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COURT OF APPEALS

ALBANY, NEW YORK

COMMISSION TO REIMAGINE THE FUTURE OF NEW YORK'S COURTS
PUBLIC HEARING

20 Eagle Street
Albany, New York 12207
June 7, 2022
PM SESSION

Before: HON. CRAIG DORAN,
Chairman of the Pandemic Practices Working Group

HANK GREENBERG,
Chairman of the Commission to Reimagine the
Future of New York's Courts

HON. TAMIKO AMAKER,
Deputy Chief Administrative Judge

HON. RAYMOND RODRIGUEZ,
Criminal Court of the City of New York, Kings
County

JESSICA CHERRY,
Assistant Deputy Counsel at New York State
Unified Court System

LEANNE LAPP
President, Chief Defenders Association of New
York

MARK BERMAN,
Co-Chair, Task Force on Post-Pandemic Future of
the Profession

Amanda M. Oliver
Official Court Transcriber

1 JUDGE DORAN: Good afternoon, everybody. To those of
2 you that have joined us in this beautiful Court of Appeals
3 Hall, and also those of you that are watching our
4 livestream, we are grateful for your involvement,
5 engagement, participation. This is the afternoon session
6 of the first public hearing of the Pandemic Practices
7 Working Group.

8 For those of you that were with us for the
9 morning, you know that we had exclusively virtual
10 testimony. This afternoon, we will have exclusively in-
11 person testimony. So we will in real time be able to
12 experience some of the things that this working group will
13 be discussing are the virtues of virtual testimony versus
14 in person.

15 So I can already tell you that it's very nice to
16 see our first panel of guests in person ready to offer us
17 testimony.

18 Before we begin, just a little bit about the
19 format this afternoon. Because of the social distancing
20 that we need to observe in the courtroom, we will call up
21 groups at a time. We've tried to group the testimony or
22 the presenters based upon their area of practice, or the
23 entity that they represent.

24 So in the first group we'll be hearing from in a
25 few moments are the president of the New York State Bar

1 Association, and also hopefully the president of the
2 Saratoga County Bar Association. Immediately thereafter,
3 we're going to hear from Administrative Judge of the Third
4 District, Judge Gerald Connelly. And also Judge Manne who
5 is the president of the New York State Magistrates
6 Association.

7 And I'll hope you'll agree with me that the
8 format for this afternoon, a little bit unique, providing
9 us with an opportunity to perhaps have a little bit more
10 engagement, a little bit more question and answer and
11 conversation. So we appreciate that very much.

12 I also want to welcome the afternoon's panel.
13 And again, I'm Craig Doran. I have the honor of being the
14 Chairman of the Working Group. Next to me is Hank
15 Greenberg who is the Chairman of the Commission to
16 Reimagine the Future of New York's Courts. We also have
17 joining us up here, Deputy Chief Administrative Judge
18 Tamiko Amaker to my left. And to her left is Jessica
19 Cherry, who is with the OCA Counsel's Office. And then
20 over to our right, we have the Honorable Ray Rodriguez.
21 And we also have Leanne Lapp and Mark Berman. So we're
22 very pleased to have you all up here. Write down some
23 tough questions for these presenters. Be ready.

24 The final thing I want to do before we call upon
25 the president of the state bar. Some additional thanks

1 that I need to get out there, and of course, there are many
2 more than I'm able to mention in the short time that I
3 have. But I have to thank the State Bar for your
4 partnership in this effort. And for lending us some very
5 able assistance, technology, but also assistance in
6 generating interest and mailing things and the bar's been
7 phenomenal.

8 And in particular, Lynn Kodjoe, who is in the
9 back of the courtroom here who has been on every one of our
10 meetings. And lends her expertise, her technical
11 expertise, to make sure we're all convened in the same
12 virtual space. And also Pam McDevitt has been tremendous.
13 So thank you in advance for allowing them to continue to
14 help us.

15 I also have to thank who's not here my assistant,
16 Jeanna Savage, who's back home in my chambers. She's done
17 a tremendous amount of work to help keep this together.

18 Other folks, and I mentioned this earlier this
19 morning, the logistics of putting this together have been
20 like nothing I've ever seen or experienced. And it's due
21 to the professionalism of the staff here at the Court of
22 Appeals.

23 We already mentioned Ann Byer, we'll mention her
24 again. She's just been absolutely phenomenal with her
25 assistance. Other folks who are here with us helping us,

1 and forgive me if I mess up your names. I'm going to do
2 the best I can. But we have Jay Kemprowski, Jacob
3 Golebiowski, Warren Kaiser, Jim VanDeloo, and Lisa LeCours.

4 Did I, how bad did I do?

5 UNIDENTIFIED SPEAKER: Pretty good.

6 JUDGE DORAN: All right. Pretty good. I got a
7 pretty good, I'll take it. Okay.

8 So with that, I believe we are ready to begin the
9 first panel of our afternoon. And it's my privilege to
10 welcome the newly minted president of the New York State
11 Bar Association, Sherry Levin Wallach.

12 And Sherry, forgive me for using your first name,
13 is going to offer us comments on the views of the members
14 of the state bar and their many, many working groups and
15 the enormous effort that has already been undertaken during
16 Covid.

17 We're grateful for your efforts, and we're
18 grateful you're here. The floor is yours.

19 MS. LEVIN WALLACH: Thank you, Judge. And good
20 afternoon, members of the Commission.

21 My name is Sherry Levin Wallach. I'm the 125th
22 president of the New York State Bar Association. And I'm
23 going to apologize in advance for speaking quickly, but I
24 want to stay within my time limits.

25 I also want to thank Judge Doran for your

1 recognition and appreciation of the state bar association.
2 We are here to help and happy to do so. And we have a
3 wonderful staff. So thank you, so much, for that.

4 We are the largest voluntary bar association in
5 the country, and the leading voice for New York's over
6 300,000 lawyers. So thank you for holding these hearings
7 to discuss the opportunities to help us determine what the
8 future should look like for our profession, the courts,
9 lawyers, and our clients.

10 Determining which practices learned during the
11 pandemic should remain in place and what changes we should
12 make permanent is incredibly challenging, but also
13 necessary. We must be conscience of the importance of
14 striking the balance between the live and virtual
15 proceedings to ensure access to justice and equality.

16 We have consulted the leaders of our twenty-eight
17 sections, our statewide association, and have surveyed
18 attorneys from regions all over the state who practice in
19 all court levels. But our work is not done. There are
20 many issues surrounding virtual court proceedings. There
21 clearly is a need for new court rules, trainings, and best
22 practice guidelines for the changes that we choose to
23 embrace.

24 We also recognize that there are significant
25 differences between the civil and criminal practice. We

1 request the opportunity to return to this Commission with
2 additional findings.

3 A majority of our 2,000 attorneys that we
4 surveyed found attorneys and the public benefit from
5 certain aspects of virtual proceedings, including virtual
6 court appearances for scheduling, status checks, court
7 conferences, and conferences with other attorneys. We
8 found that these types of virtual proceedings are
9 beneficial to continue.

10 But if we choose to do so, best practices and new
11 rules are desperately needed to create consistency
12 throughout practice in our state. All levels of our courts
13 in the state must be included in this discussion and
14 oversight.

15 We ask to be consulted and included with the new
16 rules and best practices as they will not be one size fits
17 all. We recognize that virtual appearances for some
18 proceedings I just mentioned allow attorneys to be more
19 productive with their time by eliminating the need for
20 travel. We are also aware that virtual appearances are
21 particularly helpful for our clients who wrestle with
22 childcare and transportation challenges. And for the teens
23 and children in congregate settings to allow for their
24 caregivers and their family to participate in their court
25 proceedings.

1 Criminal proceedings on the other hand create
2 many challenges for virtual appearances. The Office of
3 Indigent Legal Services and defenders throughout the state
4 have made clear that the first appearances, arraignments
5 for defendants must be handled in person. It is imperative
6 that those accused of crimes be able to consult privately
7 with counsel prior to first appearances. This is next to
8 impossible if the client is in custody or appearing
9 virtually.

10 Further, attorneys representing clients at
11 arraignments for criminal proceedings must be able to
12 develop a rapport with their clients. This is incredibly
13 difficult to do virtually.

14 Many of our members have also shared
15 inconsistencies in the courts involving allowances for
16 virtual appearances not only on a case-by-case basis, but
17 also with parties to the same matter. We need guidelines
18 for the judges and the court personnel on when virtual
19 appearances are appropriate and what factors should be
20 considered when hearing a request for a virtual appearance
21 and agreeing that it is appropriate in that instance.

22 There is also a need for guidelines for our State
23 Department of Corrections regarding virtual client meetings
24 and virtual appearances for incarcerated people.
25 Incarcerated clients meeting attorneys virtually must be

1 provided privacy during not only virtual visitation in jail
2 or state prison, but also in virtual court appearances.

3 The ability of attorneys to meet incarcerated
4 clients in a timely manner, and the condition of virtual
5 meetings, has been severely impacted by this pandemic. And
6 we need to recognize that there is a need for guidance
7 there.

8 Incarcerated clients are never alone. And this
9 adversely affects and impacts the attorney/client
10 privilege.

11 Our members who are criminal appellate attorneys
12 can only communicate with their clients in state prison by
13 phone due to serious visitation limitations put into place.

14 E-filing expansion. The New York State Bar
15 Association has a longstanding policy in support of e-
16 filing, and the creation of consistent, comprehensive e-
17 filing rules across New York State. This pandemic has made
18 e-filing even more urgent. However, there are significant
19 differences between e-filing in criminal versus civil
20 courts.

21 There are also discrepancies in resources across
22 the different courts that handle matters statewide in civil
23 and in criminal. I've created a taskforce on the
24 modernization of criminal practice which will explore these
25 issues among others, and I urge this Commission to work

1 with that taskforce to consider its input on these issues.

2 Broadband, access to broadband technology,
3 continues to be a challenge in many parts of New York
4 State, including places as suburban as Westchester County.
5 This is especially an issue for our indigent clients. Many
6 have limitations on minutes, data, and access that make
7 joining virtual court not only difficult but often
8 impossible. And many clients living in situations that do
9 not allow them, for privacy, to attend virtual proceedings.

10 While some of our members' offices can provide
11 tablets for clients, or places for clients to use virtual
12 court, others don't have that ability, that resource, or
13 the funding. Many legal service providers, particularly
14 those handling criminal defense, do not have the fundings
15 to support this kind of situation for all of their clients.
16 There is a reason that we require court officers and
17 security in courthouses, and we must consider this.

18 Lastly, I'd like to address attorney wellbeing.
19 We are all concerned with the effects the pandemic had on
20 relationships and our ability to do our jobs. We have all
21 felt the isolation and missed the human elements in our
22 work and home lives. There are missed opportunities for
23 collegiality, training, and mentoring in the courtroom and
24 offices that can alleviate the stress of our adversarial
25 profession. We worry about the isolation of solo

1 practitioners and whether they can keep up the challenging
2 guidelines and expectations.

3 The New York State Bar Association conducted an
4 extensive study and published a report last fall on
5 attorney wellbeing. We surveyed just over 3,000 attorneys
6 across the state. Nearly thirty-seven percent indicated
7 that they had mental health problems or concerns in the
8 last three years.

9 Our survey found that the pandemic blurred the
10 lines between home and work life, and attorneys felt like
11 they were never off the clock. Over seventy percent of
12 respondents who felt that they were on the clock all the
13 time worked in large firms. In addition to time off, the
14 attorneys told us they needed to spend time while away to
15 offset an avalanche of work waiting for them upon return.

16 I can go on and on about that, but I see that my
17 time is over. I certainly urge this Commission to take a
18 look at the report that the state bar published just last
19 fall on this very issue. We've had a glimpse of what we
20 can do collaboratively, and we are just at the beginning
21 and excited to begin this process and work together with
22 this Commission for the future.

23 In closing, thank you for this opportunity to
24 share our concerns on these many issues. We have before us
25 an immense opportunity to make change that will benefit

1 both the profession and the public. And the New York State
2 Bar Association looks forward to working with you. And I
3 thank you for my time this morning, this afternoon, sorry.

4 JUDGE DORAN: Thank you, so much. Anybody on the
5 panel have any questions for the president? Go ahead. We
6 do have a couple extra minutes here because it doesn't
7 appear as though Mr. Kaufman is going to be here. So
8 please don't feel pressured by the time.

9 I'm going to ask one.

10 MS. LEVIN WALLACH: Okay.

11 JUDGE DORAN: And this actually arises out of a
12 conversation that Chairman Greenberg and I had during lunch
13 about how can we balance. We heard a lot of testimony today
14 in support of continuing the use of virtual technology in
15 many proceedings. And there's a concern, and I'm sure it's
16 shared by you, in fact, you mentioned it in your comments,
17 that with virtual proceedings, we lose the human
18 interaction. And particularly for young attorneys who are
19 endeavoring to learn those nuances of being in a courtroom,
20 in front of a judge, all of those things that you know many
21 of us learned just from doing it or watching it, do you
22 have ideas or perhaps one of the working groups you
23 mentioned could take this on, or ours can take it on.

24 How can we creatively account for that loss
25 without giving up on virtual proceedings? In other words,

1 is there a way that we can continue to cultivate the skills
2 of those attorneys in a virtual world? Is there any way to
3 reconcile the two?

4 MS. LEVIN WALLACH: So I do believe there is, and
5 the taskforce on the future of the pandemic, which the New
6 York State Bar Association has, is actively working on
7 that. Mark Berman is a co-chair of that taskforce. And a
8 lot of the data that I spoke about in my testimony came
9 from some of the surveys that they created.

10 I would certainly say that the testimony that
11 I've heard today has been enlightening to that point.
12 There are certain places where I think it's imperative that
13 we maintain in person. We maintain the sanctity of our
14 profession as being a profession of professionalism. We
15 train our young attorneys.

16 But I think at the same time, we can support some
17 of the concerns and the needs that have been addressed here
18 today. I think working together with the state bar
19 association and other organizations, we can train, and we
20 can provide guidelines and support for exactly those types
21 of things, Judge, that you're mentioning.

22 So I do think there is a reconciliation that we
23 can do. And I think there's a way to move forward
24 productively while maintaining the sanctity of our
25 profession, which is so important, I believe.

1 JUDGE DORAN: Excellent. Thank you.

2 MS. LEVIN WALLACH: Absolutely.

3 JUDGE DORAN: Any questions? Anybody? Go ahead,
4 Mr. Berman.

5 MR. BERMAN: Sherry, in your speaking with the
6 sections of the state bar, are there any particular
7 technology advances that you saw that your membership would
8 like to see adopted by the courts; are there any that jump
9 out at you?

10 MS. LEVIN WALLACH: Well, I think we were having
11 a conversation over lunch today of one of the most apparent
12 is, and it was brought up earlier this morning, is the
13 ability to have that technology in the courts, right? To
14 be able to use that technology that we're using in our
15 offices and in our practices when we're presenting our
16 cases in courts.

17 I think we still have a gap, a technology gap.
18 We're getting there, but I think it would be appropriate if
19 we could put some focus into increasing that ability. We
20 now have electronic discovery as was mentioned this
21 morning, and I'm sure will be mentioned again today.
22 Everything is electronic, so the ability to and the ease to
23 be able to show that information and evidence in court
24 proceedings, and training our attorneys, on how to do that,
25 I think is particularly important.

1 I think some of the concerns that have been
2 raised, particularly in family court proceedings, have to
3 do with the sheer volume of uploading information when an
4 attorney has to do it in order, you know, in order to
5 present it for a proceeding. That's something that's in my
6 written commentary that I've provided, as well.

7 So I think that's something to think about, is
8 how the information that is not already electronic is going
9 to be put into that form, and how we can support our
10 attorneys, particularly our solos and small firms, in
11 giving them the ability to do that without taking up, you
12 know, hours and hours of time individually loading
13 documents.

14 So there is definitely a balance. And it speaks
15 to Judge Doran what you brought up just a few minutes ago.
16 There's a balance we have to strike. But those are some of
17 the things.

18 JUDGE DORAN: Go ahead, Ms. Lapp.

19 MS. LAPP: Sherry, you referenced in your
20 testimony that there are challenges particular to criminal
21 practice in terms of virtual proceedings and also the
22 proceedings that were undertaken during the pandemic. I
23 know you didn't address this directly, but I'm wondering if
24 you have any thoughts about trial practice in particular
25 with the Covid restrictions that were necessary, and that

1 continue on. And I'm thinking of masking of jurors and of
2 witnesses. Does the bar take a position on whether that
3 should continue? If it does, does it impact the ability to
4 conduct a trial to determine the credibility of witnesses
5 and that type of thing?

6 MS. LEVIN WALLACH: So the taskforce that I
7 mentioned on the Modernization of Criminal Practice is
8 going to be looking at that among some of the other
9 technology issues particular to criminal practice.

10 So do we have a position as an association at
11 this point on those issues? No. But I hope to very soon.
12 And I believe that's one of the things they're going to
13 look at, you know, first and foremost.

14 From a practitioner's standpoint, as the deputy
15 executive director of Legal Aid for Westchester County, and
16 having been observing trial practice since the beginning of
17 the pandemic, I do think there are things that are lost
18 when a face is covered. I do think there are practices in
19 place for face shields, for example, as opposed to masks
20 that help that.

21 You know, whether we're going to have jurors
22 doing that or not is something I think for this Commission
23 to look at, and I hope my taskforce will look at further.
24 And I think that together we can come to the appropriate
25 answer as to what makes the most sense, and how we can the

1 best evaluate like we did in the past credibility of not
2 only the witnesses, but I think the judges, and also
3 looking at the jurors and the ability to read the jury,
4 which is important.

5 JUDGE DORAN: Thank you, very much.

6 I believe we've been joined by Stuart Kaufman.

7 MR. KAUFMAN: Yes, hello, how are you?

8 JUDGE DORAN: We're fine. Thank you, very much,
9 for being here.

10 MR. KAUFMAN: Thank you.

11 JUDGE DORAN: We appreciate your taking some time
12 this afternoon to offer your perspective. This is Stuart
13 Kaufman, who is as we understand it, the president, I hope
14 I'm going to get this right, of the Saratoga County Bar
15 Association. And we're happy to hear a few moments of your
16 perspective whenever you're ready.

17 MR. KAUFMAN: Thank you, very much. I first want
18 to start off by apologizing for being late. I was
19 conducting a training this afternoon, and I just had to
20 finish up with that. But thank you for having me here.

21 So I am the president of the Saratoga County Bar
22 Association. I'm also a senior attorney at the Legal Aid
23 Society. As far as the bar association goes, we submitted
24 a poll to our members to ask them what their experiences
25 were with the virtual appearances. And we got back a

1 number of responses; about ten percent of our membership of
2 around 300 people responded, so not maybe the best sample
3 rate, but we did get responses.

4 Overall, the impression was positive for having
5 virtual appearances. People wanted to continue to have
6 them. There were certainly a discrepancy in which types of
7 appearances they preferred to have the virtual appearances.

8 There was strong support for having virtual
9 format in initial appearances, in conferences, and in
10 further proceedings. But there was less support
11 necessarily for evidentiary hearings, things that required
12 submitting evidence, cross-examining witnesses.
13 Anecdotally, there were some concerns about who was in the
14 room with the witnesses when they were testifying, if there
15 was another individual there, and whether or not they were
16 using notes to speak, you know, during testimony. That's
17 not generally allowed. And there were some concerns about
18 whether or not witnesses could be influenced while they're
19 providing testimony.

20 But also to add another anecdotal piece of
21 information, attorneys that we spoke to that practice in
22 the foreclosure setting, were wildly positive about virtual
23 appearances. They said it was a great savings of time and
24 cost for their clients to be able to appear virtually. And
25 so they were very happy with that, and they would love to

1 see that continue.

2 There were some concerns, I guess, across the
3 board with people that work with low-income individuals
4 about access to the technology to be able to appear
5 virtually. And practitioners in family court found that
6 there were, I think, there was one court locally in the
7 Saratoga County area, or in the local area, that had kiosks
8 available where low-income residents that didn't have the
9 technology at home could come to a kiosk and use it. But
10 there were a number of other courts where that wasn't
11 available.

12 My practice is generally eviction defense work.
13 So we do a lot of work in the town and village justice
14 courts. And some of those courts have the technology, or
15 had it before the pandemic, and some didn't. And I think
16 that that drastically improved over the course of the
17 pandemic. I believe the court system helped get courts up
18 to speed. And there was a great improvement, I think, in
19 the availability of electronic communications with courts
20 about procedural matters. And so that those particular
21 items seemed to advance during that time.

22 So overall I think that there is strong support
23 for continuing virtual appearances, I think. It just
24 depends on what types of appearances they are.

25 JUDGE DORAN: Okay. Thank you.

1 MR. KAUFMAN: All right. Thank you, very much.

2 JUDGE DORAN: Anybody have any questions for Mr.
3 Kaufman?

4 JUDGE AMAKER: I have one question.

5 So Mr. Kaufman, I'm just wondering if any of the
6 attorneys at the Legal Aid Society were bringing their
7 clients into the office, if they had issues with the
8 digital divide, and didn't have access to Wi-Fi or some
9 other method of logging in?

10 MR. KAUFMAN: So on rare occasions, we would.
11 Because there was the pandemic and because there were
12 concerns over having people in the office and certainly
13 volume, we tried to keep it to a minimum. We did have some
14 availability, but we are also a non-profit with limited
15 resources. And we only have so much available for our
16 clients to be able to use to access the virtual
17 appearances.

18 JUDGE DORAN: Anybody else? Okay.

19 Thank you so much for being here and offering us
20 the perspective of your members. This conversation will
21 continue throughout the year, but we appreciate you being
22 here today.

23 MR. KAUFMAN: Thank you.

24 JUDGE DORAN: We're now going to move on to a
25 conversation with some judges and representative groups of

1 a number of constituents we'll call them.

2 And first is the Honorable Gerald Connelly, who
3 is the Administrative Judge in the Third Judicial District.
4 And, as Judge Murphy and I know, because we were along your
5 side as you navigated your district through this pandemic,
6 your perspective is an important one to us from that of an
7 administrative judge who was tasked on a daily basis to
8 make sure the courts in this region of the state were open,
9 and all of the things that go along with it.

10 So we're grateful for your time today, Judge
11 Connelly. And the floor is yours.

12 JUDGE CONNELLY: Thank you, Judge. And thank you
13 for saying that, I appreciate that.

14 So as you said, I'm the Administrative Judge of
15 the Third Judicial District, which encompasses Albany
16 County and six other counties immediately to the south and
17 somewhat to the west of us here as we go down the Hudson
18 River.

19 I assumed my position as the administrative judge
20 in October of 2020, so we were already seven months into
21 the pandemic at that point. And Judge Doran and Judge
22 Murphy, who he just referenced, as well as Judge Caruso,
23 and the other administrative judges were enormously helpful
24 to me in navigating the administration of our courts during
25 the pandemic.

1 There's been, you know, I know I was able to
2 watch many of this morning's proceedings virtually next
3 door. There we go with virtual. And was able to see that,
4 you know, most people brought up issues that, as you said,
5 Judge Doran, you and Mr. Greenberg, had discussed, which is
6 the ability to take advantage of all of the practices that
7 had been implemented while still assiduously protecting the
8 rights of everyone who comes before our courts to be heard
9 and to enjoy all of the rights that they have when they
10 come in personally.

11 Those benefits include obviously the savings in
12 time, the savings in possible trauma for those who come in
13 when family courts who are looking to be protected and
14 don't have to be in the same courtroom. They include the
15 savings of money for paying attorneys, and the ability to
16 move things along in a much better way.

17 There are are issues, of course, with regard to
18 protecting rights, as well as with regard to achieving
19 finality of cases, and achieving the benefits that we have
20 when people come into the courtroom before us, which you
21 were just referencing, Judge Doran, about bringing young
22 people in. And I know you had a program in your district
23 which was designed to encourage younger attorneys to learn
24 how to handle themselves.

25 So what I would say is, in a nutshell, and I have

1 some other issues to speak about, some other issues that,
2 areas, where we can use the virtual aspect to help the
3 courts, and to help provide the justice. You know, we're a
4 little down on some of our hiring right now, and we're, the
5 court system, as you and Judge Murphy and Ms. Cherry, and
6 others, and Judge Amaker, and others, know well, is
7 assiduously trying to hire. But while we're trying to
8 hire, particularly upstate in these counties that can be
9 spread out, we can use the virtual system to help fill in
10 spots that we wouldn't be able to fill otherwise.

11 We have a real issues with stenographers. I know
12 you're aware of that. We're trying to hire them as quickly
13 as we can, using the virtual system to use our
14 stenographers, to not have them driving thirty miles in
15 each direction, and thereby able to cover more areas. It's
16 been a lifesaver. And it's been that way for some of the
17 other folks that we have working for us, as well.

18 Properly, Ms. Levin Wallach points out that, you
19 know, we need rules and regulations. We need to pay strict
20 oversight to make sure that these virtual appearances don't
21 result in people losing their rights, and people losing
22 their ability to be fully heard, and people losing their
23 ability to interact at will in a private way with their
24 attorneys. And to do that, we need those guidelines.

25 But because of that, I brought in this prop with

1 me. And you're not going to recognize it, Judge Doran, but
2 I can tell you all what it is. These are various
3 administrative rules and protocols; not all of them, not
4 even half of them, that were issued by the courts outside
5 of New York, the administrative judges of the courts
6 outside of New York, during the pandemic. There are at
7 least sixteen different revisions of the protocols that
8 were administered very, very swiftly as conditions changed.

9 The vast majority of them were done by Judge
10 Doran with help, with work from other judges. He was up
11 all night, every night, he was always available, and he
12 addressed each of those concerns. They're very detailed,
13 the administrative rules.

14 Many people here in this courtroom have seen
15 these rules because they were promulgated by the various
16 administrative judges. They were done in a detailed
17 fashion to address every concern that came up, to address
18 every ability to protect the rights of the people that came
19 up.

20 In fact, I should note Ms. Cherry, I know, worked
21 on these as well.

22 And they were done by judges, by the court
23 system, day after day, night after night, as situation
24 changed to make sure that both people were safe when they
25 came into our courtrooms, but also that our mission was

1 accomplished.

2 And I can tell you that that's one of our
3 greatest strengths in the court system, is the commitment
4 of the judges, of the staff, to doing things right.

5 We do need rules and regulations to follow. Even
6 if we don't have them, our judges are going to make sure
7 that people's rights are protected. Those rules and
8 regulations you're looking for are going to be implemented
9 on a minute-by-minute and day-by-day basis when people are
10 here and in front of us.

11 I will say that in our district, we have set up a
12 virtual court access network which, along with the
13 leadership of Judge Mendelson, and her team, including Anna
14 Wilkinson (ph.) from our district, in that we have set up
15 kiosks in rural areas, in a church, in one rural area, in
16 the Unity House in another very rural area.

17 In those kiosks, they have the ability to access
18 the court system. They have the immediate ability to
19 access help from the court staff with regard to filling out
20 forms and applying for various relief. They have the
21 ability and we have it with the library system here in
22 Albany too. We have it set up, they've been very helpful
23 to us, as well.

24 They're set up as private locations where there
25 is full confidential access without people around you

1 hearing where you are. The libraries and the church, and
2 the Unity House, have set up very private locations where
3 we've worked that out. That's been done with the help of
4 the Ninth Judicial District and the Grace Baptist Church
5 down in Mount Vernon which initiated this program and
6 provided great, great leadership with regard to these
7 issues.

8 So I would say we can seamlessly integrate this
9 virtual process into the goal of our system. We can do it
10 on a day-to-day basis with the guidance of this committee.
11 And I'm happy to be here in front of this committee and to
12 be able to say this to you.

13 If you have any questions, I'd be happy to
14 answer?

15 JUDGE DORAN: Anybody?

16 MR. GREENBERG: Just a few.

17 First of all, Judge Connelly, thank you so much
18 for being here, and most of all for your extraordinary
19 leadership in the Third Judicial District, which has been
20 fabulous.

21 My question to you is, you made reference a
22 couple of times to the promulgation of rules and
23 regulations or guidelines for using virtual technology.
24 And my question is because we were very mindful of it on
25 the takeoff of the working group that whatever we do,

1 whatever we recommend, it's widely accepted, embraced and
2 welcomed. And I just sort of ask you this. Do you feel as
3 though the line judges that you supervise, the JFCs, would
4 they welcome rules and regulations or, perhaps, feel as
5 though they're being micromanaged? Obviously, we want to
6 strike the balance exactly the right way. So your thoughts
7 about that would be very valuable.

8 JUDGE CONNELLY: I think they would happily
9 follow them because of the way I see this group working, to
10 be frank with you. This is, it's a very accomplished
11 group; I know this is not the only part of the group, that
12 it's the greater committee to reimagine the courts. They
13 know the membership.

14 I've received a number of calls this morning, I
15 will tell you, from judges and other court staff who are
16 watching this online. And they've been very impressed with
17 the interviews and with the testimony of folks before this
18 committee.

19 So I think the respect for the process that is
20 being followed here is there. And the judges that work
21 with me, you know, we're often told we know everything as
22 judges, right? Or people at least act for us as if we know
23 everything. But when we read through, for instance, the
24 protocols that Judge Doran here put together or the rules
25 that have been put together over the years, you see that

1 there are many, many things that people didn't, that you
2 just didn't think of, that the group work can put together.

3 And they're very open to receiving guidance on
4 these issues. I appreciate the question.

5 JUDGE DORAN: Go ahead, Mark.

6 MR. BERMAN: Judge Connelly, you talked about
7 kiosks, and there were - - -

8 JUDGE CONNELLY: Yes.

9 MR. BERMAN: - - - kiosks at a church. Do you
10 know, after speaking with people, were they well utilized
11 or, like, do they sit around, you know - - -

12 JUDGE CONNELLY: Any - - -

13 MR. BERMAN: - - - are they well utilized, sit
14 around, they used all day. I'm very curious.

15 JUDGE CONNELLY: Well, they're very rural areas.
16 The one in the church is not getting as much work as it
17 could be. But the other one in Unity House, which is also
18 in a very rural area, it can be.

19 One of our efforts has been to promulgate
20 knowledge or that it's there. And we constantly look for
21 places where we can advertise so people know that they
22 don't have to try to drive in from Hoosick Falls, if
23 anybody's from around here, and knows where that is. But
24 that they can access that, and that they can get the help,
25 many times they can get the help more easily than if they

1 walk in and start wandering around a courthouse. I don't
2 mean wandering around, but asking for help because people
3 are tasked there, whereas we have somebody sitting there
4 online ready to give the assistance.

5 They have been used; we wish they were used more
6 frankly. And we need to do that, you know, a proposal or
7 an action by this committee that made the knowledge of
8 those kiosks' availability more publicly available would be
9 enormously helpful.

10 It's the advertisement that's worse for us,
11 rather that's harder for us, than the implementation,
12 frankly.

13 I appreciate the question.

14 MR. BERMAN: Thank you, Judge.

15 JUDGE CONNELLY: Yes.

16 JUDGE DORAN: Go ahead.

17 MS. LAPP: May I just ask - - -

18 JUDGE DORAN: Yes.

19 MS. LAPP: - - - a follow-up question on the
20 kiosks?

21 JUDGE CONNELLY: Um-hum.

22 MS. LAPP: Are these kiosks that are meant for
23 people to utilize if they're making virtual court
24 appearances?

25 JUDGE CONNELLY: They can - - -

1 MS. LAPP: - - - or - - -

2 JUDGE CONNELLY: - - - yes. They can utilize
3 them to make virtual court appearances when it's approved.
4 They can also utilize them to find - - - to work - - - they
5 can receive their documents, fill them out with some
6 assistance and some direction, and file them.

7 MS. LAPP: So it is essentially like walking into
8 a court clerk's office? Is it open?

9 JUDGE CONNELLY: It can be very similar. don't
10 use court clerks to provide the assistance. But we have
11 staff in our district office that will provide the
12 assistance.

13 MS. LAPP: Thank you.

14 JUDGE CONNELLY: - - - and guidance. You're
15 welcome.

16 JUDGE DORAN: Anybody else?

17 Judge Connelly, thank you.

18 JUDGE CONNELLY: Thank you, Judge.

19 JUDGE DORAN: Thank you for your kind words, and
20 for the work that you do leading the third district.

21 I also know that the treatment courts were of
22 particular importance to you during the pandemic. And it's
23 important to think of the users of our court system. You
24 know, we've done so much work in the courts over the last
25 decades to engage in treatment courts, and domestic

1 violence courts, and a number of areas that were new to us
2 when they were started. The pandemic, you know, quite
3 precariously interrupted what was otherwise a very helpful
4 trajectory in the lives of a lot of people.

5 Take a minute if you would and tell us what your
6 observations were about how the pandemic impacted those
7 that were in need of that interaction with the treatment
8 court. And one of the missions of this group is to look
9 ahead to what we, unfortunately, have to plan for, which is
10 another instance when the operation of the courts are
11 interrupted. What could we do better next time in making
12 sure that folks that are in need of those treatment courts
13 and that interaction are not left aside?

14 JUDGE CONNELLY: I appreciate you asking that
15 question. I had cut out my treatment court discussion in
16 the interest of time, of meeting my time limit.

17 So as you noted, I've been the Albany County
18 felony DWI and drug treatment court judge for a number of
19 years, or as you referenced, I should say. And we, myself
20 and the entire recovery court team were enormously
21 concerned in March of 2020 when that immediate break
22 occurred because the treatment court is dependent upon day-
23 to-day interaction of the team with each participant. And
24 as we all know, you know, these addictions can be every bit
25 as deadly as even Covid.

1 And our team was able to, they were so concerned,
2 the CASACs, certified alcohol and substance abuse treatment
3 counselors, on our team were so concerned, they used their
4 personal phones to contact all of our people and stay in
5 touch with them in that first week or two.

6 The technology people in OCA, and in the Third
7 JD, under Judge Breslin, who was my predecessor, they
8 jumped right on it, they got us the computers to interact.
9 And as I think I heard somebody testifying this morning,
10 most people do have smart phones, even people of very, very
11 limited means. Most people in our group have smart phones.

12 So we were able to stay immediately in touch with
13 them, and in using first Zoom, as I recall, and then to
14 transfer to Teams, we were able to stay closely in touch
15 with them.

16 I was surprised, I will tell you, because an
17 integral part of the drug court process and the DWI court
18 process is that people come weekly before the judge, and
19 they stand in front of the judge with the rest of the
20 participants in the courtroom, and they discuss where they
21 are, and how they're doing, and, you know, how their
22 recovery is proceeding.

23 And that can be a very, very intimidating process
24 for those of us who aren't spending all of lives as
25 attorneys or judges. And so often that we're reticent

1 about speaking with the court in that position. They had
2 the whole group behind them, and myself sitting up, you
3 know, above them, with my robes on.

4 Online, they opened up much, much more. And we
5 had a much more positive interaction. And - - - and - - -
6 I - - - I'd never - - -

7 JUDGE DORAN: Interesting.

8 JUDGE CONNELLY: - - - saw that coming. But they
9 were more open, they were more honest, and they interacted
10 with each other and with the court in a much more positive
11 way, which was beneficial to their recovery.

12 And it made us aware, also, of the difficulty,
13 more re-aware of some of the difficulties they had
14 appearing in front of us.

15 I would say that because the technology people
16 set us up so well and have worked so well in the court
17 system over the last couple years, to put us in the
18 position, and they're continuing to do so to get those
19 laptops to everybody, that are portable, to put us in a
20 position where we can do our jobs from other places. That
21 we're ready to pivot, God forbid, another such pandemic or
22 such shut down have to occur for everybody's safety.

23 But we are in relatively good position to
24 continue. We did an amazing job, I think. Not speaking
25 for me, but speaking for our team, and the technology

1 people in that first month or two to stay in touch.

2 But I think we're well-suited, well set up, and
3 well ready after this, this fire drill, this emergency, to
4 do it again if we have to.

5 JUDGE DORAN: Thank you.

6 JUDGE CONNELLY: Thank you for asking.

7 JUDGE DORAN: Thank you. Anybody else? Any
8 questions for Judge Connelly?

9 Thank you for being here and your perspective;
10 very, very important to us.

11 We're now going to turn to Judge Manne. And as I
12 understand it, you are the president, sir, of the New York
13 State Magistrate's Association; did I get that right?

14 JUDGE MANNE: That is correct.

15 JUDGE DORAN: So if you wouldn't mind, take the
16 floor, of course, and we've heard a lot this morning. I
17 don't know if you were able to listen in, I know you were
18 here for some of it, I think I saw you back there.

19 JUDGE MANNE: I was.

20 JUDGE DORAN: So the town and village courts of
21 this state are places where many people have their first,
22 last, and only interaction with the court system. And some
23 very, very important issues, whether it's some of the
24 criminal cases we heard talked about, eviction cases, land
25 in your courts. So your input in this effort and your

1 association's input is critical to us.

2 So if you wouldn't mind sharing your perspective
3 with us, Judge Manne, we're ready to hear you. The floor
4 is yours.

5 JUDGE MANNE: Thank you. Thank you, Judge Dorn.
6 Thank you, distinguished members of the panel. And thank
7 you, very much, for including us in these hearings. It's
8 an honor to be here quite honestly. I'd also like to thank
9 Judge Marks and Judge Caruso, Judge Doran, and I'm sure
10 there are countless others whose names I don't know offhand
11 who shepherded us through the pandemic. We could not have
12 done it without your guidance. And I'd also like to
13 specifically thank Judge Murphy, who is our administrative
14 judge where I sit in the fifth district.

15 I've been in a town judge for fifteen years.
16 I've been an attorney for thirty. Certainly, obviously,
17 I'm here on behalf of the State Magistrate's Association to
18 give my comments as a judge. However, all the views I'm
19 presenting today as a judge are the same as my views as a
20 practicing attorney in upstate New York. I'm up in
21 Herkimer, near Syracuse, so very upstate by most people's
22 standards.

23 I, we, represent approximately 1,300 town and
24 village courts. We are, of course, the lowest level of our
25 court system, but as Judge Doran just mentioned, we are the

1 courts that most people are most likely to have interaction
2 with. We call ourselves the courts closest to the people,
3 and we take a lot of pride in that.

4 Our position, with all due deference to Judge
5 Connelly, it's timing's everything, because our position
6 really could be summed up in one word, and that's
7 flexibility. And I say timing's everything because Judge
8 Connelly made the point about stress the importance of
9 rules. And I guess I'm not diminishing the importance of
10 rules; rules are critical. And as I just finished saying,
11 we could not have made it through the pandemic without
12 clear guidance.

13 And we had regular, I should have mentioned this.
14 I've been the president for about eight months, but I was
15 the acting president for a large part of the pandemic. So
16 I was on the ground. Actually, throughout the pandemic, I
17 had regular weekly meetings with Nancy Sunukjian who is our
18 conduit to Judge Caruso, and we got regular weekly guidance
19 through her. And it was invaluable.

20 So, and going forward, rules are absolutely
21 critical to what we do. However, one size does not fit
22 all. And hopefully, everybody's had the opportunity to see
23 what town and village courts, how different they are
24 throughout the state. They can be literally night and day.
25 There's courts that are upstate that are still meeting in

1 the town barns. I mean, they're dedicated court space, but
2 they're part of the town barn, and might be a single room
3 with a desk versus courtrooms that are splendid in some of
4 the larger areas around the state. And availability of
5 technology might be night and day.

6 Staffing: many of our courts have no clerks much
7 less security. So that all comes into play, came into play
8 when it came to such things as protocol, certain protocols
9 as far as taking temperatures, that was difficult for some
10 of our members to carry out. And remains - - - mask
11 enforcement remains difficult for some of our courts to
12 carry out.

13 So my point is that I think the key is
14 flexibility. Guidance, but flexibility for each judge to
15 make decisions for him or herself, specifically when it
16 comes to virtual appearances and which appearances are
17 virtual.

18 I know in my area this is what we're doing now in
19 family court, specifically - - - especially, in family
20 court, surrogates court, and in some criminal courts,
21 especially the town village courts. Some appearances are
22 virtual, some appearances are live; the judge exercises
23 discretion as to whether there's a reason it should be live
24 or should be virtual.

25 I'm not going to reiterate all the reasons it

1 might be virtual because that's, I think, as I did see most
2 of this morning between watching online and then live when
3 I got here. I think all the reasons why virtual makes
4 sense going forward have been covered. And there's no
5 question we wholeheartedly support that.

6 I do want to reiterate some of the drawbacks to
7 virtual, and those certainly include interaction between
8 attorneys and clients, collegiality between attorneys.
9 When all we do is see each other in an adversarial
10 environment online, we don't have that time while we're
11 waiting for our case to get called to just chitchat, it
12 takes something away from the profession, quite honestly.
13 And I know one witness had mentioned, you know, the well-
14 being issues that are associated with that. Encouraging
15 people to settle sometimes is so much, when people are
16 there, they're waiting, they're inconvenienced, frankly, a
17 little bit, that all sometimes leads to compromise.

18 So there's pros and cons is my point, and I would
19 just urge this Commission to consider allowing flexibility.
20 And giving that flexibility and discretion to the judges on
21 a case-by-case, appearance-by-appearance basis.

22 Further, we very much would like to see CPL
23 182.20 amended. Right now, I'm in one of the counties that
24 allows for virtual appearances in criminal cases. We think
25 that discretion should be broadened to all counties. The

1 technology is here, it's here to stay. When CPL 182.20 was
2 originally enacted, it was a different world. So I like to
3 see, we'd like to see that occur.

4 We'd also like to see authority for virtual
5 arraignments. And I know that's somewhat of a
6 controversial subject between downstate and upstate. I can
7 tell you that our members upstate are universally in favor
8 - - - well, all of our members are in favor of the
9 discretion to conduct virtual arrangements. The defense
10 bar I know is split around the state.

11 Upstate in all of the counties that I've polled,
12 I'm going to say it is, outside of the major metropolitan
13 areas, it's universal that defense attorneys, district
14 attorneys, and judges all want authority to conduct virtual
15 arraignments. And the reason that it's so uniform upstate
16 is because in many of these small counties, the alternative
17 is a defendant sitting in jail overnight because there's no
18 judge who's going to come out and spend three hours waiting
19 for a defense attorney to drive an hour away to come in.
20 It's just not practical.

21 So in the end, you know, having a hearing was
22 intended to benefit defendants, and in certain cases, it
23 can work the opposite. Virtual arraignments solve that
24 problem.

25 So I see I'm out of time. So I was going to talk

1 a little bit about technology. I'll just say, certainly,
2 we could benefit from improvements to our technology.
3 We're all for E-filing, but we're going to need the
4 resources to make that happen.

5 Thank you.

6 JUDGE DORAN: Thank you, very much, Judge Manne,
7 for your perspective, and that of your members.

8 Anybody on the panel have any questions for Judge
9 Manne?

10 Leanne?

11 MS. LAPP: I have a question. Just in terms of
12 virtual appearances, do all of your members have the
13 capacity to conduct them in their courthouses given the
14 issues with internet and coverage?

15 JUDGE MANNE: Short answer is no, I'm going to
16 say. During the pandemic, definitely not. There were a
17 lot of town and village courts that did not have - - - we
18 all have laptops that are provided by OCA - - - but we
19 don't have cameras on all of them. Only the newer ones do.

20 I can't say at this point whether that's been
21 addressed fully around the state. I know there was
22 certainly a big push to slot them out. So by now, it's
23 possible. But to my knowledge, there are still some courts
24 that don't have. And the other problem is that some
25 courts, and some of you are going to probably find this

1 hard to believe, some courts don't have internet. They're
2 rural enough where there's no cell coverage to even connect
3 through a cell phone, and there's no cable or other
4 highspeed internet. So that's also a problem that will
5 need to be addressed somehow, at some point.

6 JUDGE DORAN: Thank you. Anybody else?

7 JUDGE RODRIGUEZ: But what about doing like some
8 of - - - I remember when the pandemic first happened, I was
9 one of the first judges to do this miscellaneous part. And
10 the Supreme Court, about two weeks after the pandemic
11 occurred, and my administrative judge, Matt D'Emic, had
12 told me to - - - I came in first for the first day. And he
13 was like, Ray, we're going to try to go remote. Obviously,
14 you do it from home, you obviously have to be professional
15 dressed.

16 Do some of your town and village court justices
17 have that ability, if they don't have internet in the
18 location that the courtroom is, to do it from a location
19 where they would do it remotely?

20 JUDGE MANNE: Yes. Well, so during the pandemic,
21 there was a much broader base of courts that were permitted
22 to conduct virtual arraignments. And those typically would
23 occur - - - well, some judges would go in and do them from
24 the courtroom. Other judges would do them from their own
25 home, their own living room.

1 Certain, there's, I don't know if I'm supposed to
2 say this. There may be certain counties that continue,
3 that still have authority to continue to do virtual
4 arraignments. And there are designated judges that handle
5 those, and it's up to the judge whether it's done from home
6 or from his or her courtroom.

7 JUDGE DORAN: By the way, when you just said I
8 don't know if I'm supposed to say this, everybody
9 immediately started paying attention.

10 JUDGE MANNE: I know, I noticed that.

11 JUDGE DORAN: That's a way to get attention in
12 the room.

13 Anybody else have questions for Judge Manne? A
14 lot more to come, and we're going to be engaged in many,
15 many more conversations with you and your members. So
16 thank you for being here today, and helping us set this
17 foundation. And thank you for the work that you do.

18 That concludes this portion of the panel. So our
19 guests are free to stick around if you'd like. But you
20 don't have to sit up front anymore. And we're going to
21 take a little bit of a break while we get the next panel
22 ready to go.

23 Thank you, all, very much.

24 JUDGE CONNELLY: Thank you, Your Honor.

25 JUDGE MANNE: Thank you.

1 (Off the record)

2 MS. MONSHIPOUR FOSTER: (Audio begins mid-
3 proceeding) Agencies providing eviction defense services
4 joined together, and we joined forces to establish the
5 Tenant Defense Project of Greater Rochester, Just Cause
6 Legal Aid Society, Legal Assistance of Western New York,
7 the Empire Justice Center, with input from community
8 stakeholders including tenants, landlords, court staff,
9 city and county officials, rental assistance agencies, and
10 our local state legislative delegation worked to develop
11 the project.

12 The project featured a single hotline to receive
13 call from tenants facing eviction. The number was widely
14 distributed by courts, by other stakeholders, and now
15 receives over 8,000 calls a year from tenants seeking
16 assistance with eviction matters from approximately twenty-
17 five different courts.

18 JustCause conducts intake of all callers and
19 provides a direct referral to the appropriate legal
20 services agency for resolution of their housing issue.
21 Representation in Rochester City Court was provided by
22 project partners, but no agency was adequately staffed to
23 provide representation to the twenty-three town and village
24 courts across Monroe County.

25 To allow for representation of all tenants during

1 Covid, even with limited staff, then Administrative Judge
2 Doran helped to set up a Special Covid Intervention Part,
3 SCIP court. To oversee this SCIP court, a single judge was
4 designated to hear eviction matters. It's created
5 consistency throughout the eviction process and decision
6 making and application of the new laws.

7 The SCIP court provided an easily accessible
8 centralized location for all town and village cases. The
9 model also provided holistic support during Covid with
10 onsite rental assistance, agencies, and other services to
11 streamline the application process necessary to access
12 eviction prevention funding.

13 It's no consequence that Monroe County
14 distributed the most money to landlords to any other
15 upstate county in the state. Not only has this had an
16 impact on the landlords receiving back rent and keeping
17 residents in their home. The program disrupts the cycle of
18 poverty which has plagued our city.

19 A recent internal review of the clients served by
20 the Tenant Defense Project showed that approximately
21 ninety-five percent of our clients fell below 180 percent
22 of the poverty level. Keeping those individual in their
23 homes while connecting them with city and county services
24 has become a lynchpin of the City of Rochester's anti-
25 poverty initiatives.

1 The centralized SCIP court used both in-person
2 and virtual appearances to accommodate judges, landlords,
3 clients, and counsel. The remote, this remote option not
4 only allowed for social distancing, but enabled tenants
5 with transportation or childcare obstacles to appear in
6 court and raise defenses.

7 Aside from the pandemic, transportation, illness,
8 childcare, and employment were always obstacles for our
9 tenants to attend court, and they remain so to this day.
10 Since internet access in our county is readily available,
11 remote court eliminated those barriers and allowed tenants
12 to appear without obstacles.

13 We were able to provide representation to all
14 eligible tenants in the SCIP court with only two to three
15 attorneys, and two paralegals, resulting in the resolution
16 of more than 2,000 cases despite the moratorium. To
17 provide the same level of service at each of the twenty-
18 three town and village courts in Monroe County, we would
19 require eight times the number of attorneys and paralegals
20 that are currently assigned.

21 At present, the funds for this level of
22 representation appear entirely out of reach. To put this
23 in perspective, the SCIP court, now that it's ending, we
24 estimate that our record of providing universal
25 representation to a hundred percent of tenants who seek

1 assistance will be reduced to less than ten percent in town
2 and village courts.

3 Unlike Covid, this renewed eviction crisis is
4 entirely preventable. The consolidated court model with
5 virtual access options should be made part of a permanent
6 court practice and procedure to further access to justice
7 for unrepresented litigants in eviction matters.

8 Thank you for your time.

9 JUDGE DORAN: Thank you, very much. And you
10 finished before the red light came on. Thank you, very
11 much.

12 So what I would ask everybody is if we could move
13 through all of the folks that are up here now, since it's a
14 similar subject matter, and then we'll ask questions when
15 we get to the end. So jot down your questions. All right.

16 So next, we have - - - and you can stick around
17 for a little while, right? Okay, great.

18 So next, we have, and I'm going to apologize if I
19 mispronounce your name, Jennifer Monthie; is that correct?

20 MS. MONTHIE: Close. Monthie, yes.

21 JUDGE DORAN: Okay. Jennifer Monthie is the
22 Legal Director at Disability Rights of New York. And we're
23 very happy you're with us. Thank you.

24 The floor is yours.

25 MS. MONTHIE: Thank you for the opportunity to

1 address the Commission to Reimagine the Future of New
2 York's Courts.

3 As we said, my name is Jennifer Monthie, I'm the
4 legal director at Disability Rights New York. DRNY is New
5 York's protection and advocacy system for people with
6 disabilities. The protection advocacy system is a
7 nationwide network of legally based disability rights
8 agencies mandated by federal law to protect and advocate
9 for individuals with disabilities. As such, DRNY provides
10 free legal advocacy for New Yorkers with disabilities
11 including ensuring equal access to public programs and
12 services.

13 The Covid-19 pandemic has had a disproportionate
14 negative impact on people with disabilities. Even though
15 people with disabilities and chronic conditions were at
16 particular high risk, most pandemic policies and responses
17 largely ignored their needs with devastating impact. I
18 encourage this Commission to push back against this trend,
19 and ensure that the needs of New Yorkers with disabilities
20 are highlighted in your work.

21 Today, I will focus my testimony on access, and
22 how virtual proceedings adopted as a result of the Covid-19
23 pandemic have improved access for people with disabilities.
24 As New York State was ravaged by the Covid-19 pandemic, New
25 York courts had to adapt and implement remote proceedings.

1 Many attorneys and pro se litigants with disabilities
2 welcomed this transition as they sought to protect
3 themselves from contracting Covid-19.

4 As the courts demonstrated the ability to operate
5 remotely, people with disabilities were able to benefit
6 from greater access to the courts. For people with
7 mobility disabilities and other physical disabilities, who
8 faced many barriers in attending court proceedings, remote
9 proceedings offered an avenue to access the courts.

10 From the time it takes to navigate from their
11 homes to the court setting, to navigate barriers in the
12 court, to the risk many face during the pandemic, attending
13 courts in person can be very challenging. We encourage the
14 court system to maintain and build upon the technologies
15 used during the pandemic by providing counsel and pro se
16 litigants at their option a means to appear virtually by
17 remote technologies for various courts' stages of the court
18 process.

19 We also encourage you to develop a uniform and
20 simple process for accessing these remote options. Even
21 during the height of the pandemic, decisions about how
22 proceedings were conducted were often different depending
23 on which court or judge oversaw the proceedings. These
24 inconsistencies placed a larger burden on court users with
25 disabilities. Without uniform processes, which can ensure

1 access to remote proceedings, people with disabilities or
2 chronic conditions have to rely upon the court's reasonable
3 accommodation process.

4 For the last three years, I've been a member of
5 the Unified Court System's advisory committee on access for
6 people with disabilities. The committee is charged with
7 examining and advising the Chief Judge and Chief
8 Administrative Judge on a broad scope of issues, including
9 the procedures for requesting accommodations.

10 In June 2020, the Unified Court System published
11 guidelines for handling requests for disability
12 accommodations. The guidelines have two distinct processes
13 for accommodations that are characterized as either non-
14 judicial or judicial accommodations.

15 For nonjudicial accommodations, the guidelines
16 made significant strides to improve the process, including
17 removing unnecessary jargon, designating a central point of
18 contact for all requests, requiring a higher level of
19 review before requests can be denied, tracking the denials
20 to a written denial accommodation form, and directing that
21 a statewide ADA coordinator to review all demands,
22 denials, excuse me, within ten days. These additions
23 created a uniform process for those who seek reasonable
24 accommodations.

25 Yet, the same process does not exist for those

1 that must seek a judicial accommodation. Under the
2 guidelines, judicial accommodations continue to be handled
3 by the individual job without involvement of the statewide
4 coordinator, a written denial form, or the ability to seek
5 a quick review of the denial.

6 The Covid-19 pandemic exposed the problem of
7 inconsistent treatment of accommodation request within the
8 judicial accommodation process. Many lawyers and pro se
9 litigants with disabilities or chronic conditions needed
10 and continue to need to appear in court remotely. The
11 judicial accommodation process has not been an effective
12 and timely process for responding to these requests even
13 when made by the same party, for the same accommodation,
14 before the same judge. These individuals have to go back
15 each and every time without some form of uniformity.

16 Because many of the most common accommodations
17 relevant to the Covid-19 pandemic were about remote
18 proceedings, and were characterized as judicial in nature,
19 there remains an urgent need to establish a consistent
20 remote proceeding process within the state court system.
21 The process should include the right of a litigant, or pro
22 se litigant, to seek remote options, assurance that the
23 remote technology is available, and meets the accessibility
24 needs of all participants, and training for both court
25 personnel and the public.

1 Also, there are best practices that take into
2 consideration the needs of people with disability that
3 should be adopted across the court system in the use of
4 virtual proceedings. For example, we witnessed the use of
5 the, quote, cattle call type appearances where all parties
6 on a morning calendar appear in the same virtual court's
7 session. This is confusing, and can be overwhelming for
8 certain people with disabilities.

9 In contrast, we have observed courts that have
10 used virtual waiting rooms and only admitted parties as
11 their case is heard before the judge. This not only helps
12 the privacy, but limits the number of people within the
13 virtual room which helps address clients who are
14 overwhelmed by the process.

15 Finally, we encourage you to also look at New
16 Yorkers, particularly in rural areas, who have limited
17 access to internet or technology. To bridge this digital
18 divide, there are important efforts within the Unified
19 Court System to establish remote locations and libraries
20 and other community centers to access information about the
21 court system in the Ninth and Third Judicial District,
22 which I know you've heard testimony about already. These
23 locations should be expanded and used to provide access to
24 remote court proceedings, so that those that would
25 otherwise not be able to travel long distances to court

1 settings could still participate in their own communities.

2 Thank you for the opportunity to appear before
3 you today, and for your considerations of my remarks.

4 JUDGE DORAN: Thank you, so much, for your
5 remarks. We appreciate your perspective very, very much.
6 Thank you. And we will continue our dialogue.

7 Next, we have from Sanctuary for Families - - -
8 and I see Ms. Friedman, you're also with Sanctuary for
9 Families; am I correct?

10 MS. FRIEDMAN: I am. Because of the limited
11 speaking time, the two of them are going to speak, and I'm
12 here as a backup.

13 JUDGE DORAN: Excellent.

14 MS. FRIEDMAN: - - - if anybody needs to ask any
15 questions, I'm right here.

16 JUDGE DORAN: I didn't want to ignore the backup.

17 MS. FRIEDMAN: Thank you.

18 JUDGE DORAN: But we are very pleased to have
19 sitting up front here and to hear from, and please forgive
20 me if I mispronounce your name, Luba Reife.

21 MS. REIFE: Reife.

22 JUDGE DORAN: Reife. I'm sorry. Luba Reife and
23 Karla George. Both are deputy directors at the Sanctuary
24 for Families and the Family Law Project in Manhattan and
25 the Bronx respectively.

1 MS. REIFE: Yes.

2 JUDGE DORAN: Okay. So I don't know how you want
3 to share your time, but the floor is yours whenever you're
4 ready.

5 MS. REIFE: Thank you, very much.

6 Good afternoon, my name is Luba Reife, and I'm
7 here with my colleague Karla George. We are appearing on
8 behalf of the Honorable Judy Kluger, representing Sanctuary
9 for Families, New York City's leading service provider and
10 advocate for survivors of domestic violence, sex
11 trafficking, and related forms of gender violence. I am
12 the deputy director at the Manhattan Family Justice Center
13 where I practice family law.

14 Survivors of intimate partner violence separating
15 from their abusive partners face multiple challenges as
16 they navigate the family court system. Leaving is the most
17 dangerous time in an abusive relationship, increasing the
18 risk of lethality to the survivor.

19 Litigation forces survivors to face their abusers
20 in court, and enables abusers to perpetuate their ongoing
21 tactics. This can be extremely retraumatizing for the
22 survivor, from simply seeing the abuser in court to
23 testifying in the abuser's presence. Additional challenges
24 include potential disclosure of confidential location, lost
25 wages, and difficulty of securing or paying for childcare,

1 and the cost of hiring attorneys for those who do not
2 qualify for court-assigned counsel. Assessing the court
3 system is even more challenging for survivors whose first
4 language isn't English, and for undocumented survivors.

5 These challenges were profoundly exacerbated by
6 the Covid-19 pandemic, increasing the risk of violence to
7 those confined in the very homes where the abuse was taking
8 place. When the courthouses closed in March of 2020,
9 survivors were unable to file for orders of protection as
10 before, in person with the assistance of a clerk, and they
11 could not file for custody for many months.

12 The online system was hard to access, and the
13 assistance provided over the phone was extremely limited.
14 While it remained possible for survivors to receive
15 temporary orders of protection through the online system,
16 in the first year of the pandemic, and beyond, most
17 custody, visitation, and child support cases were not
18 docketed or calendared at all. Thousands of cases, not
19 heard during the closures, created a tremendous backlog.

20 Also, a significant number of judges have been
21 reassigned to other courts resulting in thousands more
22 cases being transferred to a completely new jurist.

23 The pandemic created a stifling shortage of
24 court-appointed counsel. Many have retired or left the
25 panel due to the low pay rates, leaving those that remained

1 with unimaginable caseloads.

2 Agencies that provide supervised visitation are
3 facing similar staffing problems and backlogs, causing huge
4 delays in their services.

5 The burden of these unintended consequences is
6 being placed squarely on survivors' shoulders. Many of our
7 clients are being pressured in to settling cases in the
8 name of expediency, not safety or justice. In some cases,
9 survivors are recommended for mediation which is
10 inappropriate in intimate violence cases. In visitation
11 cases, where agencies are unavailable, survivors are forced
12 to accept unsafe, unsupervised alternatives.

13 However, some changes to the court system
14 implemented during the pandemic are positive. Filing
15 documents online and virtual court appearances have enabled
16 survivors to stay safe at home, alleviated the pressure of
17 finding childcare, and the concern about lost wages and
18 jobs.

19 MS. GEORGE: As stated earlier, my name is Karla
20 George. I am deputy director for Sanctuary for Families at
21 the Bronx Family Justice Center.

22 Based on our experience representing thousands of
23 survivors throughout the pandemic, we propose the following
24 recommendations. First, maintain virtual proceedings for
25 return of process and conferences, which would include

1 time-certain proceedings. Virtual proceedings should be
2 expanded to include breakout rooms. This will help foster
3 online negotiations. Thereby, attorneys can participate
4 fully and expeditiously with each other and their clients
5 during remote hearings.

6 Second, family courts should adopt a NYSCEF
7 system, which is an electronic filing system used
8 throughout much of New York State Court System with an
9 appropriate support for unrepresented litigants, while
10 simultaneously maintaining in-person filings.

11 Third, build a user-friendly website that informs
12 the public of current court operations to provide guidance
13 to unrepresented litigants. Within online systems, court
14 users' needs access to plain language legal information
15 offered in multiple language on the court website. Include
16 a chat for public that will allow the court users to ask
17 questions to self-help court staff.

18 Fourth, adopt a communication strategy to ensure
19 litigants and attorneys are kept up to date on the status
20 of their cases, as well as the status of court operations
21 generally, and should receive that notification in a timely
22 fashion.

23 Fifth, provide enhanced training for jurists and
24 case management strategies. Further, there should be
25 uniform procedural rules for all of the New York City

1 family courts that are posted on the court's website and
2 circulated by courts and judges.

3 Sixth, engage in meaningful conversations with
4 stakeholders on a plan for the complete and safe reopening
5 of family court. These discussions should be formalized in
6 writing, and consist of action plans.

7 And finally, Sanctuary for Families supports
8 raising the rates for 18B attorneys, and reform that would
9 enable the court system to appoint more jurists. There are
10 not enough jurists to handle the immense backlog of cases
11 that accrued during the pandemic. More are desperately
12 needed to provide the public with effective access to
13 justice.

14 We thank you for hearing our testimony today.

15 JUDGE DORAN: Thank you, so much. Thank you both
16 for being here. We hold on for a little bit, we may have
17 some questions for you. We're going to get a couple more
18 speakers in.

19 Next, is Ryan Gallagher from LIFT. Ryan, we're
20 happy you're here.

21 MR. GALLAGHER: Thank you.

22 JUDGE DORAN: The floor is yours.

23 MR. GALLAGHER: Good afternoon. And I want to
24 start by thanking the Commission for this opportunity to
25 testify.

1 My name is Ryan Gallagher, and I'm the director
2 of Legal Technology, Legal Information for Families Today,
3 or LIFT. We are a legal service organization that provides
4 limited scope representation to unrepresented litigants in
5 New York State family court.

6 We work with 25,000 families every year
7 throughout New York State on issues such as child support,
8 custody, visitation, guardianship, and domestic violence.
9 You heard from one of these litigants this morning.

10 If there is one thing I hope to make clear, is
11 that the problems this community's looking into are nothing
12 new. The pandemic only exacerbated challenges that had
13 already existed within the court system.

14 Family court is well known as a pro se court.
15 Over eighty percent of litigants come without a lawyer.
16 These litigants are disproportionately low income, from
17 communities of color, or are monolingual in a language
18 other than English. They are forced to navigate a complex
19 system on their own for cases that can mean having enough
20 child support money to put food on the table, or a safe
21 place for their child to live.

22 Because of this, the information and tools made
23 available by the court are extremely important. In New
24 York City, the family court's initial response to the
25 pandemic was to, understandably, go entirely virtual.

1 However, at that time, it only accepted cases that were,
2 quote, "essential." And it was unclear for some time what
3 this meant fermenting frustration both in the legal
4 community and with pro se litigants. The courts missed a
5 critical opportunity to utilize their website to explain to
6 the public what was happening and what their plans were
7 moving forward.

8 The people that did turn to the court's website
9 for information found it to be incredibly confusing. It
10 was, and is, extremely difficult to navigate from the home
11 page to the family court section, and even more difficult
12 to find forms the litigants need.

13 Furthermore, the court's webpage is only in
14 English cutting off access to thousands of litigants. Many
15 people weren't able to get the information they needed, so
16 they called LIFT, and the demand for our services nearly
17 tripled.

18 Prior to the pandemic, all petitions had to be
19 submitted either in person or by mail. Because there was
20 no online filing system, when things went remote, there was
21 no way for litigants to file their petitions.

22 Eventually, the Electronic Document Delivery
23 Service, or EDDS, was created. But EDDS is not a filing
24 system. Even today, there's no uniformity as to where EDDS
25 is used in New York so litigants may submit their

1 documents, think that everything is settled, and then get a
2 letter saying that they need to resubmit in person or by
3 mail.

4 When it comes to forms, not all court forms are
5 available online. Those that are, are only available in
6 non-editable PDF or Word doc formats. They're only in
7 English, and they are rife with legalese.

8 There's a great need for an expanded library of
9 do-it-yourself forms. LIFT has tried to fill this gap by
10 creating mobile-friendly guided forms to assist those who
11 don't have access to the technology needed. But it's a
12 large task for a small organization.

13 I want to take a second and emphasize, and make
14 clear, that virtual appearances and proceedings are popular
15 with our litigants and very useful. Virtual hearings make
16 it possible for them to be heard in court without having to
17 travel, not having to take off a day of work, or arrange
18 for childcare.

19 But there are still many issues with virtual
20 hearings, at which the Committee heard about this morning.
21 The courts don't have enough IT equipment or support staff
22 to handle the volume of virtual cases or to deal with
23 issues when they arise. LIFT has created a Tech Hub in our
24 administrative office to provide safety and privacy to
25 litigants to conduct their virtual hearings and have

1 trained staff to help them with the tech needs and access
2 court documents and submit them online.

3 There are many more issues I can go into, but
4 time is limited. So quickly, here are the recommendations.
5 Virtual and hybrid courts should be here to stay. They
6 work and they're much easier for litigants, but the digital
7 divide remains real, and needs to be addressed.

8 We need more places like the Tech Hub, and need
9 to be based in the community so the people can easily
10 access them. There needs to be step-by-step instructions
11 for litigants to access their virtual hearings sent in
12 advance of their case, and instructions on what do to if
13 things do not work.

14 The courts need comprehensive IT backup and
15 support staff. Communications from the court and the
16 public need to be improved, and made accessible in many
17 languages. The court's website and forms need to be much
18 more user friendly, accessible, and accessible on mobile
19 devices.

20 Family court needs an electronic filing system,
21 and there should be uniformity across the state as to how
22 it's used. The courts should push for the elimination of
23 notarization on court forms or pursue the continued use of
24 online notaries.

25 There should be greater access to UCMS, and in

1 the future, if things go wrong - - - hopefully, they won't
2 - - - but all types of cases should be heard during an
3 emergency, especially child support.

4 Our hope is that we have learned from the past
5 two years. LIFT has provided assistance in support of many
6 litigants who had nowhere else to turn, and we look forward
7 to continuing to work with family courts because all New
8 York families and children deserve equal access to justice.

9 Thank you.

10 JUDGE DORAN: Thank you, very much, we appreciate
11 your perspective. Thanks.

12 So our last presenter in this group is Erica
13 Ludwick, who is the deputy director of the Legal Aid
14 Society of Northeastern New York.

15 Welcome. Thank you for being here. The floor is
16 yours.

17 MS. LUDWICK: Thank you for the opportunity to
18 testify. As you stated, my name is Erica Ludwick, and I'm
19 a deputy director at the Legal Aid Society of Northeastern
20 New York.

21 I'm testifying today on behalf of attorneys and
22 clients of LASNY. We provide assistance for low-income
23 clients in civil legal matters in sixteen counties in
24 northeastern New York. From the Catskills to Canada, our
25 attorneys serve rural town and village courts and counties

1 like Fulton, St. Lawrence, Washington, Warren, Columbia,
2 and Greene. We also serve the cities of Albany,
3 Schenectady, Amsterdam, and Saratoga Springs. We serve
4 areas with pockets of non-dominant language users, like the
5 City of Amsterdam, where the city twenty-seven percent of
6 residents speak a non-dominant language, mainly Spanish.

7 A big issue facing LASNY attorneys was the
8 inconsistency between judges regarding whether clients
9 could waive virtual appearances. This is problematic
10 because many clients did not have access to broadband or
11 streaming quality internet on their devices. Still more
12 clients had difficulty operating these applications.

13 Only one family court in our service area had
14 available conference rooms for litigants to use to appear
15 virtually. Some judges were great about allowing clients
16 to appear by phone, and others insisted that our clients
17 must appear on camera. This created both confusion and
18 frustration.

19 Virtual trials held during the pandemic were
20 difficult. There was confusion around submission of
21 evidence, there were concerns that witnesses might have
22 notes in front of them, or that other witnesses were nearby
23 which could taint testimony. Some witnesses lacked access
24 to stable broadband internet which significantly hindered
25 proceedings. Making objections was problematic. For

1 example, some judges implemented rules where everyone was
2 required to be muted and you had to raise your hand to
3 object.

4 Virtual conferences were one of the best and
5 easiest ways to modify proceedings during the pandemic.
6 Virtual proceedings were helpful in ensuring that our
7 attorneys could attend court without having to get in the
8 car and drive to multiple courts across our service area,
9 enabling us to serve more clients.

10 Virtual appearances also has eased some of the
11 concerns and fears of our clients who experienced domestic
12 violence in confronting their abusers face to face in
13 court. However, these clients were often forced to proceed
14 virtually without having advocates or other support
15 present, which added to their anxiety and increased trauma.
16 It is imperative that advocates be able to attend virtually
17 if we continue to participate in these types of
18 proceedings.

19 We do not suggest that virtual appearances should
20 be the rule in these matters, but rather a well thought out
21 and flexible option.

22 Virtual foreclosure settlement conferences were
23 also a huge success. Individual scheduling increased
24 efficiency for all parties involved instead of one mass
25 cattle call. Counsel and homeowners can attend without

1 traveling to the county seat which was very problematic for
2 older and disabled homeowners. Banks also attended
3 conferences using their own attorneys, rather than hiring
4 local per diem counsel, who usually lacked details about
5 the status of the case, or anything authority to negotiate.
6 Therefore, matters did not progress.

7 There was some delay in entering virtual
8 appearances that mirrored pre-pandemic practices. However,
9 these delays allowed attorneys to attend to other matters
10 while waiting.

11 There were many pros for our attorneys and
12 clients, mostly in the form of less travel for both. Our
13 clients who live paycheck to paycheck did not have to miss
14 work. Instead, they could appear virtually from anywhere
15 without having to suffer lost wages.

16 Initially, there were many issues with the use of
17 court platforms for virtual proceedings. However, with the
18 switch to Teams, the court appears to have remedied many of
19 the concerns raised. Teams has been a safe and reliable
20 method to host proceedings. Although Teams glitches are
21 rare, they happen. Sometimes invalid Teams links were
22 provided, and sometimes the camera option failed. However,
23 phone-in numbers almost always worked as an alternative,
24 provided the judge did not insist on seeing video.

25 The use of interpreters in virtual court

1 proceedings was mixed. In many cases, the court ensured
2 there was an interpreter available with less than twenty-
3 four hours' notice. Masking protocols onsite for courts
4 that were unable or unwilling to host virtual proceedings
5 for clients was problematic. Some litigants and
6 interpreters were asked to remove their masks in situations
7 where it was clearly not safe to allow for better
8 translation. It was difficult for attorneys to
9 confidentially communicate with their clients because not
10 all courts understood how to place litigants into separate
11 rooms for conferencing purposes. And courts experienced in
12 utilizing interpreters, the interpreter was seamlessly
13 folded into most proceedings.

14 Many of the positive practices mentioned
15 previously did not reach local town and justice courts,
16 specifically, in the North Country. Many courts shut down,
17 rather than trying to work within the pandemic practice
18 parameters. Many justice court courtrooms are too small to
19 socially distance so no more than a few people could be in
20 the room. Many courts routinely broke this rule for the
21 sake of ease, where others enforced it rigorously to the
22 harm of some of the parties who were unable to present
23 witnesses because they exceeded capacity limits.

24 Most justice courts still do not have any virtual
25 capabilities and/or their staff remain woefully

1 undertrained on technology.

2 To many LASNY attorneys practicing in these
3 courts, it appeared that pandemic practice changes were
4 done with little to no consideration of how justice courts
5 work particularly in these rural counties.

6 Although many of the pandemic procedures that
7 were implemented would be most helpful in rural justice
8 courts, especially in overcoming a lot of issues raised by
9 transportation, distance, and disabilities among parties,
10 they have not been realized. These procedures need to be
11 implemented with care. Any such implementation needs to
12 include significant thought about how justice courts work
13 and with far more oversight than they previously received.

14 Thank you for allowing me to testify today.

15 JUDGE DORAN: Thank you, so much, you got a lot
16 into a small amount of time there. We appreciate it.

17 Anyone on the panel, we have time for a couple of
18 questions. Does anybody have any questions for any of
19 these folks?

20 JUDGE AMAKER: I have a question. My question is
21 for the team for Sanctuary for Families. My question is
22 with regard to DV survivors. What feedback have you had
23 from your clients regarding virtual proceedings,
24 specifically in family court; how do they feel about these
25 proceedings?

1 MS. REIFE: Most of our clients, I would say
2 overwhelmingly, do like the virtual proceedings. For most
3 of our clients, it's sometimes a matter of going forward or
4 not going forward in that they don't have to face their
5 abuser in court. So I think that for the majority of them,
6 this has been a positive experience.

7 MS. GEORGE: And I could just briefly add to
8 that. A lot of our clients have commitments as far as
9 childcare, specifically in Bronx Family Court, we currently
10 do not have a childcare option. And so the virtual
11 proceedings were very helpful in that regard.

12 Some people are forced to bring, not just one
13 child, but numerous children. And then they also have to
14 take into consideration their jobs, what time their
15 children get out of school. We have them enrolled in
16 programs. And it really does help our clients to be able
17 to attend these virtual proceedings.

18 MS. CHERRY: Judge, I do - - -

19 MR. BERMAN: My question is to - - - sorry.
20 Going forward, what technology advances do you think are
21 required to ensure those disabled people, the citizens of
22 New York, to ensure that they have fair access to the
23 courts? I mean, you've seen the pandemic. So I'd like to
24 hear, what do you think is needed going forward in
25 implementing the whole structure.

1 MS. MONTHIE: Structurally, I think more
2 technology in the courts. I do think the court, it was
3 testified to here that there was a shift to the Teams
4 platform versus other platforms. The court needs to stay
5 up to date on whether those platforms allow the
6 accessibility features that are needed, whether through
7 translation and captioning or being able to identify the
8 translator on the screen.

9 And so I know some of that work was done through
10 the pandemic, and Teams has those features available to it.
11 But these platforms really were not created for that
12 concept in mind, but had because of the pandemic, needed to
13 be adjusted.

14 So I do think vigilance is required in terms of
15 figuring out what technology is within the court and
16 ensuring that it stays accessible.

17 Also, the website was mentioned. There are, you
18 know, many inaccessible features of the court's website
19 that need to be addressed. And so even a person being able
20 to request from the court the accommodation they need
21 struggle through navigating that website in order to get to
22 where they need to, to request that.

23 So our experience is that people just, unless
24 forced to, avoid the use of the state court system which is
25 not really what I think this committee is trying to

1 accomplish.

2 And I do think what's also mentioned third is
3 training. There really does need to be an effort. I know
4 there's efforts made, but a continued effort that it's
5 required that this is an essential function of learning
6 your job to use these technologies.

7 Resisting and saying that you can do it a
8 different way means that you're oftentimes excluding people
9 from accessing your courts. And I appreciate what position
10 that puts the court system in as a whole but ignoring these
11 advancements and the way that many people with disabilities
12 now access our society through these online platforms is
13 just one more way of saying that you're not allowed here.

14 JUDGE DORAN: Thank you.

15 Jessica Cherry, and then I think Leanne Lapp has
16 a question.

17 Jessica?

18 MS. CHERRY: Thank you, Judge.

19 Ms. Foster, I just have two questions for you. I
20 know you were speaking specially to the Seventh Judicial
21 District, but have you spoken with any other legal service
22 providers or agencies in the other judicial districts
23 upstate in regard to their views or interest in the SCIP
24 Part?

25 MS. MONSHIPOUR FOSTER: Absolutely. I think we

1 have as part of the New York Civil Legal Services Coalition
2 of which I'm on the board, we have a working group of civil
3 legal service providers that has been looking at how to
4 increase access to counsel and throughout New York State.
5 And the collective, I think, wisdom from almost everybody
6 universally is that hub courts are necessary in order for
7 us to maximize our service delivery.

8 And so, with the caveat that nobody wants to
9 force our clients to travel, you know, to someplace that is
10 not accessible to them. Nobody wants our clients to not
11 have access to support if they don't know how to use
12 technology to access those courts virtually.

13 I think there are things that people are
14 concerned about making sure that if we do have hub courts
15 that those things will be taken into account. But
16 universally, across the board, from what I have heard from
17 people, is that it will be a very welcomed improvement to
18 their ability to serve communities in their regions.

19 MS. CHERRY: Um-hum. You kind of segued into my
20 second question, which is if you saw any issues with the
21 geographic barriers in terms of access to SCIP Parts versus
22 somebody familiar with their own local court.

23 MS. MONSHIPOUR FOSTER: Right.

24 MS. CHERRY: So you know, with that exploration,
25 I was just interested in what your conversations have been

1 to overcome these barriers, particularly as we return to a
2 mixed-use court, not always virtual, but also in person.

3 MS. MONSHIPOUR FOSTER: Right. I think there's a
4 number of different ways you can have consolidated hub
5 courts. I don't think that you have to use necessarily the
6 exact model that we had - - -

7 MS. CHERRY: Um-hum.

8 MS. MONSHIPOUR FOSTER: - - - in Monroe County.
9 I think it's possible to establish hub courts in different
10 towns and villages that may have a larger volume - - -

11 MS. CHERRY: Um-hum.

12 MS. MONSHIPOUR FOSTER: - - - of courts, for
13 example. We have some courts that only hear one or two
14 eviction matters a whole month. And then we have other
15 courts that have a whole day of, you know, eviction
16 proceedings. And if there was a way to consolidate some of
17 the smaller courts' proceedings with, you know, the courts
18 with low volume with some of those that have higher
19 volumes, you could provide the same level of service and
20 not have to duplicate having services in a court where they
21 may only have one or two of those kind of matters per
22 month.

23 MS. CHERRY: Um-hum.

24 MS. MONSHIPOUR FOSTER: So I think that there's
25 ways in which you can establish courts that are local, to

1 still considered local courts. But not so many that, I
2 mean, we literally have a situation in Monroe County where
3 there are two town and village courts across the street
4 from each other. They hold proceedings at, you know,
5 different times, sometimes competing times. They don't
6 coordinate their calendars. So it's just highly
7 inefficient for us to be able to serve both of those courts
8 without coordination.

9 MS. CHERRY: Excellent. Thank you.

10 JUDGE DORAN: Thank you.

11 Leanne?

12 MS. LAPP: I have two questions. Just the first
13 one's very brief, and for Ms. Foster.

14 You referenced in your testimony that now that
15 courts are not going to be virtual anymore, I think you
16 said you'd be serving ten percent of the people you were
17 serving previously; are the other ninety percent then going
18 unrepresented; is that - - -

19 MS. MONSHIPOUR FOSTER: Yes. The other ninety
20 percent of the people who we have been representing in town
21 and village courts will have no lawyer show up to represent
22 them in those proceedings.

23 So we've continued to provide a hundred percent
24 to all of the city court residents because that's in one
25 location, we have that set up.

1 The SCIP court we were able to send attorneys
2 every Wednesday to a central location where all the town
3 and village courts were heard at the same time.

4 And so that allowed us to have that efficiency.

5 Now what's happened is all of those courts,
6 those Wednesday hearings are happening in twenty-three
7 different places all over Monroe County, and they're
8 sometimes happening at the same time. You know, you might
9 have one court happening at the same time as another court.

10 And so all we'll be able to do at this is when
11 people call us from the hotline, call our centralized
12 hotline, is to provide advice and counsel, help them, try
13 to get them an attorney if we're able to, if they call far
14 enough in advance to be able to go out to their court. But
15 for the vast majority of people, we don't have the
16 attorneys available to go and to follow that case, and go
17 to a court with that person. And we don't have the
18 staffing to have attorneys sitting there waiting to see who
19 shows up.

20 Whereas, at the SCIP court there was always
21 attorneys there, and if someone did not call in advance,
22 they still had the option to have representation because we
23 were staffing that court.

24 So those other ninety percent of tenants that we
25 were representing are only receiving at this point, what we

1 can provide is advice and counsel prior to their court
2 date.

3 MS. LAPP: Thank you.

4 And then Sanctuary for Families, the two
5 representatives from that agency, you mentioned the
6 assigned counsel rates as part of your testimony.

7 Have the individuals that you've been working
8 with had challenges finding counsel to represent them. And
9 could you briefly explain that?

10 MS. LAPP: Yes. Specifically, in the Bronx, we
11 serve as very low-income demographic. And so they're
12 either in that demographic or they're in a demographic
13 where they make right above the 18B amount that they can be
14 assigned counsel.

15 And so what happens with 18Bs is that they leave
16 the panel. Specifically, in Bronx County, we have a
17 minimal amount of 18B counsel. And the work is just too
18 much for them. So a lot of litigants are going without
19 counsel because the 18B counsels are overworked, they don't
20 feel like they are being heard, they are unable to speak to
21 their clients until the actual court appearance, and so
22 some people do feel that they're better off without 18B
23 counsels because they're not giving them the appropriate
24 amount of time.

25 On our hotline calls, as well as our screening

1 process, we have a lot of people calling us saying we'd
2 rather you represent us because you will give us the time
3 needed. We really feel that that is related to the 18B
4 rate. If we could raise that, we would have more people
5 applying to be 18B attorneys which would help with their
6 caseload, as well as giving the litigants the time and
7 energy that they do deserve for their cases.

8 MS. FRIEDMAN: If I might just add to that.

9 In the Bronx, in particular, we were told that
10 thirty-five members of the panel had left the panel since
11 the pandemic recently. I'm not sure what the entire total
12 number is, but it's a huge decrease. And as a result,
13 there are cases that are being adjourned multiple times
14 just for assignment of counsel because there is not counsel
15 available to pick up cases on that date. It's actually a
16 true crisis. I practiced in the Bronx in the early 2000s,
17 and it was a very similar dynamic happening at that time
18 where people were retiring and cycling off the panel, and
19 then not choosing to be on the panel because the rate of
20 pay was just so low that it doesn't benefit them.

21 And in fact, several of them have actually opened
22 practices in other boroughs for private pay because they
23 just can't survive on the pay offered by the state. I
24 believe it's still at seventy-five dollars an hour, which
25 is what it was increased to, I believe, it was 2007, '6 or

1 '7, if I'm not mistaken. So that's many, many, many years
2 since there's been an increase.

3 MS. REIFE: I would just add, as a last thing, as
4 I mentioned during my testimony, what ends up happening is
5 that the process is really not guided by safety or by
6 justice, but by efficiency, just because the 18B panel
7 cannot handle the cases.

8 So we will sometimes hear of our clients settling
9 cases which are really against their interest, and any
10 lawyer worth their law degree, would tell them that. But
11 it's just a matter of trying to cycle through these.

12 We also have had clients who are monolingual
13 Spanish speakers calling us, and saying that they never
14 spoke to their attorney in Spanish. That they only spoke
15 with them in their broken English, completely not
16 understanding the process. And that's one of the things
17 that we're definitely seeing a lot of, a lot of joint
18 custody agreements where the client should be fighting for
19 sole custody. A lot of child support agreements that are
20 really not guided by what they really should deserve, but
21 again by trying to cycle through these.

22 JUDGE DORAN: Thank you. This could go on for
23 days. Honestly, and it should go on for days. We will
24 have more thorough virtual listening sessions with all of
25 you in your organizations.

1 I really feel like you've given us a very
2 visceral real window into the lives of so many people whose
3 voices, unfortunately, aren't heard often enough in these
4 conversations. You've helped us a ton by being here.

5 So thank you, thank you, thank you. I'm sorry we
6 had to cut this short. Have a great rest of the day,
7 travel safely. Say hello to Judge Kluger for us. And
8 we'll talk to you all soon. Thank you.

9 We're going to take a little bit of a break while
10 we get the next group of four up here and ready to go.
11 Don't go too far because we're going to start again
12 promptly at 4:07 and a half.

13 JUDGE DORAN: And in case you haven't noticed - -
14 - oh, I have to give you thirty seconds again. I'm sorry.
15 I keep forgetting to do that.

16 Okay, thirty seconds. I keep doing that. Just
17 because I like to hear myself talk twice and say the same
18 thing.

19 Good? Okay.

20 Good afternoon. Welcome back, everybody. We are
21 ready to proceed with the next segment of our in-person
22 hearing. This segment is focusing on criminal proceedings.
23 And we are very grateful and pleased to have four
24 individuals with us from across this state, who will offer
25 us their perspectives on the COVID practices as they relate

1 to criminal proceedings.

2 I'm going to introduce you each before you speak.
3 We'll go through each of you, and then we'll have questions
4 for all of you at the end, kind of like we did the last
5 panel, and hopefully that will allow us to have a little
6 bit of a dialogue at the end.

7 So first up is Susan Bryant, over here; I'm
8 sorry. I looked at the wrong person.

9 Hello.

10 MS. BRYANT: Hello.

11 JUDGE DORAN: Susan Bryant is the executive
12 director of the New York State Defenders Association.
13 We're very grateful to have you here, and grateful to hear
14 the perspective of all of your members. So not too much
15 pressure, all of your members, but whenever you're ready,
16 the floor is yours.

17 MS. BRYANT: Good afternoon, Judge Doran, and the
18 rest of the working group that's here today and other
19 members that will be participating throughout this time
20 period. Thank you for allowing me to testify.

21 I also want to address criminal court absolutely
22 as well as family court, because the New York State
23 Defenders Association covers public defense, which is both
24 criminal and family. And as I understand it, this hearing
25 is intended to guide the Working Group in what you're going

1 to be working on through the next month into the fall.

2 So with that in mind, I have several topics that
3 I want to cover and general principles. And we're going to
4 supplement our testimony with testimony in writing that
5 will go into more depth, and I know that I'll take more
6 than five minutes.

7 JUDGE DORAN: Well, try to keep it to five,
8 because - - -

9 MS. BRYANT: Yes, I know.

10 JUDGE DORAN: - - - we - - -

11 MS. BRYANT: No, I thought - - -

12 JUDGE DORAN: - - - they - - - they're going to -
13 - -

14 MS. BRYANT: I could go on all day.

15 JUDGE DORAN: If we're here past 5:30, we have to
16 stay overnight. Go ahead.

17 MS. BRYANT: So the New York State Defenders
18 Association is a nonprofit membership organization with
19 more than 1,600 members, and those members include not only
20 attorneys, but also defense investigators, members of the
21 public, people who are impacted by the system. And our
22 mission is to improve the quality and scope of public
23 defense representation.

24 And for over four decades, NYSDA has received
25 state funding to operate the Public Defense Backup Center,

1 which provides resources and support to defenders around
2 the state, who practice in criminal and family court.

3 We also run the state-funded Veterans Defense
4 Program, which provides support to promote trauma informed
5 effective representation of veterans and service members in
6 the criminal and family court systems.

7 We recognize the tremendous challenges that the
8 court system and the attorneys who practice in those courts
9 faced during the pandemic. And we understand that the
10 options facing the court system were limited. As we move
11 forward in setting policies, enacting laws and rules that
12 will govern day-to-day criminal and family court
13 activities, we strongly recommend that the court system,
14 this working group, as well as the legislature, executive,
15 and other members of agencies that appear in the courts
16 regularly, keep in mind and start from the perspective of
17 litigants, whose lives and families are impacted by these
18 proceedings. These people have Constitutional and
19 statutory due process and equal protection rights, and the
20 right to effective assistance of counsel. The courts must
21 ensure that these rights are given precedence, when making
22 any decisions about court operations.

23 NYSDA supports defenders across the state in
24 urban, suburban, and rural jurisdictions. And while some
25 of the challenges that jurisdictions have faced during this

1 time varied significantly, one thing that's remained
2 constant is that representation provided to clients is
3 detrimentally impacted when the clients are not allowed to
4 appear in person for proceedings that have an impact on
5 outcomes of their cases.

6 With regard to criminal proceedings, NYSDA has
7 long opposed and has continues to oppose virtual
8 communication for holding nonemergency criminal proceedings
9 deemed critical stages, and for any proceedings, absent the
10 consent of the person whose case is being heard. I'll get
11 back to consent, but we have several statements that we've
12 issued over the years that we'll be providing in our
13 written testimony.

14 And I want to highlight the Office of Indigent
15 Legal Services and the Chief Defenders Association of New
16 York have taken positions that are similar to ours,
17 particularly with respect to representation at arraignment.
18 And I know that there was some conversation about virtual
19 arraignments. We have been opposed to them. All of the
20 issues that we're dealing with cannot be about expediency
21 and efficiency over the rights of clients. And if I don't
22 say anything else today, that I want to make clear.

23 Our position is the same with family courts.
24 Often cases involve the separation of parents and children,
25 and in-person appearances need to remain the default.

1 However, as I said earlier, the clients should be able to
2 determine if they need to appear or want to appear
3 remotely.

4 Attorney-client relationships are built on trust
5 and communication. Clients are often skeptical of the
6 attorneys that are assigned to represent them, and when
7 clients meet their attorneys by video or phone, not in
8 person, particularly at a first appearance, the ability to
9 develop a rapport is significantly hampered. Ongoing
10 virtual communication, both in and outside of court, can
11 supplement, but cannot replace in-person communication.

12 And while some of the technological innovations
13 that have been developed since the pandemic started allow
14 for some degree of private communication between attorney
15 and client during virtual appearances, these options are
16 not the same as one-on-one conversations that are possible
17 when the attorney and the client are together in person.
18 For clients who require an interpreter or other assistance,
19 this needs to be available not only during the on-the-
20 record proceedings, but also during private conversations.

21 In addition to the barriers that virtual
22 communications have set up for the attorney-client
23 relationship, we also have significant concerns about the
24 way the court and others involved in the case, whether it
25 be a prosecutor or child protective services or other

1 players, view the individual who is appearing virtually.
2 In fast-paced criminal and family courts, it's hard enough
3 for there to be a focus on the human being whose freedom or
4 family is at issue. This is even more challenging when
5 some or all of those who are participating in the
6 appearance are on screens. Also when clients have
7 difficulties using the technology, there may be times when
8 this leads to frustration, even subconscious frustration,
9 by decisionmakers, and influence decisions.

10 And I see my red light is on, and I'm only on
11 page 2. I know a number of people have talked about the
12 court website. We spent significant amounts of time trying
13 to gather all of the different protocols that were put out
14 on a regular basis, and it's something that needs to be
15 improved significantly. The bar needs to be informed, as
16 well as the public, who are appearing pro se.

17 So I'm happy to answer questions, and we will
18 certainly supplement our testimony.

19 JUDGE DORAN: Thank you. And sorry to cut you
20 off. I - - -

21 MS. BRYANT: No - - -

22 JUDGE DORAN: Your views and - - -

23 MS. BRYANT: No need to apologize.

24 JUDGE DORAN: - - - your views and those of your
25 members are critically important to us, and we will, of

1 course, continue this conversation. We may ask you a few
2 questions, when we get to the end, but we want to make sure
3 we have everyone have an opportunity. So stay tuned.

4 MS. BRYANT: Thank you.

5 JUDGE DORAN: Next, we have Russell Schindler,
6 who is the vice president of the New York State Association
7 of Criminal Defense Attorneys.

8 Sir, thank you for being with us. The floor is
9 yours.

10 MR. SCHINDLER: Thank you for having my
11 organization and allowing us to speak to you about this
12 very important topic.

13 When the COVID-19 pandemic began, criminal courts
14 initially ceased all in-person appearances. Cases were
15 administratively adjourned for months, and through a
16 somewhat confusing series of administrative orders, the
17 Office of Court Administration reduced court operations to
18 only essential matters, which included criminal court
19 arraignments and writs of habeas corpus, and those hearings
20 were conducted virtually.

21 All grand jury proceedings and trials came to a
22 complete halt. Without grand juries or trials, and without
23 regular court appearances, cases stalled, and people who
24 were incarcerated faced indefinite detention.

25 In time, the courts adjusted, and through some

1 executive orders, the Criminal Procedure Law was modified,
2 and virtual appearances in other nonessential matters
3 began. Judges, rather than grand juries, determined
4 whether probable cause existed to continue the detention of
5 individuals charged with a felony.

6 Now more than two years later, in-person
7 appearances are occurring regularly. Jury trials are
8 occurring now, but with some social distancing limitations.
9 For instance, where I practice in Ulster County, there's
10 only one courtroom being used out of five. It's our large,
11 ceremonial courtroom, and that's being used because it's
12 large enough to accommodate social distancing among the
13 various participants.

14 With respect to arraignments, the NYSACDL
15 strongly advocates that all arraignments be conducted in
16 person. Video proceedings interfere with the right to
17 counsel. These proceedings impede the ability to
18 communicate effectively and privately with our clients.
19 Attorneys find the virtual proceedings to be dehumanizing.
20 Video cameras impede the ability of the attorney and the
21 judge to adequately observe the person's physical and
22 mental health. Making direct eye contact is impossible.
23 Confidentiality concerns, excuse me, while communicating
24 remain on everyone's mind and affects the ability of both
25 the attorney and the client to have an open and informed

1 discussion about the case and the charges.

2 In effect, a barrier is created by the use of
3 video technology. This is particularly damaging at the
4 time of arraignment when the foundation for the attorney-
5 client relationship is being formed.

6 More importantly, perhaps, studies have shown
7 that bail determinations made during virtual arraignments
8 result in more cases with bail being set for more cases
9 with higher bail. One study was conducted in Cook County,
10 Illinois, and it showed that the average bond amount for
11 the charges that shifted from in-person to televised
12 hearings increased by an average of fifty-one percent. We
13 also know that the Riker's Island jail population increased
14 by over 1,000 inmates from the beginning of the pandemic in
15 April of 2020, to the summer of 2021, due in large part to
16 higher bail being set at arraignments. As a group, we
17 advocate for in-person arraignments in the future.

18 As for trials, the ability to conduct jury trials
19 is of paramount concern to those accused of crimes. Trials
20 absolutely must be conducted in-person. Constitutional
21 right of confrontation must be strongly safeguarded. The
22 right to confront the witnesses against the accused means,
23 with very narrow individualized exceptions, that the
24 witness and the defendant be physically present in the
25 courtroom at the same time, so that jurors can properly

1 assess credibility and determine the sufficiency of
2 evidence.

3 Courts must be mindful to protect the health and
4 safety of the participants to criminal proceedings, but
5 without undermining the defendant's right to due process
6 and a fair trial. Underlying safety concerns should not
7 override the rights to effective assistance of counsel, to
8 an impartial jury, effective confrontation of witnesses, a
9 speedy and public trial, and other due process
10 considerations.

11 Courts must safeguard the Sixth Amendment right
12 to an impartial jury made up of a fair cross-section of
13 jurors. When questions arise about the composition of jury
14 pools, courts must ensure transparency, and allow attorneys
15 to obtain master jury selection lists, without which
16 attorneys cannot effectively move to strike jurors. Trials
17 must occur in courtrooms large enough to allow for social
18 distancing of the participants. And attorneys must be able
19 to see all participants, including the jurors, at all times
20 during the trial.

21 I see my light is on.

22 JUDGE DORAN: Give us another sentence or two.

23 MR. SCHINDLER: Okay. Thank you.

24 Failure to address these concerns could result in
25 an unfair trial and possibly wrongful conviction. One

1 critical aspect of a trial is that the jurors be able to
2 clearly see the faces and the facial expressions of
3 witnesses as they testify. Some trials have been conducted
4 where the jurors are spread about the courtroom, raising
5 concern that those jurors in the back of the courtroom
6 could not clearly see the witness' facial expression. Plus
7 the attorneys had their backs to those jurors, and thus
8 could not see them or make eye contact during much of the
9 trial.

10 I'll stop at that point.

11 JUDGE DORAN: Okay. Thank you, and - - -

12 MR. SCHINDLER: Thank you so much.

13 JUDGE DORAN: - - - please feel free to submit
14 written comments to the PPWG@nycourts.gov. I hate to sound
15 like a commercial, but - - -

16 MR. SCHINDLER: No, but - - -

17 JUDGE DORAN: - - - we'd love to have you
18 supplement your comments - - -

19 MR. SCHINDLER: We do appreciate that offer.

20 JUDGE DORAN: - - - and I do feel bad cutting you
21 off, because you're in this room talking about such bedrock
22 fundamental principles that are critical, and I apologize
23 for cutting you off.

24 Next is the undersheriff, and I want to make sure
25 I get all of this right, Richard Castle, who is the

1 undersheriff in the Saratoga County Sheriff's Office.

2 Earlier this morning, I don't know if you were
3 listening virtually, but Judge Murphy, who was up here on
4 the panel, mentioned some of the issues we all had
5 regarding transport. Things that are critical components
6 of the working relationship that our courts have with you
7 and your facilities and your officers. So we're grateful
8 to have you here. The floor is yours, Mr. Castle.

9 MR. CASTLE: Thank you, JUDGE DORAN. Justice
10 Doran and members of the panel, good afternoon and thank
11 you for this opportunity to address the working group, on
12 behalf of myself and the New York State Sheriffs'
13 Association. By way of introduction, my name is Richard
14 Castle. I have worked with law enforcement for the
15 Saratoga County Sheriff's Office for over thirty-two years
16 and currently serve as undersheriff to Sheriff Michael
17 Zurlo of Saratoga County.

18 I hold a bachelor's degree in public safety
19 management from the State University of New York, and a
20 master of public administration from Marist College, where
21 I've served as adjunct faculty in their MPA program. I'm
22 before you today to speak in support of video-based court
23 appearances.

24 Prior to COVID arriving in 2020, I had done some
25 research and writing on the issue of video-based court

1 appearances in courts outside of New York State. What I
2 found was that in some states and municipalities video-
3 based court appearances had been in place for decades,
4 while used very infrequently in much of New York State.
5 Their success across this country varied by location,
6 mainly based on the level and type of technology that was
7 employed.

8 While not a standard practice in New York State
9 at the time, this, of course, changed when almost overnight
10 COVID forced us all to find new ways of keeping the court
11 docket moving, while safeguarding the health of everyone in
12 the criminal justice system. We learned very quickly that
13 much of the court's regular criminal calendar, as well as
14 arraignments, could easily be accommodated through
15 videoconferencing.

16 While some courts and jails were more prepared
17 than others, in the end, it was not a heavy lift for most
18 to get the basic requirements of video-based court
19 appearances in place in short order. While there were
20 still some hurdles to overcome, and best practices to be
21 determined, there are now not insurmountable. In fact,
22 unlike in decades past, we are no longer limited by
23 available technology, but rather by our own to ability to
24 adapt to radical changes in the procedures and policies.

25 The New York State Sheriffs' Association

1 conducted a brief voluntary survey of sheriffs across New
2 York State in the last couple of weeks. Of the counties
3 surveyed, fifteen had previously collected data applicable
4 to this topic. In 2021, the counties that responded
5 reported 7,997 court transports in 2021, traveling over
6 330,000 miles. It is estimated that the true number
7 statewide may exceed 30,000 transports and 1.2 million
8 miles, annually, consuming over 75,000 gallons of fuel.

9 When factoring in fuel, vehicle costs, and
10 transporting officers' salaries, the Sheriffs' Association
11 estimates that the costs of taxpayers just to transport
12 persons for court appearances easily exceeds five million
13 dollars annually.

14 The safety factor of video-based court
15 appearances also cannot be overstated. Defendants,
16 transporting officers, and court personnel are much safer
17 when a video court appearance is permitted, rather than a
18 transport to the court. Every transport runs the risk of
19 potential escape attempts, assaults against staff and court
20 personnel, or injuries in motor vehicle accidents.

21 There are also significant time benefits to the
22 courts and transporting agencies. Law enforcement agencies
23 continue to face staffing shortages, while dealing with
24 ever increasing call volumes and internal staff demands.
25 Video-based court appearances requires significantly less

1 manpower, freeing transporting officers to perform other
2 required duties in our communities.

3 Courts can greatly reduce delays caused by late
4 transports or last-minute additions to the daily calendar
5 that can leave courts waiting to begin proceedings. This
6 could also potentially reduce the need for attorneys to
7 travel between courts, allowing them to handle more cases
8 per day. These efficiencies translate to significant cost
9 savings and expedited calendars for all involved.

10 Finally, a move to video-based court appearances
11 could open the door for much more transparency in our
12 courts. Video feeds could be made available to families of
13 defendants, who could not be present in court, or made
14 available to the media, without the distraction of having
15 news camera in our courtrooms.

16 While I fully support the use of video-based
17 teleconferencing for most court business, it is understood
18 that there will remain situations where the defendant
19 should be present in the courtroom. These situations may
20 include jury trials, pleas that will result in
21 incarceration, victim impact statements prior to
22 sentencing, and sentencing to periods of incarceration, or
23 as deemed otherwise by the court.

24 Thank you again for your time and attention in
25 consideration of this matter. And I'd be happy to

1 entertain any questions or requests for clarification. A
2 copy of this statement, as well as my other writings will
3 be submitted.

4 JUDGE DORAN: Thank you, sir. Thank you for your
5 testimony, for your time today. Stay tuned. We may have
6 some questions for you.

7 Last, and certainly not least, of our panel of
8 folks discussing issues as they relate to criminal courts
9 is Jennifer Naiburg.

10 MS. NAIBURG: Yes, sir.

11 JUDGE DORAN: All right. Jennifer Naiburg is the
12 Chief Assistant District Attorney in the Queens County
13 District Attorney's Office, and your boss, District
14 Attorney Melinda Katz is one of our members. We know that
15 she couldn't make it here today. But we're very pleased
16 that you're with us. The floor is yours.

17 MS. NAIBURG: Thank you, Your Honor. Thank you,
18 Chair Greenberg, thank you, Your Honor, and thanks to the
19 esteemed panel. I am testifying here today on behalf of
20 District Attorney Melinda Katz. She asked me to share with
21 you some of what we have learned, some of what we would
22 like to see in terms of changes and modifications, going
23 forward, as we have, along with everyone who has testified
24 today, bobbed and weaved in the New York City criminal
25 courts throughout this pandemic, under the leadership of

1 Judge Amaker and some excellent administrative and
2 supervising judges.

3 I will submit to you, Your Honor, written
4 remarks. I'm going to use my time today, just to speak to
5 you about a handful of issues that I think are important to
6 bring to the table.

7 First, I'd like to talk about remote appearance
8 capabilities, but specifically from correctional
9 facilities, which I don't believe has been addressed here
10 today. So both executive orders that were owing to the
11 pandemic and the most recent EO-5, declaring the disaster
12 emergency at Riker's Island, allowed and continued to allow
13 virtual proceedings, which called for remote appearances
14 from incarcerated individuals from correctional facilities.

15 In order to ensure effective and most
16 importantly, fair remote appearances by incarcerated
17 individuals, technological and communications systems need
18 to operate, obviously, with sufficient internet
19 capabilities, and provide adequate audio and video.
20 Throughout the pandemic this has not always been the case.

21 In addition, and I think this may have been
22 mentioned, we must ensure that the incarcerated individuals
23 have the ability to confidentially consult with their
24 attorneys before, during, and after such appearances. This
25 too was something that we watched develop, frankly, by

1 trial and some error, throughout the pandemic.
2 Standardized facility requirements and protocols would make
3 us better prepared statewide, should these needs continue
4 and arise again.

5 Second, orders of protection and administrative
6 adjournments, particularly, I'd like to talk to you about
7 the context of domestic violence cases and orders of
8 protection, as we saw that play out through administrative
9 adjournments. During the height of the pandemic, as this
10 panel is well aware, many criminal cases were
11 administratively adjourned, and in some cases, particularly
12 DV cases, orders of protection in favor of the complainant
13 were simultaneously extended.

14 The issue that continuously arose from the
15 prosecution perspective was notice to the defendant
16 regarding the extension of the existing order of
17 protection. We saw that play out when there was a
18 subsequent violation of an order of protection. Any
19 subsequent contempt charge that would lie would necessarily
20 require knowledge by the defendant concerning the continued
21 existence of the order. Where defendants did not appear
22 when those orders were extended, such proof was
23 challenging, if not, impossible to develop.

24 Often, in DV cases, where some survivors are
25 reluctant to cooperate with the prosecution, the contempt

1 charge, which can sometimes be proven without a victim, is
2 an important one, on which the prosecution often relies, in
3 the prosecution of a case. Anecdotally, our domestic
4 violence prosecutors tell me that they've had to explain to
5 survivors why many times when they thought they had a valid
6 order of protection, a defendant could not be prosecuted,
7 because there was no proof of that knowledge element.

8 This issue, and I don't bring to you today a
9 solution, although we have some ideas, I believe requires
10 some attention.

11 Third, issuance of subpoenas without a grand
12 jury. A prosecutor's ability to investigate felony matters
13 obviously relies heavily in our ability to subpoena
14 documents using grand jury subpoenas. When we lost our
15 grand juries, we lost the ability to subpoena records in
16 support of our felony investigations. In Queens, we turned
17 to our administrative judge, who issued an order, allowing
18 subpoenas to be returnable to the grand jury, up until the
19 time that a new grand jury was impaneled.

20 I would suggest, in lieu of the local ad hoc fix,
21 that a statutory or a broader court rules fix would, for
22 extraordinary circumstances, like that would prevent the
23 impaneling of a grand jury, be implemented for the future.

24 Finally, I'd like to talk about virtual hearing
25 proceedings, and courtroom improvements, as so many people

1 have today, you know, in accepting the risk of stating the
2 obvious, and hoping to not be redundant. While it's
3 obvious that the virtual proceedings and appearances can
4 ease some of the congestion throughout the court system, we
5 must be particularly mindful of doing so in criminal cases,
6 when a person's liberty is at stake. And this is
7 particular important to District Attorney Katz, so I end of
8 this note.

9 Administrative or ministerial court appearances
10 may be conducted virtually. However, I would suggest, and
11 I know this panel will be ever mindful, that especially in
12 the criminal context, where the right to confrontation is
13 paramount, that we accept the limitations of virtual
14 appearances. If there's anything else that our pandemic
15 trials, - - - and at this point, frankly, in Queens County,
16 we have seen quite a few - - - if there's anything that
17 they have taught us, I will end with this, it is the dire
18 necessity to upgrade the technological infrastructure in
19 our courtrooms.

20 With jurors spread out and in every one of our
21 trials, I think, to a tee, we have had jurors spread out
22 both in the box and in the gallery, and with witnesses
23 testifying behind masks, in addition to shields behind
24 plexiglass, and lawyers and advocates in court sitting
25 behind same, needless to say, safe, state-of-the-art audio

1 and video are essential if we're all to effectively
2 participate in the court process.

3 I thank you. I see my time is up. I thank you
4 very much on behalf of myself and District Attorney Katz
5 for the opportunity to bring these issues to the table
6 today.

7 JUDGE DORAN: Thank you for coming here today and
8 offering us yours and the District Attorney's perspective.

9 MS. NAIBURG: Thank you, Your Honor.

10 JUDGE DORAN: We do have some time for questions.
11 Anybody on the panel have questions?

12 JUDGE AMAKER: I have a question.

13 JUDGE DORAN: Go right ahead.

14 JUDGE AMAKER: Okay. So my initial question is
15 addressed to Ms. Bryant and Mr. Schindler, and that's with
16 regard to arraignments. So, in addition to my other title,
17 I'm the administrative judge for New York City's criminal
18 courts. So I agree a hundred percent that arraignments,
19 whenever possible, should be in person.

20 But there are certain instances, particularly,
21 you know, during the pandemic, we had a snowstorm, a crisis
22 within a crisis, and we had to then have virtual
23 arraignments. And in that instance, it worked out, because
24 those individuals didn't have to remain incarcerated beyond
25 twenty-four hours. They were able to be released.

1 Would you agree that in instances like that and
2 instances where there might be other types of natural
3 disasters, or in instances where there are counties outside
4 of New York City, where there may be a shortage of
5 attorneys, where it might be a better idea to have a
6 virtual proceeding, rather than allow the individual to
7 remain incarcerated beyond twenty-four hours, in the hope
8 that an attorney may be able to get to them at some point?

9 MS. BRYANT: I don't know if you - - -

10 MR. SCHINDLER: I'll answer, if you don't mind.

11 MS. BRYANT: Well, I'll speak to - - -

12 MR. SCHINDLER: Okay.

13 MS. BRYANT: - - - as to the - - - the
14 arraignment issue. Certainly, we understood, and I think
15 the defense community as a whole understood, that in
16 emergency circumstances, virtual arraignments had to
17 happen. It was not something we wanted to see, but we
18 understood that. So I think that there are certainly
19 exceptions to the rule, but we don't want to have a
20 slippery slope of going from it being, you know, only in
21 emergencies, and what is an emergency.

22 So you're talking about, you know, attorneys not
23 being available. Well, that's a problem of our court and
24 public defense system. That's not the client's problem.
25 And clients shouldn't be stuck for more than twenty-four

1 hours, because we can't do what our court system is
2 designed to do.

3 So I know that it's not an easy solution. And we
4 certainly have seen significant state funding to ensure
5 counsel at first appearance, and that needs to be the
6 priority, because we can't just arrest everyone, and hold
7 them, and have it be for the convenience of all of us. The
8 attorneys and the courts, it's not for your convenience.
9 It's for the convenience or it's for the rights of the
10 client. So I don't know if that answers your question, and
11 I certainly - - -

12 JUDGE RODRIGUEZ: But if there was platforms,
13 which there are now, like Judge Amaker was my
14 administrative judge, when things happened, we had through
15 Teams, where we could second call the case, or we had
16 breakout rooms, where the attorneys could speak to their
17 clients in private settings. I'm a former defense
18 attorney. I was in private practice for ten years, and
19 then was in the district attorney's office early on in my
20 career, but if we could have safeguards like that.

21 I mean, obviously, it is important the first,
22 initial meeting with your client, but that's not going to
23 be the only in-person meeting. You're going to have people
24 coming to your office, and that's how you build those
25 relationships and the trust, not just meeting people in the

1 courtroom every time that the case is on.

2 I would kind of say that doesn't really build up
3 any trust, where your only interaction is with your client
4 at court, when the most important meetings are in your
5 office, sitting, you know, right across from you, or even
6 if your clients are incarcerated. I don't know how the, you
7 know, jails are. I've been a judge for a while now, but
8 just going out and meeting my clients - - - I'm from New
9 York City - - - at Riker's Island, at Brooklyn House of
10 Detention, at the Manhattan Detention Complex, and just
11 taking that time.

12 I mean, if there are safeguards that would ensure
13 the confidentiality of attorney-client conversations, why
14 would your group be against that?

15 MS. BRYANT: Well, it's not just a matter of the
16 confidentiality of attorney-client communications.
17 Significant decisions are made at arraignment. And to have
18 a client appearing on a screen, I believe, and I think that
19 studies have shown, significantly changes the way that the
20 arraignment happens and what the decisions are during that
21 arraignment.

22 So absolutely, attorneys need to be meeting with
23 their clients in-person, whether it is at a jail or it's at
24 their office, or at the convenience of the client. All of
25 those things are quite true. But that is a critical moment

1 for the attorney and the client. And if you're meeting for
2 the first time on a screen, and you're in a breakout room,
3 it's just not the same thing.

4 And I know that we want to have things be
5 efficient, and work as well as possible and smoothly, but I
6 just want to, again, say, I think that we have to make sure
7 that we always keeping in mind what the Constitutional and
8 statutory rights are of clients. If I was that person, if
9 I was that client, I would want to see my attorney in
10 person. And that's what it comes down to.

11 Would you, if you have a child, would you want
12 them to be appearing on a screen versus in person? That's
13 the perspective that we come from.

14 JUDGE DORAN: Thank you.

15 Hank Greenberg has a question.

16 MR. GREENBERG: Just as a preliminary
17 observation, I found this group of speakers absolutely
18 fascinating. Differences in perspectives. I learned more
19 from you four actually than most anything I've heard today,
20 and I've learned a lot overall.

21 My question, I guess, is to Mr. Schindler, as
22 well, Ms. Bryant if you want to comment. But our focus
23 today, as we move past the pandemic, is less about sort of
24 responding to an exigency in an emergency situation, right,
25 and crafting a court system for the future. And one of the

1 things that has struck me, as I've listened throughout the
2 course of this day, is an extraordinary validation of the
3 uses of technology in various and different ways, and
4 obviously, we're moving past the pandemic, right, and not
5 responding to exigency.

6 But what I've heard over and over and over again
7 is, let's just not snap back to where we were before.
8 There are things that have come out of the pandemic, that
9 we've discovered, you know, necessity is the mother of
10 invention, right. And my question to you is, and accept
11 the following premise. Everyone in this room is absolutely
12 committed to honoring and protecting and respecting the
13 rights of the accused. No question about it. No one is
14 thinking of creating a model designed to cut corners,
15 right, in order to achieve efficiency at the expense of any
16 of that, right. So just, as least, as I ask you this
17 question, that's where I'm coming from, right.

18 My question to you, and it's been put to so many
19 of the speakers today, understanding that, and putting
20 aside arraignments - - - I understand what your view is
21 about that - - - do you see, in the context of criminal
22 proceedings, and putting aside confrontation clause issues
23 - - - we're not talking about trials, right. And I
24 understand your views are not all the same. Do you see,
25 from your client's perspective, from the defense bar

1 community, and I know it's not monolithic - - - there's
2 probably diversity of thought within it - - - some uses of
3 technology in light of the pandemic experience, that you
4 think would be a net plus, a benefit to the criminal
5 justice system?

6 MR. SCHINDLER: If I may, I see the virtual
7 technology as assisting in certain ways, where it doesn't
8 interfere with the rights of the client. Conferences
9 between attorneys, the DA, the judge, and myself for plea
10 bargaining purposes, those are done virtually, and nobody
11 feels that there's anything lost. When you do a virtual
12 arraignment, there's a humanization of the client that is
13 lost, just from the fact that the client appears on a
14 computer screen or a TV screen.

15 MR. GREENBERG: Got it.

16 MR. SCHINDLER: Okay.

17 MR. GREENBERG: You're loud and clear. What I'm
18 interested in, and you've just answered one of the
19 questions.

20 MR. SCHINDLER: So - - - so one of the ways - - -

21 MR. GREENBERG: What works?

22 MR. SCHINDLER: Another thing is - - -

23 MR. GREENBERG: I understand loud and clear what
24 you think doesn't.

25 MR. SCHINDLER: We used an in-court waiver to

1 accomplish certain plea agreements. So a client would be
2 told in writing they have a right to be present in court,
3 but the court system, due to the pandemic, would like to do
4 your plea virtually. Again, we were able to accomplish a
5 good number of plea-bargaining results during the pandemic,
6 using virtual appearances. It's really any type of
7 evidentiary hearing, trial, and arraignment, I think, are
8 the areas where in-person matters so much.

9 The humanization of the client, the feel you get
10 from the other people in the room, the witnesses, and so
11 on. Those things are indispensable to the proper conduct
12 of a criminal case, to protect the individual who's charged
13 with a crime.

14 JUDGE DORAN: I apologize. We're going to try to
15 get one more question in.

16 I think Leanne, you had your hand up earlier?
17 You wanted to ask a question?

18 MS. LAPP: I was just going to ask if you thought
19 or what your thoughts were on virtual appearances in the
20 treatment courts, and this I would direct to any of the
21 practitioners who represent clients in those courts.

22 MS. NAIBURG: I mean, frankly I think that
23 probably the treatment court judges, I am guessing, just
24 having to spoken to some, I think it would be such an
25 assessment. So much of the treatment court is about

1 accountability and rehabilitation, and assessment, I think,
2 and again, I would be inclined to ask some of the treatment
3 court judges, I'd be interested in their opinion.

4 But what I see in those courts is them having
5 eyes on, to some extent, in terms of progress, if it's on
6 for compliance. I would think that may be something that
7 they may want to do in person, but you know, I'd be
8 interested in what they would say on that issue.

9 MS. BRYANT: If I could just address,
10 particularly veteran's treatment courts, because we do have
11 a veteran's defense program, and that has experienced a
12 lot, and seen a lot through the pandemic. I want to
13 emphasize the veteran's treatment courts are successful
14 often, because of the mentors that are in those courts.
15 And that really ceased during the pandemic, and it was
16 incredibly anxiety producing for the individuals that were
17 participating in the courts.

18 Also being amongst other service members and
19 veterans, in an in-person appearance, all of that was gone.
20 And I know from our veteran's defense program attorneys,
21 that they are very concerned about that particular issue.
22 I don't speak to other treatment courts, but veteran
23 treatment courts are very specialized, and I'd hate to see
24 the loss of that connection. Veterans need to be with
25 other veterans and connect with them.

1 JUDGE DORAN: Thank you. And I apologize to all
2 of you, to our panel. Again, this conversation is worthy
3 of much more time than we've had this afternoon. Please
4 keep in mind, this is a foundational event, to sort of set
5 the table for what's to come, and we clearly have a lot
6 more to talk about with all of you. And we will continue
7 this conversation.

8 What I would ask you to do is, as you leave here,
9 and as your thoughts are now moving, we have great
10 difference of opinion even in the four of you sitting up
11 here. I believe that if we press ourselves creatively, we
12 can find more common ground, than we would ever have
13 anticipated only a few short months ago. Let's try to do
14 that. Let's try to re-ask those questions, as Hank sort of
15 eluded to, and reexamine our positions, and see whether or
16 not there's common ground where we can accomplish some of
17 these things that we all want to.

18 So thank you all very much. Safe travels to
19 where you're headed back to. And we will be in touch. We
20 appreciate your time very much.

21 For the rest of us, we're going to - - -

22 MR. SCHINDLER: Thank you.

23 JUDGE DORAN: - - - take five minutes, and then
24 we want to get the next group up here and ready to go, so
25 please don't go far, and we'll get the next group up here.

1 (Break)

2 JUDGE DORAN: - - - seeking the views of
3 everybody. And this next group, these are folks that work
4 in the court system, that were responsible to implement
5 many of the things that we've heard constructive comments
6 about during the course of this day. Normally when we
7 conduct these hearings, we don't listen to ourselves in a
8 setting like this, in a format like this. We're all in
9 this together. And we are all walking this journey
10 together, whether we work in the court system, or from the
11 outside the court system. And that's why I'm thrilled that
12 we have been able to put together this last group, last
13 group of the day, to end these proceedings, and have the
14 perspective of court employees.

15 So we're welcoming, and we'll introduce you
16 individually when it's time to talk, Jason Hill, David
17 Cardona, Fawn Tatro, Felipe Sostre, Lawrence Germano, and
18 Eric Allen. And I wanted to say all your names right now,
19 so I could get the mispronunciation out of the way upfront.

20 First up is Jason Hill, who is a senior technical
21 manager of the Universal Case Management System of the
22 Division of Technology within the Office of Court
23 Administration, otherwise known as the guy responsible for
24 all these amazing things the court system did
25 technologically in - - - I don't want to say you're the

1 only one, because, you know, Christine would yell at me - -
2 - there are many of you.

3 But honestly, I will just say this quick
4 editorial comment. What I witnessed in literally the
5 beginning weeks of this pandemic, I've never seen
6 government do anything that well, that efficiently, and
7 that significantly in such a short period of time. So just
8 that little plug for Christine and her folks, as a judge at
9 the time, as an administrative judge, simply remarkable.
10 There aren't enough words to describe the work that you all
11 did.

12 So Jason, we're happy to have you with us.

13 MR. HILL: Thank you.

14 JUDGE DORAN: If you could, I know we told you
15 five minutes - - -

16 MR. HILL: Uh-huh.

17 JUDGE DORAN: - - - if you can be even shorter
18 than that, that would be wonderful, and then maybe we'll
19 have some time for some questions at the end.

20 MR. HILL: Okay. I'll try to talk as quickly as
21 possible.

22 JUDGE DORAN: All right. You're on. The floor
23 is yours.

24 MR. HILL: Thank you, everyone. Thank you to the
25 members of the Commission for the opportunity to present to

1 your today. My name is Jason Hill. I'm the chief
2 technology officer for the OCA Division of Technology and
3 Court Research, and I'll be discussing the work we
4 performed during the pandemic, and our efforts moving
5 forward. And apologies in advance for speaking so quickly.

6 Our first challenge was to mobilize our court
7 workforce to work remotely, something that had never been
8 considered on this large a scale. Although all judges,
9 some managerial and technical staff already had court-
10 issued laptops, an additional 4,000 laptops, headsets, and
11 other equipment were shipped from our offices directly to
12 the homes of other court staff to support remote activity.

13 To assist in facilitating virtual appearances,
14 the IT department started several initiatives, including a
15 twenty-four-hour COVID-19 telephone hotline to answer
16 questions from the public, a Skype help team to
17 troubleshoot technical issues with anyone who needed to
18 attend an appearance remotely. An online portal was
19 created to provide how-to guides to assist court staff and
20 the public with virtual appearances.

21 Our court conferencing software was upgraded to
22 allow phones to call in to virtual hearings. This was
23 essential in expanding the access to justice to people
24 without the necessary equipment or connectivity. An
25 emergency upgrade of the court's virtual private network

1 was performed to account for the thousands of additional
2 court users.

3 By March 25th, all New York City criminal and
4 family courts were fully virtual, and all parties
5 participating remotely. This process continued statewide
6 quickly.

7 To address our new needs, entirely new
8 applications were created, and existing applications and
9 processes were greatly enhanced. For example, when in-
10 person hearings were necessary, a system was created to
11 help facilitate social distancing measures. This allows
12 litigants to register with the court ahead of their
13 appearance date, and receive text message notifications
14 from the court of the status of their case, so they could
15 be notified when it was okay for them to enter the
16 building.

17 To facilitate notifying the public of changes
18 related to the pandemic, a system originally created as
19 part of the bail reform legislation of 2020, to send
20 appearance reminders to defendants via mail, text, or
21 voice, was heavily modified to also send emergency
22 notifications for anything related to the pandemic.

23 In total, during the pandemic, over 1.5 million
24 letters were automatically generated and mailed using this
25 process. This included the emergency rental and

1 foreclosure assistance notifications, temporary orders of
2 protection extensions, and notices that appearances for
3 multiple court types had been postponed. A jury system was
4 updated to send text and email alerts, to notify jurors of
5 their status. Payroll and demographic forms were
6 transitioned from paper to online.

7 In May of 2020, a new system called the
8 electronic document delivery system, or EDDS, was deployed.
9 This system was created to allow anyone to securely
10 transmit documents electronically to courts, rather than
11 travel in person. So far, over 1.8 million documents have
12 been submitted and routed to their intended destinations
13 via EDDS. Family courts accounted for over 700,000 of
14 these documents.

15 A web portal for judges, which we call NYBench,
16 was extended from the family courts to also support the
17 civil and criminal courts. This system now regularly is
18 used by 400 judges and court attorneys statewide.

19 Multiple efforts were also undertaken to reduce
20 the need for the public to enter court facilities. A new
21 online site to take payments for criminal fines and fees
22 was created. So far, this system has taken in 1.4 million
23 dollars in payments. A new online search tool was made
24 available to allow surrogate's court cases, and documents
25 to be viewable online.

1 When litigants had no other access to
2 technologies, most courthouses throughout the state set up
3 dedicated workstations, allowing private and safe
4 connectivity for virtual appearances and other court-
5 related filings. These continue to be used regularly.

6 A court research team also worked diligently to
7 provide metrics to our court managers and executives so
8 they could get detailed insight into how the courts were
9 functioning during this challenging time.

10 These are just a few of the multitude of
11 pandemic-related initiatives our staff worked on. As
12 you've hopefully ascertained, many additional hours of work
13 by the technical staff to support the courts during the
14 pandemic.

15 In terms of future initiatives, we are
16 investigating a custom-built court virtual appearance
17 solution. Based upon Microsoft Teams, it is actively in
18 use Los Angeles County and other jurisdictions. We are
19 piloting a new system to allow attorneys and courts to
20 manage electronic evidence. Our electronic filing
21 initiatives are being expanded to include family court,
22 criminal court, and town and village courts. We are also
23 currently piloting virtual jury selection.

24 And if I can just mention some of the challenges
25 that we have had since the pandemic?

1 Since March 1st of 2020, we have lost
2 approximately twenty percent of our staff. After the
3 courts and OCA staff returned to work in person full time
4 in May 2021, we have had several key staff members either
5 retire because they were not comfortable coming back to in
6 person, or leave to take jobs that offer a work-from-home
7 option. Hiring technical staff has always been
8 challenging, since there are more jobs available than
9 qualified candidates. Many companies are still working
10 from home, so hiring the best candidates without a work-
11 from-home option is difficult.

12 We are also seeing attrition of staff, who are
13 highly productive, experienced, and responsible for mission
14 critical systems be lured away by other companies or
15 organizations that allow work from home. These staff
16 members cannot quickly be replaced by new hires since they
17 have deep institutional and technical knowledge of the
18 systems and applications which they support. With an ever-
19 increasing dependency on technology, it is critical that we
20 be able to retain staff to maintain these essential
21 services.

22 Supporting virtual hearings also requires
23 constant monitoring and technical support. Additional
24 technical staff will be needed to support online hearings
25 long term. This staff will also need to be authorized to

1 work alternative shifts for nighttime arraignments, et
2 cetera.

3 This concludes my testimony. Thank you again for
4 providing me with the time.

5 JUDGE DORAN: Thank you very much. And again,
6 extremely substantive. Thanks for that overview. I hope
7 you'll submit your written comments to the website we've
8 referred to several times.

9 MR. HILL: I did.

10 JUDGE DORAN: At PPWG@NYCourts.gov.

11 MR. HILL: Yup.

12 JUDGE DORAN: But thank you. That gives us a
13 great foundation from which to build our conversation.

14 Next up is David Cardona, who is the chief clerk
15 of the Albany County Supreme and County Courts.

16 Thank you for being with us. The floor is yours,
17 sir.

18 MR. CARDONA: thank you, Judge, and members of
19 Pandemic Practices Working Group, thank you very much for
20 having me here today.

21 I've had four different positions throughout the
22 pandemic. I've been an acting chief clerk at one clerk,
23 chief clerk in two different courts, and I was covering for
24 a chief clerk in another. And it covered two districts,
25 and, so out of the four courts and the two districts I

1 worked, and there was one common thing for sure. And that
2 was the ability for the Office of Court Administration, as
3 things changed so rapidly at the beginning, the ability for
4 them to get these new policies and procedures out to the
5 DCAJ Office, and to the AJs, and the DEs, and to us chief
6 clerks, was truly amazing, I have to say.

7 As you said earlier, Judge Doran, that was one of
8 the most amazing things, just how fast things changed, and
9 the ability to get the information to us was really
10 incredible. We had phone calls at times that we normally
11 had phone calls, weekends, nights, and it just proved to be
12 tremendous.

13 Although I didn't always agree with the policies,
14 like some - - - a lot of chief clerks do or don't, you
15 know, that was irrelevant. It was given to us; we followed
16 it, and it worked very, very well. We were even able to
17 get the judges out of the courthouse, which was one of the
18 most difficult things. None of them wanted to leave,
19 right? The ease at which the court staff and chambers
20 adjusted to the policies, again, was just unbelievable.

21 A couple of things that I'll touch on, or a few
22 things. IT, the courthouse space, and essential matters.
23 IT, we just heard a lot about IT. Truly amazing. The
24 kiosks, although confusing at first, they proved to be a
25 fantastic tool in family court. They still are today. I

1 would recommend that we continue to use these kiosks in
2 family court.

3 EDDS, again, that Jason just mentioned, a great
4 tool. And we're still utilizing it, especially in the
5 family courts.

6 Work-from-home equipment, it just fell out of
7 sky. It was unbelievable. I don't know where it came
8 from, but it was rolled out. It was sent home. Everybody
9 was trained, and off we went to the virtual proceedings.
10 It truly was amazing.

11 Court staff was just so cooperative. I mean,
12 they're learning a whole new thing. They've done it one
13 way for this many years, and now all of sudden they're
14 doing it from home. That's another thing I would encourage
15 is, we proved that it works, as you've heard a lot today.
16 It's not so great with certain proceeding. It works great
17 with others. I would say where it's appropriate to have
18 virtual proceedings, and where it's appropriate for people
19 to work from home, I would encourage both to take place
20 going forward, because they both work. We proved it.

21 Physical space, infection control guidelines were
22 implemented and followed. Supplies were readily available
23 and dropped off on a timely basis to every court. Staff
24 rotation. We were told to rotate our staff. God forbid
25 this ever happens again, I'll tell you that worked great.

1 It was very comfortable for the staff knowing that half the
2 staff was in for a couple of weeks, and the other staff
3 worked from home, and vice versa.

4 I will tell you this. The centralized courthouse
5 aspect of those policies, moving everyone into one
6 courthouse, although a great idea, being someone who had to
7 implement that, taking our city court and our family court
8 and our supreme and county court, surrogate court, and put
9 us all under one place, it was little confusing for
10 everybody, and we wondered why.

11 What we ended up doing, frankly, was we followed
12 the rules. We had half the staff at home; we had half the
13 staff in the courthouse, in the centralized courthouse.
14 But what we created was, what I call, the bullpen, and we
15 had someone from every title, who was working in court
16 those couple of weeks. Just to go over the courthouse,
17 into totally separate offices, nowhere near each other.
18 God forbid, we had some sort of exposure, we would have a
19 bullpen. So we kind of had three teams, and when the next
20 team came in the following week, we'd pull our bullpen out,
21 and move them next door as well. It worked very, very
22 well. We had no major outbreaks. We were very fortunate.

23 The last thing I'll mention are the essential
24 cases. When I look at the essential cases, and I know, the
25 essential cases changed, and there were more cases added as

1 the time went on, I think it worked very well. I think
2 that we addressed all the issues except for the couple that
3 needed to be addressed in an emergency situation.

4 The thing that concerned me was, you know, the
5 Unified Court System, we talk so much about representation.
6 I can tell you in Schenectady family court, where I was
7 covering for a chief clerk who retired, we had 300
8 petitions that were not deemed essential, just in custody
9 and visitation matters, at the end of the day. When it
10 came time to schedule these again, it's at no fault of
11 anyone whatsoever, the judges or anyone else, but there
12 were 300 there. Some of them were duplicates, some were
13 triplicates.

14 My concern, if this were ever to happen again,
15 was that there was no representation for those folks, these
16 pro se individuals who are filing these custody visitation
17 petitions. They don't know how to express that it may be
18 an emergency. If they had an attorney, who reviewed it and
19 could file an order to show cause, I just feel like if any
20 of the essential cases slips through the cracks, I would
21 say that it was the family court, run-of-the-mill custody
22 visitation petitions that was filed by a pro se litigant.

23 And that's all I have. Thank you so much for
24 your time in letting me speak today.

25 JUDGE DORAN: Thank you. Those are great points,

1 especially that last one. That's something for us to mull
2 over. Thank you very much.

3 MR. CARDONA: Thank you, Judge.

4 JUDGE DORAN: Next up is Fawn Tatro, who is the
5 chief clerk - - -

6 MS. TATRO: Um-hum, yes.

7 JUDGE DORAN: - - - of the Franklin County - - -

8 MS. TATRO: Franklin County - - -

9 JUDGE DORAN: - - - Supreme and County Courts.

10 MS. TATRO: Yes, thank you very much.

11 JUDGE DORAN: Thank you.

12 MS. TATRO: I agree with a lot of what Dave said.

13 I just have a little bit of a different perspective.

14 Frankly County is a rural county. We have a population of
15 approximately 47,000 people, and we are listed in the top
16 ten counties for the highest percentage of population
17 living in poverty. We have three New York State prisons, a
18 county jail, and OPWDD facility, and we also have the Saint
19 Regis Mohawk Tribe is located within our county.

20 So we worked with all those entities. We got
21 virtual set up with them for essential matters, and it did
22 work well. The biggest challenge we faced for our rural
23 communities is that we deal with a lack of broadband
24 access. So we have, for the individuals that do have
25 broadband access, the virtual platforms were very

1 successful, and an efficient means of continuing essential
2 court operations. It allowed these individuals, especially
3 if they were employed and didn't have childcare; schools
4 weren't in session, or they couldn't take time off from
5 work, to attend the proceedings without major hardship.

6 But however, we also had a lot of individuals who
7 do not have broadband access, especially our self-
8 represented litigants, who had a great difficulty in
9 accessing the courts. And quite honestly, a lot of things
10 didn't get filed, because they didn't know how to access
11 the courts or they didn't have access.

12 The lack of the broadband access not only
13 affected our court participants, but also affected our
14 staff. When individuals were assigned to work from home,
15 it was a very difficult situation, as a number of our staff
16 members live in areas with no broadband access. Therefore,
17 they were not able to work from home, and it left the bulk
18 of the work on others.

19 Another major challenge that we have is that
20 great distance from the people's homes, the court
21 participants' homes to the courthouse. Due to the size of
22 our county, it is commonly a one-hour commute or more, each
23 way, for our participant to attend an in-person court
24 proceeding. There is no means of consistent public
25 transportation in the North Country. Either there's a

1 county bus, but that operates maybe once-a-day throughout
2 the county. So in those instances, when they do live a far
3 distance away, they do have broadband access, the virtual
4 does work very well for them. However, we still have the
5 issue if they do not have broadband.

6 Platforms such as EDDS were beneficial to our
7 local attorneys, but we rarely received a filing from a
8 court participant, as they were not familiar with the
9 system, didn't have access, or/and they were not fluent
10 with the technology. They didn't understand how it worked
11 or how they could file. So during the pandemic, the most
12 effective way of communication, for not only my office,
13 also the family court office, were the telephone and still
14 U.S. Mail. And that's how we continued to receive filings
15 and a lot of different things from the people that honestly
16 didn't have computer access.

17 The kiosk allowed individuals without a computer
18 to come into the courthouse to file their paperwork.
19 Although it was beneficial for the participants to have
20 access to a computer to file their documents, not all of
21 them were familiar with the system, or knew how to utilize
22 it. That is when our staff, even though we were short-
23 staffed, would spend a tremendous amount of time guiding
24 them through the process.

25 In addition, we have a small aging bar

1 association, which is a great concern to our local court
2 system and practicing attorneys. A number of these
3 attorneys in our local bar association still are not
4 familiar with and struggle with the virtual proceedings.
5 However, for those attorneys that do and are able to
6 utilize the virtual platforms, it has been very beneficial.
7 The distance between most of the courthouses in the North
8 Country is a minimum of sixty miles. So if an affirmation
9 of a simultaneous engagement is filed, and the attorney is
10 covering an in-person appearance in one county and a
11 virtual appearance in another county, we, as chief clerks,
12 are able work together so both counties could move forward
13 in their cases.

14 The other benefit I have found is with having
15 virtual court reporters as an option. It has saved a
16 tremendous amount of travel time to-and-from each county,
17 and allows matters to move forward in a timely manner. It
18 should be noted, however, that we have had multiple issues
19 with reporters being unable to hear or designate who is
20 speaking at some proceedings. If we're doing a hearing
21 virtually and people are masked, they can't determine who
22 is speaking. They do struggle with that.

23 So I would, therefore, recommend that we do keep
24 virtual in some instances, and in others, unless we have
25 better broadband, it's very difficult for us.

1 Thank you very much.

2 JUDGE DORAN: Thank you very much. Sorry to cut
3 you short. You - - -

4 MS. TATRO: That's okay.

5 JUDGE DORAN: - - - you have a lot to offer. We
6 appreciate you being here.

7 Next up is, and forgive me if I'm mispronouncing
8 your name - - -

9 MR. SOSTRE: That's okay.

10 JUDGE DORAN: - - - Felipe Sostre.

11 MR. SOSTRE: I think you nailed it.

12 JUDGE DORAN: Thank you. Who is a court officer
13 in Schenectady County.

14 MR. SOSTRE: Yes.

15 JUDGE DORAN: We're happy to have you with us.

16 MR. SOSTRE: Thank you. So good evening, name is
17 Felipe Sostre. I've been a court officer for over twenty-
18 two years. Thank you for the opportunity to be seen and
19 heard. I would like to begin by thanking Chief Judge Janet
20 DiFiore for her steady handed leadership, especially in the
21 last two-and-a-half years, through an unprecedented
22 pandemic, and through the racial tensions that shook our
23 communities in the wake of the murder of George Floyd.

24 The New York State courts faced two incredible
25 challenges simultaneously. Both challenges propelled all

1 of us, as court employees, to take practical steps to
2 ensure that the courts were safe in every way for everyone.
3 We ensured that the courts were safe place, regarding
4 people's health, with the implementation of social
5 distancing, COVID screening, virtual court appearances, and
6 masking.

7 We also ensured that the courts were a safe place
8 regarding racial equity, with implicit bias trainings,
9 diversity and inclusion summits, the commissioning of an
10 independent review of the courts conducted by Jeh Johnson,
11 and the subsequent implementation of his recommendations.
12 All of these measures helped us communicate the message
13 that public health and inclusivity were uncompromising
14 values for the New York State court system.

15 The question now before us is, where do we go
16 from here, and this is where I would like to express a deep
17 concern. I believe that leading on these two issues is
18 bringing us to an impasse. A difficult place where the
19 efforts of one, steps on the toes, if you will, of the
20 other. You see, my concern is that our efforts toward
21 ensuring public health, may actually be hindering our
22 efforts toward ensuring public inclusivity and equal
23 justice, specifically and especially, our masking policy.

24 In April 2021, a study was published in several
25 academic journals entitled "Unmasking Threat: Racial

1 minorities experience race-based social identity threat
2 wearing facemasks during COVID-19." I'm going to read a
3 quote from this paper that summarizes well their
4 conclusion, after several months of research. "While the
5 CDC's guidance for facemasks was valid medical advice to
6 slow the spread of COVID-19, it ignored the burden placed
7 on racial minorities to wear masks in a society emersed in
8 racism. While appropriate for some individuals, it entails
9 additional risk for racial minorities, who consistently
10 experience acts of implicit bias, microaggressions,
11 dehumanization, and explicit prejudice."

12 One of the people who inspired this study was a
13 gentleman named Aaron Thomas, who experienced increased
14 fear and anxiety of being racially profiled by police,
15 because he was both black and masked. His viral tweet
16 read, "I want to stay alive, but I also want to stay
17 alive." The mandatory masking of people of color presents
18 a double bind for the New York State court system. In the
19 name of safety, we are actually hindering their ability to
20 feel seen and heard.

21 As a Puerto Rican American, I have struggled to
22 feel seen and heard throughout my career. I could go on
23 and on about events that I wasn't invited to, specialized
24 training opportunities that were not afforded to me,
25 derogatory remarks, ignored complaints. In fact, to this

1 day, I deal with the insistence of ranking officers calling
2 me Phil, while I have been asking them to call me by my
3 birth name, Felipe. But I don't want to make this about
4 me. I say these things to communicate that as a person of
5 color, I know the experience of feeling unseen and unheard.

6 And I believe that I speak on behalf of many, if
7 not all, people of color, when I say, that we carry on our
8 backs and in our veins, generations of unseenness and
9 unheardness. Yet now, when schools and restaurants and
10 theaters and churches and concert venues and airplanes no
11 longer require masking, ironically, it is the court system
12 that insists on covering our faces.

13 For twelve, eighteen, twenty-four months, this
14 policy was understandable, but now I am beginning to feel
15 unseen again. Please consider the idea that especially for
16 people of color being seen, literally, is an integral part
17 of justice itself. Unmask us, see us. Thank you.

18 JUDGE DORAN: Thank you. And thank you for your
19 passion. We appreciate you being here, and we appreciate
20 the work that you do to keep us safe in our courts.

21 MR. SOSTRE: Thank you, Judge.

22 JUDGE DORAN: Next up is Lawrence Germano, who is
23 the president of Local 330 in Suffolk County of the CSEA.

24 Mr. Germano, whenever you're ready.

25 MR. GERMANO: On a roll. Judge Doran, members of

1 the Pandemic Practices Working Group, good afternoon. As
2 Judge Doran mentioned, my name is Lawrence Germano, and I'm
3 president of the CSEA Local 330. The Civil Service
4 Employees Association represents approximately 5,800
5 nonjudicial court employees in every judicial district in
6 New York State.

7 The titles CSEA represents include court
8 officers, court assistants, court reporters, senior court
9 reporters, court clerks, attorney titles, judge's
10 secretaries and law clerks, information technology titles,
11 law librarians, statisticians, and all titles in the
12 specialty courts, mental hygiene and legal services, and
13 the grievance committees, except as those designated as
14 management confidential.

15 We represent members in every title, whether
16 competitive, noncompetitive, confidential, or exempt, from
17 Long Island to the Canadian border. As a result, we
18 believe we are in a unique position to comment on the three
19 charges of this committee. One, examining the court
20 systems' response to COVID-19. Two, consider post-pandemic
21 procedures. And three, determine which policies should be
22 kept at the ready, if court operations are again
23 interrupted, due to unforeseeable events.

24 In February 2020, when New York State began to
25 monitor the spread of COVID-19, CSEA, along with a

1 coalition of court unions, contacted the Office of Court
2 Administration, to request the courts to shut down for two
3 weeks, to allow staff who were sick or exposed to COVID-19,
4 to quarantine, and to deep clean the court facilities.
5 Union members and judges were beginning to fall ill. There
6 were no UCS protocols in place to limit public contact or
7 lessen person-to-person contact, and unionized staff feared
8 for their lives.

9 The first staff memo from OCA regarding COVID-19,
10 was distributed on February 28th, 2020. The memo
11 recommended handwashing and staying home if ill, but if you
12 needed a paycheck from the Unified Court System, this was
13 not an option.

14 On March 3rd, 2020, CSEA wrote to OCA, requesting
15 that every court officer be directed to wear gloves. In
16 addition, we requested that OCA provide bleach wipes for
17 desks and magnomitors, so they could be wiped down
18 regularly, as well as hand sanitizer for all staff. We
19 asked the courts, as a preventative measure, to set up flu
20 shot clinics for employees. The gloves and wipes and hand
21 sanitizer would arrive a week later, but the flu shot
22 clinics never did.

23 On March 13th, 2020, CSEA and other court unions,
24 sent a joint letter to Judge Marks, reporting that the
25 protocols that had been put in place were proving

1 inadequate in the face of the pandemic. We asked that the
2 courts limit or bar the public from entering the courts.
3 It was clear the public could not be relied upon to police
4 themselves by staying home if ill. The court officer
5 reported this to the union. The union also asked for the
6 suspension of jury trials, to decrease density in the court
7 facilities. We didn't receive a response from Judge Marks
8 or OCA.

9 On March 17th, 2020, the Governor shut down most
10 executive branch agency in-person operations, as did the
11 court system, for which CSEA was grateful. A week or two
12 after, the unions were notified by OCA that a virtual
13 court, electronic system, would be put in place the end of
14 April. CSEA felt hopeful that communications between OCA
15 and the court unions were improving, since OCA
16 representatives seem to genuinely listen to the union's
17 concerns regarding operation of the virtual courts.

18 Following the notification that UCS was seeking
19 to reopen court facilities, CSEA's Health and Safety and
20 State Operations Departments developed a list of
21 engineering, administrative, and personal protective
22 equipment solutions, for staff and the courthouses. The
23 list was agreed to by all court unions and submitted to OCA
24 in March 2020.

25 Those recommendations included plastic barriers

1 at court counters, between the public and staff, and in the
2 courtrooms, between judges, clerks, court reporters,
3 attorneys, and defendants. Floor markings to designate
4 six-foot distances in all areas of the court, as well as
5 decreasing the number of persons in court buildings
6 overall.

7 Increasing the percentage of fresh air delivered
8 in HVA systems, and upgrading and replacing air filters.
9 Temperature testing of staff and the public. Masking, deep
10 cleaning of court facilities, clear guidelines for
11 reporting staff exposures to COVID-19, as well as exposures
12 of members of the public, who utilize court facilities.
13 The need for a creation of exposure control plans to
14 contain the spread of COVID-19 in court facilities, staff
15 training in health and safety procedures, including, but
16 not limited to proper N95 mask use, revision of inmate
17 transport procedures, inhaling of urine samples, increasing
18 online forms and filings for the public, weekly meetings
19 between unions and the OCA to keep apprised of the changing
20 pandemic conditions, a recommendation to open lines of
21 communication, or improving them, between judicial,
22 district, administration, and local leaders.

23 And lastly, we asked that virtual courts be
24 continued throughout the pandemic. In the months following
25 the closure of the in-person court activities on March

1 17th, 2020, CSEA leadership and the OCA staff increased
2 communications and cooperated more than had been in the
3 past practice.

4 CSEA believes that this was crucial to the smooth
5 transition to the virtual courts and lessened the number of
6 court personnel who died. Many more staff would have
7 perished, we have no doubt, if OCA had not been provided
8 recommendations from CSEA's Health and Safety State
9 Operations Departments.

10 As the virtual courts rolled out, it was evident
11 that without the combination of the vision of UCS's
12 division of technology, leadership, and the hard work of
13 the IT staff, this dramatic change in the workplace would
14 never have occurred. The overwhelming number of personnel
15 in the IT staff are represented by CSEA. These CSEA
16 members spent hours beyond the normal workday, in the
17 evenings and during the weekends, working on the software
18 and installing the hardware that created the virtual
19 courts.

20 The UCS division of technology has since
21 experienced an exodus of IT staff, who found state jobs in
22 other branches of government, that offer more flexibility.
23 OCA's stubborn refusal to allow any unionized staff to
24 voluntary telecommute, while using the same staff to
25 telecommute on demand, has damaged morale among the current

1 staff, and it impacts hiring and retention of highly
2 qualified candidates.

3 JUDGE DORAN: Mr. Germano, I apologize. You're
4 past your time. We need you to wrap it up, another
5 sentence or two, please.

6 MR. GERMANO: Judge, I appreciate it. I
7 represent myself and my members, as well as several
8 judicial presidents. It's a third of the workforce in OCA.
9 So I appreciate just a little more time, thank you.

10 JUDGE DORAN: Well, we don't have,
11 unfortunately, sir, we don't. We will certainly take your
12 written testimony, but we're applying the same rules to you
13 that we have to everyone else. I don't mean to say your
14 testimony is not important to us, but we made clear that
15 everybody was limited to five minutes, sir.

16 So please give us your last couple of sentences,
17 and then we're more than happy to have your written
18 submissions, and what I will commit to you is that we will
19 have at least one, and maybe more, more thorough listening
20 sessions with members of our working group and your
21 members.

22 MR. GERMANO: Well, Judge, in conclusion, private
23 and public workplaces are changing. The pandemic caused a
24 great rethink on the part of the American workforce and
25 resulted in many resignations and retirements at UCS. This

1 has left our Unified Court System in a worse position,
2 post-COVID-19, than pre-COVID-19, and pre-COVID-19 OCA was
3 already down by 1,000 or more positions, due the 2011
4 layoffs.

5 And Judge, you know, I'd just like to point out.
6 I appreciate your comments, but this is the issue we have
7 OCA also. Whenever we try to communicate our position, we
8 always get cut short, it seems like, and we don't get
9 heard. Thank you.

10 JUDGE DORAN: Well, we're hearing you, and we
11 will further. We just have rules. It's 5:30 in the
12 afternoon. We will hear from you more. I commit that to
13 you. And I'm saying that while I'm being recorded.

14 MR. GERMANO: Thank you, Judge.

15 JUDGE DORAN: So, we will have a session, a
16 virtual - - - at least one - - - with you and your members.
17 The views of your members are critically important to us in
18 this effort. So - - -

19 MR. GERMANO: I appreciate it, thank you, Judge.

20 JUDGE DORAN: - - - thank you so much for being
21 here.

22 MR. GERMANO: Thank you. Thank you to the
23 committee, as well.

24 JUDGE DORAN: Last, but not least, is Eric Allen,
25 who is the president of the Association of Supreme Court

1 Reporters within the City of New York.

2 Eric, I'm sorry that you're last, but we got to
3 keep it to five minutes, as best we can.

4 MR. ALLEN: Understood.

5 JUDGE DORAN: Thank you so much for being here.
6 The floor is yours.

7 MR. ALLEN: Appreciate it. Thank you. Good - -
8 - well, I guess at this point, it's good evening, Honorable
9 Doran and the Pandemic Practices Working Group members. As
10 Judge Doran just stated, my name is Eric Allen and I am the
11 president of the Association of Supreme Court Reporters
12 within the City of New York.

13 Thank you for the opportunity for me to speak on
14 behalf of nearly 300 senior court reporters, working within
15 New York City's five boroughs in the Unified Court System.
16 It goes without saying, but I'm going to say it, that I'm
17 honored and privileged to sit before you on behalf of such
18 a dedicated and skilled title of employees within our
19 system.

20 It's no secret, and actually blatantly obvious,
21 that the court system and its employees undertook an
22 unprecedented and monumental task of keeping the New York
23 State courts operating to serve the interest of our public.
24 Senior court reporters quickly shifted, with some help from
25 the respective IT departments, to the virtual proceedings'

1 method while at home.

2 Not only did they handle this without question
3 and with aplomb, but senior court reporters were called on
4 to also handle family court matters, a jurisdiction which
5 we do not have responsibility for under our title, because
6 the For-The-Record system, which is a recording system used
7 in family court, also known as FTR, was woefully
8 ineffective and incapable of producing a virtual
9 proceedings record, in those family court parts, where FTR
10 is utilized. So not only did our members handle the
11 Supreme Court matters, we were called upon to handle family
12 court as well, and we asked, we rang the bell.

13 Now, let us now fast forward to May 24th of 2021,
14 when all personnel were required to be at their respective
15 courthouses to work, almost exclusively in their offices,
16 doing virtual proceedings, with the litigants and counsel
17 being at home, the respective judge in their chambers or at
18 home, and the entire court staff in the courthouses, using
19 the court's public Wi-Fi system.

20 A few sentences ago, I mentioned the woefully
21 ineffective FTR system, for creating a record. Now, I'm
22 going to address the woefully ineffective Wi-Fi system that
23 senior court reporters had and have to use to this day, to
24 attempt to report virtual proceedings. Senior court
25 reporters need a more dedicated system with stronger

1 internet or internet connectivity, in order to perform our
2 extremely vital roles in creating a verbatim record.

3 I relayed countless horror stories to Unified
4 Court System or OCA of reporters being disconnected from
5 the proceedings, and the parties not realizing it, and
6 because they did not realize it, continued on with the
7 proceedings, without the reporter virtually present. This
8 necessitated the reporter now in a frantic state to attempt
9 to contact the court or counsel to inform them that they
10 were no longer connected to the proceedings.

11 I was assured this was being taken care of, but
12 to this day, the issue still exists. Now, I'm not
13 suggesting that attempts to rectify this were not made,
14 because they were, but the right equipment is not being
15 utilized obviously, or this would not be occurring. This
16 could easily be avoided with our members having the ability
17 to connect to a dedicated court internet or internet, not a
18 public Wi-Fi system, in order for them to do the job they
19 are tasked with doing. Better, more effective resources
20 need to be put in place, not only if another pandemic
21 situation arises, but to facilitate the ongoing and virtual
22 future proceedings we expect will be occurring.

23 Another item to be brought to light is the lack
24 of a microphone system in many courtrooms. When counsel,
25 the court, or a witness is speaking through a mask, their

1 voice becomes very low and garbled. Now, if I were to step
2 back from this and speak to you without the microphone, I'm
3 pretty sure you wouldn't really have a very good
4 comprehension of what I'm saying. You may get the gist,
5 but court reporters can't get a gist; they need to get the
6 verbatim record.

7 So having working microphones connected to a
8 working speaker system at the bench, witness stand, and
9 counsel tables, would greatly improve the hearing and
10 comprehension capacity for the court reporters. In line
11 with the microphone and speaker systems, compatible
12 assistive listening devices, which courtrooms are equipped
13 with, aid tremendously in the parties and the reporter
14 being heard in a clear manner.

15 Now let's turn quickly to decorum when doing
16 virtual proceedings. Many times individuals appear in a
17 proceeding without video because they choose to call in
18 with a phone that does not have video capabilities, or they
19 choose just not to use their camera. The Unified Court
20 System has gone to great lengths to provide access to
21 individuals needing such equipment. This needs to be
22 better managed. Informing parties well in advance of their
23 hearing date that they must appear on video will give them
24 ample time to avail themselves of the resources that have
25 been put in place.

1 While we are all very sensitive to the needs of
2 those we serve, we need to be able to serve them in the
3 best manner we can. Some individuals call in from their
4 cars while driving, the noise is both distracting and makes
5 it very difficult to create a record, because of that
6 background noise. People walk around outside on their
7 phone with a camera, and at one point a judge just had to
8 stop and question, what is going here? What are we doing?
9 So none of this would be acceptable in an actual courtroom,
10 in an actual courthouse, and all proceedings should be
11 carried out as if they were.

12 I appreciate and respect the opportunity given to
13 me today to address the working group. It's my hope that
14 these few items that I've touched on today, will be
15 earnestly attended to, not only should another pandemic-
16 like situation arise, but to immediately cure the
17 shortfalls we are facing during the virtual proceedings we
18 are working with today. Thank you.

19 JUDGE DORAN: Thank you very much, Mr. Allen.
20 Thank you all.

21 Unfortunately, I don't think we have a whole lot
22 of time for additional questions and dialogue. My
23 apologies to the members of the panel.

24 Thank you for being here, and apologies for what,
25 I'm sure appeared to be, rudeness, because you're last, and

1 that makes you feel a little more pressured to get it done
2 quick, but I want to give you my word and assure you this
3 is only the beginning of what's going to be a very robust
4 conversation, listening sessions, et cetera.

5 I want to wrap things up now by thanking the
6 Court of Appeals, the Chief Judge, for allowing us to use
7 this glorious room. I don't think it's lost on any of us
8 where we are, and the importance of the conversations we're
9 having in this place. It really helped add meaning to what
10 we experienced together today.

11 I also want to thank the members of the Pandemic
12 Practices Working Group. You can see, we have our work cut
13 out for us. These are not easy issues. We're not going to
14 have a consensus on everything. But I hope you'll agree
15 with me that the members that we put together, the folks
16 that we've asked to join us in this effort, make us, I
17 think, remarkably well suited and positioned to do the
18 right things and to deal with these issues and to make the
19 recommendations that this moment calls for.

20 The final reflection I'll add is, isn't it a
21 great thing that we are all in this space together, and I
22 don't mean physically, although it's a beautiful place, but
23 we are in this space together, from all of those various
24 places we come from, and all of those various things we do
25 in our day job, to set the course for a much better future

1 for this court system. So thank you for being here with us
2 during this journey and take a moment and reflect on how
3 fortunate we are to have the opportunity to do great things
4 for the people that need us to do great things. So travel
5 safely to where you're headed to.

6 To the Working Group, I think we have a meeting
7 tomorrow, at 4. Is that right, Scott?

8 So we'll have a virtual meeting tomorrow at 4 and
9 chart out our course from here.

10 To everybody, God bless and thank you so much.

11 MR. GREENBERG: Thank you.

12 (End of audio)

13 (Court is adjourned)

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C E R T I F I C A T I O N

I, Amanda M. Oliver, certify that the foregoing transcript of proceedings in the Court of Appeals of Pandemic Practices Working Group was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

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