

Craig Doran:

Christine McMenamin, who is the housing supervising attorney at the Erie County Bar Association Volunteer Lawyers Project. Professor Kim Diana Connolly, who is with the University of Buffalo Law School. And Lauren Breen who is the Executive Director of Neighborhood Legal Services. I think that's everybody. Thank you. So nice to see you. Thank you for being with us this afternoon and offering us a very important perspective. This panel is our effort to try to get the views, the candid views, of the legal service providers in our communities who are critical, obviously not just during a pandemic, but all the time. The collaboration that we had with you as we all navigated through this pandemic proved critical in our ability to serve the people that bring us all together every day. So thank you so much for being with us.

I want to reintroduce the members of our panel for those that perhaps were not here or following us this morning. This time I'll start on my right with the Supervising Judge of the Buffalo City Court and our very gracious host here for the last day and a half or so, The Honorable Craig Hannah, Supreme Court Justice. Thank you, Judge Hannah. To my immediate right, the Honorable Edwina Mendelson, who is Deputy Chief Administrative Judge for Justice Initiatives. Thank you so much for spending the whole day with us. On my left, Christine Sisario, who is the director of technology of the Office of Court Administration. To Ms. Sisario's left is Porter Kirkwood, who is the District Executive in the Sixth Judicial District. And all the way on the left there is Leanne Lapp, who is the immediate past president of the Chief Defenders Association of the State of New York. Also, and perhaps may I say more importantly, the Ontario County Public Defender. We all welcome you and we all look forward to your comments.

If I may be so bold as to ask a couple of things of you, when you speak, please make sure that the microphone, that you get one of those microphones, and put it as close to you as you can get it, as you're comfortable with, because our live stream requires that those microphones be able to pick up your voice. Also, try to, if you can, keep your comments to five minutes or so and that will allow us to have further opportunity, perhaps engage you, in a dialogue.

Also I want to let you know that if you don't get a chance, and this is for anybody within the sound of my voice right now, if you do not have the opportunity to say everything you want to say to us, and your input is absolutely critical to us, feel free to share whatever comments you wish to the following email address, which I will assure you will become part of the body of work that we will rely upon as we make our recommendations. That email address is P-P-W-G, stands for Pandemic Practices Working Group [@nycourts.gov](mailto:ppwg@nycourts.gov). Ppwg@nycourts.gov, we invite you to share any written comments you wish.

First to start off our afternoon panel, the Supervising Attorney from the Center for Elder Law and Justice, Sarah Hedden. The floor is yours whenever you're ready.

Sarah Hedden: Thank you. Good afternoon, Your Honors. Thank you for allowing me the opportunity to speak today. It's the mission of the Center for Elder Law and Justice to improve the quality of life for elderly, disabled, and low-income persons in Western New York. We do so by providing free civil legal services in 11 counties across 14 practice areas to economically and socially disadvantaged older adults, as well as to younger, disabled, and low-income persons as our funding permits. Our primary goal is to use the legal system to assure that our clients may live independently and with dignity. My area of expertise is in kinship care and family court. Through that lens, I would like to start by sharing the positive impact that virtual court proceedings have had on both practitioners and clients.

As a practitioner in a bifurcated county, it can be a challenging to navigate a busy court calendar. Virtual appearances have provided practitioners with greater flexibility in navigating higher caseloads and have allowed many of us to take on more cases than before. Matters including initial appearances, reviews, permanency planning hearings in family courts, and settlement conferences, have proven just as fruitful as virtual proceedings as when they're in person. It has been my experience that cases are called on time more frequently as the litigants and attorneys are readily available in the virtual waiting room, regardless of where they are physically. For many litigants, virtual appearances provide a greater probability that they will be able to attend, particularly in rural areas. Many of our clients experience transportation issues, childcare issues, and have work commitments that limit their ability to take time off for court. And virtual appearances give them a more equitable opportunity to attend. In cases involving an alleged victim of domestic violence, virtual appearances allow for a more comfortable and safe environment for the alleged victim so they're not forced to attend in the same room as their alleged abuser.

Considering these positive impacts, the Center for Elder Law and Justice supports the overall continuation of virtual court practices in many instances. We urge the commission and the courts to consider allowing litigants to opt for in-person proceedings where practicable. While there are many positives to virtual court practices, we must acknowledge the digital divide and ensure equitable access to justice. As noted by Helaine Barnett on behalf of the New York State Permanent Commission on Access to Justice during her testimony on June 7th, the court system's adoption of virtual court operations has provided greater access to justice for some, while creating significant barriers for others. Through our work at the center, it is apparent that not all adults are technologically proficient. A 2017 poll by Pew Research showed that only 26% of those 65 and older felt comfortable using technology, and 41% of that group didn't think they even had access to the internet.

While the world we live in is heavily reliant on technology, we must acknowledge the digital divide. Those living in poverty cannot always prioritize access to technology. According to Justice In Aging, nationally, 45% of individuals over age 65 have trouble meeting their very basic needs. According

to the Federal Legal Services Corporation, approximately 6.4 million seniors have family incomes below 125% of the federal poverty level and more than 11 million people with a disability are below this threshold. Each day, 10,000 people turn age 65 in the United States.

We urge the commission and courts to consider equitable access to the justice system as we move into the next phase of our practice post-pandemic. We echo the suggestion of the Permanent Commission on Access to Justice, that providing technical support and training for unrepresented litigants could be accomplished by the courts in collaboration with community-based organizations, public and law libraries and other stakeholders. It is imperative that the court system participate in addressing the significant barriers caused by the digital divide if it is to adopt virtual practices permanently.

We understand that efforts are underway in the 8th Judicial District to establish remote court access locations, and we look forward to seeing those efforts come to fruition. In addition to offering trainings to unrepresented litigants, we would ask the courts to ensure information on these remote access locations is mailed with all the notices to litigants, and to provide this information to petitioners who file papers in person.

Thank you for your consideration of our remarks. Center for Elder Law and Justice welcomes future opportunities to collaborate with the commission and the courts as we continue to navigate our new practice environment. Thank you.

- Craig Doran: Thank you. Anybody on the panel have any questions? Go ahead, Ms. Lapp.
- Leanne Lapp: Thank you for your comments. My question is, you mentioned training to unrepresented litigants in accessing virtual technology. Do you have a picture of what that might look like or how that would potentially be rolled out?
- Sarah Hedden: I imagine that the trainings could occur at the courthouse or at public or law libraries. I understand there are some trainings available online. It's the access to those trainings that could be a barrier for the litigants from their homes, so they would need to be aware that those trainings exist and for a location that they can access those trainings in public or at the courthouse.
- Leanne Lapp: Thank you.
- Sarah Hedden: Thank you.
- Craig Doran: Anybody else?
- Edwina Mendelson: I just wanted to comment thanking you for all the remarkable work that you've been doing during the pandemic, of course, and beyond. The Center for Elder

Law and Justice is a wonderful, wonderful organization providing great service to the public. Thank you.

Sarah Hedden: Thank you.

Craig Doran: Does your entity, Ms. Hedden, have a presence here in the courthouse?

Sarah Hedden: No, our office is at 438 Main.

Craig Doran: I thought I saw a sign somewhere that mentioned your agency.

Sarah Hedden: I apologize. We do. We have a surrogate court help desk.

Craig Doran: Okay.

Sarah Hedden: I misspoke. I apologize.

Craig Doran: That's all right. I caught you off guard, I apologize. It causes me to think of how we could partner even more so with entities that are not the government to help us do our job. I think we learned a lot during the pandemic about getting outside of our comfort zone and relying upon the experts that, and as hard as it is for judges to admit they're not experts in things, folks that know the community, know the work, and your agency is certainly in that category. One of the things that I've noticed in the virtual proceedings that I preside over, I don't think we do a very good job of providing an immediate, in real time, entity that a litigant, particularly a pro se litigant, can contact to get help. The link isn't working. They can't find something. There's a document that they're worried about not being able to get.

I wonder, and I apologize for asking you this because I'm catching you off guard. Because obviously, we can't do all of that. You weren't here this morning, but you know we're short-staffed in the court system like everybody else is. But I think we need to maximize the collaborations that we have. Where we might not be able to have a live person sitting by a phone during the day that can respond to a litigant who's having trouble getting into a virtual scenario, do you think there's room to have us collaborate with agencies such as yours to have folks that might be available to be able to help these folks in real time? Is that something that we ought to think about and talk about?

Sarah Hedden: Absolutely. One of our recommendations is for collaboration with the community-based organizations. Center for Elder Law and Justice does about 400 outreaches a year. We are really in all of the communities that we serve. We do have a help line that's open daily for two hours. We could expand that to be available to litigant's real time for when they need that tech support.

Craig Doran: If we had, like you said, a tech support help line or a remote proceeding help line that's dedicated for folks that are having particular challenges with the

virtual technology, I think that's something we ought think about. Thank you. We won't give you all that work but, thank you for your willingness to explore that.

Next up is Michael Deal, who is the supervising attorney at the Criminal Defense unit of the Legal Aid Bureau of Buffalo. Before Mr. Deal makes his presentation, I just want to welcome Professor Connolly. We were very rude when we started without you. But be assured, I gave a 20-minute introduction of you and talked about all the wonderful things on your resume. Just kidding. We're happy that you're here and I apologize-

Kim Diana Connolly: I apologize. I was with students a little later than I planned.

Craig Doran: That's all right. We all have that happen to us. But we're really happy you're with us and we'll get to you in just a moment. Mr. Deal?

Michael Deal: Thank you. Good afternoon. I want to thank you for the opportunity for us to make our presentation as well. We'll correct one thing. I'm one of the supervising attorneys in the criminal defense unit. We are currently four of us are supervising that unit. That unit is the public defender for the Buffalo City Court. As such, we are, I believe, the largest public defender's office, or at least the city court office, in the state outside of the boroughs of New York City. What we did in 2020 was very similar to I think what you've heard so far today, in the sense that our office really didn't close. I was involved in some of the preparatory meetings for how to proceed with the closures that were going on in March of 2020.

Every day, arraignments were held in the City of Buffalo. For the first few weeks, myself and then chief of the unit alternated days on and off for several weeks, in-person arraignments with in-person defendants. That was the precursor to the implementation of virtual technology, and then the virtual appearances started in full. I know you've heard some of that today. Our office obviously then maintained those appearances as well. I'm extremely proud of what our office was able to accomplish in the sense of being always in court, and we were. That year, including months where there were in-person appearances, but that year we arraigned over 5,300 cases. But more importantly, we disposed, settled, resolved almost 4,300 cases that year.

Our perspective is different in terms of the lessons that were learned during the pandemic and the necessary steps that had to be taken to ensure the protection of every member in the system, including the defendants. As public defenders, we are client-based in the sense of protecting our clients' legal interests as vigorously and as zealously as we can. Like many public defender organizations and offices across the state, we're opposed to the implementation of virtual appearances, certainly in any evidentiary or adversarial proceeding. I include arraignments in that, for a variety of reasons. One thing that the pandemic, I think, really revealed in terms of virtual appearances, is a lack of personal

communication with your client. It's essential in criminal defense. It's essential for confidential communications. It's essential for the effective representation of your client at any time during any type of evidentiary or adversarial proceeding, your client can impart important information, even if it's by a whisper in your ear. And while very good steps were taken to ensure or to allow communication between attorneys during these virtual appearances with our clients, it just is not the same as being present.

I can recall having to step away and make phone calls to cell phones of officers in the holding aspect of the Buffalo Police, or at the holding center to talk to the client, and then get back onto the virtual appearance. While that might suffice in the throes of a pandemic situation or some other situation where we all can't be face-to-face, it is really not sufficient to safeguard the protections that our clients deserve when their freedom is at stake. The right of confrontation at those types of hearings is essential to be in person. You just cannot get the same sense of a witness's credibility when you're in a TV type setting. Especially with the technology that's still currently available, but certainly was available in 2020 where video freezes, lines drop, any number of things happen that still continue to this day. I do plenty of virtual meetings and the same type of problems occur. You just cannot effectively confront witnesses in a criminal setting in virtual appearances.

To the extent that the consideration of virtual appearances would extend as far out as jury trials and jury selection, obviously the same type of concepts apply in jury selection and things of that nature. You just can't get the same assurance that you're making the right decisions when you're basing those decisions on trying to determine whether this person is either telling the truth or the appropriate person to hear your case and be impartial. Access to technology, as you just heard, is a major issue for our clients. So many of our clients, while they may have cell phones, don't have internet connections at the house. Much less, the ability to navigate whatever program might be used for any virtual appearance. At one point, I believe we were using Zoom, I'm sure Judge Hannah may recall some of this. At the time he was the Chief Justice of Buffalo City Court. He was involved as well in all these plannings.

We were using Zoom. Then I believe we transferred Microsoft Teams, which I think is the current program. But the point being that's all great for attorneys or institutional providers like where I work that have the funds and the resources to not only obtain the programs, but navigate them and get the resources available when you're having problems, our clients don't. Transport to things or transportation is a major issue for our clients in in-person proceedings. The idea that we can supplant these deficiencies in technology by having clients appear at other locations to be able to utilize those types of facilities either for training or for using the technology that might be present there, transportation is always an issue for our clients. It would be no different than transportation to and from court. So, for all of these reasons, we do oppose the extension of virtual appearances in criminal defense matters.

Now, that leaves us, well what did we learn that we might be able to carry over? There are many appearances, maybe not perhaps in our Buffalo City Court, pretrial conferences where there are discussions between defense attorney, the prosecutor, and the judge. Oftentimes those happen at the bench in Buffalo City Court, and then decisions have to be made by the client right away. But in the felony matters that we represent, those oftentimes happen in chambers. That's one of the great benefits to practice in the State of New York as opposed to our federal courts, is in chamber conferences where you can sit and speak a lot more freely about the case, about the issues, with the judge and the prosecutor. The defendant's not there. It's not like TV or Law and Order, with the defendant then is sitting right beside the attorney and makes some admission. That's not the way it works. Those types of appearances I think, perhaps, could be done virtually.

In fact, our IDV court still has attorneys-only virtual appearances to set the stage, so to speak, for how the case is going to proceed, et cetera. There's really no requirement that the defendant be present for those when they're non-substantive in nature, other than for scheduling perhaps. But I could envision the use of virtual appearances or virtual technology for those types of matters. In order to facilitate the virtual appearances, all of the charging documents that originated in Buffalo City Court were scanned and emailed to the attorneys. I think that practice should continue. I heard the term digitization and that the various aspects of the state are moving towards that. I think that's a great thing.

That leads right into e-filing, whether it be through a program like Federal Court, like's being contemplated being instituted in our criminal courts like the Appellate Division uses, or just simply emailing. That's the cheapest, most effective way to have documents sent into a case. I think that should be encouraged. In my experience, certainly in felony matters, it's more of an ad hoc approach, depending on the particular judge, whether to accept pleadings from me through email. I've been fortunate that I've been able to do that quite often. But, I think that should be encouraged if not outright allowed or mandated, because it's a cost-effective way to facilitate pleadings, motions, et cetera being filed.

Craig Doran: Mr. Deal, I apologize, we've got to wrap it up a little bit.

Michael Deal: Well that's a good time to end my comments and I want to thank-

Craig Doran: I thought maybe it was and I'm sorry to interrupt [inaudible 00:24:41].

Michael Deal: What's that?

Craig Doran: I said I thought maybe it was, that's why I interrupted you. Thank you though.

Michael Deal: Well, from our perspective, there's not quite a lot we can agree on in terms of the virtual nature. I know that this is going to be a major issue. But from the

criminal defense perspective, our clients really deserve the face-to-face and everything that comes along with that. It's to the best benefit of their legal interests.

Craig Doran: Thank you.

Michael Deal: Thank you.

Craig Doran: Thank you for your perspective. Thank you for being here. Anybody in the panel?

Craig Hannah: I have a comment more than a question. Mr. Deal, similar to one of my other colleagues stated before is that, I do recall you ... if I got the date right. Wasn't it 3/17 where we went totally to centralized courts? I recall you and your office being there in the trenches handling cases from all over the county. So, I commend you for your effort, and everyone on the panel, for your effort for pivoting instantly to make sure your clients were served. So it's more of a comment than a question.

Michael Deal: Thank you, Your Honor. It's greatly appreciated coming from you.

Craig Doran: Anybody else? Thank you. Thank you so much for being here. We appreciate your perspective very, very much. Next up is Christine McMenamin, housing supervising attorney at the Erie County Bar Association's Volunteer Lawyers Project. Ma'am, the floor is yours. Thank you for being here.

Christin McMenamin: Thank you to the committee for allowing me to present today. As Judge Doran said, I am the housing supervising attorney at Volunteer Lawyers Project, so my comments will focus on landlord tenant law as that is my specialty. We do represent tenants in five counties, although our primary practice is in Erie County, and the majority of those cases are in Buffalo City Court. I just wanted to call attention on behalf of my clients, that although the pandemic may be technically over or ending, the effects of the pandemic are going to be felt, especially by the litigants, for years to come. Although some of our practices may change, the effects of what we've just been through will be affecting the people accessing the courts for many, many years. We do have to keep that in mind.

In that vein, I just want to let you know what has been going on in landlord tenant court with evictions. During the pandemic, there was of course the eviction moratorium, and so the court, although they still heard cases, there were not many evictions actually going forward. However, the need for legal services to these tenants and for the litigants navigating the court system, the ones that had pending cases, the ones that didn't know if they could still be evicted or not, the need was exponentially increased during the pandemic and continues to be. On behalf of my clients, I would say that in regards to the virtual court process, it has actually been quite successful for our clients who

are low-income tenants and most of our clients who had to access virtual court were able to do so. If not through Microsoft Teams, they do access the court through the telephone. So they aren't able to be seen and they may not be able to see the court. So, that does have to be taken into consideration. But they are usually at least able to call in for the proceedings.

We have a very unique situation right now in Erie County because, we are in person with eviction courts in Buffalo City Court, but we also have for the county village courts, we have a virtual court right now as well. We have the unique perspective to have a hybrid situation right now and can compare and contrast those experiences. I would say that for the most part, our clients are very mixed in their preference for in person or virtual court. It does depend on the person's situation. I would urge this committee to consider a hybrid situation and not an across-the-board scenario or protocol. Again, it's been discussed here, but even in Erie County there is a diverse section of people. In Buffalo City Court, a lot of tenants are able to get to court physically. They prefer to be in person. They prefer to be heard in person. They prefer to show their physical documents in person to the judge.

They can also access easily, legal services in person. It's much more difficult for them to get in contact with us when they are not in person. We have seen that because we do have the unique situation of contrasting that with the town and village hub court, which is virtual. However, there are a lot of people that due to employment, transportation issues, childcare, health concerns, mobility issues, they are not able to come in person. I would say that an option to be virtual when those issues come up would be great. But most people in the city court, the tenants at least, do prefer to be in person. However, in the town and villages, despite some of the access to technology, that may be an impediment.

For the most part, our tenants are getting on Microsoft Teams, and again, like I said, they are either getting out on the phone or they are able to access Teams through their phone. They do prefer the virtual in that capacity because they're able to access justice. They're able to get representation from our office and other offices like mine. Because we only have, just to clarify, my office for housing, we have three staff attorneys and two paralegals. Prior to the pandemic we had no staff attorneys and one paralegal. So we have grown, but we still are not meeting the need. If town and village court was held in person, we could not represent people in all of these town and village courts. It's just impractical and we would not be able to ever staff enough attorneys to go out to all of the town and village courts to meet the need of the tenants. So in that sense, the virtual court is very helpful to get tenants representation, so we are able to represent a whole lot more people in the virtual court.

I definitely would urge the committee to consider a hybrid model on that aspect. I also strongly encourage, to echo my colleagues' statements, to encourage continuing with e-filing. We use the EDDS system daily and that definitely assists us. We have a tremendous volume of cases, which will

continue for a while, post-pandemic. Being able to electronically file has helped a lot. In addition to the court accepting e-signatures, electronic signatures, that has helped as well, because as you can imagine, eviction proceedings are summary proceedings. They move fairly quickly. They are moving quicker and quicker as we get caught up. To have this volume but have to get original signatures on all of the settlements, which most landlord tenant cases do settle, it's a tremendous burden. So, accepting the electronic signatures is very important.

Similarly, the need for electronic court records. During the pandemic we were able to receive court papers or notices of petition and petitions for our cases, electronically. But we are in person now and that is now a paper file that we receive. I would urge this committee to also look at that. I know there's a lot of technological issues that have to be addressed to be able to do that on a wide scale, but that would be very important in the landlord/tenant framework. Thank you.

Craig Doran: Thank you so much for that very thorough presentation. Anybody in the panel?

Speaker 1: I have a comment. Lovely.

Craig Doran: Let's go. Let's go. All right. Ms. Lapp, you go [inaudible 00:33:20].

Leanne Lapp: Thank you for your comments. You mentioned the town and village hub court. Was that a product of the pandemic or was that something that existed prior to that?

Christin McMenamain: It's a pilot project that was discussed but created during the pandemic.

Leanne Lapp: And having a hub court obviously makes it easier for your office to cover a broader variety of cases. Is that ...

Christin McMenamain: Yes, geographically. We are able to represent majority of the people that contact us for representation regardless of which town or village they live in because of the virtual nature of the court. Whereas a lot of those courts prior to the pandemic were evening courts, and many of them had court at the same time. So with three staff attorneys, we could only represent three people that needed our services that night or that day. Now we can represent all of them or most of them because they have virtual court.

Speaker 2: I think Judge Hannah led that effort. Thank you, Judge Hannah.

Craig Hannah: But I would have to say it is modeled after the 7th District program. And the creator of that program is a couple seats next to me. But thank you.

My comment, because I just commend you for the excellent work that you do, but I would be remiss if I didn't say, for you, making sure that we have attorneys

at every phase of these important proceedings, and evictions is a crucial proceeding, taking someone's property from them, and you covering every court in this district I think is amazing. So I just wanted to take this time to commend you for what you guys do.

Christin McMenamin: Thank you.

Craig Doran: Anybody else?

PART 1 OF 5 ENDS [00:35:04]

Craig Hannah: You guys do.

Speaker 3: Thank you.

Craig Doran: Anybody else? Thank you. Thank you so much for your work.

Next is Professor Kim Diana Connolly, who is a professor at the University at Buffalo School of Law. We're honored to have you with us today. Thank you so much. Whenever you're ready.

Kim Diana Connolly: Thank you so much for this important work that you're doing, and it's exciting to be at this table with some amazing people who do Access to justice along with me. As you said, my name is Kim Diana Connolly. In addition to being a professor, I serve as Director of the Clinical Legal Education Program at the University of Buffalo School of Law on SUNY's flagship campus here in Buffalo and the Vice Dean for Advocacy and Experiential Learning.

I'd like to note, before I go into my remarks, that Dean Aviva Abramovsky was very sad that she had a conflict and couldn't be here. She sends her sincere regrets. I'd also like to say, in her absence, that her commitment to Access to Justice is profound, and her support was essential to the legal work that UB's clinics were able to continue to do during the pandemic and since.

Judge Drew, you noted, as many have, that during the pandemic the courts never closed, and other people never closed, and UB's law school clinics never closed. Our main hashtag, #UBLawResponds, we did respond. We went online, we made it work, and we supported our student attorneys and our externship students. And we had law school staff, especially our IT staff, headed by Brandon Tubinis, our Clinical Experiential Managing Director, Elisa Lackey, they made it happen, and they made us able to support our clients.

To remind everyone - I think everyone knows this - but to remind everyone, law school clinics are special places of service learning. Faculty and staff essentially run a pro bono law firm within a law school. And about 70 student attorneys are admitted to practice law under supervision and participate in an actual clinical course.

So here we are, SUNY's only law school, which is in Buffalo. We ran nine clinics out of our law school, from criminal law to civil rights to family violence to mediation and beyond. And you know what? We also created a special clinic, with the support of the Dean, we created a special clinic right as COVID was happening and turning into something, that started the fall after COVID happened, called the COVID Response and Community Engagement Legal Clinic. So that worked for three semesters, supporting individuals who would not have otherwise been able to get help, that were damaged by, in some way, by the pandemic.

That story began for us, as many people who served the court, as we pivoted in one day to online practice. For a while, we weren't even getting mail, but we had emails to check and calls. We were getting lots of calls, so trying to triage calls. We could do those remotely. But once mail started, then our then Office Manager Cheryl Tubinis and I rotated days of going in to make sure that faxes - because lots of people still fax us, lots - and our mail was scanned in and gotten to the appropriate people.

All of the professors, like myself, worked with our student attorneys by Zoom and met with the clients the way they could, met with our clients. Some of them could meet by Zoom, lots of them by phone. And there were a few that we did have to wear masks, go meet them outside, even in the cold, to continue to work for them. You should see the stories that students can tell.

I want to say, I want to give a shout-out, and I've watched much of the proceeding this morning by distance, but I didn't watch all of it. But I do want to give a shout-out, perhaps a second or third, to Andrew Isenberg, District Executive, who not only continued, but increased the frequency of the Eighth District Access to Justice meetings and shared in real time with us and got us documents that I was able to share with my practicing colleagues.

Over the time, the graduates who worked during the pandemic, our student attorney graduates completed over 19,000 hours of pro bono student work through their service. And the most recent graduates, who started during the pandemic, they completed 22 - the numbers increased - they completed 22,000 hours of service.

One thing that I want to talk about, since we work with students a lot, is practicing from home for student attorneys was hard, in addition to the clients, because our students are not people who are set up in an office. Our students have responsibilities, are admitted to practice. But I'll just provide a couple of examples, just so you can get a sense of the extra level of work that they had to do to try and complete their work as student attorneys.

For example, one of our student attorneys lived at home with family, and multiple family members moved in at the time, and that student had a mother who was an essential worker, and there was no space. He would sit with

earbuds in a corner so he could keep confidentiality. When his mom got COVID, he had obligations in the classes, so his work was transferred. We got the work done, but his work had to be transferred. The efforts that he made, and he felt badly about that because he wanted to be doing the service, but the efforts that he made, and we had extra things to provide to him. So we took that as a great lesson.

We had another student who lost work because of the pandemic. His computer broke. We had to get him a computer so he could continue his work on behalf of clients, because he didn't have the means to get another computer.

Those are just two examples of the support we had to give to our student attorneys. I heard stories like this from other Access to Justice practitioners, of people using personal devices and having to get them. But there's more of a safety net when you're working with an organization than when you're a student attorney enrolled in school. So again, we learned a lot of what we owe to our student attorneys as people who provide them this service-learning opportunity.

Speaking of students, we increased our wellness initiatives for our student attorney practitioners during the pandemic. We got reports back from graduates that that investment was essential to their ability to do good work for clients during the pandemic, was the wellness initiatives we took for them.

One good thing is that our UB Law Response Law Firm was already relying on CLEO, which we get for free as a law school, a practice management system, and UBbox, which is a box space, and that's where all of our... We require students to put all of their documents in there. So when we pivoted to online, there wasn't having to take a lot of paper home. That was a mandate, so that was something that was really fabulous, from our federal courts down to our lowest municipal courts. This served our clients and students well.

Over this course of the pandemic, our student attorneys appeared remotely, and some of them are still appearing remotely because of the continuing stage. And as I said, they sometimes still appeared masked and distanced.

We also had help desks that used to be in person, that moved to online that we continued to do, that we're now in the process of trying to move some of them back to in person, although having an online presence for longer periods of time can be helpful for some clients. We had increases in some kinds of work in our many clinical spaces because we're a law firm with many different practice areas. And we had some clients that fell off because they didn't have the technology or the ability to get to us, to make contact.

Today, we are excited by some of the remote work that continues. Actually it's not just good for the clients, sometimes it's really good for the student attorneys to be able to be somewhere when they don't have to drive

somewhere and miss other classes and things like that. So they're kind of a subset of practitioners that I don't think we all continue... And of course, we have 15 law schools who have clinics in the state of New York.

One thing to note, some courts still rely on faxing or mailing, and again, that was taxing staff. I really support the suggestion that electronic communication be increased in all the spaces that the courts operate over time, because I think that that is really important. And I could talk all day, but I do have some bulleted suggestions to summarize things.

Speaker 4: I apologize. We got to have you wrap it up in the next minute or two, please.

Kim Diana Connolly: Yep.

We support continued and refined online practice and the electronic types of things and hope you'll make that a continued part of court.

We believe that multi-platform options will increase equity going forward, although it does depend on the type of practice area.

We encourage Access to Justice providers to make sure that Access technology for their providers, for their practitioners are part of their strategic planning, because that's one big thing that we learned.

We think that investment should happen in rural and local courts, access to technology.

Invest in wellness efforts for those who serve the justice system. We learned that from our students.

And as you noted, commit to pl... Judge Dora noted, commit to planning for how we're going to deploy technology into the future. I do disaster and resilience work. Other things are going to happen, and we need to use this opportunity to have collective learning from the pandemic and move into having that be part of our day-to-day reality.

Thank you very much.

Craig Doran: Thank you very much. Anybody on the panel? Any questions?

Kirkwood: Just a quick comment. I would commend you on the wellness efforts with the students. I know that Albany Law School has a similar program going on and that it's made dramatic impact on those students' lives. The other thing that I would just ask you is, in terms of ways that the court system can collaborate with the schools to give opportunities to students, do you have any specific ideas about how we can improve those opportunities?

Kim Diana Connolly: We already have great placements for students, but I think that, I love the idea of finding spaces for the people who are in clinics to be able to be closer, especially for Buffalo. Buffalo, unlike some other law schools, is located very far from a lot of our client bases, and being able to have spaces that students could have on a regular basis and offer their expertise perhaps as part of the technology expertise is something we would be really interested in exploring.

Craig Doran: Anybody else?

Speaker 5: Ms. Connolly, on a personal level, I'll be in touch with you.

Craig Doran: Thank you, Professor. And just a plug, I'm probably not supposed to do this, but Rochester has no law school. We have an extremely vulnerable population of folks that have been marginalized, not just by the pandemic, but in other respects. I know that we have many relationships with the university. We have a lot of judges who are alumni of the university, but I would love to have that collaboration tightened. I would love to explore ways in which we could benefit, as has the Eighth District, from the great programs that appear to fall. I love advocacy and experiential learning. There are so many opportunities for your students and so much need for us to take advantage of their passion and their expertise.

Kim Diana Connolly: Well, let's keep talking.

Craig Doran: Okay.

Kim Diana Connolly: Because we do place students through a course in Rochester at the federal court. So let's catch up with the state.

Lauren Breen: Yeah, yeah, please. We could absolutely benefit from that. Thank you so much for being here.

Next is Lauren Breen, who's the Executive Director of Neighborhood Legal Services. Ms. Breen.

Thank you, Your Honor. I'd first like to give a shout-out to Professor Connolly. We used to work together, and she's a former member of our Board of Directors. She was using Zoom years before the pandemic.

Thank you for the opportunity to speak at today's hearing. And many thanks to the Pandemic Practices Working Group for all they have done to make the court's listening sessions and today's hearing possible. I'm the Executive Director at Neighborhood Legal Services, and we are the largest civil legal services agency in Western New York.

In 2023, Neighborhood Legal Services will have a \$15 million budget, which is more than twice our pre-pandemic budget of \$6.5 million. We're grateful that

the government and philanthropic community have responded generously to our clients' increased needs as a result of the pandemic.

Pre-pandemic Neighborhood Legal Services handled over 10,000 cases in 2019. So far in 2022, we have handled close to 8,000 cases. We work in both the administrative agency realm and the court arenas. Our courtroom practice focuses primarily on residential eviction prevention and family law, prioritizing representation of domestic violence victims for very, very, very low-income western New Yorkers.

During the pandemic, NLS clients benefited from federal and New York state eviction stays, but our domestic violence practice increased by over 70%. Now that the eviction moratoria have been lifted, we were faced with an unprecedented need for eviction defense services. Neighborhood Legal Services represents the most vulnerable western New Yorkers in areas that affect the essentials of life: food, shelter, safety, health, and healthcare.

Two weeks ago, along with a number of other people represented at today's hearing, I participated in a listening session held by Judge Pritzker and Bill Silverman. I didn't realize they would ask each of us to do a 10-minute presentation on our thoughts. I think my colleagues didn't know that either. So as lawyers sometimes do when we have no other option, I improvised to describe our clients' needs following the pandemic, the high point of the pandemic. After I found out that I was fortunate enough to get a last-minute invitation to today's session, I did my homework, and I met with all of our supervising attorneys at Neighborhood Legal Services to find out their thoughts. And here's what they told me.

As Christine mentioned, virtual appearances really help our low-income clients to reduce the cost of traveling to court, pay for childcare, take time off from work in terms of vacation or foregoing their pay because they don't have vacation time for court appearances. That was fantastic for our clients, really great and continues to benefit our clients. Our rural attorneys said it was a godsend to appear virtually when they had appearances in multiple counties with as much as 60 miles between courthouses in a single morning without having to travel. So those were really fantastic improvements in terms of our representation of our clients. Thank you for that.

They had some suggestions as we move forward. They asked that the court make the investment in the technological infrastructure to offer the flexibility of virtual or in-person as much as possible in all courtrooms and to train court staff on use of the equipment. Some courts had equipment at the high point of the pandemic, but did not know how to use it, and therefore did not offer the option to have a virtual appearance.

If a pretrial conference or issue of law is at stake, then virtual works really well is what our attorneys told me. If it's an issue of client credibility, the in-person

option is critical. Our clients are the most vulnerable, and some will be at an extreme disadvantage without their attorney alongside them, next to them physically, during court proceedings. For other clients, they are less nervous with a virtual appearance. So flexibility, if possible, is helpful to attending to our individual client needs.

I chair the Attorney Grievance Committee for the Eighth District, and we had two years of virtual meetings. We went back in September to our in-person meetings, but we didn't have the option to have a hybrid meeting. I would very much like to see that option for the Attorney Grievance Committees because we cover a large geographical area, and in the winter months, we struggled pre-pandemic to have a quorum at our meetings when the weather was really bad. So I just offer that as another reason why having hybrid capacity really helps.

Our attorneys asked me to ask you if we could have the capacity for breakout rooms or train court personnel on Teams' capacity for breakout rooms. Some courts use it, some courts don't, but it really helps. It can give the parties an opportunity to settle or to, without leaving the Teams meeting, to speak confidentially with a client, after asking the court's permission to do so.

They told me... Now I'm not in court anymore. The electronic filing systems I'm really not very familiar with, but they told me EDDS is not... Access to the case docket is not as user friendly as NYSCEF. So is it possible to make EDDS more similar to NYSCEF or have all courts use NYSCEF?

Evidence. The attorneys told me that they had to submit, for some courts, had to, for virtual appearances, submit evidence for a hearing or a trial as much as a week in advance, and they found that that reduced the ability to rebut the witnesses. They suggested that if there was an option to introduce evidence through a screen share, or to submit it one day before the hearing or trial, instead of one week in advance, that that might be an improvement.

Courts seem to be scheduling more frequent appearances, in particular, because the virtual appearances are easier to conduct. But this can hamper settlement efforts because there's less time to negotiate between appearances. They told me that it helps when the courts are very clear about virtual appearance expectations at the initial appearance. For example, I think in Niagara County, they're very clear about that: be here on time, be on camera with no one else in the room. The attorneys told me it really works. That helps us with our clients, so we appreciate that.

The attorneys said that Teams can make it very hard to raise an objection, because if one person is talking, and you object, it does not always come through on the audio. Then we tested it at our conference table, and it's true. Only one speaker at a time can be heard on Teams. I'm not sure how to remedy that, but it can't accommodate multiple simultaneous speakers.

Finally, Erie County Hub, thank you Judge Hannah, for evictions. It's been fantastic to consolidate all the cases for Erie County and appear virtually, but it's challenging for us. Sometimes it's hard to find our clients after appearances, and getting the stipulations signed can be very difficult. If there is a way to facilitate signing documents connected to the appearance, that would be terrific.

Thank you very much for taking time to listen to our concerns. We know you're extremely busy. I can't imagine what the past two-and-a-half years have been like for you all, but we really appreciate all your efforts. And I want to echo what Professor Connolly said about Andrew Isenberg. He's been simply fantastic, so thank you so much.

Craig Doran: Thank you, Ms. Breen. The past two-and-a-half years have been difficult for all of us, but much easier for us because of people like you.

Lauren Breen: Oh thank you.

Craig Doran: And the dedication of all of you. So thank you.

Lauren Breen: My staff, not me.

Craig Doran: Anybody on the panel?

Craig Hannah: Just a brief comment, even though I shouldn't make all these comments, but I never get a chance, because when we're meeting, it's just about the clients. We never talk about all the sacrifices that you make on behalf of your clients. So I'm going to take this opportunity just to thank you for your hard work and your dedication for helping the less fortunate in this area, because a lot of times those individuals are overlooked. A lot of times they don't have the access to technology, and most importantly, a lot of times they get frustrated and just throw their hands up. So I appreciate for all the efforts and sacrifice, and I never get a chance to thank you. So I'm going to take this opportunity to thank you.

Craig Doran: Anybody else?

Lauren Breen: Thank you, Judge.

Craig Doran: Thank you so much, and thanks to you all. I want to throw something out there for digestion. Mr. Diehl very eloquently pointed out some of the challenges that his clients have with virtual technology, and certainly there are different considerations when talking about criminal cases. The Constitution has to be considered. I won't say impediments, but the protections that the Constitution provides to criminal defendants may not be the same as some of the other clients in your offices.

But there's a bit of an inconsistency that I think we're all hearing is that, aside from those issues, is there a difference in the digital divide between criminal

defendants and litigants in a landlord-tenant case? I'm not sure there is. We're hearing some of that though. And I think one of our challenges is we have to separate out what are the Constitutional concerns versus what are the technological concerns, the digital divide concerns, et cetera?

I just want to have us all thinking about that, because as we make our recommendations moving forward, we certainly have to be mindful of the law, the statutes, the case law, the Constitution. But as a separate layer perhaps, we also have to think about technology. Where is the digital divide? And how can we overcome those things?

And if it's an impediment to expanding the use of virtual technology in criminal cases, if the digital divide is an impediment, well, we can deal with that. We're not necessarily going to change the Constitution, but we can address some of those technological issues. I just want us to be creative and thoughtful about those issues.

Thank you, thank you, thank you to everybody. We're going to take a seven-and-a-half-minute break right now, and we'll be ready to start Group 5 at 2:45. So thank you all so much.

Welcome, everybody, and thank you for being with us this afternoon and being patient with our schedule. As luck would have it, we are relatively on time here, so thanks to everybody for putting up with this rather hurried environment. But we are... There were those that said we couldn't do it. We have more than, or in the vicinity of, 20 witnesses, and when we initially started planning this event, our goal was to have 10 or 12 maybe. So we are extraordinarily pleased with the response that we've had.

This next panel has with us this afternoon, Adele Fine, who is the Bureau Chief of the Family Court Bureau of the Monroe County Public Defender's Office; Brian Degnan, who is an attorney for the child, an 18B attorney in Genesee County; Cavette Chambers, who is Corporation Counsel for the City of Buffalo Law Department, otherwise known as the lawyer for the City of Buffalo.

It's a big job. We're happy you're here. Thank you for being. Everybody has big jobs, by the way.

Norman Effman, Wyoming County Public Defender; Claudette Newman, Associate Court Attorney to the Honorable Frank B Revoir of the Chenango County Courts; and Judith Osburn, who is Chief Clerk of the Broome County Supreme and County Court and probably knows Porter fairly well, I would guess, maybe.

The order in which we will call upon people has no relationship to the importance of anyone, unless you're Adele Fine, because you're first up. So Adele, we're very happy you're with us. Thank you. And I should say, I have

known you as long as I've been a judge. I think you might have been around on my very first day as a judge. Thank you for the work that you've done in the courts and the work you've done to teach me how to do things. I appreciate that. So Adele Fine, the floor is yours. Thank you for being with us.

Adele Fine:

Thank you, Judge. And thank you everyone for inviting me here to actually give my thoughts about this issue. Just to give a little demographic information about the Public Defender's Office, the Family Court Bureau of the Monroe County PD's Office, our office handles all matters. We accept assignments for all matters under Section 262 of the Family Court Act, so every kind of case. Our clients' financial eligibility, we represent clients who are at or below 125% of poverty level. That was up until this week. It's changed somewhat, as you might know. But in the 2020 and 2021, we represented or we opened just over 2,400 cases in each of those years for approximately 1500 clients. And CPS in our county filed about 225 Article 10 petitions in each of those years. Our office represented, most often, respondents but also non-respondent parents in approximately 75% of those cases. Our numbers are nothing like Downstate New York numbers, but for an upstate family law practice, we are a very busy office, and we were a very busy office during the pandemic.

Actually, the pandemic was the closest we came to being near the caseload caps that are recommended by ILS. So it was sort of heaven from that perspective, but that's gone now. That's done.

What we learned about virtual appearances during that time, one is that it pays to be prepared. At that time, our office was headed by Tim Donner, who was our public defender. He's technologically a very savvy person. We all had laptops; we all were able to remote access from home right away. On March 17th, we were able to do that. We sat around for about a month wondering where the judges were, and then it dawned on us that you were not where we were, and that the court system was very much behind even us, a public defender's office, in terms of the available technology to do the job remotely.

The other thing that we learned about virtual appearances themselves: in general, they are helpful in some cases, and in other cases, they should not be an option at all. Where we feel like they ended up being very helpful to us was in the initial stages of Article 6 and Article 8 petitions. Those are proceedings where personal service is at issue. We're trying to get the counsel assigned, get everybody situated, get the AFC assigned, maybe just get up to speed on what the issues look like they are in the case. Those kinds of appearances, it was very helpful.

It was also helpful for attorney only conferences, where we're talking about trying to settle the case. It was also helpful if we had a solid stipulation that we were ready to place on the record, and all that needed to be done is that the clients needed to be colloquied by the court, and we could conclude the case.

But where hard decisions need to be made about a case, whether it's at a pretrial conference or at a trial or hearing, those should always be in person. I sort of echo what the Family Court Supervising Judge from this morning said. It's the immediacy of the court proceedings, the physical engagement of us and our clients and opposing counsel with the court, our clients being able to look the judge in the eye, the judge being there, the physicality of all that, the emotional and physical nature of that is very important in terms of people, everyone taking it seriously.

We actually just got more stuff done when we went back to in person. While everything was virtual, stuff sort of floated along, with no decisions being made, ultimately. It was actually harder to close cases than it was once we started going back in person.

With respect to Article 10 cases, and I would include PPHs in this, also willful violation cases, termination of parental rights cases, all of those appearances from the very beginning of the case should be in person. And that's any proceeding where there's a possibility of a hearing that's going to occur that day, as a 1027, 1028 or child support, willful violation hearings. Those hearings are the timelines in the regs for those are fairly short.

But all these in-person hearings by statute are for those cases, where there are substantial liberty interests at stake, or there are parental rights at stake. So the statute already recognizes that hearings are often and frequent in those cases. And in those cases, they should be in person all the time.

I think some of the saddest cases I saw, they were actually not from our jurisdiction. I don't know that there was any of those that happened in New York, but there was a young woman in a car who was having her parental rights terminated virtually. That just shouldn't happen in any court anywhere. It was heartbreaking to see.

We are essentially, I think, our office would advocate for a hybrid model, but with heavy on the in-person and light on the virtual. And with that, there are some practical issues that I would say, and one of them, talking about access to the internet for virtual or access to virtual technology.

Most of our clients had phones. Some did not, but most did. Most of our clients did not download the Teams app. When they got the... Most of our clients had Obama phones, some of which have, some of which are smartphones, some of which are not. Some of our clients had... None of our clients had desktops, as far as I know. Everything, their whole internet life resolve revolves around their phone. Some of them had access to internet, some of them needed hotspots, but most of them, even with the possibility of all that, still tended to call in and not use the Teams app to be able to appear virtually. And that's problematic because, really, there should be nothing happening on a telephone call appearance other than just the very basic stuff that happens in the case.

We had it set up in our office, so we were operating the whole time during the pandemic. If we had clients that we really wanted to appear virtually then, and they didn't have the ability to do that, we had specific spaces in our office set up for virtual appearances, and we would appear with our clients. They would go through the whole screening process in our office, the COVID protocol, and we would do it in our office.

But other offices I know didn't have that option. Private 18B attorneys doing this stuff didn't have that option. So we were lucky that we were able to do that. We understood that there were kiosks over at the courthouse that were available. I don't know anything about a kiosk. They might have been available in our courthouse, but we never took advantage of them because we had the way to control it in our office.

Another concern that I had throughout this is the ability to be able to preserve my attorney-client relationship with my client during a court proceeding. I hated that I had no control over what my client was going to say when we're both on a virtual court proceeding. I also did not like to be able to confer privately with my client during a court proceeding. We were told by some of the referees and a couple of the judges that they had expected that they were going to get training on how to be able to do the breakout rooms and how to be able to manage all of that on the Teams application from the courthouse. That training never materialized, and it never happened in our county.

Now, me personally, because I'm a control freak about my cases, I ended up devising my own little ad hoc method of being able to control the attorney-client relationship that involved Googling or downloading Google Voice and using my personal cell phone. A lot of my clients actually liked me doing it that way. So I appeared for my clients, they could hear everything, but when I needed to speak to my client personally, I would mute the court and then be able to speak to my client privately. But that was the only way I was able to manage to do that. That's a weakness in this system from an attorney-client, from a parent representative perspective.

The other thing that's going to happen, I think, it's happening more now, is that if you have a hybrid model in place, that there's going to be increasing conflicts, scheduling conflicts between hybrid appearances and in-person appearances. There's an increasing number of in-person appearances, a decreasing number of available

PART 2 OF 5 ENDS [01:10:04]

Adele Fine: counsel who are willing to accept these assignments so it's a finite pool of attorneys who are doing these cases in family court. And my impression is over the years has been its like herding cats to get judges to act collaboratively with each other. But this is one area where I really feel it would be so great if the judges in each district would actually come up with some collaboration.

For example, we thought about in our county, if we could have each judge have one morning that was devoted to nothing but virtual appearances in family court and then maybe the rest of the time be doing in-person. And that they coordinated that with each other, that would reduce the number of conflicts that attorneys would have in being able to appear one minute in a virtual proceeding, another time in the next minute in an in-person proceeding. Because we all have to be at court now to do both the virtual and the in-person court proceedings.

The other thing is physical spaces. So just this week, I'm on part one this week. I had a brand-new client that I was just meeting and I was meeting with her to discuss whether to have a 1027 hearing in the Article 10 case that had just been filed against her. I couldn't have a private meeting with her in our little satellite over said court because one of our attorneys was already on a virtual proceeding.

Every other single office that was available on my floor to be able to meet with her privately, was occupied by a single attorney, most of them, the 18B attorneys who were appearing on virtual appearances just before they had to leave to go to their in-person appearances. So the physical layout of the court as it currently exists doesn't really enhance the ability to do virtual, have privacy while you're doing virtual appearances, and then having to appear in person. And I don't know if that means you give more space for people to have private conferences with their client or separate spaces for people to do virtual appearances, but it's a factor. It's something to be considered.

Craig Doran: Ms. Fine, I apologize, we have to have you wrap it up in the next minute or two.

Adele Fine: The only thing I was going to say was the broadband. Really, I think it's a collaboration between the county and the state. County and Erie County owns our building, they host the public Wi-Fi that's available but the state are the judges and so we need to have better broadband. But maybe that remains more collaboration between the state and the county in terms of being able to fund some of the things in order to make the virtual work.

Craig Doran: Yes.

Adele Fine: That's it.

Craig Doran: Great point. All great points. Thank you. Anybody have any questions or comments for Ms. Fine? Thank you so much. Thank you for the work that you do. I know that you are on the front lines there and we don't often have the opportunity to hear suggestions like we just did from you, so feel free, continue to share those through the website you heard me mention a little while ago.

Adele Fine: Okay.

Craig Doran: ppwg@nycourts.gov.

Adele Fine: I wrote it down.

Craig Doran: And those detailed suggestions you have.

Adele Fine: Yes.

Craig Doran: We're not going to hear those from anyone other than someone who's actually in the courthouse who's doing the work.

Adele Fine: Right.

Craig Doran: So, please share them.

Adele Fine: Okay. I will.

Craig Doran: And thank you. Thank you so much. Next up is Brian Degnan, who is an attorney for the child and also an 18B attorney in Genesee County. Mr. Degnan?

Brian Degnan: Thank you. Good afternoon, everyone. I'm actually also employed through the Wyoming County Attorney's Office.

Hon. Edwina Mendelson: Please use the microphone.

Craig Doran: Oh that's right. Thank you.

Brian Degnan: Start over. Good afternoon, everyone. I'm also employed through the Wyoming County Attorney's Office. As Mr. Effman politely reminded me when I walked in here, so thank you Norm.

Norman Effman: My pleasure.

Brian Degnan: So I've had the pleasure of doing both criminal and family law during my entire career and throughout the pandemic. First primarily as an 18B and private attorney in AFC. So I've been on both sides of it, as both a government employee and a private practitioner. And I just wanted to start out by saying that the court system provides a vital service to the public and it's not my opinion that we need to take a look at the technology, expand the technology and to better serve the public moving forward.

The pandemic allowed us to the ability to reimagine court and to move forward. I think that these hearings are very important to improving the technology and hopefully discovering a manner for them to work in criminal proceedings. I appeared in criminal proceedings virtually and unfortunately it was a disaster to put it politely.

The district attorney's office in Genesee County, the former district attorney accused not only myself, but other members of the defense bar of playing games because we would not consent to running evidentiary hearings such as suppression hearings where we need to see body language of law enforcement or other witnesses, so that was problematic.

In terms of having state inmates, incarcerated individuals, excuse me. I've had clients over the years that don't want to come to court for future proceedings because it removes them from program. If we could have the ability to have these clients appear virtually, it serves two purposes. The client is there at their hearing or their court appearance, and then not traveling around from place to place.

I know during the pandemic, Linda Coston from the Attorney for Children Program sent out a memo looking for additional attorneys for children in many of the rural counties that I practice in throughout the eighth and seventh district. I know particularly the 18B panels in Wyoming and Genesee County are desperate for additional attorneys to join these panels.

We have a massive attorney shortage, not only due to the rates, but also willing to accept assignments to represent clients. One of my good friends, his name is Michael Guarino, he's an attorney at the Webster, New York. Mike is on the 18B Panel now as a result of virtual courts in Orleans, Genesee, Wyoming, Steuben, and Wayne counties. I spoke with Mike about this yesterday.

I got his consent to use his name here and he indicated to me that he has 30 cases in Steuben County, but for virtual court he would not have the ability to take on cases and to represent these individuals. The Genesee County 18B moderator or the administrator, Kristie DeFreze, she chimed in as well, indicating that we've been able to expand our panelists to provide not only high-quality representation but to fill a desperate need for attorneys willing to take these cases.

One of the benefits of speaking with several colleagues and my experience, is that the virtual court really hones in on time management skills. No longer are we waiting around in court cases for 9:00 o'clock, 9:00 o'clock means 9:00 o'clock sharp. Courts in my opinion now are more efficient than they've ever been in the past. There's virtually no delay in waiting around for cases to be called. There's no travel time that we're paying attorneys to have to come to court. That saves the client's money, it saves the county's money, it saves the state money.

There's also an added bonus of not having to pay for gasoline at \$4 a gallon. Many of these folks are indigent. That's a lot of money to people. It's a lot of money to me at \$4 a gallon driving around from county to county. That also helps the court system put on a good face that, "Hey, we're able to do this virtually. We're reducing our carbon footprint."

Clients are also able to attend work. They can take a 15-minute break, tell their supervisor, I need to step out for a court proceeding. They don't have to take an entire day off any longer to come to court to participate. One thing that I talked to Judge Kibler about is, we had to learn how to re-practice law, how to work with our clients and it took a little bit of time for both the attorneys and for the court system to grasp how to get into a rhythm doing this. You have to prepare your client for what to expect at a virtual hearing.

As Ms. Fine indicated, we don't want our clients just blurting things out and that continues to be a problem and we just have to tell them ahead of time, please be quiet, please be quiet. I use the ability to text with clients during court proceedings through my cell phone. They have a quick question. It's not disruptive, it'll come up. I turn the iLive, the live caption, so I'm able to multitask. It's something I've learned to do over the years.

Another issue that... Another added bonus is reliable transportation. Many of these individuals live in rural counties. There is no mass public transportation system in the Genesee, Livingston, Orleans, and Wyoming County area. There's very limited Uber drivers, allowing virtual courts allows these litigants to appear in each and every court appearances, adjournment requests, and adjournments are, in my opinion, they're a thing of the past because there really is no excuse for someone to miss a court appearance.

They have telephones, there's internet, they can go through their attorney's office. I know when in my private practice, clients are always welcome throughout the pandemic. We followed whatever the CDC guidelines were. I've had several truck drivers that I represented. Those guys would pull over and take care of their court appearances.

One of my friends is an assistant county attorney in Livingston County. She indicated that their warrants on the article 10 cases are down and cases are moving quicker because again, the litigants are constantly in the court system. One of the case workers that I work with in Wyoming County, she indicated we're in the snowball their folks. I don't know how much you guys are familiar with Wyoming County, but probably about 250 inches of snow is probably what I would estimate is the average there.

We don't have problems with clients having the call in because of weather, snow days, child is sick at home, somebody's scrambling for childcare. Both the attorneys, the court, we can all do these things virtually. Unfortunately for children now, the snow days may be a thing of the past, but we'll figure out something to maybe the teams will get a virus or something along those lines.

Craig Doran: Mr. Degnan, excuse the interruption, I got to have you-

Brian Degnan: Okay.

Craig Doran: ... just another minute or two.

Brian Degnan: Okay. One other thing then that was discussed amongst attorneys is, COVID still remains an issue. Case workers are going into home, this could be continuing virtual would reduce the spread of viruses, the wintertime viruses. The high-speed internet as Ms. Fine indicated, that does remain to be a problem for some folks. That's something that we need to address. And then in terms of the technology, the breakout rooms, if OCA is the one that created this technology, I feel that OCA should provide a CLE for all attorneys free of charge moving forward on how to use this technology.

I think Ms. Fine indicated precisely about the breakout rooms. Our offices were as well promised that and it's something that I think that is really important for not only the attorneys to know how to use this, the system, the court system, the court clerks, but then we can teach our clients how to use it. In layman's terms, computers are very complicated and hopefully the state can put that CLE together and make it available to the general public. Thank you.

Craig Doran: Thank you. Excellent comments. Any questions, comments?

This is Ernie.

Christine Sisario: Hi, Mr. Degnan.

Brian Degnan: Hello, hello.

Christine Sisario: So I'm actually doing a CLE on Teams and breakout rooms for the New York City bar.

Brian Degnan: Excellent.

Christine Sisario: I think it's next week or the week after. So different bar associations we can work with maybe out in this way and do something for you for sure. It's all about Teams. The breakout rooms are not anything OCA built that's just feature, a feature of the Team software.

Brian Degnan: Okay. That is something that you guys could share.

Christine Sisario: It's not a great feature of the Team software to be clear, it's not easy to use for the court or anybody. So we've been looking into alternatives.

Brian Degnan: Okay.

Christine Sisario: So thank you for raising that as well as I think Ms. Fine raised that as well. Thanks.

Craig Doran: Thank you. Anybody else?

Brian Degnan: Thank you.

Leanne Lapp: Good afternoon.

Brian Degnan: Good afternoon.

Leanne Lapp: You mentioned in the beginning of your remarks suppression hearing, why that shouldn't be held virtually. Are there any other types of proceedings that you think should not be held for this court?

Brian Degnan: Any type of evidentiary hearings, I hate to say this but I did one with Judge DiMillo. We can only see the witness testifying from the waist up and he kept putting his head down and kept objecting that we didn't know what he was looking at, whether or not he was reading something, whether or not it was a cell phone, a screen papers, a nervous habit, we don't know. But evidentiary hearings I don't believe are a great idea to have before a virtual proceeding.

Obviously, if everyone consents to it, that's fine. I'm actually doing an AFC substituted appeal that Judge Williams and Genesee County Family Court handled virtually and there was no problems. I spoke to prior counsel; the prior AFC and the transcript was clear. So it appeared to work there. All the attorneys consented. But I think something in terms of a criminal case where someone's facing incarceration, they needed to have their attorney right next to them. I think it leads potentially to an ineffective assistance of counsel claim, if you have a client that's looking at any form of incarceration, they need to have their attorney right next to them.

Leanne Lapp: Thank you.

Brian Degnan: Thank you.

Hon. Edwina Mendelson: I'm sorry, can I follow up on that because I was a bit confused because at one point you did mention that some incarcerated individuals will lose time in programming if they are produced and coming into court. So could you clarify your position on that?

Brian Degnan: Sure. If they're on for argument of motion or something where they're not going to take a plea or being arraigned or being sentenced. If it's just a conference with the court or a check-in or a call appearance and certainly clients may not want to come, obviously it's their choice. But if they don't have to be removed from program for a five-minute appearance and they're on the road for a day or two going from Dannemora to Attica to come to Wyoming County Court, it's cost effective.

And a lot of those, a lot of my clients over the years are like, "What am I doing here for something that could have been done in five minutes over the phone?"

Those are things that I've heard in the past and I think that's one of those hybrid situations where that would be acceptable in a criminal proceeding.

Hon. Edwina Mendelson: Thank you for clarifying.

Brian Degnan: Sure thing.

Craig Doran: Thank you.

Brian Degnan: Thank you.

Craig Doran: Anybody else? Thank you so much, Mr. Degnan.

Brian Degnan: Thank you, Judge.

Craig Doran: Next up is Cavette Chambers whose corporation counsel for the City of Buffalo. Thank you for being here.

Cavette Chambers: Thank you for... Thank you for the invitation. Good afternoon. As you said, my name is Cavette Chambers, I am the Corporation Counsel for the City of Buffalo. Here with me today are my Senior Deputy Corporation Counsel, Mary Scarpine and Deputy Corporation Counsel, Robert Quinn. Again, thank you for the invitation that was extended to us and especially from Judge Hannah to be part of this very important discussion on how we reimagine the courts moving forward.

The city's law department has embraced many of the court's pandemic-related practices. Excuse me. While many of us have experienced technological challenges, certainly the benefits from moving towards a hybrid schedule far outweigh any of the inconveniences that many of us experience during this time. As such, we support and encourage the continuation of what we've experienced as being largely innovative and efficient tools that have allowed for the continued practice of law during the pandemic into our current, what we're now calling our post-pandemic era.

The use of blending remote and in-person appearances have allowed for certainly increased productivity and the ability to quickly pivot what needed to address not only the needs of the court but of any other party that's involved with our actions. We have found that remote appearances are best when used for pre-trial conferences, motion arguments, depositions when agreed to by the parties. However, we do believe that there is value found in having in-person hearings as well, trials and other proceedings that actually require witnesses before the court.

What we found during the pandemic, many of us have all experienced this, is when you're going over to court and certainly our journey is not as long as others, but the time that's spent when you're waiting for another attorney to

appear is time that you're not being productive. So in speaking to the attorneys in our office, we're able to multitask to the umpteenth degree.

You're able to quickly assess any documents that you need to while you're preparing for other counsel to show up. And it's a far more easy experience. If easy can be a word that's used when we're litigating, it's one that allows for the attorneys. If you're running late, that's okay. I still have other matters that I can take care of. If the judge is running behind, that's fine. My time is not lost sitting in court where I'm not able to be as productive and work on other matters that I can't do. And while sitting in a courtroom.

We don't have... No, we don't have the long journeys, we're merely crossing the street. But it has something that has significantly impacted just the way that we do business, just the way that we serve the city, so that's something that we strongly encourage that the court continue. In speaking to the attorneys in the office, we haven't come across too many pitfalls or any problems probably because we have a fantastic team of lawyers.

But any technological issues, which is what the most of our problems were, we have a great MIS department that was ready and able to fix those issues for us. So while the world shut down, we immediately, people were taking laptops home, people were taking desktops home. And for as far as city hall, all of that work still continued.

So we were able to pivot quickly. We're still seeing the benefits of that on a lot of our matters where we're able to do things remotely. And then certainly if the court ever desires, we're able to also appear in person. But that ability to have both an in person and a remote option has... It's really increased the efficiency of how the office runs.

Craig Doran: Thank you.

Cavette Chambers: Thank you.

Craig Doran: Thanks so much. Anybody have any questions or comments for Ms. Chambers? Thank you for being with us today. We appreciate you very, very much and keep in touch if you have additional suggestions, please feel free to-

Cavette Chambers: Yes, and please reach out if you need anything else from us.

Craig Doran: We will. So next is Norman Effman who needs that microphone? All right. And Mr. Effman is the Wyoming County Public Defender. Mr. Effman, the floor is yours. Thanks for being with us.

Norman Effman: Pleasure to be here. Thank you for the invitation, which is way everybody has started their comments that I can recall. So I'm very happy to be here as well.

It's surprising given Wyoming County, you've heard it described as more cows than people.

Craig Doran: By the way, can we verify that?

Norman Effman: Yes, we can. 42,000 cows, 40,000 people and approximately 4,000 incarcerated individuals. All right. So you've heard from Judge Kibler who is not only the administrative judge for family court in the eighth but is our primary family court judge and surrogate court judge. We have two judges, superior court judges, Judge Mohun is also a three-hatter. I not only run the public defender's office at least until the end of this year, but I also I'm director of something called Attica Legal Aid.

So speaking about incarcerated individuals and appearances, we've been doing that since 1981 and it's a very interesting phenomenon, especially what Brian said about when they want to be in court and when they have to be in court and when they don't want to be in court. I'll get to that if any questions. We remained open during the pandemic with a rotating staff. We have a building that accommodates that.

We also had what I would call our clean room and that we had one room dedicated for clients who were masked and we had all kinds of protections to ensure that there was no spread of disease so that they could participate from our office space in virtual appearances. I think you will hear consistently both that you're Albany presentation and, in this presentation, and in New York City presentation, the same thing from the institutional providers that I'm going to say.

And that is the absolute certainty that we are against virtual appearances for arraignments. Just starting with that and a lot of individuals have discussed, number one, developing the rapport between lawyer-client. Now, it's a little bit different because I've also had a private practice for the last 52 years and if I get retained on a case, I don't have to worry about developing a rapport with my client.

There is already an economic rapport that we have developed and is a trust level. But if I am showing up as a public defender or a council at first appearance and arraignment, my client is going to be suspicious from the very beginning. We're part of the system. We have a large obstacle to overcome to gain the kind of interaction that you would hope to have with a client in defending them in a criminal case so that's a burden.

And the fact that you're there in person representing them and arguing for their liberty is a good way to start a relationship. As far as a defense attorney is concerned, it's more than that. And I think some people have mentioned this. As you know, I've sat here all morning because I think it's important to hear all

sides that have been presented as you have. And I've also listened to most of the Albany presentations as well.

But it's more than simply gaining a relationship with your client. As some people have indicated, there is a time that you have to use your elbow to keep your client quiet at an arraignment. And that's hard to do virtually. So you have to be there. You have to be with your client. And I told Judge Hannah, I would relay some of his other comments at one of our listening sessions.

We talked about at an arraignment issue of bail and the difference between deciding a bail issue where bail may be appropriate, when you're doing it on a computer screen and when you're doing it in person with your client there, the defendant with the lawyer there. And maybe with his or her family behind him. And I think Judge Hannah agreed with me that he has found that he is more likely to set a higher bail on a computer screen than when you have an in-person relationship. And you can see people and their humanity and it's a totally different thing.

And many people have talked about in-person appearances having quite a different impact on those who are decision makers. Because you can see body language, you can see facial expressions, you can form different opinions as to credibility if you're in the room that you can't do on a computer. So I'm going to leave the slippery slope of virtual appearances aside for a moment because every institutional provider is on the same page.

And I belong to every institutional organization including Chief Defenders Association of New York where I'm on the executive board, including NASDA, where I'm vice president including NACDL where I'm a member. So I know we're all on the same page, that there is certain hearings that mandate in-person appearances and they include everything that everybody else has said evidentiary matters.

For example, I also handle from time-to-time civil commitment cases when mental hygiene legal services has a conflict. And even before the pandemic, they were provisions for permitting expert witnesses to testify virtually because a lot of them are based in Albany and the hearings take place throughout the state so that's been provided.

The most difficult thing I ever found in doing a virtual hearing was trying to cross examine a psychologist when I have a hundred pages of documents. And you've heard the description of how some things have to be entered in advance, but give me a break. The theater of courtrooms is an important part of those of us who litigate. We will have to be there. You have to get in the face of a witness if the court will let you and show them a document and ask them to read it, you can't do that virtually.

So even if it's permitted, it is a real obstacle to appropriate lawyering because we, who lawyer in courtrooms enjoy that. And that's, by the way, I think part of the problem of getting people in the market right now, you've heard about the difficulty of replacing staff members in OCA positions. Well, multiply that by a hundred and you'll find out that public defender offices and district attorney's offices are finding it impossible to recruit people.

And the pandemic is part of that because the thrill of being a defense lawyer is the thrill of the courtroom. And if you're doing it virtually and you never have that experience, you don't understand what can get your blood flowing when you represent someone on either side of the aisle.

And those young attorneys and law students that have never experienced the collegiality of being together in groups such as bar associations, CLEs, whatever, have never experienced the collegiality of talking to your comrades in arms during breaks in a courtroom meeting, have no idea about the plus part of representing people or representing the people. I think it's the same. I'm going to tell you.

Craig Doran: One or two more minutes Mr. Effman.

Norman Effman: All right.

Craig Doran: And I hate to do that to you because you've been here all day.

Norman Effman: Well, in two minutes, let me focus on some of the problems. The one thing we have really not touched on, is village and town courts. And I can tell you the OCA and on our court system did a great job during the pandemic. We didn't miss a peak. The town and justice courts were a total failure. It doesn't work. They don't have the technology and they don't have the experience and they don't have the knowledge of the 22 town and village courts that we have.

All of them but I think one is a lawyer, so it's all non-lawyer courts. The ability to do an arraignment is next to impossible. Bail is ridiculous, centralized arraignment parts. So they operated during the pandemic and they operated well. And what I think, I'm going to be very quick about this because it's the elephant in a room. OCA should take over the town and village courts.

They took over the county courts in the '70s. They should take over the town and village courts. There should be some economic resolution between the municipalities and the state to make this a balance. But these courts cannot operate on their own. They will never be able to fully function during another pandemic. And you should address that and address it clearly.

Centralized arraignment courts work, but the system doesn't work because it's voluntary. The statute should be changed to mandate centralized arraignments. We have no pre-detention arraignment facilities in Wyoming County. We're

going to need to do something and it's an economic one to get us to be able to use the jail where we can have centralized arraignments.

There's a public area, but we need to somehow economically provide the ability for that jail to conduct pre-arraignment detention, even if it's for eight hours because it's a staffing issue. It's a money issue. So with my 52 years in the system, I want another 10. And I think you can help me survive that. Thank you all.

Craig Doran: I hope we can do that. Thank you. Anybody comments, questions for Mr. Effman? Go ahead, judge.

Craig Hannah: I'll be brief. I was remiss. I didn't take Mr. Degnan and Ms. Chambers and Ms. Fine for their very thought-provoking comments. Your insight was well received and I thank you for being here. Mr. Effman is being way too nice to me. Mr. Effman did a mic drop moment on our virtual listening session. He said, and I'm going to put a little emphasis on it, he said, "It's easier to hold someone in jail when you don't have them sitting in front of you." He said, "It's easy to throw some high bail on somebody when their pastor, their family, and their baby is not sitting in front of you."

So he said, "Think about that when you talk about doing arraignment virtually." And I told them it made the short hairs on the back of my neck, even though I don't have many of them stand up. So I wanted to emphasize what you said because the way you said it to me was moving. And I appreciate it because that's what these sessions are about. It's about hearing ideas and making sure that these ideas might even change your opinion on something. But it's all my colleagues said, "We need these type of forms so we can hear all sides and all ideas." So thank you, Mr. Effman.

Norman Effman: Thank you, Judge Hannah.

Craig Doran: Well said, Judge Hannah. Anybody else? Thank you, thank you, thank you, thank you. And continue to share your thoughts, please, Mr. Effman. I don't mean right now. I mean-

Norman Effman: Oh, give me the mic back.

Craig Doran: That's what I'm afraid of. Yeah. All right, so next up is Claudette Newman, who is associate court attorney, the honorable Frank B. Revoir of the Chenango County courts. Ms. Newman, thank you for being here.

Claudette Newman: Thank you. Good afternoon. As you said, I'm the associate law clerk court attorney for Judge Revoir. Judge Revoir has a multi-bench. He handles criminal, civil, family court, and surrogates court. So we see it all. I am also a town judge. I've been a town judge, had the privilege of serving as such for over 10 years. Right now I'm currently handling two courts in at Otsego County. And-

Craig Doran: Could you move that microphone? I'm sorry. A little bit closer to you so we can make sure that the folks watching us on the internet can hear you.

Claudette Newman: I will just address quickly his comments about CAP. I'm a huge supporter of CAP. I wasn't to begin with, but once we went to the centralized arraignment part and where we have 12-hour shifts, it was transformative, which is my word also for this, the pandemic practices that we've come up with. But CAPs should be mandatory in every county because we've experienced in Chenango County a tremendous resistance from the sheriff for no other reason that it's different.

They have the staffing, they don't have as many people in the jail, and it should be mandatory. And we've had a situation in Chenango County that Mr. Kirkwood is aware of, where they've gone months with no after-hours arraignments. That is a dangerous situation. It was all because the sheriff would not agree with CAP. He finally has and they're moving forward, but that cannot be stressed enough. It should just be mandatory.

And as a town judge, I'm all in favor of it though. I do like virtual arraignments and I think it can be very. I've let people go either that I just saw virtually. So I think that there can be accommodations for that. But getting back to our remarks about pandemic practices, as I said, the word that I could think of to describe it was transformative. The courts run more efficiently than they ever have in the past, and that is a benefit not only to the attorneys, the court staff, but most importantly the litigants.

We have seen time savings, cost savings, and most importantly, we have been able to provide more representation to people because of the pandemic practices of having virtual appearances. As most of you know, and you've heard already just with this panel, the small or rural counties are in desperate need of attorneys.

We are just one step away from being in a crisis situation. There isn't a dwindling pool of attorneys. There is a disappearing pool of attorneys. We simply do not have any new attorneys coming in. So as people retire, there is no one to replace them. I can give you a couple examples, both at Otsego County and Chenango County, both recently had their public defenders move on to other positions and so they needed to fill them.

They went months, months unfilled because there was no one who applied, no one for jobs that pay over \$100,000, no one. So the solution won't be just with the 18B. So we have to do something else, and having virtual appearances

PART 3 OF 5 ENDS [01:45:04]

Claudette Newman: by attorneys is the solution for the small counties, at least. Right now in Chenango County we only have four attorneys who serve as attorneys for the children. We have five attorneys who will accept 18B felony assignments. Four

of those attorneys live an hour or more away. One of them lives three hours away. We have court on Mondays and Fridays for county court, so she comes for a long weekend to visit family. The other, the fifth person, he is sharp as a tack, but he is almost 80 years old and he does it because he knows that we're in desperate need. At one point in the Chenango County Public Defender's office, we had one person, one lawyer, left and that was in May and she does family court, so everything had to go to 18B. So he, out of the goodness of his heart, stepped up and solved that problem for us and gave us one person in the county who does 18B work.

What I'm here to ask you today is to support an expansion of Article 182 of the criminal procedure law that allows for electronic or virtual appearances. I can think of no reason that every county in the state of New York should not be on that list in section 182.20. Why can't we all have that opportunity? I also believe that there needs to be an expansion of the appearances that can be handled through virtual appearances under section 182.30 of that article. We have judges sitting here, we have lots of experienced counsel. Pleas and sentences are very commonplace. You've already met with your client. You can do that in the jail. But we can't have attorneys come from out of the county to do a 10-minute plea that have to drive an hour. There's just not enough time because then they have to be another hour away and then another hour away.

During the pandemic, we were able to add more people to our list of assigned council because they could sit in Oneonta, New York and appear in Norwich at 9:30, in Cooperstown at 10 o'clock and in Delhi then at 10:30 and they never left Oneonta. That only serves the defendants because we could give them quality representation. To be frank, we have some attorneys on our 18B panel we would not choose to have, but we have no other choice. There's nobody left. What are we supposed to do when the public defender's office is conflicted out? We have to have somebody in court with them, which goes to the time saving.

You talk to a lot of the attorneys, they'll tell you they like being able to appear virtually for the reasons you've heard. It allows them to handle more clients and they don't spend all their time just driving around, especially in the smaller counties. We have to rely a lot on attorneys coming from Binghamton and it's a lot easier for them to book a half hour appearance than two and a half hours for that still just half hour appearance, which goes to the cost savings. There's a lot of people who want to appear, especially in family court and surrogate's court with an attorney, but they can't afford to pay somebody \$300 an hour to drive two hours for a 30-minute representation or for surrogate's court, five minutes. They can't justify that, but virtual appearances have allowed that.

Craig Doran: Ms. Newman, I apologize, we got to have you ... another minute or two.

Claudette Newman: Sure. I will just say I conference a lot of cases in family court and we have seen much better attendance and I think much better resolution of matters because we're virtual. Instead of me conferencing with attorneys, I have litigants on the

line as well and they really are more reasonable when they know that they have to speak to each other, speak to me. We've seen a tremendous increase in the amount of cases we can resolve. If the purpose of the court system is to serve the public, my belief is that the way we do that is by expanding virtual representation and appearances. We make it an option. It doesn't have to be mandatory. Thank you.

Craig Doran: Thank you so much, Ms. Newman. Anybody on the panel? Questions or comments?

Porter Kirkwood: Well, I'll just throw out a thank you for Judge Newman and for Chief Clerk Osberg coming up here today and representing the sixth [inaudible 01:50:02]. Greatly appreciate it and I thought for certain you were going to immediately respond to the idea of an OCA takeover of the town and village courts.

Claudette Newman: I agree with that wholeheartedly. Wholeheartedly, yes.

Speaker 6: We were waiting for that actually.

Speaker 7: That's the after five portion of the presentation, a debate between Norman Effman and Claudette Newman.

Speaker 8: Can you tell her I'm 79?

Claudette Newman: I think that there is a misconception that the towns will oppose it. The towns are tired of dealing with town court. That's what I find. You send them some money from the fines from the vehicle and traffic and they would be more than happy to get rid of it. They are just tired. It's too much for them. They can't get judges. That's why I'm serving on two courts and at [inaudible 01:50:51]. We have judges in Shenango who serve on three courts because you can't get anybody to run. So it is a system that is way past its time. Thank you.

Craig Doran: Thank you, judge. Anybody else? Next up in this group is Judith Osburn, who is the chief clerk of the Broome County Supreme and County Courts. Thank you.

Judith Osburn: Good afternoon. As everyone, I'm honored to be here and I thank you for the invitation. I thank you for the time that you've spent on this issue and all the perspectives you're listening to to make things better. I appreciate it as a member of OCA and part of the team. In talking to Porter about this, I thought that I would maybe try to focus on things that you haven't heard because you've heard from a lot of people. So there are a couple things that we did in Broome County that maybe you haven't heard. We used the primary tool of the pandemic, the Teams meeting, we've used that post pandemic as a way to communicate with the public. If there's some sort of emergency in the court that causes a closure of the court, we use the Teams meeting phone number to be the court phone number and we'll post that outside the doors of the court.

Then it enabled also me to have my staff working off site. I gave them shifts on this Teams meeting so that if the public was trying to reach the number, there'd be somebody there taking the calls. This is something that ... it's nice because we had 44 inches of snow a couple years ago. I don't know if we're like Buffalo in terms of our totals, but that was quite a storm. If you know a storm is coming or anticipate a storm is coming the night before, I could make the Teams meeting, I could post things everywhere and if we don't use it, I come in the next day and take the signs down. If we use it, I have some sort of peace of mind that if someone's coming and there's something urgent or some way, they need to reach the court, they have a way to do that. I told my staff I thought this was ... I call it accidental brilliance. I'm not sure how it happened, but it was-

Craig Doran: Can we have permission to use that?

Judith Osburn: Sure, sure. It was accidental brilliance and throughout the district my clerks were like, "Wow." I told them about the idea, they were like, "Could we use that idea?" So now, at least within the sixth, I think a lot of the chief clerks are using that. I think the same could happen in a power outage or someone could use a cell phone to make a Teams meeting and just hand write the signs and put them up and you could do the same sort of thing. In terms of my background, I've been in the court system just over six years, but I'm also an attorney and I practiced law for over 20 years. So I bring that perspective to tell you and actually, the first year that I was a clerk, I was president of our local bar association so I have a relationship with the bar association, which I think was very helpful during the pandemic and something that we did was we partnered with the bar association from my court where they advertised the ability that they could contact me, any attorneys that wanted to test out the technology.

If people felt uncomfortable with the technology, they could make an appointment with me. I know that there was a centralized kind of OCA helpline for this, but I found the personal approach where they could be dealing with people, they were comfortable with and they could be understanding my particular judges, how they were going to run the proceedings. Some of them even wanted to go into their particular Teams meeting or we had the CAP meeting for appearances from the jail. They wanted to be able to actually go into the cap and I was able to see when it was free so we wouldn't be interrupting anything and actually go into the site, see what it looked like.

Although I think I may be more of a tech person after the pandemic by necessity, I'm not a tech person. I think that was actually a benefit in this situation because I think I could speak on a very simple level because I had to learn because I am not a tech person. That's how I had to learn because I'm not a tech person and we would have this practice meeting, they could practice different tools within the meeting and evidentiary things are very hard. I agree with everyone who's ... any evidentiary hearing, even from a clerk's perspective, is not ideal. But we could teach people how to share their screens. We could make them presenters and say, "This is how you share your screen if you want

to show some sort of evidence." They could give us evidence ahead of time and we could use that for the practice session. I even had for some of the larger firms in town, the people that were setting up the technology reached out to me in terms of where they were going to put their cameras and how they were going to set up the rooms.

Even though it takes time on the front end of it, I think that we have attorneys that feel pretty comfortable now in Broome County using this technology. You're not going anywhere if you're sitting in a court conference and the attorney isn't able to get into the meeting. They don't know how to get into the meeting, they haven't downloaded Teams, they're not sure how to use it on their particular technology. I think the time in the short run and the long run helped everyone. I mean, even within the past couple weeks I set up for someone that was appearing from Florida. We had a special Supreme Court session memorial ceremony and he was testifying from Florida and I was able to ahead of time make him comfortable with the technology and kind of get in there early with him.

I think it's hard enough to be an attorney. I've been on that side too, but to not have to worry about how the technology is going to work so you can concentrate on your representation of the clients. I think partnerships with all the local bar associations would be a great idea for clerk's offices. So those are the positive things, but in terms of the talk about technology and criminal proceedings, I think if we're going to get very heavy into criminal proceedings again like in the pandemic, I saw a lot of problems with virtual appearances in connection with the county correctional facility, the jail. Our jail only had one virtual hearing room and still only has one virtual hearing room. If you think about it, they actually help have me continuing to help with scheduling after the pandemic.

I was helping with scheduling during the pandemic just to make sure that our cases could be heard, but we're talking about not only county court cases, local court cases have to be heard in that courtroom, family court cases that involve the incarcerated individuals. I think that there needs to be more than one place if we're going to go heavier on virtual hearings involving incarcerated individuals. I think there was a huge problem with the ability for incarcerated individuals to confer with their attorneys and during the proceeding, let's say there was some sort of quarantine in the jail so that the attorneys couldn't go into the jail, there are times in the proceedings that our particular jail didn't really have a room that there could be a private conversation with an attorney. I would be hopeful that the court system would work with the county correctional facilities to get a physical setup that gives people just the justice they deserve, the ability to speak with their attorneys.

The other thing is documents in criminal proceedings with incarcerated individuals. It was a huge problem and we ended up having failures where we had to end up scheduling appearances. That would be like a drug court scenario

if they wanted to sign a contract. The correctional officers, rightly so, their job is to be protective, to move the incarcerated individual. Their job is not to be scanning documents, making sure that documents are signed. There was a lot of difficulty even getting to the point where there's a comfort level with the correctional facility to get the prisoner there, to know how to get onto the particular Teams conference for the particular proceeding.

I would suggest maybe a rotation from county clerk's offices of one of our clerks in the facility if there's going to be a heavy volume to justify it, where you're ensuring that orders of protection are served and signed, where you are making sure that everyone gets copies of documents that they're supposed to get copies of. I think there's really a need for an electronic signature and protocol for signing things in counterparts because I'm not sure that I saw that protocol where you need the judge and sometimes the attorneys and the defendant to sign a document. So those are my suggestions on the criminal side.

Craig Doran: Excellent practical perspective. Thank you so much. Any questions or comments for Ms. Osburn? Go ahead, Ms. Lapp.

Leanne Lapp: I just have one. First, I want to say I think it's wonderful that you engaged in kind of the hands-on training of attorneys to show them how to use the technology. As a person who's sort of limited in that respect myself, I have to say I'm sure that was appreciated by the attorneys. I'm wondering if you observed any unrepresented litigants having struggles at all with accessing Teams or court appearances. If so, what those struggles were and if you had any thoughts about how they could be overcome.

Judith Osburn: I think that a lot of times it might be access to having a device that has a camera. I agree with everyone here in terms of observing proceedings, I mean at the very least it seems like it's nice to actually see people in these proceedings that I think you lose a lot just with it being a phone call. I know that to this day, I mean, we were required at one point to have a room for people to access Teams if they didn't have access to come in and to this day, we'll set anybody up and we'll find a place and we'll set them up and we'll make sure that they have it if it's something that they don't have.

Now, if there's a transportation issue and then they don't have that kind of access, I think it's hard. But I think there needs to be a lot of sharing of emails and phone numbers because I know that my clerks and myself ... I mean what we do as an office, if someone's having trouble, we'll call them, we'll email them, we might email them and send them the link again or we say to the court, "Could you wait a minute?" and we can make a phone call and try to work people through it. I mean, I've had to work police officers and other people through the technology, but I think maybe contact information is really important from all the players ahead of time so that if people are having problems, I think that might ... having a staff well trained where it seems like there is a different level of training here.

I know that we had a case involving 28 attorneys and we used the breakout rooms and I talked to Porter about this and I said, "I don't know how we would've physically done this. So that was a situation where the technology really gave us an ability that it would've been physically ... we would've used every room in the courthouse I think to be dividing these people up.

Craig Doran: Excellent. Anybody else?

Christine Sisario: Judith, I have a lot of openings in my technology department if you want to change jobs? Porter's going to kill me.

Speaker 6: Porter, stop her. Stop her.

Craig Doran: Thank you. Thank you very much for your perspectives. We appreciate you. Have a wonderful rest of the day and be safe everybody. We are ready to move directly into our sixth and final panel of the day. So if we could ask those folks to start making their way to the table. They are Joseph Cardone, who is the district attorney of Orleans County. James Ritts, who is the district attorney of Ontario County. Michelle Parker, who is the executive director and chief defender of the assigned council program. I don't know where. Michelle Parker. Ma'am, where are you from?

Michelle Parker: Erie County Bar Association's Assigned Council.

Craig Doran: Okay, thank you. And Brian Melber, who is the president of the New York State Association of Criminal Defense Attorneys. Welcome, everybody. Sorry to be so rushed here. We're trying to keep everybody on time and since you're the final panel of the day, we don't want everybody getting antsy in the middle of your eloquent comments. So this panel, if you hadn't noticed, our final panel of the day is focusing primarily on criminal practice, criminal courts. We've heard much about that earlier, but we have this group devoted exclusively to that. We look forward to hearing from you. First up is Mr. Cardone, who is the district attorney in Orleans County. Whenever you're ready, sir. Welcome.

Joseph Cardone: Thank you very much, and I appreciate having the opportunity to be here. I'd like to kind of pick up where Mr. Effman left off. I am from Orleans County, been practicing criminal law out there for approximately the last 40 years, the last 32 of which as the elected district attorney. I think Orleans County more than any other county in the state has really done some things, even pre pandemic, to push the whole court system forward. When I started as district attorney, we had 24 town and village justices, and that's for demographics very similar to Mr. Effman's. We have about 43,000 people in Orleans County. We have two correctional facilities. We're centered right between Niagara, Monroe, and Erie County. So while we're a small county, we had some big city crime out there, but it was very apparent that with these 24 town and village justices, things just weren't getting done in an efficient manner.

Some of these judges, all of which wanted different dates for their courts, met once a month, some of them once every two months. Moving cases was a very difficult thing to do. Beginning in the early 2000s, we pushed for consolidation and actually the dissolution of some of the courts. We dissolved all the village courts; all the village court matters went to the towns and we took advantage of Section 106A of the Justice Court Act. They actually combine townships into one court. So now as of January 1st, 2023, we're going to be down to 11 town justices for our whole county. Frankly, we have found that that serves us much better and we're not going in so many directions. We have, as you might imagine, as in most small counties, a very small DA's office, a small public defender's office, and trying to put personnel in all those courts was very difficult. We've now consolidated it down and it's become much more efficient for us on a lot of levels.

I think you're aware that in the justice court system in New York state, here's over 2.2 million cases a year. New York is one of just eight states in the country that permit non-lawyer judges and that's created a lot of issues over the years. In the past couple of years, working with our county legislature and with our Public Defender's office and sheriff's department, we've been doing a study of changing over our criminal cases from the justice court system over to district court system, which is permitted as you know under the district court acts.

Right now in the state of New York, those are pretty much just in Suffolk and Nassau County, but I think you're probably also familiar with the fact that in the mid-2000s, there was a lot of criticism that came of the Justice court system in upstate New York. I kept the articles from the New York Times that reported about those issues and Judge Kay at that point formed a commission to look at the justice court system and there's a report, if you don't have, it's online, but basically it was a lengthy report and the findings of that report were, "Well, let's look at the geographics and demographics of a particular county and let them decide what system best works for them." The problem that we're having in getting district courts established in Orleans County is political issues. I mean, going up against the magistrates association's a tough thing and trying to displace them, of course, meets up with resistance.

So it would be great, I think, for the Office of Court Administration to take a better look at this whole issue of district courts, which frankly I think would serve upstate counties very, very well. I think it eliminates a lot of the issue of centralized arraignment that is very costly in the state of New York and what we've talked about and proposed. We think we can do away with that by having arraignments in that district court every morning and every evening and displacing a lot of the inefficiencies that currently exist. I think it was President Roosevelt when he was the governor of the state of New York back then stated that the Justice court system back then he felt was antiquated.

Since then there's been several commissions to look at all this, but frankly, nothing's really happened. There are some vehicles in our law to make things

happen, but I think we need to make that easier for county governments to shift over to that. I think the Office of Court Administration needs to play a major role in developing district courts in upstate. It fills a lot of gaps, as I think you're aware, justice courts are just able to have jurisdiction over financial matters to \$3,000. District courts can go up to \$15,000. Right now, there's a void in that area and I can go on and on about that. I mean, there's just so many issues that are resolved by district courts in terms of transportation, of sending inmates into various parts of the county. When it's centralized, I think it's going to result in a lot of efficiencies.

There's a lot more I can say about that. We do have a plan that we've worked up for Orleans County, which I'd be glad to share with this commission to show how it might work in some of the upstate counties, but at minimum, I think there's a lot of efficiency in at least attempting to consolidate. I don't think many counties in upstate New York have done that. There's an old saying, of course, every person has the right to be represented by an attorney, but everybody in New York state doesn't have the right to appear in front of a judge who's an attorney and anybody who's in the public defender's office or the DA's office, we're often uncomfortable with the fact that town justices who don't frankly have a lot of training in the law will lean on the DA's office with respect to how certain matters should be handled. We don't like that. We don't want that. We want independent judges that can use their own knowledge and discretion and how to handle matters.

I know we have a short window here, so there's a couple other things I wanted to talk about quick and I'll do that-

Craig Doran: A minute or two if you would please, sir. We need to have you wrap it up.

Joseph Cardone: Okay. Number one, software in the state of New York I think is something that the Office of Court Administration needs to look at and work with the other agencies in the state. When someone is arrested, that ought to start populating databases in DA's offices, public defender's offices, and in the court system. Every agency has a different software. They're not talking with one another and it would make things extremely more efficient. I support the idea of virtual appearances until some other form of court system can be put in place and I can tell you our public defender and our county does as well. We found particularly now with the change in the law which permits individuals to not show up in court twice before warrants get issued, we find that we have a lot more people showing up in court if they can appear virtually. So I would just ask that you consider that.

Last point I want to make, and if you can indulge me for just another minute, relates to traffic cases, vehicle, and traffic matters in the state of New York. Anybody who's ever practiced in a justice court, when you get to a justice court, there's a whole line of people, a cattle call of people, waiting to get their tickets dealt with. During the pandemic, we came up with a much more efficient

system of doing that, and that involves making offers to individuals through the mail. Orleans County is one of the few counties in New York State that have a diversion program in place, and we worked with a private company. In fact, Mr. Pacone from that company is here with us today to develop software so people could handle their vehicle and traffic tickets through the diversion program online.

We've now developed software that permits us to do e-pleas online for all vehicle and traffic matters. The problem in the state of New York, unlike many of the other states, is that the track system, which is the system that keeps the database with respect to all vehicle and traffic matters, is not being shared. It's shared with the Office of Court Administration so it gets down to the town justices, it's shared with DCJS, and it's shared with the Department of Motor Vehicles. But unlike any other case we deal with as prosecutors, whether it's a harassment to a murder where we get that paperwork up front, we are not getting vehicle and traffic information until we actually appear in court. The track system needs to be shared with the district attorney's offices and frankly even public defender's offices, although they don't play a role in most of the vehicle and traffic matters.

If that were to happen, we could have an extremely efficient e-plea system. The software has already been developed, but we don't have the data stream to make it work. Thank you.

Craig Doran: Thank you, Mr. Cardone. Mr. Ritts, Ontario County District Attorney.

Norman Effman: Thank you. As you're aware, I'm Jim Ritts. I'm the District Attorney Ontario County, and recently sworn in is third Vice President for the District Attorney's Association for New York State DASNY. I'm tempered in what I'm going to say to make sure that I'm reflecting both of those roles. I certainly appreciate the opportunity to be here and to give some information to this panel. I think we learned a lot as a result of the pandemic. We learned a lot of things that worked, and I think by and large, what OCA did, kept the system alive in county courts, in our superior courts. I agree with virtually everybody who's spoken that our local courts, our town and village courts, really were the courts of adjournment and not a lot of appearances and not a lot was getting resolved at those levels much to the chagrin of, I believe, our defense bar as well as the prosecutors.

We also realized some of the things that didn't work. I'm sure you've heard over all of the meetings everything you want to hear about the need to upgrade as it relates to courtroom technology. The fact that we get to appear on a daily basis in the courtroom where Susan B. Anthony was tried for suffrage doesn't mean we should use the technology from the days that Susan B. Anthony was tried for suffrage. We need to improve that. But I'm going to talk about a little bit some of the other things that we need to be concerned about. We need to make sure that OCA controls every aspect of virtual appearances because we don't need

people who shouldn't have access to copying and recording these teams being able to do that. There's a presumptive prohibition from recording in a courtroom, and we need to make sure that that continues. We need to increase and make sure that our cyber security is sufficient.

So if somebody does share a document, we've talked about the sharing aspect and the ability, that we're not sharing something that's infected with malware or some other pernicious software to ruin all of us. Because the minute it hits one of us, it hits all of us. I think we just saw Nassau County get completely shut down as a result of some malware, so we'd want to avoid that. I think that there's a benefit and there's a way ... I actually ran into an old friend today where there is encryption. There's an ability for the court system to track who does that, who's looking at the information and to shut them off if in some respect that's being done. I think we need to do that.

We had a trial that we live fed in April, a murder trial, and we had a ton of trouble with the software as it related that there were a lot of delays that were attributed to that. The cameras were not really set up where you could see the attorneys. We have egos. We're on TV, we'd like to be on TV, and we weren't able to see the attorneys as we were performing, except in closing argument. You could not see any of the gesticulations or gesturing, so we need to improve that aspect of it. We need to expand the access to information, as Mr. Cardone was just saying, from all of the courts. I believe Tony Jordan spoke in June of this year talking about expanding the use of and I apologize, but I have his notes here.

PART 4 OF 5 ENDS [02:20:04]

Norman Effman: ... Well, there's the county court and superior court, but not using that same technology in local courts so that we can get to calendars and know what's happening in calendars on a day-to-day basis. The ability to publicly access those would be important, I think, improve our efficiencies. There was some mentioned earlier, including the jails and Department of Corrections and Community Supervision in that technology upgrade. I know that we've tried to do appearances from docs that have been impossible to schedule. I know a number of our jails are providing tablets. If they're providing tablets, we should be able to use those tablets to grow the virtual appearances that are necessary.

I think that expanding the use of virtual appearances, and I do support using it in arraignments in certain circumstances. I think any virtual appearances we've seen has been in court, has been requesting the consent of all the parties, which is a good place to start. When we're talking about making sure the constitutional guarantees are there, I don't think court appearances should be a substitute for prepping and meeting with clients. That should not be the first time or the only time they're seeing their attorneys, but if there's not an order of protection or license paperwork that needs to be signed, I think that doing arraignments virtually is something that we can do. We were one of the pilot

programs for centralized arraignment, and so as a result of the collaboration with the courts and what I believe is probably one of the best relationships between the public defender's office and the district attorney's office, we've been able to keep with that going through the pandemic.

Our jail did scan and send us the paperwork ahead of time. They still do for us. Our office does not appear at CAP physically, but we do appear by phone in every case on every day, and so we've developed that working relationship and the ability to do that with our judges and our town justices. SOR hearings are one of those painful things that I think a lot of incarcerated individuals who are looking forward to that release date who have to do the SOR hearing, the sex offender registration, are oftentimes frustrated by coming, either being delayed, being returned, not getting their decision, and that pushes out their release dates. I think that SOR hearings, which are oftentimes simply documentary and argumentative hearings could be done easily in that respect and the use of out-of-state witnesses consistent with 190.32 where we get a court order for grand jury, including out-of-state witnesses, being able to testify from there. Real quickly, building efficiencies.

Since we've come back, we get our calendars and it's nine o'clock conference, virtual 10 conference, virtual and staying with that, I think taking out things that don't need to be there, payment of fines, expirations of ACDs, adjournments and consultation of dismissal. Take those off the calendars. Our county, we've actually moved our traffic dates off of a normal justice court date, so we're dealing with those in a different way and a lot of times dealing with them through diversion and plea by mails. Expand electronic filing. We're not doing that yet in Ontario County. I know it's coming, but I think there's an efficiency to that. Early calendar publication. The one thing I hope that we never see again because we're still suffering from the termination of jury trials, finding a way that we can continue to do those trials. When we came out of the pandemic, my office was 62 cases that were trial ready behind, and as we sit here today, we're probably 100 cases trial ready behind.

We're not catching up. We've been frustrated and seeing civil jury trials being given priority, three-week term being set, and then on the morning of jury selection, it settles. That would be in our county three to five criminal trials that we could have accomplished. And so I'd like to see more. And again, I'm a prosecutor. I get what I do, but I represent the people of the state of New York, and I've said this multiple times, that includes the guy who sits at the table with defense counsel. We have a duty to uphold the constitution and having people sit. I've got four cases, one that's four years old that was indicted before we had some 730 issues, competency issues, but now as we sit here trying to get this case set for trial, I've got what was an eight-year-old, nine-year-old child who's now 13 and has gone through all of the things that she needed to do to get to a healthy place and now she has to come back.

I've got two burglars who have, since that time, have allegedly gone up to Monroe County and gotten in far more serious trouble. And these are three-year-old cases. Seeing that and hopefully being able to prioritize the criminal cases for defendants, for accused, and of course for victims and survivors is something I'd really like to see happen and we can just not shut down jury trials.

Craig Doran: Thank you. Thank you, Mr. Ritts. Anybody have any questions or comments for Mr. Ritts. Thank you so much for-

Norman Effman: Thank you.

Craig Doran: ... Traveling over here and sharing your perspective. We now would love to hear from Ms. Parker, Michelle Parker, who is the Executive Director and Chief Defender of the assigned counsel program with Erie County. Ms. Parker, whenever you're ready.

Lauren Breen: And I'm also a board member for the Chief Defenders of New York, CDNY. Our program opposes the expansion of virtual technology in any criminal proceeding were evidentiary testimonies to be provided for both constitutional and practical reasons. The efficiency of virtual proceedings fails to outweigh the significant risk to the constitutional rights of the accused. As set forth 59 years ago in Gideon versus Wayne Wright, the assistance of counsel is one of the safeguards of the Sixth Amendment deemed necessary to ensure fundamental human rights of life and liberty. Upon the onset of the pandemic, the defense bar readily made concessions with respect to the use of virtual technology in order to mitigate the spread of the COVID 19 virus. However, the availability of an effective vaccine and implementation of other mitigation protocols has nullified the need for the virtual courtroom. The bedrocks of the attorney client relationship are trust and confidence, which can only be achieved by direct face-to-face communication.

In-person proceedings allow easy communication between clients and attorneys, whether it's a quick meeting before the proceeding, a few whispered communications or an elbow during, or a debrief as client and attorney exit the courtroom. A virtual setup prevents those interactions from occurring. Before any meaningful discussion can be had about expanding virtual appearances by those appearing in courts, we need to ensure that everyone has equal access to the quality of internet needed to appear remotely. Recently, the Federal Communications Commission estimated that 14 million Americans lack usable internet access and over 25 million lack reliable high-speed access. In New York, it is estimated that about 13% of households lack any sort of internet access, and only 37.7% of households have access to 1G broadband, ranking New York 46 among all states. Indigent defendants cannot be constitutionally denied access to courts based on their income and resources, for instance, not being able to afford internet resources, and therefore an accommodation would need to be made to facilitate such virtual appearances.

An individual lacking the ability to appear at a criminal proceeding based on lack of income to excess appropriate technology raises both due process and equal protection concerns. Virtual court innovation would exacerbate existing class and race inequalities in the justice system. The digital divide between those who can easily access and use technology and those who cannot is shaped by economic, educational, and social inequalities. In the virtual courtroom where people can be judged not only on their clothes but on their surroundings or the quality of their internet connection, this divide would disproportionately benefit defendants and law firms with high digital literacy or access to high quality technology. This digital divide will make it difficult, if not impossible, to guarantee a criminal defendant a virtual jury selected from a fair cross section of the community where a large percentage of lower income jurors do not have the technology required to be included in the virtual jury pool.

Moreover, because people of color are twice as likely to live in poverty as whites, virtual jury trials could effectively undercut their ability to serve on virtual juries, implicating the 14th Amendment's equal protection clause in a manner that is reminiscent to the jury pool practices in the Jim Crow era. One of the great distinctions of our court system is that is the last forum where the important decisions are still made exclusively by human beings. While we are awaiting the results from the pandemic, previous studies conclude that appearing virtually inevitably skews the perception of others by altering the viewing angle, stripping or overemphasizing some nonverbal cues, and failure to replicate normal eye contact. In the courtroom, those observing the defendant can decide for themselves whether to hone in on a detail or to take in a more general impression of the defendant, not so with video conferencing. One need only to look at the previous findings from Cook County, which prompted that court system to end virtual bail hearings when it was determined that bail amounts were increased by 51% as compared to the amount for individuals who appeared for a bail hearing in person.

In summary, we thank the members of this body and the office of court administration for listening to our concerns and ideas, and we look forward to working together in the future to implement changes which will benefit both the bar and the bench and not disservice indigent people who are appearing in court. Thank you.

Craig Doran: Thank you, Ms. Parker. Anybody on the panel, questions, comments for Ms. Parker? Thank you so much for being with us and sharing that important perspective. Mr. Melber, you have the unenviable position of being the very last presenter for us today, but we promise you we will not give you short trip here.

Brian Melber: I'm happy to have the opportunity and I appreciate everybody's attention. I know it is late in the day and I will try to be brief. Our organization represents criminal defense attorneys in all walks of criminal defense law, so private attorneys, public defenders. Our members represent anyone who's accused of a crime in the state of New York. And our mission is to advocate for the rights of

our clients who are the accused. I hope you'll bear with me while I make a quick reference to two facts that I think have to be front and center in this discussion, but which really should be painfully obvious to all of us already. And the first one is that this odyssey, this pandemic has lasted far, far longer than any of us dreamed. It's been two and a half years. And at the beginning of this, we were talking about weeks and then we were talking about months.

And so that's the first fact. The second is it's not the last time that we're going to go through this. Scientists and epidemiologists are telling us that there will be more outbreaks and these are going to be a regular feature and we have to be prepared for that as well. Those two things mean that our practices, our ongoing pandemic practices, our post pandemic practices have to take those two things into account. They have to account for those realities. And from our view, we need to make sure before questions like efficiency and before expense and cost, which are very important, before that, we first have to make sure that those practices do not impair and limit the rights, the constitutional rights, the fundamental rights of people who are accused of crimes because we all have an interest in those safeguards. And those rights that we're talking about are the right to counsel.

The right to counsel not just the fact of having an attorney assigned, but having an attorney that has the kind of communication, the kind of relationship, and the kind of access between the attorney and the client that can build a relationship of deep trust. That's what's needed from the very first stages of representing someone who's accused of a crime. That's a human connection and it's essential to the right to counsel under the constitution. The right to confrontation, also a direct human contact right. The right to a speedy trial and the right to a trial by jury, and I'm sorry to say that despite a lot of very good intention, a lot of effort, and a lot of really herculean work that has gone into trying to cope with this pandemic, that those rights over the last two and a half years in many cases have been seriously impaired. And this process, my hope is that this process will put us in a better position to avoid that in the future.

And I think that we can do it. Personally, I want to say I'm very enthusiastic about technology. Technology can accomplish a lot of things. I have a civil practice as well, and in civil litigation, it's wonderful that we can do a virtual appearance for a routine pretrial conference and accomplish in 10 minutes what might have taken two hours with schlepping back and forth to the courthouse and waiting around in hallways. That's great. But when we're talking about these fundamental rights and the prosecution of people accused of crimes, there is no technology substitute in many instances for the direct human contact that is necessary for these rights to be protected. I want to give you a couple of examples. Oh, first I'm going to digress one minute and say we are not using technology in our criminal courts in some areas where we really should be and where it could help a lot.

It's very common now that it is impossible in the busiest justice courts in this area that you cannot communicate with the court or with the clerks of the court by phone or by email. And often the only way to communicate about even a routine thing, has my client been produced and is my client going to be here for the appearance? Or we're not ready to proceed with anything substantive, judge, could we put this over and adjourn it to the court's next date? You cannot accomplish that with an email. You can't accomplish it with a phone call. And a lot of court time and attorney time is being wasted where we could be leveraging technology to do those sorts of administrative things and we're not doing it. We should be looking at that. We shouldn't be looking to move to one of our recommendations. This is about the right to counsel at arraignment.

Virtual arraignments do impair the right to counsel. It's essential at the very first stage of a criminal case, often it's either your very first or one of your first communications or contacts with the accused. It's important that their attorney be able to look them in the eye. It's important that their attorney be able to put a hand on their shoulder to calm them down. It's important that the attorney be able to put a hand on the elbow before the client blurts out something that's going to be detrimental to them in front of the judge and in front of the prosecution and on the record. Those things cannot happen virtually. And over and over again, we saw that the right to counsel was limited, was impaired at the arraignment stage. And it may seem efficient to do things virtually. And before the pandemic we saw there were proposals and experiments in doing arraignments virtually.

When you do the arraignment virtually, and when you set back the progress of the attorney, developing that relationship of deep attorney client trust with that client, you're delaying the day when that case can be resolved. The immediate efficiency of being quickly through the arraignment, it comes at the cost of making the case stay on the docket longer because it takes a long time. It takes a lot of that contact before you can establish a relationship with your client where they will take your advice and enter a plea to resolve a matter. And the case is going to stay open longer. The harder it is to communicate with your client, the longer cases will take to resolve, period. It's the same thing when we talk about access and communication with our clients who are detained. During the pandemic, we had less opportunity to meet with our clients in custody settings. Oftentimes, instead of direct open communication where you can pass notes and papers across the table, it was divided by glass. Hours were restricted.

The less we can communicate with our clients, again, in person, face to face without barriers, the less we have of that, the longer it will take cases to resolve. And they're not being resolved because the attorney client relationship is being impaired. And that means the right to counsel is being impaired. Bail determinations, Judge Hannah, I heard you speak very directly to this earlier. It's just a fact that if we do arraignments virtually judges will detain more people and set higher bail. It's just a fact. And if we know that's a fact, then obviously

that right is being impaired when we do it in that way. That is just unarguable. The right to confrontation is another fundamental right that requires direct human person to person contact. There is no substitute to the cross examination of a witness without the interference and without the barrier of electronic transmission, without the barrier even of masks or shields.

All of those things will change the dynamic and will impair a defendant's right to a fair trial because cross examination is less effective because jurors don't have the same opportunity to gauge the credibility or the truthfulness and decide whether they trust the witness. Confrontation is impaired and it has to come before, it has to come before, some other very important considerations, considerations that are raised by the pandemic. Speedy trial, this is the area where I think it's most clear that defendant's rights have been impaired and we all have been harmed by the way that we've handled this pandemic. We suspended jury trials in many instances. I have a case myself that was on trial calendar in a town court in western New York for May 2020. Just this past week the court got permission to schedule a jury trial in that matter, and it's going to be tried at the end of March 2023. For three years, those parties have had that case hanging over their head. Everybody.

And I was really happy to hear that the prosecutors in part share this concern that those complainants, the alleged victims in those cases have waited three years for that matter to come to trial. The defendants have waited three additional years for that matter to come to trial and everybody loses. The right to speedy trial cannot be impaired because of other considerations. It's more important than the reasons that we suspended trials. And we are, as was just said, we are still catching up. And of course, the right to trial by jury itself goes hand in hand with the right to speedy trial. There are solutions to these problems and there are solutions that can be pursued and can be preferred over suspending jury trials over virtual arraignments. And we did not have the capacity at the beginning, two and a half years ago, we didn't have the capacity for testing, doing rapid testing. We didn't have the capacity for vaccination. We didn't have the facilities. And this may be the most important thing for this panel to hear.

A lot of the reasons that people decided it wasn't safe to go ahead with in person proceedings in criminal cases is because of where they have to take place because of the really insufficient facilities, the cramped courtrooms, and the lack of ventilation and all the other things that are really part of facilities and operations. And those things are going to need to be addressed so that we don't have to feel like we need to suspend and we don't feel like we have to sacrifice the rights of the accused and all of our rights that are protected when we defend them for the accused, we don't have to sacrifice them because there's another pandemic and another health crisis. There are solutions. We want to be a partner in them, but we have to first recognize that these constitutional rights are paramount. That's what this system exists for. It doesn't exist just so that cases can be processed. It exists to vindicate these values that we hold so

important. And if we sacrifice those values in order to achieve efficiencies, we're not serving the reasons that we're all doing this in the first place. Thank you.

Craig Doran: Thank you so much, Mr. Melber. Anybody on the panel have any questions or comments for Mr. Melber? And ignore the fact that it's after 4:30. If you have a question or a comment, it's important that we have the conversation while we're together.

Craig Hannah: I'll say one thing and then I'm going to be quiet. Ms. Parker, Mr. Melber, Mr. Cardone and Mr. Ritts, we appreciate your comments. I know it's late in the day, but I do really say on behalf of this panel, we appreciate you bearing with us and we appreciate your comments. They were very well received. And I think as our chair is going to tell you as we sum up, if we don't have the information from individuals like yourselves, it's hard to make these decisions, so we truly appreciate your time and for you sharing your talents with us too.

Craig Doran: Thank you, Judge. Anybody else?

Hon. Edwina Mendelson: I can't let it go. I was going to not speak, but I just can't, and it's not for you to answer right now, but your last words and your compelling words about there being solutions, what you described as the issues of concern, those solutions cannot be addressed by the courts alone. Period. Full stop. And so what we are seeking from you is a detailed suggestion about how we actually accomplish those solutions that you say are available. Thank you.

Brian Melber: I appreciate that. And as I understand it, part of this process does allow for a written submission.

Hon. Edwina Mendelson: Please do.

Brian Melber: That we would endeavor to do that.

Hon. Edwina Mendelson: Thank you.

Craig Doran: Thank you. Anybody else? To this panel in particular, and then I'll make some more general comments and allow my fellow panelists to do the same. This last conversation we've had is probably the most vivid example of what makes our job so difficult is the tension that exists among a number of various factors. And Mr. Melber, I'm so glad in many respects that you were the last speaker because I think you very eloquently pointed out why this is so challenging for us. To what you say, we also have to consider, and I won't name the person, but at some point during the pandemic, as we were exiting the pandemic, one of your colleagues in another county came to me with a number of his colleagues and literally begged me, now this is somebody on the defense side, to do whatever I could as an administrator in the court system to allow the continuation of virtual arraignments.

Not because he doesn't believe in those constitutional values that truly are why we all exist. But because the reality of his world, he couldn't cover the arraignments. He doesn't have the staff to cover the arraignments. To Judge Mendelson's point, we don't exist in a vacuum where we have limitless resources to build whatever court facilities we want to build, put whatever ventilation we'd like to have in them, and have these facilities be equipped to be able to adjust to an act of God in an instant. We simply don't exist in that world. Similarly, in the world of providing counsel to those accused of criminal acts, we have many very, very impoverished counties in this state whose county governments are not adequately funding the defense bar. The answer there isn't necessarily up to the courts as Judge Mendelson points out. We have to do this together.

We all have to be in this together. We have to make these arguments together. And in the meantime, when those of us that are in the business of running offices, as many of you are, you don't exist in a vacuum. You don't have limitless resources. And if you got to make a decision right there and then, either this defendant doesn't have an attorney or we have a virtual opportunity, so an attorney who's in a different place could represent the defendant, sometimes we have to make those difficult, difficult choices. And that'll be part of what I think we have to deliberate on based on the comments that you've all shared with us. Thank you, thank you, thank you. And now, more generally, to conclude today's proceedings, I want to reiterate our thanks on behalf of the working group to those who have taken time out of their lives to share their views with us and those who continue to do that, you are critical to our work.

And you've all gone above and beyond the call of duty. To our hosts here, to Judge Carter, to Judge Hannah, to Oliver Young, to the amazing tech folks who've been with us all day long, making it possible for us to do, Tasha Moore, thank you so much. Andrew Eisenberg, who I know would be here if he could be here, and I'm not naming everybody that I need to name, but profuse thanks to everyone. To the members of the working group, those who have been on this panel today, thank you for being up here with us for the entire day. You certainly add credibility to our efforts by giving us your time and being up here in front of this room. Not free to leave at any given time, so thank you, thank you. And to some of the folks sitting over here in the left-hand side of the room, Scott Rents, Bill Silverman, Wilderness Casio, and Nicole Swanson, they now have the most difficult work ahead of them. This is all done. There's a recording of these proceedings.

Now, we have to curate it, we have to collate it, and we have to begin to put this in a form that will make our recommendations possible. Thank you in advance for the dozens of hours you're about to spend helping us. With that, I want to allow my colleagues an opportunity if they have anything more to say. All right. I will-

Speaker 9: Can we keep the cards?

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Craig Doran: Yes, you can keep the cards. And Judge Mendelson will be happy to autograph your card afterwards if you'd like. Thank you all so much. That concludes our day's business. Be safe, everybody.

PART 5 OF 5 ENDS [02:50:39]