE

The percentage of T&V Courts that used UCS-issued laptops to conduct court business remotely is not very high and thirty-two (32%) percent of T&V Judges used their personal laptops to conduct such business.³ The reason for this is that generally one laptop/digital recorder is issued per T&V Court and not per judge, and thus they are often removed to be used remotely.

Thirty-two (32%) percent of T&V Judges use non-UCS-issued computers at home to conduct court business remotely. Finally, twenty-four (24) percent of T&V Judges conduct personal business on the same devices they use to conduct court business as compared to eighteen (18) for non-T&V Judges

Additional and multiple laptops/digital recorders should be issued to T&V Judges in order to allow for remote, virtual proceedings. The UCS could consider providing a universal bridge to all T&V Courts so that they can securely work remotely, thus removing reliance on individual municipalities' IT support for technology and personal needs to assist in effectuating remote proceedings. In addition, the UCS should seek to provide each T&V Court and Judge the same equipment, *i.e.*, laptops, cameras, video cart, to facilitate virtual proceedings.



The recommendations above would increase judicial productivity, protect data security and work to better serve the public.

VIRTUAL PROCEEDINGS

JUDICIAL COMFORT LEVEL WITH TECHNOLOGY

The Survey reveals that T&V Judges are much more satisfied with the comfort level of their Court Attorneys and Non-Judicial Staff with technology than the other types of courts surveyed. In fact, only fifty-one (51) percent of the T&V Judges indicated that they would like a “live” technical support person to assist them with technology as opposed to sixty-four (64) percent for other categories of courts. T&V Judges also expressed a greater comfort level with conducting virtual conferences, hearings and trials than their counterparts in the other New York trial courts.

³ The Survey did not reveal why or where they used their personal laptops rather than UCS-issued laptop.

“PAPERLESS” FILING



Although the Survey inquired about judges' practices regarding “paper” submissions, whether or not e-filing was required, there is currently no legislative authority authorizing T&V Courts to participate in the New York State Courts Electronic Filing System (NYSCEF). See CPLR 21-A and Court Rules 202.5-b and 202.50bb. Nevertheless, the Survey revealed that thirty (30) percent of T&V Respondents, when asked if they would like to become paperless, answered in the affirmative. To that end, there is currently an ongoing pilot program with certain

T&V Courts to utilize OCA's Electronic Document Delivery System (“EDDS”) so that parties can transmit documents electronically to the court. The EDDS should be expanded to all T&V Courts as a first step toward a “true” NYSCEF-type electronic filing system for such Courts.

VIRTUAL APPEARANCES

Perhaps due to the nature of T&V Judges' scheduling of matters and types of cases, the Survey data reveal that T&V Judges schedule fewer virtual “bulk” appearances than other judges. The data also indicate that T&V Judges do not use the “lobby feature” to admit attorneys into virtual appearances. Lastly, the data indicate that T&V Judges required attorneys to remain “on-line” until their case is called far less often than other categories of Judges.

REMOTE PROCEEDINGS AND OPINION DRAFTING

Sixty-two (62) percent of T&V Judges used their UCS-issued or personal Mobile Devices to conduct court appearances and/or to draft orders and/or decisions remotely.

Twelve (12) percent of non T&V Judges indicated that they send court documents from their private email addresses as opposed to seventeen (17) percent for T&V Judges. This percentage needs to decrease.

On a positive note, seventy-eight (78) percent of T&V Judges indicated that they would use a feature that would allow them to securely sign an order electronically without having to physically print it out and sign it or use a stamped signature. Further, seventy-six (76) percent indicated that they would use a program that would allow them to mark up and sign a PDF document, without having to print it out and rescan the document.

REAL TIME COURT REPORTING

Forty-one (41) percent of T&V courtrooms are equipped to utilize “real time” court reporting and seventy-six (76) percent of both T&V Judges and non-T&V Judges want to use “real time” court reporting. In addition, more than ninety (90) percent of T&V Judges, compared to sixty-five (65) percent of other Judges, would be willing to utilize technology that could digitally record a court proceeding



without the need for a court reporter. Of course, to the extent a court is not utilizing a stenographer to transcribe a proceeding, the court needs to utilize the digital recorders provided by OCA.

USE OF FAXES



Ninety-five (95) percent of T&V Judges use faxes to communicate with attorneys. This outdated practice needs to end or T&V Courts need to utilize the electronic faxing functionality included in the court's outlook platform as a way to upgrade the technological use of facsimiles as needed to accommodate governmental or public defender organizations who still utilize faxes.

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