

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COURT OF APPEALS

ALBANY, NEW YORK

COMMISSION TO REIMAGINE THE FUTURE OF NEW YORK'S COURTS

PUBLIC HEARING

20 Eagle Street
Albany, New York
June 7, 2022
AM 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. CAROLYN WALKER-DIALLO
Administrative Judge of the Civil Court of the
City of New York

CHRISTINE SISARIO
Chief Information Officer at New York State
Unified Court System

HON. JAMES MURPHY
Judge of the Saratoga County Court in Saratoga
County, New York

LAUREN SANG-HEE OWENS
Associate, Dreyer Boyajian, LLP

HON. EDWINA MENDELSON
Statewide Judicial Policy Leader

Alexander Reaves
Official Court Transcriber



1 (Proceedings commenced at 9:30 a.m. as follows:)

2 JUDGE DORAN: Good morning, everybody. It's
3 wonderful to have you all with us. Those of you that are
4 joining us virtually, we're so happy and pleased to be
5 together, here. I'm Craig Doran and I have the honor and
6 privilege of being the chairperson of the Pandemic
7 Practices Working Group, which you'll hear more about in a
8 little while.

9 This is our first of what we hope will be many
10 listening sessions. This is our first in-person hearing,
11 and before I introduce the chairmen of the chief judge's
12 commission to reimagine the future of New York's courts,
13 which is the organization that gives us our mission and our
14 purpose, I want to thank the chief judge and the court of
15 appeals for the tremendous hospitality that they've
16 extended to us, allowing us to have this what we hope will
17 be a historic conversation in a place that reminds us all
18 how important our mission is.

19 We have the privilege of being in a room that,
20 quite frankly is for many, the last bastion of justice, and
21 today, we discuss very important conversations. I'm sorry,
22 we have very important conversations about people who badly
23 need us to do our jobs and to be at our best, so it's great
24 to be with you and it's my honor to ask the chairman of the
25 commission, Hank Greenberg, to say a few words.



1 Mr. Chairman?

2 HANK GREENBERG: Thank you, Judge Doran.

3 Good morning to everyone here physically in the
4 courtroom and online as well. There's so many debts of
5 gratitude that are owed to so many people that worked so
6 hard to make the hearing today a possibility. Of course,
7 first and foremost, Judge Doran, who's leadership has been
8 nothing short of extraordinary, and taking the steps that
9 made this morning possible.

10 Chief Judge DiFiore, Chief Administrative Judge
11 Marks, the staff of the Court of Appeals, the greatest
12 common law of last resort on the planet, its clerk, Lisa
13 LeCours and there are so many people to whom we owe so
14 much. The reporter, who is done, and his staff's got
15 (indiscernible). Every member of the working group, thank
16 you, thank you, thank you.

17 It's a truism to say that COVID-19 changed the
18 state, the nation, the world. It was and is an
19 extraordinary moment in world history and no community, no
20 region of the world was impacted more or suffered more than
21 the State of New York. For those of us who can remember,
22 we try to block it out, but the days of March and April and
23 May of 2020, when COVID struck, New York was the epicenter
24 of the pandemic, and the human toll, the economic toll, the
25 impact was, to say the least, seismic on all facets and



1 aspects of society.

2 But among those was the law. Indeed, the impact
3 of COVID-19 on the practice of law, on the adjudicative
4 process of courts, was nothing short of historic. We saw
5 more change in the first two months of the pandemic in how
6 law is practiced and how cases are decided and processed
7 than we had experienced in 200 years, and the response to
8 that crisis, to that seismic impact by our court system was
9 extraordinary and inspiring.

10 A series of brilliant innovations and
11 inspirations and improvisations that allowed the
12 administration of justice to continue, the courts to
13 function when much of society, much of the state was locked
14 down. Extraordinary testament to the leadership of Chief
15 Judge DiFiore, Judge Marks, Judge Doran, and all the
16 persons who were involved in making that possible.

17 What we are going to do this morning is go back
18 to the future. We are going to take a look at those days
19 at the beginning of the crisis through the next two years
20 for the purpose of looking forward. All of that change,
21 all of those extraordinary changes as to how law is
22 practiced and how cases are processed and decided, many of
23 those changes we know were not only a response to a crisis,
24 but ultimately represented a more efficient and effective
25 way to handle different aspects of the process.



1 And while we all want this pandemic, goodness
2 knows, to be behind us, and as we all want to return to our
3 lives in full and we all want to I say this as a litigator,
4 be back in courtrooms, we all want that. While we do that,
5 we want to make sure that those changes that we responded
6 to, that we maintain and build on them into the future.

7 So today, we have an extraordinarily busy agenda.
8 It is my privilege to turn this over to the chairman today
9 and I look forward to the hearings.

10 JUDGE DORAN: Thank you very much, Hank, and
11 thank you for the encouragement and the leadership that
12 you've provided all of us in this very ambitious
13 undertaking.

14 When Hank called me about this working group, we
15 had a conversation about what our mission would be, and it
16 was very clear from the beginning, the mission of this
17 working group is to, in the first instance, listen. To
18 engage people across this state, to have open, honest,
19 unvarnished conversations about the policies and the
20 practices that were implemented during COVID.

21 Hank indicated that it was a very important part
22 of our mission to have in person public hearings. The
23 working group was formed in May, and I asked Hank, when
24 should we have the first public hearing, thinking that his
25 response should be sometime in the fall, and Hank said, I



1 think we should have it in early June. I said, June of
2 this year, and Hank said yes, it's important that we get
3 started.

4 So we immediately set out to put together the
5 working group of this commission, the Pandemic Practices
6 Working Group. I am so proud to say today that that
7 working group is thirty-seven members strong, from all
8 across this very diverse state, geographically, ethnically,
9 practice area diverse. We have folks from within the court
10 system. We have folks who are providers. We have
11 prosecutors, defense attorneys, judges.

12 Folks that work in our courts. Frankly, I hope
13 you'll all agree with me that the vibrancy of this group is
14 unmatched by many other efforts that we've had the
15 privilege of being involved in. Not a single soul said no
16 when we asked folks to be involved in this. Not a single
17 person declined to be a member.

18 We'll talk more about the members as we go today,
19 but the first category of folks that I want to extend my
20 gratitude to are those of you who have agreed to be part of
21 this most ambitious, unprecedented effort, and I want to
22 emphasize as we will repeatedly throughout the day that the
23 mission is conversation, and honesty, and openness, and the
24 truth.

25 We want to have a very honest assessment of how



1 we did, and when we get to the end of our work, our work
2 product will be a report that we will prepare for the
3 commission, and ultimately, we hope to the chief judge,
4 reflecting the great input that we expect to start today.

5 It's also important to point out that today, we
6 have more than thirty witnesses to testify. Frankly, we
7 were a little bit concerned when we were on this tight time
8 frame that we wouldn't have enough witnesses to fill up
9 even half a day, and as you can see from our agenda, we've
10 had such a tremendous response from folks who are anxious
11 to share their thoughts, suggestions, et cetera with us.

12 So my thanks to everybody who responded, and I
13 will apologize in advance. We are going to be on a very,
14 very tight time frame. This morning session is exclusively
15 virtual, and each speaker has been allotted five minutes to
16 make their initial comment, and then we might have time for
17 a question or two depending on how we're doing.

18 So I also want to thank my fellow panel members
19 for the morning session. You've already met Hank
20 Greenberg. Judge Carolyn Walker-Diallo is with us.
21 Christine Sisario. Judge Jim Murphy. Lauren Sang-Hee
22 Owens, and next to me here, the honorable Edwina Mendelson,
23 and I'm thrilled that they all agreed to be here and to sit
24 up here and join me as we engage in this conversation.

25 I also want to extend a special thanks to members



1 of our working group, Scott Renz (ph.) and Bill Silverman
2 (ph.). They agreed to be the cochairs of our hearing sub-
3 committee. They had the task of putting together this
4 day's events, which you might imagine is seemed
5 unsurmountable when we set out on it, but these two
6 extraordinary individuals have done tremendous work to make
7 sure this day goes well.

8 And I can't name them all, but they have brought
9 with them associates from their firm. These extraordinary
10 young people have really been pillars of our effort, here,
11 and we simply could not have done this without them. I
12 also want to thank from the court of appeals, Anne Buyer
13 (ph.). There are so many people here at the court of
14 appeals who have been gracious and welcoming to us. Anne
15 in particular has been tremendous in the work that she's
16 done for us.

17 In fact, we were just talking outside that she's
18 sad that she won't be able to work with us anymore after
19 today, and I said to Anne, well, you know, we might be able
20 to help your sadness a little bit. We've got lots of other
21 lots of other of these sessions to engage in, and we would
22 benefit from her professionalism. So thank you to
23 everybody at the court of appeals who's been so gracious to
24 us.

25 This is a huge state, an extremely diverse state,



1 and as Hank mentioned a few moments ago, we didn't have
2 time in the beginning of the pandemic and then throughout
3 the pandemic, we didn't have the luxury of engaging in
4 detailed planning sessions. We had to act. As we have
5 said many times, the constitution doesn't take a break
6 during the pandemic.

7 People need access to the courts during the
8 pandemic, and one of my observations throughout this entire
9 period was that we all have the privilege of working with
10 extraordinarily dedicated, thorough people, and again, when
11 we embarked upon the various stages of the pandemic in
12 order to fill the chief judge's mission which was to assure
13 that the courts never closed, and they indeed never closed,
14 and they never closed because of everybody engaged in this
15 conversation.

16 It was an all-hands-on deck effort, it was a team
17 effort, and nobody said no. In the early stages, I
18 remember our conference calls. No one said we can't do
19 something. It was more of a conversation about why we have
20 to do it. There's a lot of tension, of course. It's a big
21 state. We don't always agree, and these are very, very
22 important issues that we speak about, very, very important
23 interests.

24 Variety of them, people that need access to our
25 courts. States, as I mentioned, very diverse, urban world.



1 The concerns are different. We're not going to reach
2 unanimous opinions on many of our recommendations, but the
3 important thing is that we have the conversation, that we
4 listen to each other, and that we engage each other, and
5 that we learn from each other, and I couldn't be more
6 enthused than I am right now about this effort and this
7 mission, and what we are about to embark upon.

8 So it is with that in mind, and also I'll ask all
9 of you to join me in keeping in mind the folks that we're
10 not going to hear from, that aren't necessarily able to get
11 to us. They aren't necessarily able to show up to the
12 court of appeals. Please keep them in mind. Those are the
13 folks that bring us all here together. Those are the folks
14 that we get up in the morning for every day to make sure
15 that the access to justice, that has become the standard in
16 this state, in our judiciary, continues and gets better.

17 You know, folks talk about, we can't wait to get
18 back to normal. My belief is that we're going to get back
19 to a better than normal, and I truly believe that this
20 working group is going to have a great deal to do with what
21 that better than normal looks like.

22 So with that, I think we're still on time. We're
23 actually a little bit early, so rather than me try to take
24 up more time, perhaps we can get started with the first
25 panel a little bit early if that's okay, and let me



1 acknowledge and introduce the panel. Oh, we got to let
2 them in, first. All right.

3 JUDGE DORAN: So with life television, we have
4 awkward pauses and no commercials, but it looks like the
5 first group is with us now, so give me a brief opportunity
6 to introduce them and acknowledge them. This first group
7 discussing access to justice issues will be led by Helaine
8 Barnett, who I'm sure everyone knows is the chair of the
9 permanent judicial commission on access to justice, also my
10 friend, and a wonderful, dedicated person in our justice
11 system, but also in particular, on access to justice
12 issues.

13 And I want to have everyone hear me say this, as
14 Helaine and I have discussed privately, our working group
15 intends to work in lockstep with the Permanent Commission
16 on Access to Justice. Frankly, the Permanent Commission on
17 Access to Justice has done much of the foundational work
18 for this working group, and the focus during the pandemic
19 that the commission has engaged in, we're going to learn
20 from that, we're going to build upon that, and we're going
21 to work together with the permanent commission.

22 Helaine and I have had several conversations
23 throughout the pandemic, but most specifically in the last
24 couple of weeks about the degree to which we intend to work
25 together so that we can build on the amazing work of the



1 commission. So Helaine will be joined by Kristin Brown
2 from the Empire Justice System, Ken Perri from Legal
3 Assistance of Western New York, Marcie Kobak of Legal
4 Services of Hudson Valley, and Sally Curran, who is with
5 the Volunteer Lawyers Program of New York.

6 Kristin Brown, Ken Perri, and Marcie Kobak, and
7 forgive me if I'm mispronouncing names, by the way. I'll
8 apologize in advance. I'm very, very sorry. They are
9 members of the Permanent Commission on Access to Justice,
10 so with that, and we are a little bit early, Helaine, so
11 you can use up a few extra minutes. We're honored to have
12 you with us. The floor is yours.

13 MS. BARNETT: Thank you so much, Judge Doran, and
14 thank you for the opportunity to present the findings of
15 the New York State Permanent Commission on Access to
16 Justice. On the impact of the digital divide on low income
17 and unrecognized litigants in civil cases, we made these
18 findings in response to a request from Chief Judge DiFiore,
19 which led us to form our future access to the court's
20 working group, consisting of commission members and
21 judicial leaders.

22 The evidence we gathered demonstrated that the
23 court system's adoption of virtual court operations has
24 provided greater access to justice for some court users
25 while creating significant new barriers for others. I will



1 speak briefly about five key areas that the Permanent
2 Commission has identified and our recommendation for access
3 on behalf of unrepresented litigants.

4 First, I will address access to technology. Over
5 the last two years, the court system has made an effort to
6 provide access to technology and court-based facilities and
7 community-based organizations. For example, the Ninth
8 Judicial District's local access to justice committee the
9 established private spaces in safe space locations outside
10 the courthouse for litigants to participate remotely in
11 court proceedings.

12 While this effort has inspired some replication,
13 we believe that existing locations should be better
14 publicized and similar projects be initiated in the many
15 geographic errors with no such services. We also believe
16 it would be helpful to compile a user-friendly guide to all
17 available local sites for broad public dissemination.

18 Second, access to technology alone will not
19 bridge the digital divide if court users lack digital
20 literacy. Providing technical support and training for
21 unrepresented litigants could be accomplished by the courts
22 in collaborations with community-based organizations,
23 public and law libraries, safe based institutions, and
24 other stakeholders.

25 One promising model is using trained digital



1 navigators to provide customized, individualized technical
2 assistance for such matters as connecting to the internet,
3 using devices, and navigating court technology tools.

4 Third, while the Commission supports the continuation of
5 remote proceedings on a permanent basis, the court system
6 needs to address the significant barriers caused by the
7 digital divide.

8 I'll go through a few of those barriers. For
9 litigants with limited access to technology, having to
10 appear by telephone is inherently unfair when everyone else
11 is appearing by video conference. This type of proceeding,
12 often referred to as hybrid, places the litigant at a
13 disadvantage by not being able to identify who is speaking
14 or react to nonverbal clues.

15 Even if a litigant has a mobile phone, the
16 litigant may need to use public Wi-Fi to access the
17 internet, such as at the public library or at a Starbucks,
18 and will therefore lack the privacy to speak freely and
19 fully participate in a court proceeding. For example, a
20 litigant may not want to discuss domestic violence when
21 someone is sitting at the next table or is within earshot,
22 but even if a litigant has access to the internet, a single
23 court appearance might use up a litigant's minutes or data
24 plan for the month, even before the proceeding is
25 concluded.



1 Our observation has been that many judges would
2 welcome guidance and education on how best to address these
3 types of situations, including which cases and which
4 appearance types are suitable for virtual proceedings, and
5 when, if ever, it is appropriate and fair to conduct hybrid
6 proceedings. The development of uniform and consistent
7 statewide procedures and protocols would go a long way to
8 our assuring equal access to justice.

9 One point to consider is adopting a simplified
10 process for an unrepresented litigant to express their
11 preference for whether the proceeding should be conducted
12 virtually, or in person, or opt in or opt out. We think it
13 is essential that the court system gather input and
14 feedback directly from low income and other vulnerable
15 court users in developing statewide policies.

16 As we have learned from our court user survey, it
17 is difficult to obtain feedback from litigants, especially
18 the unrepresented. You may find that listening sessions or
19 focus groups are an effective way to gather this
20 information, and the Commission is available to provide
21 guidance with your planning, including identifying possible
22 participants.

23 Equally important is the flow of information from
24 the court system to court users. In 2020, the Commission
25 identified the lack of timely, easy to understand



1 information on the court system's website in administrative
2 orders and in court notices. Effective communication and
3 outreach strategies should be developed with the goal of
4 devising appropriately targeted messages using various
5 modes of contact, including texting.

6 Fourth, I turn to the need for simplification of
7 court processes that place burdens on unrepresented
8 litigants. The Commission has heard from various
9 stakeholders about real life examples of the barriers
10 presented when litigants are required, among other things,
11 to notarize documents in person or virtually, complete and
12 scan court forms, and submit documents electronically to
13 the courts.

14 We have proposed that the CPLR be amended to
15 eliminate the notarization requirement and bring New York
16 in step with the federal courts, which have allowed the use
17 of affirmations in civil litigations since 1976. We have
18 also suggested that e-filing be expanded to all courts,
19 including the town and village courts, and redesigned to be
20 more accessible and user and mobile friendly for
21 unrepresented litigants.

22 Additionally, if DIY form programs were linked to
23 the court system's case management system, litigants could
24 seamlessly file the generated DIY form with one click.
25 Lastly, a simplified process for signing documents



1 electronically should be devised for all online submissions
2 by unrepresented litigants.

3 Fifth and in conclusion, addressing the digital
4 divide's impact on equal access to the courts requires a
5 multi-prong approach that involves all stakeholders.
6 Coordination, support, and oversight at the local level are
7 key. Considerations should be given to allocating
8 resources to allow each judicial district to designate a
9 technology liaison to work with the local access to justice
10 committee.

11 Thank you and I commend you to the additional
12 materials that we will be submitting with our testimony for
13 your consideration.

14 JUDGE DORAN: Thank you very much, Helaine.
15 We'll move right into the next speaker, Kristin Brown.

16 MS. BROWN: Good morning, and thank you for the
17 opportunity to testify. As noted, my name is Kristin
18 Brown. I'm president and CEO of Empire Justice Center, and
19 I'm also a member of the Permanent Commission as well as a
20 board member of the New York Services Legal Coalition.

21 Empire Justice is a statewide civil legal
22 services organization that focuses on areas of law
23 affecting low income and marginalized New Yorkers. We use
24 a 360-degree approach to address the root causes of
25 injustice affecting our clients. It's a blend of direct



1 representation, legal training and support, and systems
2 change advocacy.

3 I first want to express my appreciation to you,
4 Judge Doran, co-chair, Chair Greenberg, the panel, and of
5 course, the chief judge for holding these hearings. We can
6 all agree that the pandemic has deepened many, if not all
7 of the divides we face in our country, and COVID-19 has
8 placed a spotlight on racial and economic injustices that
9 are baked into our laws, our systems, and including our
10 courts.

11 During the pandemic, we saw New York's massive
12 court system accelerate digital access, allowing for
13 creative solutions that help remove barriers to justice for
14 many of our clients, and we appreciate the court system for
15 examining these changes in an effort to preserve what
16 worked well while recognizing that areas for improvement
17 will be highlighted as well. I'm going to focus on three
18 areas where we see opportunity to expand equity for court
19 users.

20 First, statewide policies and standards are
21 creating a foundation for equity in the court system. We
22 all can agree that where you reside should have no bearing
23 on the degree of access to justice you experience, but
24 unfortunately, across New York, throughout the pandemic,
25 lack of uniformity in court processes allowed this to



1 happen.

2 We recognize that the courts had a difficult past
3 in reopening during the pandemic. However, it's critical
4 that whether a small rural court with limited technology
5 budget or an urban court hearing thousands of cases each
6 month, in each of those courts, every individual has
7 equitable access to fair process that's not impeded by lack
8 of information, technology, or basic understanding of what
9 their rights are.

10 A good first place to start with this is the
11 development of consistent standards that allow court users
12 to choose for themselves, and as Helaine noted, based on
13 their individual needs, technology and resources, how
14 they'll interface with the court, whether it's in person,
15 remote, or hybrid.

16 We also recommend funding, and wherever possible,
17 requiring, the best practices developed in communities
18 across the state to be implemented across the board. As
19 again, as noted by Helaine, the Permanent Commission has
20 researched and developed a series of recommendations
21 related to the digital divide, including utilization of
22 court and community kiosks, blending of digital devices and
23 digital navigator programs, and these and other
24 recommendations of the Permanent Commission should be
25 adopted.



1 Second, notarizations are a barrier to the court
2 process and access to justice. During the pandemic, New
3 York temporarily authorized remote notarization and then
4 made it permanent. However, New York needs to go further
5 and eliminate notarizations completely. Continuing to
6 require notarizations in civil matters places a significant
7 burden on communities of color, low-income and rural
8 communities, and impedes equitable access to justice.

9 There are many ways in which requiring
10 notarization is problematic for low-income litigants. In
11 black and brown communities, the most reliable place for
12 notaries, is a bank, is significantly harder to access as
13 there are fewer financial institutions in majority nonwhite
14 neighborhoods.

15 In rural communities, it's similarly difficult to
16 find notaries. One must either go to a bank or to the
17 court itself, and transportation and privacy become a
18 challenge, and finally, finding notaries and languages
19 other than English is very, very difficult. We strongly
20 support the bill that was referenced by Helaine and
21 advanced by OCA for the past several years, and we
22 recommend that actions be taken to immediately adopt that
23 legislation.

24 Finally, language justice. We have numerous
25 recommendations in our testimony, so I'll only mention a



1 few, here. In order to ensure language justice in our
2 court system, consistent statewide procedures and extensive
3 training is necessary, particularly when it comes to remote
4 proceedings.

5 First of all, litigants, but especially those
6 participating remotely, must be consistently made aware of
7 the availability of interpretation services for
8 proceedings. A clear description of the process must be
9 developed and provided when using an interpreter so
10 everyone knows what to expect.

11 Judges and all court personnel should be trained
12 to ascertain when a litigant or witness may need an
13 interpreter and on best practices when working with
14 interpreters. New York must also take steps to address the
15 severe shortage of certified interpreters, including
16 American sign language. The nationwide shortage is causing
17 delays in access to the courts or forcing litigants to go
18 without interpretation even when they don't feel
19 comfortable doing so.

20 One concrete step that can be made would be to
21 increase the frequency of court certificate exams for non-
22 Spanish interpreters. Those are only offered currently
23 once a year. Thank you once again for this opportunity and
24 I'm happy to take questions at the end.

25 JUDGE DORAN: Thank you very much, Kristin.



1 Ken Perri.

2 MR. PERRI: Thank you and good morning, everyone.
3 I appreciate the opportunity to address you, today. I do
4 want to thank the chair of the reimagining commission,
5 Henry Greenberg, and Judge Doran, the chair of this work
6 group, for all of your leadership on the important issues
7 that are the subject of today's hearing.

8 Again, my name is Ken Perri. I am the executive
9 director of Legal Assistance of Western New York which many
10 know as Law New York, and I am also a member of the
11 Permanent Commission. Law New York provides legal services
12 to low-income people in a wide variety of practice areas in
13 a fourteen-county service area. The service area is just
14 under ten thousand square miles, and it spans across three
15 judicial districts, the 6th, the 7th, and the 8th, and two
16 judicial departments, the 3rd and the 4th.

17 My written remarks, which were submitted
18 yesterday, addressed three topics. My verbal remarks
19 focused primarily on one, and that is the high unmet need
20 for representation of tenants in evictions and the ability
21 of a model which includes essentialized part as a tool to
22 help abate that need.

23 Courts in the law of New York service area with
24 original jurisdiction over evictions are the town and
25 village courts and the city courts. New York has more than



1 1,275 town and village courts, 299 of these are in the Law
 2 New York service area, and in addition, the Law New York
 3 service area has 11 city courts, so it is physically
 4 impossible for us to serve all of the eligible tenants in
 5 evictions through the current town and village court
 6 structure that's in place.

7 Meanwhile, the need for our services continues to
 8 grow in significantly greater numbers. During COVID, one
 9 new practice introduced in the 7th Judicial District under
 10 Judge Doran's leadership was to skip courts special COVID
 11 intervention part, which provided for centralized parts for
 12 summary proceedings.

13 That particular model, in that particular model,
 14 summary proceedings continued to be commenced in the town
 15 and village courts and then were transferred to the dockets
 16 of the county courts, so this reduced the number of courts
 17 that our attorneys have to travel to from 310 down to 18,
 18 299 town and village courts and 11 city courts down to 7
 19 county courts and 11 city courts.

20 The results were increased access to legal
 21 counsel for low-income tenants at risk of losing their
 22 housing, with all of the disruptions to families that are
 23 created by that. Better opportunity for tenants to resolve
 24 their cases, cases adjudicated by attorney judges with
 25 greater capacity to implement the complex procedural



1 statutes governing evictions, and because of the
2 availability of supportive services providers in this
3 model, a better opportunity to successfully apply for
4 emergency rental assistance and other supports.

5 So our call is on the best practices developed
6 through the SKIP model to be incorporated into the eviction
7 process with centralized parts to hear all evictions filed
8 in the town and village courts, and my written materials
9 contain metrics both regarding the high, unmet need for
10 legal services for low-income tenants and the numbers that
11 were served during the SKIP pilot or project in the 7th
12 Judicial District.

13 The second component that my written remarks
14 pertain to the need for representatives of litigants in
15 summary proceedings to have access to pleadings filed in
16 the town and village courts in real time through an
17 electronic platform.

18 My written remarks provide background for a pilot
19 that is about to be launched I believe by the end of this
20 month, through which the electronic document delivery
21 system, EDDS, will serve as the vehicle through which
22 documents are delivered to the town and village courts, and
23 then Christine Sisario's team will, behind the scenes,
24 miraculously allow for those to be moved to NYSEFS, where
25 the New York State Electronic Filing System, which will



1 serve as the repository where pleadings and anything filed
2 can be obtained at this point in the pilot by attorneys
3 only.

4 It won't be open to the general public or the
5 parties themselves. My call is for you to monitor the
6 pilots. There will be, at least one town and village court
7 in every county outside of New York City will be included
8 in the pilot, and four in Monroe County. To monitor them,
9 assess lessons learned, settle on best practices, and move
10 the pilot from ramp it up to eventually be implemented in
11 all of the courts, town and village courts.

12 And finally, the third component of my comments,
13 perhaps off topic for pandemic best practices has to do
14 with the rural attorney shortage. Under again, under Hank
15 Greenberg's leadership, the New York State Bar Association
16 created a taskforce on rural justice matters, which issued
17 a report and recommendations that were adopted by the NYSBA
18 House of Delegates in April of 2020.

19 I will wrap up. There's more there's more in my
20 in my written comments, but just as an example of how the
21 rural attorney shortage affects us locally, Law New York,
22 at the end of 2021, received two large grants that allowed
23 us to create 29 new attorney positions to provide eviction
24 defense work, and although we started recruiting shortly
25 after the grants were awarded, it's now June and we've only



1 filled four of the twenty-nine positions, just under
2 fifteen percent.

3 So the report has interventions which we hope
4 your work group will look at and that UCS and NISPA will
5 work together to implement them. Thank you. I apologize
6 for going a minute over time and I'm happy to take
7 questions at the end.

8 JUDGE DORAN: Thank you, Ken.

9 Marcie, whenever you're ready.

10 MS. KOBAK: Absolutely. Good morning and thank
11 you to the Committee for the opportunity to speak on the
12 issues. I'll touch on a couple of points on virtual
13 proceedings, not repeat the great points that have already
14 been made. I'm going to speak about court calendars and a
15 couple words about e-filing, again, not being repetitive.

16 So virtual proceedings have absolutely the huge
17 potential to expand access to justice. They save attorneys
18 and litigants time. To piggyback on a point that Ken made,
19 one of our attorneys in 2019 appeared in 13 different
20 housed courts in the course of a year. That's a great deal
21 of travel time in a very rural area.

22 Our service area extends from Yonkers, one of the
23 largest cities in the state, to the foothills of Cassville.
24 Another aspect of the availability of virtual proceedings
25 to expand representation and access to justice is pro bono



1 recruitment. There are tremendous potential resources,
2 both of them in large law firms in New York City. They are
3 eager to expand access to justice and represent tenants in
4 housing court.

5 They're wonderful, but it's not practical if they
6 have to travel to a town or village court for every routine
7 proceeding. Now, when it comes to pro se litigants,
8 absolutely, having the ability to opt into a virtual
9 proceeding with a streamlined way to do so and uniformity
10 is absolutely essential, so it's ironic, one of our biggest
11 practice areas is housing.

12 We also assist consumers in with brief service,
13 and so these are cases a lot of time, they're being sued
14 for money, and to defend themselves, they have to lose a
15 day of work or risk losing a job, whereas with the virtual
16 proceeding, it could be completed in an hour.

17 So it's a cruel irony that people face when
18 there's no option for a virtual proceeding. I'd also like
19 to just mention that we assist in family law and survivors
20 of domestic violence, and the safety concern of two people
21 having to go to the same building is a very important
22 consideration in conducting proceedings virtually in that
23 practice area.

24 So next, let me just touch on e-filing. It
25 absolutely needs to be universal. We need to have



1 navigators to help people manage it. The opt-in for a pro
2 se litigant should not require a notarized form. That's
3 another step where a notary takes places, and then another
4 inequity with pro se litigants and e-filing is that their
5 papers go into the e-filing system, but they're not
6 considered served on the represented party which
7 participates in e-filing.

8 It's a terrible injustice. People have had
9 orders to show cause denied because they made a mistake
10 with filing the affidavit of service for a document which
11 was e-filed. The affidavit of service, they have to get
12 some poor friend or relative to go and get a form notarized
13 simply stating that a mailing was done, again, a document
14 which was e-filed. That's absolutely something that we
15 need to correct.

16 And then lastly, I'll just speak briefly about
17 court calendars. This isn't so much a technology thing,
18 but it was a big -- it was a change during the pandemic and
19 it was a welcome change. Secretary Johnson's report really
20 showed that the high-volume courts, which bring people en
21 masse, are the places where justice is most in danger of
22 being ignored.

23 In housing courts and even the town and village
24 courts, which are small, there could be a large vehicle in
25 traffic calendar in you know, with people (audio



1 interference) in line behind that calendar, so these --
2 it's very disrespectful of a litigant's time and dignity to
3 have them in to a courtroom, to tell them they must show up
4 at 9:30 or potentially lose their housing or have their
5 wages varnished, and there might not be any chance they can
6 be heard until 12:30.

7 Also calendaring cases where when you do the
8 math, it works out to three minutes per case, does not do
9 justice. Now, it can be done during the pandemic for
10 basically social distancing reasons, the calendars were
11 managed, and they were staggered. People were given, you
12 know, a thirty-minute time frame in which their case would
13 be heard, and that was absolutely more fair.

14 It also prevented people from being coerced into
15 unfair settlements which is what happens when you have
16 people in the courtroom which other reports and
17 investigations have made incredibly clear.

18 So with that, I'll conclude, and thank you again.

19 JUDGE DORAN: Thank you very much, Marcie.

20 And last but not least is Sal Curran from
21 Volunteer Lawyers Program of New York.

22 MS. CURRAN: Thank you so much for the
23 opportunity to testify. My name is Sal Curran. I'm the
24 executive director of the Volunteer Lawyers Project of
25 Central New York, based in Syracuse, and I am a past



1 cochair of the New York State Bar Association's committee
2 on legal aid and a board member of the New York Services
3 Coalition.

4 The mission of the Volunteer Lawyers Project of
5 Central New York is to provide access to justice through
6 engaging the legal community and volunteer service to those
7 in need, and our team of 20 staff and a panel of over 500
8 volunteers provide legal assistance to over 3,500 low-
9 income community members in all of the essentials of life,
10 including family, housing debt, and elder law, as well as
11 special serving special populations such as immigrants,
12 LGBT individuals, and veterans.

13 I want to start by saying I strongly agree with
14 the testimony of my colleagues who have testified here
15 today and I'm going to hone in specifically on landlord
16 tenant matters as well. For thirty years, our Volunteer
17 Lawyers Project has operated an attorney of the morning
18 program at Syracuse city court. In an average year, we
19 defend over 800 tenants in eviction proceedings, and of
20 course, the past two years have been incredibly
21 challenging, especially for tenants who cannot afford to
22 pay their rent due to COVID related hardships, and those
23 who have faced serious housing concerns and landlord
24 harassment.

25 Landlord-tenant law became even more complex,



1 making legal representation of tenants critical to due
 2 process, so I'm going to focus in on six simple steps that
 3 were taken by the Syracuse city court during the pandemic
 4 that made a profound and transformative difference, and my
 5 case is that these steps should be implemented permanently
 6 and consistently in all landlord-tenant courts throughout
 7 the state, as doing so would ensure that tenants have true
 8 access to justice.

9 First is allowing all tenants and lawyers to
 10 appear remotely without having to request permission or
 11 provide a reason for doing so. Second is pausing after
 12 each tenant makes an appearance to let the tenant know
 13 their attorney is present who can assist with their case
 14 and asking the tenant if they would like representation.

15 Third, and I know this seems really simple, but
 16 it's transformative, allowing the tenant and an attorney at
 17 that time to exchange contact information. Four,
 18 automatically adjourning all cases for two weeks when the
 19 tenant indicates they would like an attorney to represent
 20 them so that the attorney has time to represent them so
 21 that the attorney has time to prepare the case.

22 Five, scheduling a limited number of cases at a
 23 time allowing court attorneys and litigants the time needed
 24 to address the cases in meaningful ways that ensure due
 25 process, and six, providing virtual court access sites to



1 address digital divide concerns.

2 During the pandemic, the court largely operated
3 remotely. This not only protected the health and safety of
4 tenants and attorneys, but also had other benefits, such as
5 allowing tenants to appear without missing work or
6 struggling with transportation or childcare. Not missing
7 work, as Marcie mentioned, is particularly critical, given
8 that ninety percent of eviction matters are for nonpayment,
9 and all of our clients are living paycheck to paycheck.

10 Additionally, when holding hearings regarding
11 housing conditions, tenants who are connecting from home
12 were able to show the court directly via video the housing
13 issues they were facing, which was particularly impactful.
14 During the pandemic, the court would usually only schedule
15 at most ten cases at a time, and since the court started
16 back in person in April, they have consistently scheduled
17 thirty to fifty cases, and often more than that each
18 morning.

19 Even with our considerable default rate, this
20 means there can be up to one hundred people in the
21 courtroom at once, which raises serious crowding and health
22 concerns, and in addition, the high number of cases makes
23 it extremely difficult to ensure tenants are able to
24 meaningfully access legal representation.

25 We simply do not have enough lawyers to handle



1 this case load, and without legal representation, the
2 tenants are often unaware of the numerous and often complex
3 defenses they can raise, and they are left bewildered and
4 soon without a home.

5 A simple solution would be for the court to slow
6 the cases down and ensure that a tenant has a right to
7 access representation, and I will make this point as
8 strongly as possible. The court should actively support
9 efforts to ensure right to counsel for all tenants in
10 landlord-tenant proceedings.

11 Finally, I echo Ken Perri's testimony that
12 centralized or hub courts are desperately needed. During
13 the pandemic, we received nearly 200 requests for
14 assistance from tenants in town and village courts
15 throughout Central New York, and they did not offer remote
16 appearances, and we simply did not have the staff to attend
17 those court appearances.

18 Had a centralized hub court been available, we
19 would have been able to represent those tenants, but it is
20 critical that a virtual appearance and remote access be
21 part of that.

22 Thank you so much and I'm happy to take any
23 questions.

24 JUDGE DORAN: Thank you very much, Sal. We do
25 have a couple minutes. Anybody on the panel wish to make



1 any comments or ask any questions?

2 JUDGE WALKER-DIALLO: Yes, I do have a question.
3 Good morning, everyone. I'm Carolyn Walker-Diallo,
4 administrative judge of the civil court of the city of New
5 York, which encompasses the civil court and the housing
6 part, so I perked up a bit when we started talking about
7 housing.

8 So I did have a question about the six steps that
9 you mentioned and the first being allowing tenants and
10 landlords to appear remotely. Does this take into account
11 what we discussed earlier about the digital divide that
12 does exist within our state, and especially within New York
13 City, where we have a significant population of those who
14 seek justice within the housing court, that do have those
15 issues, so that's my first question to you. Thank you.

16 MS. CURRAN: Absolutely, thank you. I'll address
17 that, though I'm sure all of my colleagues have a lot of
18 opinions as well and would love to chime in. Yes, we found
19 that the default rate for tenants went down substantially
20 when virtual court appearances were permitted. Not all
21 tenants joined with video. Many called in, and critical to
22 this was also having virtual court access sites around the
23 community, should somebody want to appear in person, and
24 also letting tenants have the option to go in person if
25 that's what they prefer.



1 The idea is that there shouldn't be one
2 prescribed option, but rather, we should be responsive to
3 the needs of tenants, and allow them to connect with the
4 court in whatever way is best for them.

5 JUDGE WALKER-DIALLO: Thank you, and I do have
6 one more question. So one comment you made at the end was
7 a request that the court slow down cases. What does that
8 mean, because for us, you know, within the housing court
9 context in New York City, we have a certain amount of time
10 where we have to put cases on the calendar, so when I hear,
11 slow down, I hear, there's an issue that we'll be violating
12 statutes.

13 And then in terms of, you know, we are proponents
14 of course of right to counsel, but when we talk about also
15 slowing down cases, what happens to these cases that, you
16 know, attorneys are not matched up in the beginning if
17 they're adjourned in perpetuity. So can you just talk a
18 little bit about that for me? I really appreciate it.
19 Thank you.

20 MS. CURRAN: Absolutely. That is a huge topic
21 that I can spend the next hour talking about.

22 JUDGE WALKER-DIALLO: I'm sure, I'm sure.

23 MS. CURRAN: And I want to start by saying I'm
24 definitely not speaking for my New York City colleagues,
25 because they're much further along in the fight for right



1 to counsel than we are, and they are facing their own
2 challenges.

3 All I can speak for is Onondaga County and
4 Central New York, and what I'll say is this. At the very
5 least, we need to spread out the scheduling of cases, and
6 we need to do automatic adjournments on a more regular
7 basis throughout the region. What I'll say is that, quite
8 frankly, given the complexity of the cases, rushing the
9 matters because of fearing that we're not going to keep the
10 case the court calendar moving along, is depriving people
11 of what I believe and what the legislature possibly will
12 soon believe is a fundamental human right to housing and to
13 safe and affordable housing.

14 We cannot say, oh, we have to rush things along
15 just to keep our court calendars moving or to comply with
16 statutes and make sure that everything is cleared out, when
17 at the end of the day, the consequences are so profound.
18 People end up missing school. They miss work. The rate of
19 depression, of suicide, of physical health, of
20 hospitalization, and everything goes up with evictions.

21 So I think the problem is that when we're talking
22 about something that is in a summary proceeding,
23 realistically speaking, we can't rush it even though it's
24 summary, because the consequences are so profound, and in a
25 place like Syracuse where rents have gone up twenty percent



1 in one year, it's not like people are going to find other
2 housing.

3 We need to take the time to ensure these folks
4 have due process.

5 JUDGE WALKER-DIALLO: Thank you.

6 MS. KOBAK: And if I could just add one quick
7 point to that, that the legislature recently amended RPHL
8 746 to detail a judge's allocation of a pro se litigant in
9 a housing case. The way the calendars are in many courts,
10 there are literally not enough minutes for the judges to
11 comply with that legislative mandate.

12 Whatever resources it takes to allow tenants
13 adequate time to be heard and defend themselves from
14 eviction has to be the top priority of the courts.

15 JUDGE DORAN: Thank you. Unfortunately, we've
16 got to move on. Before we do, let me just thank you all
17 for setting a great foundation for today's work. You all
18 kept yourselves within the time frame, and I know that was
19 very challenging to do. Thank you, Helaine, for bringing
20 such a great group this morning. Thank you all for the
21 work that you do and for giving a voice today in this
22 conversation and many others to folks that frankly would
23 not have a voice without you.

24 So thank you, thank you, thank you. Good luck
25 and we'll talk soon. Take care.



1 MS. CURRAN: Thank you so much.

2 JUDGE DORAN: Good morning, Denise. Can you hear
3 us okay?

4 MS. KRONSTADT: Yes, good morning.

5 JUDGE DORAN: Good morning. So next is Denise
6 Kronstadt, who is with the Fund for Modern Courts, also a
7 friend to many of us in this room, and a voice on these
8 issues that we have heard from, and we appreciate you being
9 with us today. We look forward to hearing from you.

10 I'm assuming others can hear us right now that
11 are going to testify. I forgot to mention at the outset,
12 our wonderful system here that the court of appeals has of
13 demonstrating time limitations, so each speaker has five
14 minutes. When you have one minute left, the white light
15 will come on, and when the time is up, the red light will
16 come on.

17 And Denise, don't take it personally that I used
18 this opportunity to mention it. It's very good to see you
19 on our big screen and we look forward to hearing from you.
20 Denise, the floor is yours.

21 MS. KRONSTADT: Thank you. Thank you so much.
22 Thank you.

23 So the Fund for Modern Courts is a nonpartisan
24 statewide organization committed to ensuring that the New
25 York State judiciary is independent and that our courts are



1 just and equitable for all. On behalf of the Fund for
2 Modern Courts, I thank you for giving this opportunity to
3 testify before you.

4 I'd like to also state that I'm also a member of
5 the Access to Justice Commission, and many of the remarks
6 I'm going to make are part and parcel of what the panel
7 before me has already raised. U.S. Attorney General Vanita
8 Gupta has said, access to justice is not simply an
9 initiative or a project, and our innovative efforts to
10 combat the justice gap cannot end with the end of the
11 pandemic.

12 During the height of the pandemic, it became
13 apparent that new venues for court proceedings were not
14 merely necessary, but opportunities to bring change to our
15 state, especially in eviction proceedings in rural areas.

16 Traditionally, as you've heard, summary eviction
17 proceedings, which are legal proceedings and should have
18 the same value of every other legal proceeding in this
19 state, take place in more than 1,300 justice courts across
20 the states.

21 Every year, our town and village courts preside
22 over a large number of summary eviction proceedings, which
23 of which can result in significant disruptions to families
24 and the loss of a necessity of life, a home. These
25 proceedings are governed by strict laws, statutory



1 guidelines, federal rules, state rules, local building
2 codes, county health codes, et cetera.

3 They can be complex. These laws change, and
4 adherence to these applicable laws is not always
5 straightforward. The entire state was impacted and will
6 continue to be impacted from the public health crisis. To
7 ensure meaningful opportunities to preserve housing in
8 suburban and rural communities, we support utilizing hub
9 courts, centralized assignment parts as was done
10 (indiscernible) and elsewhere for eviction proceedings in
11 each county outside of New York City.

12 These don't have to be cookie cutter. Depending
13 on each county, depending on each JD, they can change how
14 we do this. This alternative is an important way to
15 address public health, equal justice, and economic
16 uncertainty and equality. Those are the big issues, right,
17 and how do we begin to do those things? We have to have
18 greater opportunity for counsel, we have to have data
19 analysis, assessment, and alternatives available to people
20 facing eviction.

21 Public policy demands that we have the capacity
22 to change, keep New Yorkers safe from COVID-19 and other
23 public health crises. It also requires we have the ability
24 to witness and account for how all New York communities are
25 impacted.



1 The lack of affordable housing sits at the root
 2 of a host of problems. Poverty, homelessness, educational
 3 disparities, healthcare. This means we have to understand
 4 the eviction crisis, so how does that play into changing
 5 the court system? We don't have or there appears not to be
 6 any method, or at least a best a disjointed one or an
 7 incomplete one to assess the impact of evictions that occur
 8 in our 1,300 justice courts.

9 There's not oversight, there's not enough
 10 resources for those courts or means of determining how many
 11 evictions, what kind of evictions, what are the proceedings
 12 like that pass through those courts. Whether these justice
 13 courts are equipped with the proper health safety
 14 requirements, what the technology is, whether it's remote,
 15 digital. Are they meeting the digital divide? It's too
 16 much. It's too much to expect there to be that kind of
 17 oversight, and how that digital divide is being addressed.

18 We don't know except for the attorneys that just
 19 testified, the people on the ground, and I used to do that
 20 work, too, whether all the due processes and laws of the
 21 state and the feds are being followed. We can't appeal
 22 every case. It's impossible, so as discussions on the need
 23 for counsel proceed, it's critical to enhance opportunities
 24 to counsel. It's critical to enhance our data collection,
 25 and the best way to do that is to follow the model of the



1 seventh JD, successfully implemented by Judge Doran, and
2 have centralized proceedings.

3 I also want to quickly address our
4 recommendations for family court that were part of modern
5 courts and the New York City Bar's report on the family
6 court during the pandemic. In the family courts, we need
7 to address the electronic filing system, provide better
8 regular statistical reporting, build an effective user-
9 friendly website, enable litigants without access to
10 adequate technology to participate in remote proceedings,
11 adopt communication strategies that ensure litigants and
12 attorneys are kept up to date on the status of their cases.

13 Provided has training for jurists in case
14 management, and assess the court's needs with respect to
15 remote proceedings which is discussed, unified procedural
16 rules, and obviously more judges, staff, and others, and
17 just like what these hearings are doing, what the panel
18 before me is, the court system benefits from engaging with
19 stakeholders, from working collaboratively to come up with
20 solutions to the myriad of issues that the court system
21 faces, and that litigants use the courts face.

22 So thank you so very much for this opportunity to
23 testify on these issues.

24 JUDGE DORAN: Thank you very much, Denise. Thank
25 you for being one of those stakeholders that makes it very



1 easy to engage with. We appreciate the dialogue.
2 Unfortunately, we don't have time for questions. We got to
3 move on to our next speaker, and I apologize. Let me say -
4 - - let me use this opportunity, though, to remind everyone
5 that because we're trying to hear from as many people as
6 possible today, we've had to condense the time periods for
7 everyone's testimony, but we do want to hear the complete
8 volume of your thoughts and comments, not only now, but
9 throughout this process.

10 Please feel free to share written comments to our
11 email, which is PPWG@NYCourts.gov. PPWG@NyCourts.gov. I
12 also want to let everybody know, and we'll mention this
13 again, that we will have additional what we're going to
14 refer to as virtual listening sessions throughout the
15 summer before we proceed in the fall with in-person
16 hearings.

17 Those virtual listening sessions we anticipate
18 will take place during the noon hour during days of the
19 week where we will engage a more thorough in-depth
20 conversation with smaller groups of people, hopefully allow
21 us to have a deeper dive into some of the more specific
22 issues that relate to the various interests or
23 collaborators that we should be engaging with.

24 So apologies for the brevity of today, and if I
25 do interrupt you, I'll apologize in advance. I don't do it



1 to be rude, but only to keep us on schedule.

2 So next on our schedule this morning is Amy
3 Hozer-Weber, who is with the Veteran Advocacy Project.
4 Amy, we're very happy to have you with us and grateful that
5 you're giving us some of your time, today. The floor is
6 yours.

7 MS. HOZER-WEBER: Good morning, and thank you to
8 the panel for the work you are doing and for holding these
9 hearings today. I am currently the director of the civil
10 practice at the Veteran Advocacy Project in New York City
11 and am mainly practicing in the New York City housing
12 works.

13 In March of 2020, when the pandemic first began,
14 I was a support magistrate in Brooklyn family court
15 presiding over child support, spousal support, and
16 maternity matters. The courts began holding court
17 appearances via Skype and then Microsoft Teams, and while
18 there have undoubtedly been obstacles to overcome, overall,
19 I believe technology has made courts more accessible while
20 improving efficiency and access to justice. Therefore, I
21 do believe the options of virtual appearances should
22 remain.

23 In my experience, most litigants have access to a
24 phone and many have the ability to appear by video as well.
25 However, I do note that some of my clients run into issues



1 when they have no more minutes left on their phones or
2 cannot afford Wi-Fi and must use public Wi-Fi.

3 While I was in the family court, those did not
4 have the necessary technology were able to appear via
5 technology rooms in the family courts. I think expanding
6 and keeping these technology rooms are an important part of
7 moving forward with a hybrid model.

8 Having run a court calendar in person, pre-
9 pandemic, and then virtually, during the pandemic, I found
10 it was much more realistic to enforce time certain
11 appearances in a virtual setting. In my experience, there
12 is less time spent finding the attorneys that needed to
13 appear on the cases, the litigants, knowing they have to
14 appear at a specific time, appear at that time.

15 Time certain appearances respect the time of
16 litigants, attorneys, and the court. The ability to appear
17 virtually means that litigants do not have to take a full
18 day off of work or travel to the boroughs courthouse.
19 Litigants can find a quiet place at their job site and
20 appear via phone or sometimes even via video.

21 Parents are able to put their children in a
22 different room in their phone while attending the virtual
23 court appearance or obtain childcare for a much shorter
24 period of time. This means that children are not being
25 taken out of school because their parents have court, and



1 the parents are not spending money that they really cannot
2 spend on childcare or on transporting their children to the
3 courts via public transportation.

4 Litigants with disabilities can also more easily
5 access the courts. Additionally, attorneys are generally
6 able to represent more litigants in more boroughs when they
7 can do so virtually. An attorney can appear virtually for
8 a 9 a.m. case in Brooklyn and a 9:30 case in Queens without
9 leaving their office. This is obviously not possible when
10 the appearances are in person.

11 Attorneys can also work on other cases while
12 awaiting for their virtual appearances to be called as
13 opposed to being in a loud courthouse without access to
14 their computer or their files. Moreover, there's no longer
15 issues of clients having to pay for an attorney's travel
16 time, when it is a paid attorney, to the various
17 courthouses.

18 There are also less safety issues for attorneys,
19 litigants, and jurors. As a support magistrate and
20 practicing attorney, I have had to deal with multiple
21 safety issues, and while the goal is obviously to have
22 everybody get along, dealing with these issues virtually is
23 much safer and less stressful than dealing with such in
24 person.

25 Jurors are ultimately able to hear less cases



1 when the hearings are heard virtually, given the time that
2 must be built in for technology issues. However, when
3 everything is running smoothly, that either means more time
4 for the litigants to be heard or much needed time for
5 jurors to work on cases, time they did not have before.

6 While I conducted virtual trials, I would say
7 it's probably easier for most litigants and attorneys to do
8 such in person. Additionally, while interpreters did a
9 magnificent job of adapting to a virtual platform, it takes
10 more time for interpreters to interpret during a virtual
11 hearing than in person.

12 In person, an interpreter is able to stand next
13 to the litigant when others are talking, interpret quietly
14 and in real time, while in a virtual hearing, the entire
15 proceeding must pause for the interpreter to interpret each
16 sentence. This can be especially time consuming during a
17 trial. Therefore, in my opinion, it would make more sense
18 to hold most trials in person.

19 Another challenge with virtual hearings is the
20 virtual submission of evidence, and in family court,
21 parties need to upload all of their documents in PDF
22 format. Unfortunately, not all litigants are able to do
23 so. I would suggest having more clerk availability to help
24 these litigants be able to provide their documents to the
25 courts so that they can provide them in jpeg or other



1 picture format and still be able to get them to the courts.

2 I also think that the technology rooms in the
3 courthouses can be expanded to allow litigants the
4 opportunity to come at their own time and upload documents
5 or use the technology so they don't have to take -- they
6 could do it on their day off and not take time off from
7 work.

8 It is in my opinion that most appearances could
9 be most virtual appearances could be virtual and at least
10 in family court and housing court, and then the parties,
11 attorneys, and jurors can determine how to proceed going
12 forward.

13 I also think a hybrid approach a hybrid model is
14 possible if there is the sufficient technology in the
15 courtroom. I do think it is very important for there to be
16 set protocols for in person versus virtual court
17 appearances, and for such to be clearly stated on the
18 courts' websites and mailed to litigant and counsel via
19 postal mail.

20 I support a hybrid model going forward and would
21 like to stress that the protocols need to be consistent,
22 easily available to everyone, and updated in real time.
23 Thank you very much.

24 JUDGE DORAN: Thank you very much, Amy, and
25 forgive me for using first names. I'll say that to



1 everybody. I don't mean any disrespect. It's just a
2 little quicker and easier to do that. We do have time for
3 a question or two if anybody would like to ask Amy
4 anything. Anybody?

5 All right. That was an incredibly substantive
6 presentation in a very condensed period of time. Thank
7 you, thank you, thank you. Really, we appreciate that so
8 much. We look forward to talking with you again.

9 MS. HOZER-WEBER: Thank you very much. Take
10 care.

11 JUDGE DORAN: Take care. Bye-bye.

12 Next, we have Saul Fishman. Sir, can you hear me
13 okay?

14 MR. FISHMAN: Yes, yes, I can.

15 JUDGE DORAN: All right, we can hear you. Thank
16 you for joining us. You're next on our list of witnesses.

17 MR. FISHMAN: Thank you.

18 JUDGE DORAN: And Mr. Fishman, you are with the
19 Civil Service Bar Association as we understand it, and
20 we're happy to hear from this morning. Thank you very
21 much. The floor is yours.

22 MR. FISHAN: Thank you, Mr. Chairman. Good
23 morning, distinguished panelists on the future of the
24 courts and the Pandemic Practices Working Group. Thank you
25 on behalf of the members of the Civil Service Bar



1 Association.

2 JUDGE DORAN: We can hear you. Mr. Fishman?

3 MR. FISHMAN: Yeah, I think I just got bumped,
4 there.

5 JUDGE DORAN: No, we can hear you fine. Go
6 ahead.

7 MR. FISHMAN: Okay, good. Thank you on behalf of
8 the members of the Civil Service Bar Association, the
9 nearly 900 nonmanagerial agency attorneys employed by the
10 city of New York, and approximately 40 city agencies,
11 people who themselves have generally risen from working-
12 class families, and are dedicated to giving back and
13 helping the less fortunate New Yorkers. It is an honor to
14 speak with you today about their collective deeds and
15 experiences.

16 I, Saul Fishman, their president, with the
17 privilege of serving for the past decade, express most
18 succinctly agency attorneys want what most people want,
19 their time respected and their health protected. Some
20 extensively temporary changes have helped and should be
21 considered going forward.

22 Let's start with the attorneys for the
23 Administration for Children's Services who comprise about
24 one quarter of our membership. They practice before the
25 New York City family courts, try to improve and even save



1 the lives of children who are often being seriously abused,
2 physically, sexually, and every other way.

3 Their case loads are almost always incredibly
4 high. Despite New York State Bar Association's ethics
5 opinion 751 advising government attorneys against
6 undertaking more cases than they can competently handle,
7 few people have any confidence that they can follow the
8 well-meaning suggestions contained therein without extreme,
9 serious ramifications and retaliation.

10 Government attorneys instead vote with their
11 feet, leaving and making a bad situation worse. Since last
12 September alone, we have lost an excess of 100 members from
13 when we had 1,000 agency members. Indeed, multiple city
14 agencies are frustrated that they cannot hire people nearly
15 as fast as they are leaving.

16 The pandemic, the great resignation, and
17 expectations of being allowed hybrid, flexible schedules so
18 far being denied to them have only exasperated the
19 situation. What's my point relative to today's hearing?
20 Simply that by allowing remote appearances where possible,
21 such as for pre-trial conferences with court attorneys,
22 their lives are made a bit easier and their time in between
23 being called before the court can be used more productively
24 at their desks, preparing other cases, coming before the
25 court in the next few days or at best, couple of weeks.



1 These cases have often been handled previously by
2 another attorney or other attorneys who have left for
3 saner, less stressful, and probably better paying jobs. It
4 is our hope that even these relatively small measures to
5 make their workloads easier to accomplish in a confident,
6 better prepared way may encourage more folks to stay and
7 better help the most vulnerable New Yorkers, abused and
8 neglected children.

9 Similarly, our members at the Department of
10 Housing Preservation Development and the New York City
11 Housing Authority are often squeezed into small housing
12 conference rooms where it can't be healthy even in normal
13 times, much less during a pandemic. Unfortunately, most
14 experts believe that there will be more waves and other
15 pandemics, so proactive steps to safeguard health and
16 wellbeing are important to take now, or as expeditiously as
17 possible.

18 Once again, returning to a remote option or where
19 not feasible, scheduling in bans so as not to take everyone
20 make everyone be present at once, should be implemented or
21 expanded. Our members on the stand at the administration
22 of justice is and should be paramount and made available to
23 all, so let's start with allowing fully represented and pro
24 se litigants the option to participate remotely or in
25 person with the option being provided early on and the



1 default being a remote hearing.

2 Please remember that working class people
3 generally do not get paid when they miss work. If they can
4 appear remotely, they can participate in court proceedings
5 and still get paid for most of the day. It should also be
6 noted that far more people from all walks of life, incomes,
7 and ages use computers and/or and with smartphones with
8 cameras than ever before.

9 Grandma probably is on Facebook, and more likely
10 than not, appearing from home rather than taking the bus or
11 the subway and struggling with stairs would be far
12 preferable. In a time when people are disillusioned and
13 distrustful of all government institutions including the
14 courts, efforts to respect people's needs and preferences,
15 time and safety may go a long way to restore and enhance
16 mutual respect.

17 Finally, we know that there are many times of
18 courts, a variety of needs and expectations among judges,
19 practitioners, and members of the public, and no one can
20 speak for everyone, and no solution is perfect for all.
21 Once again, I thank you for taking the time to hear our
22 perspective and trying to better serve New Yorkers in the
23 months and years ahead. Thanks.

24 JUDGE DORAN: Saul, thank you so much.

25 Anybody from the panel? Judge Murphy.



1 JUDGE MURPHY: Mr. Fishman, I think you said you
2 were advocating for scheduling in bans is the term you
3 used. I just want to make sure I understand what you mean
4 when you say bans.

5 MR. FISHMAN: Okay. Well, I mean, first, my
6 first preference and my members' first preference is, where
7 possible, to appear remotely, but

8 JUDGE MURPHY: Yes, I

9 MR. FISHMAN: What I'm talking about relative to
10 bans, or there may be other phrases for it, there are some
11 courts that during the pandemic, instead of having everyone
12 start at 9:30, you know, is you know, when we are all
13 growing up, pretty much, you know, you have a 9:30 or a 2
14 o'clock, and you know, and you might be hanging out from
15 9:30 until, you know, the court closed for lunch at 1 and
16 whatever.

17 So what I mean by ban is, you know, this group
18 from much like today's hearing, is from 10 until 11. This
19 group is from 11 to 12, so you may, you know, triple book
20 or whatever it is, but you're not going to have, you know,
21 a hundred people or even fifty people, you know, cooling
22 their heels for most of the day. That's what I mean by
23 bans.

24 JUDGE MURPHY: Thank you, thank you.

25 MR. FISHMAN: So like, when you go to a doctor's



1 office, you have an idea. You may not be first, even
2 though you have a 10 o'clock, but you're sure not going to
3 wait in front of after fifty people, either.

4 JUDGE MURPHY: Thank you.

5 MR. FISHMAN: Thank you.

6 JUDGE DORAN: Anybody else on the panel?

7 Sir, thank you so much for your time and please
8 extend our gratitude to your members for the work that they
9 do.

10 MR. FISHMAN: Thank you.

11 JUDGE DORAN: So I get to deliver some good news,
12 now. The good news is that we're slightly ahead of
13 schedule and we have

14 (Audio feedback)

15 JUDGE DORAN: What?

16 JUDGE MURPHY: That's you, Craig.

17 JUDGE DORAN: Did I just slip into the Twilight
18 Zone? Slip into the virtual world? The last thing I want
19 to hear is myself talking, believe it or not.

20 I believe that we have an opportunity for a
21 little bit of a break, now. That's what our schedule says,
22 so if I'm looking at this correctly, why don't we just take
23 about five minutes, and then we'll be onto our next witness
24 who I see is already ready for us.

25 So ma'am, just give us five minutes or so. We'll



1 be right with you. Thank you.

2 JUDGE DORAN: Good morning. Can you hear me
3 okay?

4 MS. CHAFFER: I can hear you, yes.

5 JUDGE DORAN: Excellent. Welcome. We're so happy
6 to have you, here, and forgive me. I may mispronounce your
7 name and you can feel free to correct me. This is Penelope
8 Jagessar Chaffer.

9 MS. CHAFFER: Almost.

10 JUDGE DORAN: All right. Tell me how it goes.

11 MS. CHAFFER: Good morning. My name is...

12 JUDGE DORAN: Yeah, go ahead.

13 MS. CHAFFER: No, my name is Penelope Jagessar
14 Chaffer, so you were very, very close. That was excellent,
15 and I am a proud mother of two children, and I'm testifying
16 regarding my experience as a pro se litigant navigating
17 virtual family court.

18 I first went to family court in 2018 and have
19 been dealing with various issues in family court ever
20 since. As a result, I have experienced both in person and
21 virtual court. I will start off by saying I do prefer
22 virtual court. As a single mother, I appreciate not having
23 to deal with long wait times, find childcare, and travel to
24 attend court in person.

25 Although I deeply appreciate the benefits of



1 virtual court, I'm here today to speak about how the
2 court's current system for virtual hearings has had serious
3 negative impacts on my case, and as a result, on my
4 children. In September of 2021, I filed a petition to
5 modify my child support order due to financial difficulties
6 that arose during COVID. My ex-husband had also filed two
7 separate petitions in prior months. We attended a few
8 virtual court appearances with no issues.

9 Our case was adjourned to January 20th, and on
10 that date, I attempted to enter the virtual courtroom
11 through Microsoft Teams using the link that had been
12 emailed to me through the court's e-notify system. I
13 waited for several minutes to be let into the meeting
14 before receiving a text from my ex-husband, informing me
15 that he had been told by the court officer that the
16 magistrate was unavailable, that the case was being
17 adjourned again, and that the court would notify us of the
18 new date to appear.

19 I continued to wait to be let into the courtroom,
20 and I waited about fifteen to twenty minutes, maybe a
21 little bit more, but I was never let in and I eventually
22 disconnected the call. About a week later, I received an
23 email with a new court date. I assume this meant that both
24 my and my ex-husband's petitions would be addressed.

25 However, four weeks later, I received an order in



1 the mail from the court informing me that my petition had
2 been dismissed because of my alleged failure to appear.
3 The order also stated that my ex-husband did not appear,
4 which I found strange because his modification petition was
5 adjourned from January 20th, which meant clearly, he was
6 there at that date and time.

7 I wanted to contact the court to address why my
8 case was dismissed when I had been in the virtual waiting
9 room, but there was no phone number or email address for
10 the court. I sent a letter to the court explaining what
11 happened, and requesting my petition to be reinstated.
12 Eventually, I heard back from the court and was told I
13 would need to refile my petition.

14 This has been a particularly challenging year
15 because my family's finances has suffered tremendously
16 during COVID. The delay in the child support modification
17 has only made things harder. While my ex-husband has the
18 income to afford legal assistance if needed, I have been on
19 my own. Luckily, I'm now working with a lawyer from Lyft
20 and hope to have my petition re-calendared.

21 I hope that by sharing my story today, the court
22 can implement a better system of communication for pro se
23 litigants like myself. What makes the system particularly
24 challenging is the inability to contact the court when
25 there is an issue. Perhaps the court can set up a phone



1 number or email for litigants to get tech support for when
2 they are having issues getting into hearings or when, like
3 me, you have been in a waiting room for half an hour, to
4 make sure the connection is okay.

5 Likewise, the court should work to make sure that
6 their letters and orders to pro se litigants are easily
7 understandable with clear instructions on the next steps
8 they can take. Thank you for the opportunity to speak
9 today. I hope that you will hear my story and use it to
10 make real change going forward.

11 JUDGE DORAN: Thank you so much for sharing your
12 personal story. We're going to hear from a lot of really
13 important voices today, but I dare say that we just heard
14 from you is among the most important voices we will hear
15 today, so thank you. I am particularly in agreement with
16 your suggestion, frankly, that we provide litigants, pro se
17 litigants, and frankly, you know, all litigants and
18 attorneys a way to contact the court, a phone number,
19 whatever that may be, if something goes wrong on the user's
20 end of our virtual link.

21 I'm certain that that happens a number of times.
22 I think that's a great suggestion. Anybody on the panel
23 have any questions?

24 JUDGE MURPHY: No, I think -- well, I know I'll
25 be implementing it soon, like, when I get back.



1 JUDGE DORAN: You're going to wait until you get
2 back?

3 JUDGE MURPHY: Yes.

4 JUDGE MENDELSON: I just wanted to thank you for
5 your testimony today. My name is Edwina Richardson
6 Mendelson. I am a judge, a statewide policy, judicial
7 policy leader, but I spent most of my career representing
8 people like yourselves in New York City's family courts,
9 and to hear directly from you was very important for us,
10 and we will make sure that we take very, very seriously
11 your experience and your recommendations for us. Thank you
12 so much.

13 JUDGE DORAN: Anyone else? Any questions?

14 Ma'am, thank you so much. All the best to you
15 and have a wonderful day.

16 MS. CHAFFER: Okay. Have a great day.

17 JUDGE DORAN: Thank you.

18 MS. CHAFFER: Thank you. You, too.

19 JUDGE DORAN: Bye-bye.

20 We're seven minutes ahead of schedule. That
21 might possibly be throwing off the balance of the universe,
22 here. Stay tuned.

23 I would like to use this opportunity to
24 acknowledge some, and we will before we break for lunch, be
25 able to acknowledge all of the members of the Pandemic



1 Practices Working Group. As I said earlier, these are
2 thirty-seven of the most remarkable people that I've had an
3 opportunity to interact with, and once the world learns of
4 the work of this group and the membership of this group,
5 you will all I'm sure join me in looking forward to the
6 amazing product of this group's work.

7 These, I will acknowledge these folks in
8 alphabetical order, not in order of importance, although
9 Judge Amaker is the first on the list, who is the deputy
10 chief administrative judge, so with that one, it's in order
11 of importance.

12 We also have as members of our group, and by the
13 way, most of whom are in this room with us today, for those
14 of you who are watching the livestream, remarkable
15 attendance of folks who came from across the state to be
16 here to be part of this conversation.

17 Nancy Barry, who's the chief of operations at
18 OCA. Mark Berman, who's a private attorney, and forgive me
19 for not giving your law firms a free plug. Jessica Cherry,
20 who is assistant deputy counsel at OCA. John Cremo, who is
21 deputy attorney general with the Office of the New York
22 Attorney General.

23 Mike DeVito, who is manager of the office of the
24 record. The Honorable Alicea Elloras-Ally, and forgive me
25 if I'm mispronouncing names. Judge Mendelson will yell at



1 me later. Judge Ally is a family court judge in Kings
2 County. The Honorable Patria Frias-Colon, supervising
3 judge of the New York City Civil Court in Queens County.
4 Hank Greenberg, whom you've already met.

5 The Honorable Craig Hannah, who is supervising
6 judge of the Buffalo City court. John Healy, who is
7 assistant attorney general with the New York Attorney
8 General's Office. He is with the criminal enforcement and
9 financial crimes bureau. Adriene Holder, who is the
10 attorney in charge of the civil practice in the Legal Aid
11 Society in New York City.

12 Seymour James, who is a private practitioner in
13 New York City. Melinda Kats, who is the district attorney
14 in Queens County. Porter Kirkwood, who is the district
15 executive in the 6th Judicial District. Lianne Lap (ph.),
16 who is the president of the Chief Defenders Association of
17 New York, and also the Ontario County public defender, near
18 and dear to my heart, Roger Maldonado, who is also a
19 private practitioner who I understand had something to do
20 with conceiving this effort.

21 Are we ready with our next? All right. Mr.
22 Winslow?

23 MR. WINSLOW: Yes.

24 JUDGE DORAN: Next up is Darran Winslow, who is
25 the president of the Kings County Bar Association. Kings



1 County, for those of us outside of New York City, otherwise
2 known as Brooklyn, I believe.

3 So Mr. Winslow, you're up. The floor is yours.

4 MR. WINSLOW: Thank you so much. It's an honor
5 to be before all of you all today. My name is Darran
6 Winslow. I'm the president of the Kings County Criminal
7 Bar Association. I want to give a little context of
8 myself. I've been an attorney in private practice in
9 Brooklyn since 2012, a criminal practitioner, and I've
10 served on the 18B panel since 2013, having moved here from
11 Louisville, Kentucky, where I had a criminal practice.

12 I did work briefly as an ADA in the Kings County
13 District Attorney's Office, and so I think I have extensive
14 background in this area. The Kings County Criminal Bar
15 Association, which I'm the president, is a community legal
16 organization dedicated to the betterment of the criminal
17 justice system in Brooklyn, New York. The KCCBA, which
18 we're known as in short, is a diverse organization that
19 counts among its membership judges, prosecutors, attorneys
20 from indigent defense proprietors, military service
21 members, and private criminal defense lawyers practicing in
22 the state and federal court systems who are among the most
23 accomplished trial practitioners in the state.

24 My comments today are a reflection of both my
25 personal experience as a practitioner in the criminal



1 justice system, but in addition, it's also based upon
2 conversations I've had with stakeholders in my organization
3 in preparation for this presentation.

4 There are three areas I'm going to address. Some
5 of these have been previously addressed, so I will make my
6 comments relatively short, but they're very, very important
7 to the people and stakeholders that I've had conversations
8 with. First, I'm going to talk about the utilization of
9 electronic discovery. Then, I'll briefly talk about the
10 utilization of virtual appearances, and finally, I'm going
11 to address the policy of masking in the courthouse.

12 With respect to the utilization of electronic
13 discovery, there are two areas I would like you to
14 consider. First, we've begun which, at this point, this
15 may already be an accepted part of practice but the
16 exchange of discovery through Microsoft OneDrive, and in
17 addition, the filing of pleadings through the EDDS system.

18 Everyone I've talked to, all the stakeholders
19 that I've spoken with are very much in favor of these
20 discovery practices remaining. The discovery exchange
21 through Microsoft OneDrive eliminates the need for paper
22 discovery exchange, which was the practice before the
23 pandemic, and in the EDDS filing pleadings, also both of
24 those are time saving for the participants.

25 In addition to being time saving, they have



1 practical effects as well. The exchange of discovery
2 through Microsoft One gives us centralized place for to
3 hold the record of what's been exchanged so that when there
4 are disputes about discovery, we're not questioning what
5 was given. We can see what was exchanged, and the use of
6 both of the EDDS system for filing pleadings and the
7 Microsoft OneDrive are ... can everyone hear me?

8 JUDGE DORAN: Yep, we can hear you. We can hear
9 you. Go ahead.

10 MR. WINSLOW: Sorry.

11 JUDGE DORAN: We can hear you, Mr. Winslow.

12 MR. WINSLOW: Okay, I'm sorry. Great, I'm sorry.
13 I thought there was a problem.

14 Second, I'm going to talk about the utilization
15 of virtual appearances, and also the utilization of
16 scheduling times. Both of these are incredibly important.
17 They allow, as people have talked about, they prevent
18 packed courtrooms. They prevent people from having to sit
19 all day while they wait for their cases to be called, so
20 virtual appearances need to be utilized.

21 I do understand that there are going to be times
22 when the use of virtual appearances need to be controlled
23 by the court, and so these decisions need to be left to the
24 judges. The judges in the courtrooms will determine when
25 virtual appearances can be utilized, but when they can,



1 they need to be utilized.

2 Finally, as I see that I'm running slowly out of
3 quickly out of time, I'm going to quickly address masking.
4 While I see all of you masked there today and I certainly
5 public health is a priority, I do think there are instances
6 in our courts where the grand jury proceedings, hearings,
7 and trials, in which we need to begin to relax those rules.

8 Constitutional concerns need to be placed as a
9 higher priority when people can, you know, go to the
10 grocery store and you know, they're people put into
11 constant situations where we're not always perfectly
12 masked, and the constitutional protections in those moments
13 are so important that I think that that needs to be
14 considered.

15 We can use face shields, we can use utilize other
16 techniques, but to have someone blocked the entire time
17 during hearings in trials and grand jury proceedings I'm
18 talking specifically about the ADAs and the defense
19 counsel, as well as the witnesses, I think we need to relax
20 those rules when the day when now that you can fly without
21 a mask and go to the grocery store, we need to again
22 consider relaxing those rules.

23 I very much appreciate this opportunity to give
24 testimony before you, and I can answer any questions you
25 have. Thank you very much.



1 JUDGE DORAN: Thank you, Darran. Does anyone on
2 the panel have any questions? No questions? Okay.

3 Thank you very much for your time today.

4 MR. WINSLOW: Thank you.

5 JUDGE DORAN: Good morning.

6 MS. RADCHENKO: Good morning. How are you?

7 JUDGE DORAN: I'm fine. How are you?

8 MS. RADCHENKO: Great. Thank you so much for
9 having me here today.

10 JUDGE DORAN: So forgive me if I mispronounce
11 your name. You are Halina Radchenko. Did I get that
12 right?

13 MS. RADCHENKO: You hit the nail on the head.

14 JUDGE DORAN: Wow. This may be the first, last,
15 and only time that happens with my name pronunciation. You
16 are with the New York State Trial Lawyers Association and
17 we are very pleased and honored to have you join us this
18 morning. The floor is yours.

19 MS. RADCHENKO: Thank you so much. My name is
20 Halina Radchenko. I am the president of the New York State
21 Trial Lawyers Association, and I appear here today on
22 behalf of the NYSTLA board of directors and our attorney
23 members who practice in trial and appellate courts
24 throughout the state.

25 Thank you for inviting NYSTLA to participate



1 today and for this opportunity to speak with the Pandemic
2 Practices Working Group. For over sixty years, NYSTLA has
3 fought to protect equal access to the civil justice system
4 for all New Yorkers. The constitutional right to a trial
5 by jury is the foundation of that equal access.

6 Our practices have been deeply impacted by the
7 pandemic. Initial court closures and the postponement of
8 certain proceedings have meant delays in justice for our
9 clients and income for those of us who work on contingency.
10 Many practitioners are small business owners who have
11 struggled to stay afloat without steady income from
12 settlements and verdicts.

13 The pandemic has necessitated a rethinking of our
14 practice by the courts and attorneys in every field. We at
15 NYSTLA have found some valuable efficiencies in this trying
16 time and some opportunities for further improvement. The
17 advent of virtual proceedings have made the administration
18 of justice more efficient for the court's attorneys and our
19 clients.

20 NYSTLA urges this panel to recommend the
21 continued use of virtual conferences to save time, travel,
22 and exposure for court personnel and litigants,
23 specifically, preliminary and compliance conferences have
24 been successfully conducted via video conferencing
25 software. This welcome change allows attorneys to spend



1 their time working on their cases with clients or in trials
2 elsewhere, rather than waiting in courtrooms across the
3 state.

4 So at NYSTLA, we found that preliminary
5 conferences and compliance conferences in the course of
6 civil litigation have been incredibly effective. In fact,
7 some courthouses like New York County and Kings County use
8 a pre-printed preliminary conference form, and we find that
9 even more effective. The preliminary conference form
10 really lays out that litigants have to exchange initial
11 discovery.

12 It sets a date for depositions, states a date for
13 independent medical examination, and then for the exchange
14 of independent medical examination between defendant and
15 plaintiff, followed by that note of issue date. It's a
16 really standard scheduling conference order.

17 The only issue that we, as the plaintiffs, see
18 with that order is that it's missing one line if the only
19 thing that we could add to it is that all parties respond
20 to any outstanding discovery that has been already served
21 prior to that order. But that order in some counties is
22 issued automatically, saving time both for the court and
23 for the attorneys.

24 The compliance conference, which, for example,
25 certain things didn't happen in the course of the



1 preliminary conference order, that should also stay
2 remotely, but in that instance, many courtrooms have made
3 the attorneys come together, agree on a compliance
4 conference order with the scheduling in it, and then file
5 it on their own accord.

6 Also if the attorneys are having any type of
7 discovery issues, then we seek the court's intervention and
8 then a virtual conference is scheduled. Again, this is
9 incredibly efficient. It saves time for court personnel,
10 it saves times for attorneys, and makes the case move
11 forward in a more efficient matter.

12 Similar to oral argument, after motions are
13 filed, oral argument we ask remain virtually, because once
14 again, with the use of technology, attorneys can come in at
15 a time certain and we can move the court proceeding forward
16 efficiently, and we can even present our exhibits virtually
17 through the use of share your screen.

18 The other thing that I would like to address
19 similar as to the head of the criminal defense bar ahead of
20 me is the use of masking. As civil litigants who are the
21 main focus of representing our client, and what's most
22 important to us is actually the civil jury trial, because
23 if we can't come together with defense counsel in
24 connection with settlements, the only thing we have left is
25 to try the case, and with the loosening of masking



1 restrictions throughout the state, we think there might be
2 a way to make trials more fair for plaintiffs by allowing
3 the witness in the witness box and the attorney themselves
4 to unmask when they're asking questions.

5 The way that a courtroom is set up allows the
6 attorney to social distance from both the jury and the
7 judge that's sitting on the bench, and if we can stay
8 within a six-foot distance, we think it could be possible
9 for an attorney and the witness to be unmasked so that the
10 jury can fully see their faces.

11 I see I only have thirty seconds left. I don't
12 want to go over my time, so I'm just going to move quickly
13 on my one last point. The last point I want to say is that
14 settlement conferences have gone back mostly in more most
15 courthouses to an in-person appearance, and we think that's
16 important, because if we can settle a case and that case
17 can be disposed of, it is good for court efficiency.

18 So we suggest that the settlement conferences
19 remain in person, but we ask that those settlement
20 conferences are firm, meaning that all parties, both
21 plaintiffs and defendants are ready, willing, and able to
22 discuss settlement at that moment.

23 So the adjusters should be present as well as my
24 client, so if there is an offer or an acceptance or
25 meaningful conversation, we're all in the same place to get



1 it done.

2 Thank you so much for allowing me to appear. I
3 incredibly appreciate the opportunity to be heard and I
4 look forward to working with you in the future.

5 JUDGE DORAN: Thank you so much, Halina. Thank
6 you for being respectful of the time. Take a deep breath,
7 now. That was hard to do. We appreciate your input and
8 the work that the trial lawyers have done with us in
9 collaborating with us throughout this pandemic.

10 We have Ed Steinberg as a member of our working
11 group and always a vocal advocate of the issues that are
12 important to your members. Quick question. I know you
13 addressed it briefly -- settlement conferences. So I sit
14 in upstate near Rochester, and many of the litigants in the
15 cases that I preside over are New York City based.

16 So If I have a settlement conference and I
17 request in person appearances, obviously, that is a
18 significant time commitment for attorneys to travel for
19 what we hope will be a productive conversation, but
20 sometimes it's not. Sometimes it doesn't take that long,
21 so I want to hear why your members don't like, and perhaps
22 some do, virtual settlement conferences.

23 MS. RADCHENKO: Thank you for that question, and
24 I have to say that I wouldn't mind coming up to Rochester.
25 I'm a former graduate of the University of Rochester, so



1 it's a very familiar place to me, but I do want to say that
2 I understand that, because I do represent some cases in
3 upstate New York, and I will agree with you that a
4 downstate lawyer finds it difficult to take a full day to
5 travel for an in-person settlement conference.

6 And although we believe that in person is a gold
7 standard, and I think that's if what I said happens, all
8 parties are in, the adjuster is there, the plaintiff is
9 there, I'm there, defense counsel is there, and we're all
10 on the ready, meaning that if we're still a little ways
11 apart, the adjuster can go back for authority. I have
12 direct access to my client, well, we can have a meaningful
13 conversation in the moment.

14 If the travel time, like you say, coming from
15 downstate to Rochester is an impossibility, surely, the
16 alternative, which would be a virtual settlement conference
17 is fully acceptable, but the members of my bar have all
18 said in one voice that they did seem that it was a more
19 productive to be there in person, especially if all parties
20 come together, because then if we're really close, we're
21 just all in that one space and we work really hard to get
22 it done as opposed to someone saying, all right, well, I
23 have to go get more authority, can we come back in two
24 weeks or one week or something of that nature?

25 JUDGE DORAN: Thank you. Anybody else on the



1 panel?

2 JUDGE MURPHY: Yeah. Can I ask a question,
3 please?

4 MS. RADCHENKO: Absolutely.

5 JUDGE DORAN: Absolutely, Judge Murphy.

6 JUDGE MURPHY: My whole career has been civil
7 litigation pretty much going back since once I got out of
8 being an ADA right out of law school. I've heard, and I
9 guess I'm talking about the virtual motion arguments, I've
10 heard from a lot of attorneys, younger, especially and
11 managing partners, that that's an opportunity for you to
12 practice your trade.

13 To appear in motion calendars, to watch other
14 good lawyers present their cases, watch other bad lawyers
15 present their cases, and learn from that, and so I have a
16 concern. I completely agree with the benefits of
17 preliminary conferences virtually and all of that, but at
18 some point, I am concerned I guess with civil litigation,
19 the loss of in person proceedings and to the point that it
20 doesn't allow lawyers to develop their skills.

21 I don't know if you've heard that through your
22 conversations with people, because I have, certainly.

23 MS. RADCHENKO: I have not heard particularly
24 about motion practice. I have heard it when we're talking
25 about getting back to the office in person, because we do



1 think that when you have young associates in the office,
2 it's so much easier for them to go into a more senior
3 attorney's office, just pop in, ask a question, or
4 collaborate. As far as motion practice is concerned, I do
5 think there is a great efficiency in getting a time
6 certain, 9:15, come on Microsoft Teams and present your
7 oral argument if you choose to do so.

8 Certain jurists have told us, if you don't want
9 an oral argument, I have your papers on submission, I don't
10 need it. Some of those calendars have actually been a
11 public calendar, so it's almost, like, fifty people come
12 into the Zoom and you just mute yourself and you actually
13 get to listen to the other attorney's arguments.

14 In my office, if we have a younger associate,
15 many times, they'll prepare with an older associate and
16 they'll sit in the background and listen to the argument,
17 so I do think you raise a really great point in that
18 younger attorneys do get the benefit of learning by
19 watching, but at the same time, I go back to those days in
20 Kings County pre-pandemic where I had a motion call at, for
21 example, first call is at 9:30, second call is at 10:30.

22 I could be easily in that courtroom until about 1
23 o'clock, and that type of time constraint on a plaintiff,
24 although we all lived with it pre-pandemic, now seems to be
25 unacceptable, because that time that I'm either waiting in



1 the virtual room or in my office, I'm working on other
2 cases and I'm working to settle other cases and resolve
3 other cases, and so that way, my case flow and the case
4 flow of the court moves more efficiently.

5 So to be very honest with you, I don't know how
6 to resolve that type of question because it seems that
7 training of young lawyers is very important, but the
8 efficiency brought by virtual proceeding just makes our
9 cases flow better, move better, and allows our clients to
10 get an end result quicker, alleviating some pressure on the
11 courthouse.

12 JUDGE MURPHY: And I do appreciate that. I don't
13 know if it's dealt with by staggered appearances or
14 whatever, the old calendar, be there at 9:30 and we'll get
15 to you at noon I think is unacceptable, and I do agree with
16 that.

17 JUDGE DORAN: Hank Greenberg has a question for
18 you.

19 HANK GREENBERG: Ms. Radchenko, thank you so much
20 for being here. I'd just like to go back to the subject of
21 settlement conferences and virtual settlement conferences,
22 and I'm a civil litigator myself, and I certainly
23 understand and appreciate that there are certain instances
24 or times where getting everybody there physically, in
25 person, being able to walk in and out of a courtroom can be



1 more efficient than doing it virtually, from an efficiency
2 point of view.

3 But I just want to drill down a little bit more
4 on this, because I've also experienced settlement
5 conferences that worked perfectly virtually, that worked
6 great. Weren't as complicated, didn't need an adjuster,
7 right? So I'm just wondering, does the trial lawyer sort
8 of see some nuance with respect to its views about
9 settlement conferences?

10 Can some settlement conferences be done virtually
11 and then a judgment be made even at that conference? We
12 may need another, do you follow what I'm saying?

13 MS. RADCHENKO: I do, and it's by the way, Mr.
14 Greenberg, I'd like to thank you for all of your work. I
15 know you've led this commission now for since its
16 inception, and I think that the reports you've generated
17 and the work that you've done is incredibly important, so
18 I'd like to thank you for your time in leading this
19 association.

20 And I agree with you, there is a dichotomy, and
21 I'll even go further as to say that most of the plaintiff's
22 bar and the defense bar has gone to paid mediation
23 remotely, and that mediation has been incredibly
24 successful, but I also think that we all prepare for it, so
25 if I'm going to paid mediation, I've usually submitted a



1 report to the mediator thirty days in advance.

2 My client has been put on notice. There's been a
3 demand. There's been maybe very preliminary settlement
4 negotiation where the defense says, all right, we have your
5 demand, our carrier would like to engage in mediation with
6 (indiscernible).

7 It seems that everybody is incredibly prepared
8 for that day, and there's a dichotomy in the courthouse and
9 I honestly can't tell you why, but that's why I said
10 settlement conferences, in person, possibly, but when the
11 parties are actually prepared in the same way as they would
12 be for paid mediation.

13 And so because I have been personally to
14 settlement conferences even recently, and I'm not going to
15 put names on anything, meaning the carrier. I'm not going
16 to say because I just don't want to go there, but I've
17 appeared in the courthouse, and you know, I had a demand,
18 and the carrier said, oh, we just got her demand yesterday,
19 but I had emails that I had sent it to them numerous times
20 in the course of litigation, and then they said, okay, you
21 know, we got to go back, we got to talk about it, and then
22 let's come back in a couple of months for real, meaningful
23 discussion.

24 Well, yes, that could have completely been done
25 virtually. And in fact, it was a waste of time for either



1 myself or one of the associates at my firm to go there and
2 spend that time on that.

3 So I think you're right. With settlements, there
4 could be a hybrid here. But to us as the plaintiffs' bar,
5 and I feel to the defense bar, somewhat, itself also and to
6 the court, it's so important to make sure that the backlog
7 of cases is moved forward.

8 So maybe we do have some preliminary settlement
9 conferences virtually until we're all ready. And that's
10 the whole point is that everybody should be ready,
11 plaintiffs, defendants. Walking into a settlement
12 conference, the court has such little time right now and
13 such valuable time that if we're actually going there in
14 person, it has to be to get something done, not just walk
15 in and get a matter adjourned.

16 So maybe we line it up virtually for that, you
17 know, this is it, guys. This is your day. Come in today.
18 Either settle it or you get a trial date very quickly.
19 Maybe that's the solution to it.

20 MR. GREENBERG: Thank you very much. That was
21 very helpful.

22 JUDGE DORAN: Thank you so much for your time
23 today, Halina. Forgive me for using your first name.

24 MS. RADCHENKO: Oh.

25 JUDGE DORAN: We appreciate the interaction. We



1 appreciate your candor. And we hope to, perhaps during one
2 of our virtual listening sessions over the summer, have a
3 little bit deeper discussion on some of these issues.

4 Thank you.

5 MS. RADCHENKO: Thank you so much for having us.
6 And anything that you need from us, please reach out, and
7 we'd be so happy to work with you and have input at the
8 table. Thank you again for your time.

9 JUDGE DORAN: Thank you. It looks like a
10 beautiful day behind you there. I hope you can get outside
11 and get into it.

12 MS. RADCHENKO: Thank you again. Have a great
13 day, everyone. Bye.

14 JUDGE DORAN: Thank you.

15 Good morning.

16 SUPPORT MAGISTRATE TESTA CICCONI: Good morning.

17 JUDGE DORAN: You are Jacinta Testa Ciccone. Did
18 I come close?

19 SUPPORT MAGISTRATE TESTA CICCONI: That was
20 perfect, actually. Yes.

21 JUDGE DORAN: Wonderful. Welcome. We're so happy
22 that you've joined us. We look forward to your comments. If
23 our information is correct, you are a support magistrate in
24 the 6th Judicial District.

25 SUPPORT MAGISTRATE TESTA CICCONI: Yes, sir.



1 JUDGE DORAN: So, you are familiar with Porter
2 Kirkwood, one of our proud members of our working group who
3 is here in the courtroom with us to cheer you on.

4 SUPPORT MAGISTRATE TESTA CICCONE: Thank you.

5 JUDGE DORAN: We're ready.

6 SUPPORT MAGISTRATE TESTA CICCONE: Okay, great.
7 Thank you. Yes. So good morning, and thank you, Judge
8 Doran and the committee. As indicated, I am a support
9 magistrate for the 6th Judicial District. And I currently
10 handle cases in my home county, where my office is, of
11 Tioga County, but also in other counties across the
12 district. Right now, I have cases pending in five
13 counties.

14 As a support magistrate, I preside over spousal
15 support, child support, and paternity actions. I have been
16 a support magistrate since 2017. And before that, I was a
17 court attorney to a supervising family court judge in
18 Broome County. I testify today based on my own experience
19 and opinions, and I am not a representative of support
20 magistrates statewide, formally.

21 I requested the opportunity to testify for a few
22 reasons. First, I wish to applaud the court system's
23 rapid, almost immediate transition to a virtual court
24 system in March of 2020 and describe the success I had
25 using the virtual court system for support and paternity



1 matters.

2 Further, I hope to explain why I believe the
3 virtual court system is especially suited for support and
4 paternity proceedings and should be permanently
5 incorporated into family court practice and that support
6 magistrates be given discretion to continue to use the
7 system as they deem appropriate.

8 As we all know, COVID-19 stopped the world in
9 March of 2020. All of my pending appearances scheduled
10 between March 17 and mid-June were canceled. New filings
11 were accepted but not put on my calendar. However, because
12 of the speed and efficiency at which OCA and the Division
13 of Technology, along with the implementation work of my
14 amazing local 6JD, the virtual court system was created and
15 in operation in less than sixty days.

16 The virtual court system allowed me to quickly
17 rebuild my calendar and resume hearing cases. Because of
18 the virtual court system, I was able to clear any backlog
19 by the fall of 2020. I was able to schedule and hear cases
20 in all counties I covered, without having to travel or
21 appear in person in another courthouse.

22 I believe I was successful because the virtual
23 court system works especially well for support and
24 paternity proceedings. First, the Family Court Act already
25 provides for the use of electronic appearances in support



1 and paternity proceedings. Pursuant to Family Court Act
2 Sections 433 and 531-a, the court has the authority to
3 allow both parties and witnesses to appear electronically
4 for both initial appearances and fact-finding hearings.

5 In a pre-pandemic world, it was already routine
6 for my court users to appear by telephone. And it was not
7 unusual for fifty percent of court users on any given day
8 to appear by telephone. Further, I believe the procedures
9 that were established for virtual appearances in support
10 matters have increased both attendance and compliance with
11 mandatory financial disclosure.

12 In the pre-pandemic era, it was common, despite
13 my best efforts, for both court users and even attorneys to
14 bring the mandatory financial disclosure to an appearance,
15 instead of submitting the documents in advance. That
16 practice delayed proceedings because the court had to
17 process and copy and distribute documents during the
18 appearance, plus allow time for court users to review the
19 materials.

20 When documents are submitted electronically, even
21 if they were submitted on the same date, it's easier for
22 the court to process and distribute the documents to all
23 involved before the appearance.

24 Support and paternity proceedings tend to have
25 fewer participants. The overwhelming majority of court



1 users appear without counsel. And most appearances include
2 no more than two to three people. Further, we address very
3 narrow issues, and appearances are short in duration. My
4 initial appearances are fifteen minutes. And most
5 evidentiary hearings finish in around thirty minutes.

6 The virtual court system has been beneficial for
7 my court users for several reasons. First, the majority of
8 my working court users do not have jobs that provide paid
9 time off. Virtual appearances minimize wage loss for those
10 court users. Further, court users without childcare can
11 stay home, instead of bringing the children to court. Most
12 courthouses do not have on-site childcare centers.

13 Many court users, especially in the rural
14 counties that I cover, do not have transportation or access
15 to reliable public transportation. The virtual court
16 system allows them to appear without the stress of relying
17 on a third party to get them to the courthouse on time.

18 And the virtual court system that was built is an
19 amazing replacement upon the existing phone practices. We
20 used to use a speakerphone in the courtroom, and it was
21 much more difficult. This is amazing improvement on that.

22 The virtual court system has other benefits as
23 well. I can reduce my travel to other counties, which
24 means less travel expense for OCA. But it also makes it
25 easier for us as support magistrates to cover these other



1 counties. For example, in the 6JD, we had two retirements
2 in 2021. And both myself and other support magistrates
3 were able to cover those calendars by doing a lot of it
4 virtually, which minimized delay for the litigants in those
5 counties that had lost their support magistrate.

6 The virtual court system reduces courthouse foot
7 traffic, which lessens the burden on court security and
8 also, again, allows more flexibility in my scheduling and
9 often allows me to have greater calendars, which means
10 cases can move faster. It allows me better ability to
11 handle my violation proceedings.

12 Thank you. I understand I'm out of time.

13 JUDGE DORAN: You are. And I'm very sorry about
14 that. But just a reminder for you and everyone else, first
15 of all, you have provided us with a whole lot of substance
16 in a very short period of time, so thank you. It's also
17 apparent to us you have more. So please feel free to
18 submit additional comments to our email address, which is
19 ppwg@nycourts.gov - Pandemic Practices Working Group.

20 SUPPORT MAGISTRATE TESTA CICCONI: Okay. Thank
21 you.

22 JUDGE DORAN: Happy to receive that from you. So
23 thank you so much. Enjoy the rest of the day. Good luck
24 with your work. And we appreciate you. Thank you.

25 SUPPORT MAGISTRATE TESTA CICCONI: Okay. Thank



1 you.

2 JUDGE DORAN: Bye-bye.

3 JUDGE DORAN: Professor Nevins, if you can hear
4 us, you need to turn your camera on. All right. There you
5 are.

6 MS. NEVINS: Yeah. Hi.

7 JUDGE DORAN: Hey.

8 MS. NEVINS: Good morning.

9 JUDGE DORAN: I want to give you a proper
10 introduction. This is Professor Elizabeth Nevins, who is a
11 clinical law professor with the Criminal Justice Clinic at
12 the Hofstra School of Law.

13 Professor Nevins, we're happy to have you with
14 us. And the floor is yours.

15 MS. NEVINS: Thank you for having me. As a
16 clinical professor in Hempstead, New York, at the Maurice
17 A. Deane School of Law, each semester I supervise eight law
18 students as together, we represent poor people charged with
19 misdemeanors in Nassau County. My students and I practiced
20 throughout the pandemic. And though our purview is
21 primarily limited to this court, the district court, I
22 imagine that many of the recommendations I'll make based on
23 our experience apply to other jurisdictions as well.

24 So recommendation 1, clients' appearances should
25 be waived as a norm. During the pandemic, most judges



1 required clients to attend only very limited court dates.
2 More latitude here is important because our clients, who
3 are disproportionately poor, disproportionately people of
4 color, often from communities that are already struggling,
5 may lose jobs or income for each court date they're forced
6 to appear at. They also face transportation and childcare
7 costs and hassle.

8 Finally, they're a cost to the system and to
9 public safety, as those who are subject to the court's lack
10 of respect for their time then lose confidence in its
11 justness, something that can affect their future
12 compliance.

13 Recently, a judge grudgingly told us that she
14 would let it slide when she was advised, with
15 documentation, that our client missed court because she was
16 literally in the hospital having a baby. But lawyers
17 appear for clients all the time in civil cases. And
18 there's no justification for requiring clients to appear
19 every few weeks for cases that last, often, over a year, as
20 they used to pre-COVID.

21 Recommendation 2, when clients do have to appear,
22 they should have the option of appearing virtually. I know
23 you've heard a lot about this already. It's important to
24 maintain physical access to courtrooms for those who don't
25 have technology or who wish to appear in person. But



1 clients like Ms. L., who entered a plea via her cell phone
2 in her car and then walked back into her rental car job are
3 grateful not to miss court for court not to miss work for
4 court.

5 Screenings for court-based programs or meetings
6 should also consider virtual or at least hybrid
7 functioning. A study of Texas courts found that virtual
8 proceedings increase parties' attendance and other access
9 to justice measures.

10 I do have three corollary recommendations if we
11 do continue with virtual proceedings. First, clients need
12 to communicate better with the parties when the proceedings
13 are online. I once sat in a virtual waiting room for three
14 hours and never got called. Virtual proceedings can run
15 smoothly if everyone is prepared, organized, and has clear
16 lines of communication.

17 Second corollary, people who are in custody must
18 have confidential access to counsel. In Nassau, newly
19 arrested individuals could only speak to counsel via an
20 unsecure phone line that was literally held by law
21 enforcement. That's not acceptable attorney-client
22 communication under any circumstances.

23 And third, if proceedings are only virtual,
24 something that I'm not recommending, the courts need to
25 provide some sort of public access terminals for clients.



1 Third recommendation, courtrooms should be
2 virtually open to the public as well. During COVID, Nassau
3 County did this for arraignments without fanfare. This
4 practice should continue and be extended to other court
5 parts via public video links. The public has a First
6 Amendment right to observe many court proceedings, not just
7 trials. And those who are accused also have a Sixth
8 Amendment right to a public trial.

9 It should be easier for folks to observe all
10 criminal proceedings, as exercise of these rights is one
11 way that we ensure fairness, legitimacy, and accountability
12 in the courtroom, as well as support for the parties and
13 civic education.

14 Places as varied as DC and South Dakota are
15 already doing this in a limited way. Advocates in Maryland
16 are pushing for legislation to open every courthouse in the
17 state to remote public proceedings. New York should do
18 everything it can to facilitate court watching and could
19 even establish itself as a leader in this regard.

20 Recommendation 4, motions should be filed
21 electronically. Many courts, as you heard, already allow
22 E-filing. It is unquestionably more environmentally
23 friendly, affordable, space-saving, and convenient. But
24 while this was available during COVID in District Court, it
25 is no longer. Again, a change of rules would require clear



1 policies and communication. Is an E-filed document timely
2 if it's filed at 5 p.m., 11:59 p.m.? And they should be
3 consistent statewide. I think you could offer a lot of
4 guidance here.

5 My fifth point isn't strictly about the courts
6 but is a crucial lesson from COVID. We really need to stop
7 prosecuting and jailing so many people. COVID caused
8 jurisdictions across the country to decrease prosecutions
9 of misdemeanors and to release many people who are
10 incarcerated. The sky did not fall. The physical and
11 mental-health risk to both those inside and the communities
12 to which they return is staggering, even pre and post
13 COVID. And for what?

14 When it comes to misdemeanor cases statewide,
15 almost sixty percent wound up as dismissals last year, and
16 another twenty-three percent were noncriminal dispositions.
17 Courts don't get to decide which cases DAs pursue. But
18 they can refuse to set bail, and they can pressure
19 prosecutors to focus on more serious matters and not let
20 cases linger unnecessarily.

21 I applaud the efforts of the working group and
22 the commission for taking up this issue. My students and I
23 remain committed to access to justice for poor people in
24 the State of New York. If we can be helpful in this
25 pursuit, please do not hesitate to reach out to us. Thank



1 you.

2 JUDGE DORAN: Thank you, Professor Nevins.

3 Any of the members of the panel have any
4 questions for the professor?

5 JUDGE MURPHY: Lauren does.

6 JUDGE DORAN: Go ahead, Lauren.

7 MS. OWENS: I have a question. Good morning,
8 Professor Nevins. One of the things that you mentioned, I
9 believe it was some sort of, like, a public access kiosk
10 for litigants. And that's something that's been somewhat of
11 a theme by some other witnesses that have testified at this
12 morning's hearings.

13 Do you have any suggestions in terms of just
14 access within the courthouses, but then that also we would
15 need to address the same issues that people have raised
16 with respect to transportation and other, potentially,
17 safety issues or areas within the community where access to
18 the litigants can be granted? Did you have any suggestions
19 in terms of areas or places where those can be installed?

20 MS. NEVINS: Yeah. I mean, I will say that it's
21 largely essential for people to have access to phones and
22 often smart phones. Most of our clients, even folks who
23 are poor, do have some sort of access on their phone. So
24 being able to even be accessible by an actual phone and not
25 even a video phone would be one way of doing it that is not



1 about the kiosk.

2 But if we're going to do kiosks, I think having
3 them in libraries, in public libraries, which already have
4 technology and are dedicated to serving the public in these
5 sort of WIC technology issues would be a great way to do it
6 and to be able to be in deeper communities.

7 I do think, whether it's in libraries or the
8 courthouses or other public buildings, it's essential that
9 folks have a quiet, confidential area that they can be in.
10 It's not okay to just be in the middle of everything, the
11 way you might be with a bunch of computer kiosks around in
12 a public library.

13 MS. OWENS: Thank you.

14 JUDGE DORAN: Anybody else? Any questions?
15 Professor Thank you so much. Thank you for your time
16 today. Thank you for the work that you do. Give our best
17 to your students.

18 MS. NEVINS: I will. Thank you very much.

19 JUDGE DORAN: Thank you.

20 So ladies and gentlemen, it looks like we're
21 going to have a little bit of time to stretch our legs.
22 I'm going to ask you in a moment, to do that quickly.

23 Before we do that, please allow me a moment to
24 acknowledge the balance of the members of this
25 extraordinary working group, again, many of whom are here.



1 Mary McQueen, who is the president of the
2 National Center for State Courts. And we are grateful for
3 that collaboration.

4 The Honorable Edwina Mendelson, who is here on
5 our panel and a great friend to all of us.

6 Lillian Moy - I should say Edwina Mendelson is
7 the deputy chief administrative judge for Justice
8 Initiatives and so much more. We're grateful for your
9 participation.

10 Lillian Moy is the executive director of the
11 Legal Aid Society of Northeastern New York.

12 The Honorable James Murphy, whom you've already
13 met, is the administrative judge for the 5th Judicial
14 District.

15 Carolyn Nussbaum, who is a private practitioner
16 in the Rochester area.

17 Lauren Sang-Hee Owens, whom you've met, is a
18 private practitioner here in the Albany area.

19 Shannon Pero is a town judge in the Town of
20 Greece, New York.

21 Anthony Perri, who is deputy counsel, one of my
22 personal COVID heroes, with the Office of Court
23 Administration.

24 Lisa Preston is the chief clerk of the Monroe
25 County Supreme and County Courts.



1 The Honorable Stan Pritzker is an associate
2 justice of the Appellate Division, Third Department.

3 Scott Reents, who you heard me acknowledge a
4 little bit earlier, Scott is a private practitioner in New
5 York in the city. He is also the reporter for our group,
6 which means he will do a large amount of the research and
7 writing that will bring about our final work product.

8 The Honorable Ray Rodriguez, who is with us, he
9 is an acting justice of the Supreme Court in Kings County.
10 And he's here in the room.

11 Bill Silverman, whom you met earlier, is a
12 private practitioner; also serves on many boards,
13 including, I believe, chairing the board of The Fund for
14 Modern Courts.

15 Christine Sisario, who is over here to our left,
16 another COVID hero to all of us, who is the chief of
17 technology at the Office of Court Administration.

18 David Slayton is vice president in charge of
19 court consulting with the National Center for State Courts.
20 He was immediately prior to that role, he was, I believe,
21 the chief administrator of the court system in the State of
22 Texas. So his involvement and participation will be
23 invaluable.

24 Edward Steinberg, who is a private practitioner
25 and member of the Trial Lawyers Association.



1 The Honorable Carolyn Walker-Diallo,
2 administrative judge, New York City Civil Court, up here to
3 my right. And we're very happy to have you with us, Judge.

4 Mike Williams, who many of you already know, star
5 of stage and screen, chief clerk of the Suffolk County
6 Family Court. He's had many jobs. That's his current job,
7 but he's one of those guys that's always there when
8 something exciting is happening in the court system.

9 And last but certainly not least, Oliver Young,
10 who is a private practitioner in Buffalo and also a very
11 active member of the New York State Bar.

12 So as you can see, that's an extraordinarily
13 inclusive, diverse, vibrant, robust group. And I know the
14 work product will be absolutely unprecedented and amazing.

15 So why don't we take about five minutes, stretch
16 our legs? Please don't go far because we want to stay on
17 schedule. Thank you.

18 JUDGE DORAN: Good morning.

19 MS. GERBER: Good morning.

20 JUDGE DORAN: You can hear us okay, I assume.

21 MS. GERBER: Yes, I can.

22 JUDGE DORAN: All right.

23 MS. GERBER: Yes, I can.

24 JUDGE DORAN: Everyone, please welcome Ms. Judith
25 Gerber, who is with the Attorneys for the Children Unit in



1 Buffalo, Erie County, I believe. I hope I got that right.

2 We are very grateful to have you with us today.

3 And we look forward to your input. Those bells ringing in
4 the background tell us that we're on time. It's noon. And
5 the floor is yours.

6 MS. GERBER: Wonderful. Well, I much appreciate
7 and thank you for your kind introduction.

8 It's really an honor and pleasure to join you
9 today from my office here in Buffalo. In Erie County
10 Family Court, the Legal Aid Bureau is the primary provider
11 of legal representation to children in child welfare and
12 juvenile justice matters. So daily, we walk side-by-side
13 with children, both in and outside the courtroom, as they
14 navigate complex life challenges.

15 We engage, as our ethics require, in client-
16 directed representation, sensitive to the developmental
17 status of children and youth. We encourage them to play an
18 active role in their own court proceedings, and most
19 particularly, their permanency hearings.

20 So in our county, as in other areas of the state,
21 I reckon, the pandemic has laid bare the inequities that
22 plague our child welfare, youth justice, and family court
23 systems. Many of our young clients hail from the City of
24 Buffalo but also the far reaches of the county, in both
25 suburban and remote rural settings.



1 Access to family court has never been easy for
2 our clients. They and their families wrestle with the
3 impact of poverty, job and security, unstable housing,
4 physical, mental, and mental-health, medical and mental-
5 health disabilities, limited childcare, and transportation
6 options, with limited English proficiency. The list just
7 goes on.

8 Our client population, in egregious proportion,
9 is comprised of children of color. From the start of the
10 pandemic, our family court and its stakeholders drew on our
11 established relationships and collaborative structures to
12 communicate. We quickly devised ad hoc procedures to
13 secure release of children from detention -- it's very hard
14 work but with a lot of success and later, a neglect
15 admission by affidavit process to hasten adjudication.

16 Despite much good will, however, the family court
17 had little authority to generate local policies, practices,
18 and seemed to have little advance notice itself, as State
19 directives came down that required us all to turn on a
20 dime. Lacking resources, the court struggled to muster the
21 tools, technology, staff, new training to respond
22 effectively, efficiently, equitably, and on a systems
23 level, even compassionately to the needs of our clients and
24 their families. Now, our court has established a rhythm of
25 practice, but much innovation is needed.



1 In preparing for today's hearing, I've read the
 2 report of the New York City COVID workgroup on family
 3 court, issued jointly by the City Bar Association and The
 4 Fund for Modern Courts. The report rings true for much of
 5 our experience in Western New York. Its recommendations
 6 capture priorities for the State that I think apply at
 7 large, including broad access to the UCMS, a uniform system
 8 to file, process, and track family court cases, proper data
 9 collection, a user-friendly website template, partnerships
 10 to provide community-based access to technology, and
 11 ongoing training, support, and feedback for jurists, court
 12 staff, and court users.

13 In Erie County, we require investment of some of
 14 those basics, including reliable Wi-Fi services and a
 15 vehicle to permit a seamless, hybrid system of court
 16 proceedings. We require, I think, thoughtful channel for
 17 court standards for engaging in in-person and/or remote
 18 proceedings and a viable court calendaring system.

19 None of us wants to return back to those not-so-
 20 long-ago days of cattle calls and overstuffed waiting
 21 rooms, where from our young clients' perspective, justice
 22 was too often delayed, rushed, or denied. We have been
 23 heartened that court attendance by parties and our clients,
 24 the youth in particular, has significantly improved through
 25 remote practices.



1 Before I wrap up, I offer two additional
2 suggestions. The first is to seek the direct input of
3 youth regarding the nature and quality of their access to
4 family court. Many of our clients struggle mightily during
5 these times, losing access to family, school and friends,
6 community, and the court itself. Yet they are wizards with
7 their phones and embrace technology.

8 This summer, OCFS will be conducting a youth
9 speak-out in Batavia, for example, where I will be
10 participating on a panel. This kind of activity may
11 present a special opportunity to connect with youth.

12 Second, I would propose that this workgroup
13 employ a racial equity impact analysis or assessment tool
14 to bring a structured and consistent focus on racial equity
15 to the fore in your work. Such tools, comprised of a
16 series of questions, permit a systematic examination of how
17 different racial and ethnic groups will likely be affected
18 by a proposed action or decision and is designed to
19 minimize unanticipated adverse consequences in a variety of
20 contexts, including analysis of proposed policies,
21 institutional practices, programs, plans, and budgetary
22 decisions.

23 So as I close, I offer my thanks and my best
24 wishes to you as you forge ahead in your work. And I
25 appreciate your commitment to furthering the delivery of



1 justice to the people, the children of our state.

2 JUDGE DORAN: Thank you so much. Thank you for
3 your time. And thank you for your patience with a very
4 condensed schedule. We appreciate that very, very much.

5 MS. GERBER: Oh, truly my pleasure. And I know
6 this has been a long morning, and you have a long day
7 ahead.

8 JUDGE DORAN: That's true. But I think we have a
9 couple of minutes if anyone has any questions for Judy.
10 Anybody?

11 JUDGE MENDELSON: Not a question. Thank you, Ms.
12 Gerber. It's nice to see you again.

13 MS. GERBER: It's nice to see you.

14 JUDGE MENDELSON: I would just pinpoint what you
15 said about including youth voice and also add, from the
16 family court perspective, parent voice as well.

17 MS. GERBER: Oh, absolutely. Absolutely. Truly,
18 to speak to all those who are litigants in the court
19 process.

20 JUDGE DORAN: Now, I leaned over to Judge
21 Mendelson when you mentioned seeking the voices of youth.
22 We certainly need to hear from litigants, from consumers of
23 the court processes. And we plan on, over the summer, to
24 have virtual listening sessions. We may call upon you to
25 help us put one together with youth and families that have



1 interacted in our courts, just to have a very open and
2 honest and more lengthy conversation from their
3 perspective. So stay tuned. We may call upon you.

4 MS. GERBER: Sure. I would love to help in any
5 way I can.

6 JUDGE DORAN: Excellent. We appreciate you and
7 the work that you do. Thanks for being with us.

8 MS. GERBER: Thank you.

9 JUDGE DORAN: Take care. Bye-bye.

10 MS. GERBER: Take care. Bye-bye.

11 JUDGE DORAN: Mr. Jordan, if you can hear us,
12 we'd love to have you turn your camera on. There you are.
13 Good afternoon.

14 MR. JORDAN: Yes. Sorry about that.

15 JUDGE DORAN: That's quite all right. Good
16 afternoon. Nice to have you with us.

17 MR. JORDAN: Good afternoon.

18 JUDGE DORAN: Let me give you a proper
19 introduction.

20 Our next presenter is J. Anthony Jordan, I'm
21 assuming otherwise known as Tony Jordan because that's what
22 it says on the screen right now.

23 MR. JORDAN: That's correct. Thank you.

24 JUDGE DORAN: He is the Washington County
25 District Attorney, and he also happens to be the president



1 of the New York State District Attorneys Association.

2 We appreciate your time today. The floor is
3 yours whenever you're ready.

4 MR. JORDAN: Great. Well, thank you for the
5 introduction, and thank you, most importantly, for allowing
6 me to appear on behalf of the DAs' association. And I'd
7 like to highlight some of the things that we thought were
8 incredible about how the courts responded to the pandemic
9 and, I think, some areas where we saw an opportunity to
10 continue and maybe some needed areas of improvement. And a
11 lot of this comes from a mix of rural and urban and
12 suburban district attorneys from across the state.

13 And I think to highlight one of the challenges
14 that we discovered, both in terms of appearances but also,
15 then, when we moved into trials, is technology in
16 courtrooms, a large gap between many courtrooms in terms of
17 courtroom technology.

18 Often, we have to bring our own technology down
19 because the court doesn't have a system that works, and
20 then we're trying to share and those awkward moments that
21 occur. So I think it would be good to see an improvement
22 in, like, the ELMO and the different types of AV systems
23 that help improve that.

24 If we continue with jurors that are spread out, I
25 think we also have to improve the audio-visual systems that



1 are in place. The audio can be difficult, especially when
2 young witnesses are masked. And then being able to see
3 video or photographs, to increase the number of (audio
4 interference) that are available would be a big help.

5 I think what we saw that saved the criminal
6 justice system, in many respects, was the utilization of
7 virtual appearances. And I think there were some of those
8 that we would really like to see continue in some form.
9 And in no order of importance, certainly, one would be
10 arraignments. And when I look at, especially, our rural
11 and large geographically dispersed counties, that was a
12 significant savings for staff, timing, to be able to
13 conduct arraignments in person.

14 Speaking with my colleagues on the defense bar,
15 though, there are some who are equally as committed to the
16 value of being in person with their client. And I
17 understand the value that that can deliver and the
18 importance of that. So if there was a way to permit
19 hybrid-type appearances, when appropriate, would be great,
20 meaning if the defense is present but the prosecutor can't
21 be there physically, to permit the arraignment to go
22 forward with a hybrid virtual and in-person type
23 arrangement.

24 I don't know whether this is permitted or would
25 require action by this group, but certainly, allowing



1 conferences to occur virtually will save defense attorney
2 travel time, especially. You know, very often, DA offices
3 are located in the county courtroom building itself or
4 adjacent. But allowing those to occur virtually would
5 certainly help.

6 Sex offender registration, especially for State-
7 incarcerated individuals, is effective tool to be able to
8 allow that to occur virtually, if appropriate safeguards
9 can be put in place to protect the individual and permit
10 appropriate communication with their attorney. In order
11 before you could be released, if you're incarcerated and
12 it's an offense that results in sex-offender registration,
13 that quantification, whether level 1, 2, or 3, has to be
14 established.

15 I think, in that area, safeguards would be very
16 important, though, with virtual appearances, especially in
17 the criminal justice world. We would be very I'm very
18 cautious about allowing hearings to occur. It would be
19 nearly impossible to protect victims and witnesses from
20 abuse or intimidation and also to ensure that they're not
21 being coached. And I think that would be helpful.

22 I note my time is quickly running out, and so I
23 think lastly, I think we all pivoted to virtual or not
24 virtual but paperless offices with the passage of CPL 245.
25 And it would be good if our criminal courts be permitted



1 and then upgraded technologically to receive digital
2 evidence, which is how we think almost every DA office in
3 the state delivers evidence to defense attorneys that way.
4 Many courts are not permitted and/or equipped
5 technologically to receive that.

6 And so I thank you for your time and for tackling
7 this important issue. So good for questions, and we'll
8 also be submitting a more formal written submission as
9 well.

10 JUDGE DORAN: Excellent. Thank you, and we
11 welcome your written submission. And I'm sure we'll be
12 communicating with you and your colleagues as the process
13 goes on throughout the year.

14 Anybody on the panel? Judge Murphy.

15 JUDGE MURPHY: Mr. Jordan, did you experience - -
16 I know I've heard this around upstate, but transport issues
17 in trying to get you know, I know I'm contacted by a number
18 of different sheriffs with custody who could not get
19 defendants to all the places they needed to be for court
20 appearances. I don't know if that's something you
21 experienced in Washington County or not.

22 MR. JORDAN: Not so much in Washington County,
23 but many of my colleagues had expressed those very concerns
24 in terms of staffing. Generally, what happened for us,
25 meaning if it was COVID or people weren't working or the



1 limited ability to transport the number of people, having
2 trouble getting individuals that were incarcerated to the
3 different appearances. And certainly, that was a
4 challenge.

5 JUDGE MURPHY: Thank you.

6 JUDGE DORAN: Hank Greenberg.

7 MR. GREENBERG: Mr. Jordan, thank you so much for
8 being with us and the extraordinary work that DAASNY does
9 as well.

10 I'd like to just go back so I understand your
11 point about how courts or at least many courts, in your
12 experience, don't have the capacity to accept digital
13 evidence. I understood that to mean, tell me if I
14 understood correctly, the lack of computer screens and the
15 ability to present digital evidence to juries in ways that
16 they could actually see it, you know, in a technologically
17 sophisticated way. Were you saying or suggest in other
18 words, courtrooms in twenty-first century courtrooms,
19 federal courts lavishly funded by Congress?

20 MR. JORDAN: Yes.

21 MR. GREENBERG: Lavishly funded

22 MR. JORDAN: Yes.

23 MR. GREENBERG: Wherever you go, all four
24 districts in the state. Virtual I haven't been in a
25 federal courtroom in a while that wasn't wired. Is that



1 what you were referring to, just so I understand?

2 MR. JORDAN: I actually had two separate points,
3 and I was rushing, so I apologize for the confusion that I
4 left. One is certainly the twenty-first century courtroom,
5 where providing with a dynamic ELMO and sufficient screens
6 for viewing by jurors if they're spread out, as well as
7 sound systems that can accommodate jurors that are spread
8 out around a courtroom with a masked witness.

9 The second part, where I left the panel with
10 confusion, I think, would be electronic filing. I think
11 most of our civil courts have gone to electronic filing of
12 (audio interference). And having that same ability on the
13 criminal side would certainly be very helpful for our
14 offices, but I also think for the courts because it's you
15 know, versus trying to make photocopies of thousands of
16 pages or downloading gigabytes of data onto a thumb drive,
17 which is just another form of digital media, being able to
18 use a different type of digital evidence management, which
19 most of all of us use now, in allowing that, that they
20 would get the exact same information that defense counsel
21 gets.

22 MR. GREENBERG: One last question. And I'm born
23 and raised in upstate New York, spent virtually my whole
24 career practicing in upstate New York. North of the George
25 Washington Bridge, are there any twenty-first century



1 courtrooms?

2 UNIDENTIFIED SPEAKER: Yes.

3 UNIDENTIFIED SPEAKER: Yes.

4 UNIDENTIFIED SPEAKER: Yes.

5 MR. JORDAN: I don't know. I've been in some
6 that seem to have better technology than others. So I
7 would imagine it's sporadic.

8 MR. GREENBERG: Okay. Thank you very much, Mr.
9 Jordan.

10 MR. JORDAN: Yeah. And then one other point, if
11 I could real quick. On a similar point, I thought where
12 you might go is with access to reliable internet. I used
13 to think that was a rural New York issue. Since then, I've
14 learned very quickly that that same challenge is shared in
15 metropolitan New York and in all urban locations as (audio
16 interference) actually in DA offices too, so a similar
17 challenge.

18 JUDGE DORAN: Yes. Thank you.

19 MR. JORDAN: Oh, you're welcome.

20 JUDGE DORAN: We wish we had more time. Thank
21 you for your testimony. And we will be in touch, and we
22 appreciate your time today.

23 MR. JORDAN: Great. Well, I truly appreciate you
24 undertaking this effort. It means a lot to us. Thank you.

25 JUDGE DORAN: Have a great rest of the day.



1 MR. JORDAN: You as well. Thank you.

2 JUDGE DORAN: Good afternoon. Can you hear us
3 okay?

4 JUDGE ALLY: Yes. Can you hear me?

5 JUDGE DORAN: I can.

6 JUDGE ALLY: All right.

7 JUDGE DORAN: I will give you a proper
8 introduction.

9 JUDGE ALLY: Thank you.

10 JUDGE DORAN: This is the Honorable Shahabuddeen
11 Ally.

12 And please forgive me if I've mispronounced your
13 name. I've done that before today a few times. And as we
14 understand it, you sit in the New York County Civil Court,
15 and you are also with the Asian American Judges Association
16 of the great State of New York. And we I'm sorry,
17 supervising judge of the New York County Civil Court. Is
18 that right?

19 JUDGE ALLY: That's correct.

20 JUDGE DORAN: All right. You can thank Judge
21 Mendelson for the notes that she's sliding me here. But in
22 any event, that makes your testimony even more valuable to
23 us and your time more valuable to us. We are grateful to
24 have you with us today. The floor is yours.

25 JUDGE ALLY: Well, thank you Justice Doran. You



1 know, my heart is racing because when you left out
2 supervising judge, I thought I was demoted. And what a way
3 to find out, in a public hearing.

4 JUDGE DORAN: It'd have to come from a higher pay
5 grade than mine.

6 JUDGE ALLY: Well, let me see if I can

7 JUDGE WALKER-DIALLO: You're fine. Don't worry
8 about it, Judge Ally. You're fine.

9 JUDGE ALLY: Let me see if I can get back onto
10 script now. Good afternoon, Justice Doran, chairperson of
11 the Pandemic Practices Working Group; to Hank Greenberg,
12 chair of the Commission to Reimagine the Future of New York
13 Courts; my administrative judge who's kept me in my role
14 now, thank you, Justice Carolyn Walker-Diallo; my upstairs
15 neighbor, who I'll thank for reminding me of my title, DCAJ
16 Edwina Mendelson; AJ Murphy; Ms. Sisario, whose department
17 I am particularly fond of. I call your office or your
18 Division of Technology once a day. And Ms. Sang-Hee Owens.
19 Good afternoon to you all of you.

20 I'm Shahabuddeen Ally, the president of the Asian
21 American Judges Association of New York and still the
22 supervising judge of New York County Civil Court. For
23 context, our association has fifty-one members throughout
24 New York State, approximately four percent of the total
25 judiciary. In contrast, the Asian American and Pacific



1 Islander population in New York State is approximately 2.2
2 million, and that's of 2022, representing approximately
3 eleven percent of the total state's population.

4 A deeper analysis as to why the AAPI
5 representation in the judiciary is so low is for another
6 public hearing. I suspect we have a lot to cover in this
7 public hearing.

8 The harm and destruction of the COVID-19 pandemic
9 has caused what has caused to our population in New York
10 State, our country, and across the globe is unquestionable.
11 It seems that no aspect of our life has gone untouched. It
12 has tested our resilience as individuals and as
13 communities. It has brought us together, and the same
14 time, divided us.

15 In our New York State court system, an integral
16 institution that exists to serve our community and help
17 carry out justice was also tested. Of the challenges we
18 faced came a plethora of new practices and procedures that
19 have helped move our court system forward. On behalf of
20 the Asian American Judges Association of New York, we
21 submit this statement as another voice among many, as we
22 continue to reimagine the future of our courts.

23 One of the greatest advancements of our court
24 system during the pandemic was the creation and
25 implementation of virtual court. Virtual court has



1 provided another avenue of access to the public. Of
2 course, there are significant challenges that arise when
3 court is exclusively virtual, as many people don't have
4 access to the internet or phones. Therefore, we urge our
5 court to consider a permanent hybrid version of in-person
6 operations with an option to appear virtually. That is,
7 litigants have the option to appear in person or virtually.

8 We understand that not all court appearances are
9 conducive to virtual appearances. But for court
10 appearances that are, adding a permanent virtual option
11 would be valuable. A virtual court option helps people who
12 cannot leave work, helps people with childcare issues. It
13 helps individuals without reliable transportation to court.
14 It also helps individuals who are lacking the funds to go
15 to court.

16 We also believe that a virtual option to appear
17 in court is important to some of our AAPI population. As
18 we all unfortunately know, violence and aggression against
19 the Asian Americans, particularly in New York City, has
20 risen significantly since the start of the pandemic. The
21 Asian American Bar Association of New York issued a report
22 in 2021, and recently, as early as May 31st of this year,
23 detailing the continued upward trends of anti-Asian hate
24 incidents in 2022 to present.

25 From March 19th of 2020 to December 31st of 2021,



1 a staggering number, a total of 10,905 anti-Asian hate
2 crimes were reported to the group Stop AAPI Hate. And of
3 course, many of those incidents go unreported.

4 According to a report published by Stop Asian
5 Hate and this is a very shocking fact for me to learn that
6 public streets and sidewalks were most frequently reported
7 as sites of hate crimes against Asian American women.
8 There have also been many incidents of Asian American hate
9 crimes and harassment in our public transportation.

10 The fear of many AAPI people to use public
11 transportation or to walk the streets near their own homes
12 is, unfortunately, very real. And for those reasons and
13 for so, so many other reasons of our population, a
14 permanent virtual option in the appropriate circumstances
15 can help provide relief and a plausible safe way to appear
16 in court.

17 With the increase of virtual appearances, we urge
18 our court system to consider establishing offsite
19 locations. And it's a comment I've heard before, and I
20 know that Judge Mendelson's office has done this and other
21 JDs, where litigants can access the internet and log on to
22 their virtual court appearances near their homes or
23 workplaces.

24 During the pandemic, there was also an apparent
25 lack of access or availability to foreign language



1 interpreters. For instance, many Mandarin, Bengali, or
2 Urdu-speaking defendants had their arraignments delayed due
3 to the lack of appropriate interpreters. We urge our
4 courts to ensure that interpreters in many languages are
5 readily available and that those interpreters can
6 accurately translate. Having a virtual option to appear
7 would help increase our court's access to interpreters.

8 Looking forward to the future, utilizing virtual
9 technology, such as speech-to-caption applications that
10 translate via text, could be helpful in ensuring every
11 litigant has access to language translations as needed.

12 We also urge a mandatory cultural sensitivity
13 training for judges and court staff. As you know, many
14 AAPI households are multigenerational households. We have
15 community members living in cramped conditions with little
16 privacy. And this doesn't apply across the board. There
17 are some practices that cannot accommodate this. But for
18 those that can, we ask that it be explored.

19 We've heard that judges require litigants to turn
20 on or activate their cameras during court proceedings,
21 without regard for litigants' housing conditions. We are
22 given a snapshot into the most private areas of a person's
23 home, person's life, their home, when they're joining
24 proceedings from their home. Not everyone has the luxury
25 of a court-appropriate background. We encourage our



1 judicial colleagues to be mindful of that, that there might
2 be personal embarrassment or shame associated with
3 revealing of how someone lives.

4 We join in the call for E-filing. And I'm just
5 moving through my statement to make sure I remain on time.
6 And there are many advantages and concerns associated with
7 virtual proceedings and continued pandemic practices. The
8 Asian American Judges Association of New York wants those
9 advantages and those concerns to be visible to this
10 workgroup. While our numbers might be small, both in the
11 judiciary and the state's population, the concerns of the
12 AAPI community are no less important.

13 Thank you for this working group for giving us
14 this opportunity and for a seat at the table. Thank you.

15 JUDGE DORAN: Thank you so much, Judge. And
16 apologies to you to put so much in such a condensed period
17 of time. But you did a remarkable job of it. And
18 congratulations on keeping your job.

19 JUDGE ALLY: All right. I have to get back to
20 work. I have to get back to work because I want my AJ to
21 know I'm back to work now.

22 JUDGE DORAN: All right. So noted.

23 JUDGE ALLY: Thank you.

24 JUDGE DORAN: Thank you.

25 JUDGE ALLY: Thank you.



1 JUDGE DORAN: Take care. Have a great rest of
2 the day.

3 Good afternoon, sir. Are you John -- is it
4 Toyful?

5 MR. TEUFEL: That's close. Tueful.

6 JUDGE DORAN: Teufel. All right. Well, if I got
7 a fifty-fifty chance, I'm going to get it wrong. In any
8 event, we are honored to have you with us. As we
9 understand it can tell us a little bit more about your
10 practice, but you are a private practitioner specializing
11 or focusing primarily in family law. And your perspective
12 is very important to us, and we're very grateful you took
13 the time to join us. The floor is yours.

14 MR. TEUFEL: Yes. Thank you. Good morning, Your
15 Honor, and good morning to the commissioners. And thank
16 you all for your service on this very important issue.

17 So as a bit of background, I am a family lawyer
18 based in New York City. My practice consists primarily of
19 negotiating and litigating custody, child support, and
20 divorce matters. Many of my clients are working or middle
21 class.

22 I'd like to give you a brief anecdote that I
23 think perfectly illustrates why I'm testifying before you
24 today. A few months ago, I settled a contentious custody
25 case in Queens County Family Court. There had been a total



1 of five court appearances, which is on the low end for
2 litigated family law matters. All of them were virtual.

3 As I debriefed with my client, he said to me, I
4 probably saved some money with this being totally virtual,
5 huh? I later did the math. I estimated he had saved close
6 to 4,000 dollars in legal fees, just because all of our
7 appearances were online. Let me explain.

8 In normal, non-COVID times, Court appearances
9 involved showing up at initial call, usually at 9:30 a.m.
10 or 2:15 p.m., and waiting around to be seen by a judge.
11 There are very few appearances scheduled for a time
12 certain, as the phrase goes. Waiting around for hours is
13 not abnormal. Sometimes the judge will hear you, give you
14 some morsels of judicial wisdom, and send you back into the
15 hallway to figure it out. Sometimes that means coming back
16 after lunch break. Family litigation in non-COVID times
17 involved lots and lots of waiting.

18 Attorneys charge for this wait time because it is
19 time they cannot spend working on other cases. Many
20 attorneys also charge for the time it takes to get to the
21 courthouse. Waiting is expensive. New York has the second
22 highest solo or small-firm lawyer rates in the country,
23 averaging out to 357 dollars an hour. Big family law firms
24 here charge more. I know divorce lawyers who top 1,000
25 dollars an hour. A few hours of waiting can mean a few



1 thousand dollars tacked onto a bill.

2 Family law litigants are uniquely vulnerable to
3 big counsel-fee bills. By law, we are not allowed to work
4 on contingency. Clients have to pay up front. And these
5 are families, not corporations with legal funds. A nasty
6 divorce can go on for literally years. There's a reason
7 most family lawyers can tell you a story of a client who
8 cashed in an IRA, sold a pension, or took out a usurious
9 divorce loan to pay for their divorce. It is no
10 exaggeration to say that I have seen lives destroyed by
11 this process.

12 The changes necessitated by COVID were not a
13 cure-all for the problems of divorce, but they did rewrite
14 the process in serious, substantive, and positive ways.
15 Now, we get a time certain every time. There is very
16 little waiting. The longest I have waited for a virtual
17 appearance to start is thirty minutes, and that was an
18 outlier. There is no travel back and forth to the
19 courthouse. If the judge wants you to come back, you can
20 log off, call your adversary, and then work on other cases
21 until it's time to go back.

22 Collectively, this saves clients thousands and
23 thousands of dollars, money that should rightfully be spent
24 on rebuilding lives after what is quite possibly the worst
25 experience many people will go through.



1 There are other benefits of remote court for
2 middle and working-class litigants. They often do not have
3 to take a day or half day off work and can log in from a
4 private spot in their workplace. Litigants with kids don't
5 need to find childcare, which we all know is expensive.
6 And spouses and parents with disabilities don't have to
7 navigate the trek to the courthouse.

8 The counter to my argument is that remote trials
9 are awkward, and seasoned litigators want to look a cross-
10 examinee in the eye in person. I don't disagree. But
11 trials are a small part of family litigation, and most
12 cases never go to trial. There can be five, ten, twenty
13 court appearances before a single person is sworn in to
14 testify.

15 Most court appearances are informal discussions
16 on the case status or oral arguments on motions. If judges
17 want to reserve their trial days for in-person appearances,
18 great. But everything else should be remote.

19 In an ideal world, people without unlimited funds
20 would not be sucked into the muck and mire of nasty divorce
21 and custody litigation. But it is often unavoidable. And
22 one intransigent or embittered spouse or parent can drag a
23 process out for years.

24 Remote court has been a real, palpable, positive
25 way to reduce the burdens inherent in family litigation.



1 It has worked beautifully, and it should remain in place,
2 even after this pandemic is behind us.

3 Thank you very much for your time.

4 JUDGE DORAN: Thank you for your very, very
5 substantive and concise presentation. We appreciate that
6 very much.

7 Anybody on the panel have any questions? Okay.

8 Thank you so much. We appreciate you, and good
9 luck. Enjoy the rest of the day.

10 MR. TEUFEL: Thank you, all. Same to you.

11 JUDGE DORAN: Good afternoon, sir.

12 MR. RIVERA: Good afternoon. How are you?

13 JUDGE DORAN: We're all doing very well here.
14 We're in an ambitious schedule. We're moving through it.
15 I don't want to put any pressure on you, but you're the
16 last person between this group and lunch.

17 MR. RIVERA: I will definitely.

18 JUDGE DORAN: No pressure at all. So let me give
19 you a proper introduction after that horrible jab. You are
20 Peter Rivera. And we understand that you are with the New
21 York State Puerto Rican Bar Association. We are grateful
22 that you've given us your time today. We look forward to
23 your comments. The floor is yours.

24 MR. RIVERA: Thank you. And good afternoon to
25 the distinguished panel. I will definitely keep my



1 comments brief because I don't want you all to go hungry.

2 I am the chair of the Judiciary Committee of the
3 Puerto Rican Bar Association. The PRBA was established in
4 1957. It's one of the oldest affinity bar associations in
5 the country, offering personal and professional support to
6 Puerto Rican and Latino attorneys in the State of New York.

7 I am also a partner at the law firm of Richter
8 Restrepo PLLC. I'm a practicing litigator, working
9 primarily on commercial litigation matters and Supreme
10 Court. Our firm also makes appearances in housing court
11 throughout the City of New York.

12 The widespread use of virtual hearings during the
13 COVID-19 pandemic has had both positive and negative
14 effects on communities of color. Pro se litigants in
15 communities of color, now more than ever, have more access
16 to resources and legal representation, where previously,
17 many would often lack childcare or lose income for having
18 to make physical appearances. The ability to now appear
19 virtually, for those who have the means, is very positive.

20 However, and I emphasize this point, pro se
21 litigants in communities of color often do not have the
22 same access or means to technology, which has been
23 discussed at length here today.

24 Language barriers remain a large concern among
25 the Spanish-speaking community. The disparity between



1 attorneys' ability to utilize E-filing versus a pro se
2 litigant's ability, particularly those that don't speak
3 English, is glaring. We need more translators, not only in
4 courtrooms but in the clerks' offices as well, to help non-
5 English-speaking litigants, to help them navigate the E-
6 filing system and to obtain files and speak generally with
7 clerks.

8 For litigators, attending virtual hearings has
9 made it easier and more convenient for practitioners to, on
10 any given day, attend multiple court appearances in
11 different counties by being able to appear virtually from
12 anywhere. Doing so allows litigators to attend hearings at
13 a specific time, whereas previously, as the previous
14 speaker mentioned, we would spend time traveling to and
15 from court and sitting around the courthouse, waiting to be
16 called.

17 Our clients benefit by not having to pay their
18 attorneys for that time, while they wait to make an
19 appearance before a judge or a court attorney. Previously,
20 a litigator could spend up to a whole day in court, while
21 only spending about ten to fifteen minutes of substantive
22 time discussing the case with the court.

23 Where virtual appearances may be more prohibitive
24 is in arriving at substantive settlements. Often, when we
25 were physically in court, parties were more willing to



1 negotiate settlements. Virtual appearances make the
2 parties more contentious in sticking to their positions
3 without the physical presence in the courtroom or in the
4 halls of the courthouse to engage in real dialogue.

5 E-filing can use an upgrade. Filing certain
6 documents can be difficult. Some clerks are not checking
7 the documents filed, which result in certain documents
8 getting filed that shouldn't be filed, and other files that
9 should be filed being rejected.

10 Lastly, I appreciate the efforts of everyone on
11 this panel and of all your support staff and volunteers to
12 ensure that the future of New York courts will be well-
13 equipped and well-prepared going forward. Thank you.

14 JUDGE DORAN: Thank you. And thank you for your
15 kind words. And we appreciate the dialogue. It's much
16 more than the five minutes we just spent together. And we
17 plan, over the summer, to engage a little bit more deeply
18 with the judicial associations and the bar associations.
19 So please look forward to an opportunity to have a little
20 bit more lengthy conversation with us.

21 MR. RIVERA: Thank you very much.

22 JUDGE DORAN: Anybody have any questions or
23 comments for Mr. Rivera?

24 Thank you so much to you and your members. Thank
25 you for the work that you do. We appreciate you all very



1 much. Thank you.

2 MR. RIVERA: Thank you, and have a wonderful
3 lunch.

4 JUDGE DORAN: Thanks. Bye-bye.

5 MR. RIVERA: Bye-bye.

6 JUDGE DORAN: All right. So we have reached that
7 point where we're going to take a lunch break. Give me two
8 minutes of your attention, since we are a little bit early,
9 because I want to recognize some other folks who have been
10 so instrumental in making this happen.

11 So I mentioned earlier that Bill Silverman and
12 Scott Reents have been the cochairs of our hearing's
13 subcommittee. And I hope you agree with me that the
14 quality of the witnesses, the diversity of the group that
15 we've put together and you'll see more of it this afternoon
16 that didn't happen without a whole lot of work. We had in
17 excess of fifty people who wanted to offer testimony, which
18 is absolutely wonderful. But unfortunately, we had to
19 organize it into a more cohesive group that was manageable
20 for us to get through.

21 So I would like to thank, in addition to Scott
22 and Bill, the associates in their respective law firms who
23 have done incredible work. I first want to recognize
24 Nicole Swanson, who has probably I'm really happy that
25 she's not billing us for this work, but very clearly, she's



1 well worth whatever she bills.

2 Nicole Swanson, outstanding. Thank you for all
3 your work. We're going to give you some applause.

4 And I also want to thank other associates.
5 Kelsey Miller, who is an associate with Scott Reents, and
6 Kelsey will be assisting Scott in his role as our reporter
7 and already has done a tremendous amount of research and
8 writing and collating of materials that are out there that
9 will assist this working group in its work.

10 So Kelsey, thank you so much for the work you
11 have done and the work you will do.

12 And I'm going to list some other folks. Hold
13 your applause. These are also associates that work with
14 Bill. And some of them are here today.

15 Wilderness Castillo-Dobson, Portia Proctor, and
16 Vincent Tennant, thank you for the work you've done to help
17 us. I wanted to make sure your names are mentioned out
18 loud in the Court of Appeals because you deserve it. And
19 it'll probably happen again in your future because you're
20 wonderful. So thank you.

21 One more outstanding individual who I'm sure most
22 of you already know, who is usually behind the scenes, but
23 she is no less than foundational in all of these efforts,
24 not just this commission but so many other things the court
25 system does. Barbara Mulé deserves our applause and our



1 thanks.

2 Thank you for your attention.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

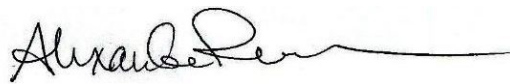
25



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

I, Alexander Reaves, 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.

Signature:



Agency Name: eScribers

Address of Agency: 7227 North 16th Street

Suite 207

Phoenix, AZ 85020

Date: June 24, 2022

