

PANDEMIC PRACTICES WORKING GROUP

PUBLIC HEARING THREE, OCT 31, 2022: MORNING SESSION

Hon Craig Doran: Morning, everybody.

Hank Greenberg: Morning.

Hon Craig Doran: I believe we are ready to begin. Welcome. This is the third and final in-person public hearing of the Pandemic Practices Working Group, which is a working group of the commission to reimagine the future of New York's courts. I'll have a little bit more to say in a moment, words of welcome to all of our presenters and to our panelists, but before I do any of that, I want to ask the chairman of the commission to reimagine the future of the courts, which is our parent organization, so to speak, the organization that has given us this great opportunity to do this important work. I want to ask my friend and the chairman, Hank Greenberg, to say a few words of welcome to everybody.

Hank Greenberg: Thank you, Judge Doran, and good morning to everyone, and just a few words it will be, almost entirely devoted to thank you of which many need to be handed out. Starting with the extraordinary Chair of the Pandemic Practices Working Group, Judge Craig Doran, who has really marshaled the resources of this extraordinary collection of lawyers and judges, upstate and downstate, reflective of really the full breadth of New York and New York's court system and those who appear before New York's court system. This working group is, I think, one of the great success stories over the last several years of the court system's work. It represents, I think it's a metaphor for the court system's dedication, devotion, commitment to understand the needs of those people, those people most important in the court system, the litigants, the people who use the court system, who come before the courts, and to try to create a court system for the future that is reflective of the needs of the consumers of the court system.

I will share with you one last thought, about the work of this group that I find so inspiring. As we, God willing, continue to come out of COVID and look back on that nightmare, hard to wrap your minds around what we suffered. If you bring yourself back to March of 2020, in a state that was locked down, and a city that was the pandemic of COVID-19, in a community that actually watched refrigerator trucks outside of hospitals, it's hard to remember pain like that. But through that period, one of the inspiring examples of dedication and public service was the court system. Out of whole cloth, with no experience to draw from in terms of dealing with a crisis like that, under the leadership of people like Judge Doran, and I see Jim Murphy, one of our Administrative Judges, across the state, their determination, their dedication to not let the virus beat us, to make sure the court system stayed open was nothing short of inspiring.

With scotch tape and a stapler, and “What's a Zoom”, “What's Teams”, who knew, they built a virtual court system out of nothing and kept the courts operating for the people who used the courts. Today, as we think back, we saw more change in two weeks in the practice of law and in the adjudication of cases than we'd seen in 200 years. Through improvisation and creativity and dogged determination, they did it. They kept the courts functioning through the worst of the worst. So as we look back and look forward at the same time, we do that with the hope of building an even better and stronger court system, taking the lessons learned, the experiences of all of you, the experiences of judges and policy makers, and put together an even greater and stronger court system for the days and years to come.

My final thanks go to the members of this working group, Scott Rinks, who's just done extraordinary work. Bill Silverman, who likewise, has done extraordinary work, all the members. Lastly, and most importantly, all of you, the witnesses to be here to share your wisdom, your insight. As Judge Doran said, this is the third leg of a three-legged stool, Upstate, Downstate, Buffalo, Albany, and finally New York City. We have heard from, I think after today, 70 witnesses or abouts. To all of you, my deepest thanks for you giving your time and energy, and again, Judge Doran, bravo for your extraordinary work.

Hon Craig Doran:

Thanks very much, Hank, and we appreciate your leadership and your vision to give us this license to do this important work, which I think most of us involved, probably all of us involved, have realized as we've gone along that it's even more critical than we may have thought in the beginning. We appreciate the challenge ahead of us as well as we move forward to make our recommendations, and we appreciate your wisdom and guidance. Thank you so much for everything you've done for us.

Ladies and gentlemen, I am Craig Doran. I am a Supreme Court Justice from up in the Seventh District. I have the honor and privilege of being the Chairman of the Pandemic Practices Working Group, which has really evolved into a project that I would not have imagined its success. The depth of our work, the breadth of our work, the interest that we've seen across the state in this work has, I think, gone beyond any of our expectations.

As Hank mentioned, I was the Administrative Judge in the Seventh District for 10 years, a couple of those years during most of the pandemic, and had the privilege along with our acting Chief Judge, Anthony Cannataro, of working day to day with some of the finest people you'll ever have the opportunity to engage with. In crafting, frankly, it wasn't always pretty and it certainly wasn't planned. None of us planned on this happening, but because of the dedication and the hearts and the minds of the people who serve this justice system, whether they be people that work in the court system, judges, non-judicial staff, attorneys, our many, many partners in agencies that we rely on so much that we've had the opportunity to not only experience the importance of collaboration during the pandemic, but as we've moved through this process of charting a path towards what I like to refer to as the new better-than-normal.

We've just, I think, experienced one of the greatest synergies that many of us have had the opportunity to enjoy in our professional careers.

This group that I've had the privilege of leading is remarkable, and I'm going to take a moment because this is important to introduce. Some are here, if you're here, stand up when I read your name, but many of these... Every one of these, by the way, as Hank mentioned, we've heard from hundreds of people. When you look at the hearings we've had in person, each one of these hearings today, no exception, we will have heard from 30 people by the end of today. In Buffalo, we heard from nearly 30 people. At our first in-person hearing in Albany, we had 40 witnesses. In addition to those in-person proceedings, over the summer, and this is a unique component of this group. We had remote listening sessions during lunch hours all through the summer where every member of this working group was engaged in one or more of these remote listening sessions where based upon discipline, based upon area of practice, based upon a court or an area of concern for litigants, 30 plus of these sessions were held.

All of the material that we've gathered in these sessions, together with what will be we believe to be numerous written submissions, will form the body of our work. Our mission ultimately is twofold. I would invite everybody to look at the website for this working group, and you'll see more detail in what I'm talking about now, but our mission is essentially in two components. One is to make recommendations to the commission to reimagine the future of the courts, and then onto the leaders in the court system as to what of those things that were done during the pandemic, what did we learn and what should be carried forth into the new, better-than-normal.

Could be technology, could be protocols, could be policy recommendations, but our mission is from all of this input that we've received from across the state, and it's a big state and a very diverse state, many differences even within a single courthouse, let alone across the 62 counties of this great state, we've learned a lot and we will take from all of that input what we believe will be consensus in what we should recommend, ultimately to the leaders in the court system, the Chief Judge, the Chief Administrative Judge, as to what we all believe collectively should be carried forth.

So let me tell you who's on this working group, and I'm going to go through this quickly and I apologize. The honorable Tamiko Amaker, who's the Deputy Chief Administrative Judge for Management and Support for the Office Court Administration; Nancy Berry, who is the Chief of Operations for the Office of Court Administration; Mark Berman, who is a private practitioner; Jessica Cherry, who is Assistant Deputy Counsel at OCA; John Cremo, who's a Deputy Attorney General; Mike DeVito, nobody's standing, you don't have to stand, just wave, Mike; Mike DeVito, who's the Manager of the Office of Record Production of the Office Court Administration; The Honorable Alicia Ellores-Ally, who's a family court judge in Kings County; the Honorable Patria Frias Colon, who's the Supervising Judge of the New York City Civil Court.

Hank Greenberg, whom you've already met; the honorable Craig Hannah, who's the Supervising Judge of the Buffalo City Court, and now a Supreme Court Justice; John Healy, who is an Assistant Attorney General; Adriene Holder, who is the attorney in charge of civil practice at the Legal Aid Society here in the city; Seymour James, who is a private practitioner, formerly with the Legal Aid Society, attorney in charge of their criminal practice.

Melinda Katz, who's here to my left. We'll meet Melinda again in a moment. Porter Kirkwood, who is the district executive in the Sixth Judicial District; Leanne Lap, who is the President of the Chief Defenders Association of the State; Roger Maldonado, who you'll see in a second. Roger is a private practitioner, former President of the New York City Bar Association, and our host here today. A special thank you to Roger for the arrangements. This is a beautiful room. I don't know if those of you watching our live stream can see this room, but it is an absolutely beautiful room full of history and very appropriate for the important conversation we're having here, Roger. Thank you for your hospitality.

Mary McQueen, who is the President of the National Center for State Courts; the Honorable Edwina Mendelson, who's the Deputy Chief Administrative Judge for Justice Initiatives; Lillian Moy, who's the Executive Director of the Legal Aid Society of Northeastern New York; the Honorable James Murphy, who is Administrative Judge in the Fifth Judicial District. Hold your applause for James Murphy. Carolyn Nussbaum, who is a private practitioner; Lauren Sang-Hee Owens, who is a private practitioner; Shannon Pirro, who is a Town Justice in the town of Greece, New York; Anthony Perri, who is acting counsel for the Office of Court Administration. Anthony we'll hear more from in a little while.

Lisa Preston, who's the Chief Clerk of the Monroe County Supreme and County Court; the Honorable Stan Pritzker, who is an Associate in the Third Department Appellate Division, Supreme Court Justice; Scott Rents, who is the reporter for this group and who will have an awful lot to do with putting our report together and has already been a leader in this operation along with Bill Silverman, who is also a private practitioner. Scott and Bill are the co-chairs of our hearings subcommittee, and I also have to say that, and we'll talk more about them a little bit later, thanks to Scott and Bill, we have some remarkably, extraordinarily talented young people who are assisting us, associates in their firms who are assisting us in our work. Boy, we would be lost without them.

Christine Sisario, who is the Chief of Technology of the Office Court of Administration; David Slaton, who is Vice President of the National Center for State Courts; Edward Steinberg, who is a private practitioner, also past President of the New York State Trial Lawyers Association; the Honorable Carolyn Walker-Diallo, who's seated over here to my right; Judge Walker-Diallo, the Administrative Judge of the New York City Civil Court; Mike Williams, who is Chief Clerk of the Suffolk County Family Court and Oliver Young, who is a private practitioner in Buffalo. So as you can see from that list of folks, all of whom by the way, have been engaged. We've all been on these groups that get put

together, have a couple of meetings, maybe a few of them are engaged, many of them aren't. This group, every single person whose name I just read is engaged in this process. And frankly, for whatever it's worth, from my vantage point, that is an absolutely extraordinary dynamic that we've put together with this group.

So before we begin, and we're going to try to be on time, I want to just ask all of us to take some time and as we are considering the important work ahead of us, take some time and think about the folks that are not here. Every one of us is here because we represent somebody or we represent a group of people or we represent an interest or we have a role in the justice system. But every single one of us serves people in some capacity. We are here for those people. We're here to make the justice system better and we're here to push the envelope, as we might say. We're here to not gather conclusions that might all be good news for us not to hear just good news not to hear compliments. We all know that what we've just been through and what we are experiencing has tested us to the limits.

But most importantly, it's tested the folks in our communities, in our state that need justice. It's put them in a very difficult spot and we owe it to them to keep them in our hearts and minds as we talk about the recommendations that we ultimately will make to the Chief Judge. We have an extraordinarily rare opportunity to, in this window of time, that God willing isn't going to happen again in the near future, where there is a receptiveness to things that none of us would've thought possible even three years ago. If we were to take a poll of folks involved in this effort, how many of you think that we would in two weeks convert the entire New York State court system less than two weeks from an in-person operation to a virtual operation. Who were to believe that was possible? Now it wasn't... I don't mean to tell you that it was remarkably successful, but frankly, the courts never closed.

We never closed the courts. We had to close some buildings, we had to adjust facilities, we had to adjust proceedings. Some things were delayed, many things were delayed, but we didn't close. And the process that we've all been through together and that we're going through now, we owe it to the people that we are here for to do our best work for them. So whatever we come here with, in our hearts, please join us all and keep those folks at the top of your thought process. That's our mission, that's what we're here to do. And by the way, we've all pledged, I've pledged to Hank and our members, we've all committed together that we want the truth. We don't want fluff, we don't want to hear just good news, we don't want window dressing, we want to hear the truth. We have structured our proceedings so that we will hear from people who we trust will tell us the truth, who will be honest with us, even if it's not good news.

The only way we're going to get better is if we face challenges and we face them head on. So with that, I want to introduce the members of the panel and then we should actually be a little bit ahead of schedule when we start with the first presenters. So the panel that is up here now, and I'm grateful to these folks for

their willingness to be here, be present and listen to the presentations. I'm going to start on my far left and all of these folks are members of the working group, so I have already mentioned their names, but I want to give them adequate billing. So we're going to introduce them again. So Porter Kirkwood, who is probably the person that smiles the most up here, is, Porter Kirkwood is the District Executive in the Sixth Judicial District. And for those of you who don't know what a district executive is, they pretty much run the judicial districts.

We won't tell the administrative judges that, but the district executives, all of the business side of operating a judicial district, all the judges, all the non-judicial staff, all the human resources, finances, etc, that's Porter Kirkwood in the sixth district, which is Binghamton and the surrounding area. Next to Porter is Roger Maldonado, who is a member of the Commission to Reimagine the Future of the Courts and also stepped up almost immediately when we formed this working group to say that he wanted to be part of our working group. So we're thrilled to have Roger with us. Melinda Katz is the District Attorney in Queens County. And Melinda, with all of the things on her plate, as you might imagine running a district attorney's office, all of the things that happen on a daily basis, we are so grateful to have your input, your involvement, and your participation here.

Thank you for being here. Thanks for giving us some of your day.

Melinda Katz: My honor.

Hon Craig Doran: I know you have lots to do and we appreciate you being here. Thank you.

Melinda Katz: Thank you.

Hon Craig Doran: You already met Hank Greenberg and I'm a little bit concerned because there's an extra five minutes and Hank, Hank's liable to jump back. It's all right. And to Hank's right is the honorable Carolyn Walker-Diallo, who also, I believe you were on our panel in Albany. We appreciate your effort, we appreciated you traveling up there, appreciate you being here today. Appreciate your input. Look forward to having you be part of our efforts here. And to my far right is Anthony Perri, who is one of my personal heroes. I had opportunity to talk with Anthony a lot during the pandemic. The court system is extremely fortunate to have Anthony, not only because of his intellect and his competence as an attorney, he's also a great guy and a wonderful person to interact with and work with.

And Anthony is the Acting Counsel to the Office of Court Administration. So talk about having a lot going on right now. If he looks at his phone once in a while, forgive him because he's the attorney for the entire New York State courts. Well, you have some help too, Jessica Cherry and lots of other good folks in that office. But Anthony, thank you for giving us part of your day here and we are grateful for your participation. So we are going to start with our panelists. We're

a little bit early, you all look ready to go. So we're going to begin. I'm going to introduce each of you and then starting with Ms. Rosenthal, we'll ask you each to give us about five minutes, maybe take a couple more minutes if you want, because we are a little bit early. And give us just your opening comments, just your reflections on what practices you believe we should continue, we should recommend continue, we should improve upon. I mentioned earlier our mission's twofold.

I only told you about one component of the mission. The other component of the mission is to recommend to the leaders in the justice system, the court system, more specifically, when court operations are interrupted again. And I don't want to be the bearer of bad tidings or be a pessimist, but I think it's being a realist to assume that there will be other moments when, because of weather, because of some other unexpected occurrence, that our justice system is interrupted and access to justice becomes challenged. We would like, as the second component of our mission, to make recommendations to the leaders in the court system.

What should the playbook look like when this happens again? We don't want to have to start from scratch. We've all learned so much, we should benefit from that. And those that follow us in these positions should benefit from the experience that we've had. So we're happy to hear your comments and we're excited that you're here. We appreciate you being here. Now, let me just introduce each of you. So, the first presenter you'll hear from is Deborah Rosenthal. Deborah is the President of the Women's Bar Association of the State of New York. We're thrilled to have you with us today. Helene Hechtkopf is a private practitioner, a partner at Hoguet Newman Regal & Kenney.

You can correct that when you start talking. And next to Helene is Ruezwanul Islam, who is a co-chair of the President's Committee on Access to Justice and a member of the Committee on Legal Aid of the New York State Bar Association. Thank you for being here. The state bar, by the way, has been a wonderful partner in our efforts. We've worked side by side with them on many of their initiatives, many parallel interests occurring, and we appreciate the involvement of the state bar. And last but not least is Veronica Salama, who is a Staff Attorney with the New York Civil Liberties Union. We're thrilled to have you with us as well. So we'll start with you, Ms. Rosenthal. Whenever you're ready, you may begin.

Deborah Rosenthal: Good morning. Thank you for the opportunity to testify before the commission today, and thank you Justice Doran and distinguished panelists. The testimony I'm about to give is a summary of our full written testimony, which will be provided to the commission. This testimony is based upon the comments that we received from our chapters, our committees, and individual members. WBASNY is the second largest statewide bar association in New York state and the largest women's organization in the nation with nearly 4,000 members representing 20 regional chapters throughout the state. WBASNY has a long-standing role in making life better for all New Yorkers in furtherance of its

mission to promote the advancements of the status of women in the legal profession and the fair and equal administration of justice. WBASNY continues to act as a unified voice for our members with respect to issues of statewide, national, and international significance to women generally and to women attorneys in particular.

It goes without saying that women have historically taken the burden of caregiving responsibilities and other household demands, as well as the physical burden of reproduction. For this reason, the pandemic disproportionately affected women and minority attorneys forcing many to make impossible choices with respect to maintaining career, while also balancing responsibilities at home. Taking these factors into consideration, WBASNY members have found virtual appearances and electronic submissions to be a much more efficient way to practice law. Virtual appearances help to provide a greater work-life balance. Indeed, there is not a chapter, committee, or single member who sent us comments that advocated for a return to pre-COVID, in person practices. Some of our members recommended that virtual appearances only be held for specific proceedings, such as pretrial conferences, calendar calls on motions, and settlement conferences. Other members also suggested that trials, guardianship hearings, and other hearings for at-risk or vulnerable individuals be held in person depending on the circumstances.

Additionally, our members opined that by maintaining certain in-person appearances, less experienced female attorneys will be provided with opportunities to learn, observe, and train in the practice of law, as well as to gain vital, practical experience and connections with other attorneys. WBASNY members have also identified several health and work-life balance benefits to virtual practice. Virtual practice helps reduce the physical toll on attorneys who have heavy caseloads in multiple venues over a broad geographic area. This is even more significant in rural counties where panel attorneys often practice in several counties. Virtual appearances enable them to appear in different counties on the same day, rather than spending several hours traveling. Eliminating the need to travel from court-to-court results in a less frantic and stressed work environment. It has also enabled women attorneys to spend more time with family and deal with childcare issues, taking proactive steps towards starting a family and addressing any medical issues.

For clients, virtual practice provides similar benefits and is a much more convenient and less stressful way to appear. In lieu of taking time off from work and arranging for childcare and transportation, clients can appear during their workday, on their phones or computers, lessening their costs and any related challenges associated with physical appearances. With respect to treatment ports, virtual practice has reduced the number of repeat offenders since defendants no longer need to drive to appear, often while under undue influence. Notwithstanding these benefits to virtual practice, WBASNY members have identified some potential drawbacks. Specifically where WBASNY members were particularly concerned with a lack of uniformity and virtual court practice and procedures by court. In some cases, individual parts within the same court

have completely different practices. WBASNY members further express the importance of maintaining the integrity of the court process and recommended that OCA ensure that all persons can actually be heard during the appearance, that testimony is properly recorded or transcribed, and that the recording or transcription can be corrected.

WBASNY members also raise concerns about access to reliable mobile and internet service, as well as the importance of litigants being able to fully participate in the virtual environment. It was suggested that counsel and litigants be allowed to call in rather than appear on camera if Wi-Fi is unavailable. Further, courts should consider establishing internet access points in public spaces to assist those with access issues, as well as in-court kiosks, a virtual hearing room, and other accommodations at the courthouse for those with access issues, particularly in rural areas. From a technical standpoint, OSEA should provide knowledgeable technology personnel during virtual proceedings to solve any glitches and technical queries that may arise.

Teams should allow for breakout rooms, a feature that is crucial to settlement conferences. Overall, WBASNY members find that virtual appearances and electronic submissions have approved the efficiency of practice, thereby benefiting clients. WBASNY recommends that courts consider establishing more uniform and consistent practices among various courts, counties, and judicial districts to avoid confusion to attorneys and litigants. This may need to be done by practice area and court jurisdiction as some practices may be more effective in one type of proceeding and less effective in another proceeding. I hope this information is helpful to the commission when it is considering what we have learned from the COVID-19 pandemic. We look forward to sending you our written testimony. Thank you for your time this morning.

- Hon Craig Doran: Thank you so much. I want to see if any of our panel members have any questions for Ms. Rosenthal.
- Roger Maldonado: Good morning, Ms. Rosenthal. Did WBASNY give any consideration to, in terms of sort of access to justice, to non-litigants, to be able to witness what is happening in our courtrooms to the extent that the proceedings go forward remotely only?
- Deborah Rosenthal: I don't think we received any comments on that particular issue.
- Roger Maldonado: And to the extent that any of the other panel members, if you did receive any comments, if you could address that either now or during your comments.
- Hon Craig Doran: Go ahead.
- Melinda Katz: You're the judge.
- Hon Craig Doran: Go ahead.

Melinda Katz: I'm very well trained. I'm wondering whether or not there's any distinction between criminal practice and civil practice with your members.

Deborah Rosenthal: Yes, there is. And when we submit our full written comments, they will deal with specifically with the differences between the criminal and civil practice aspects.

Melinda Katz: If they could, 'cause it's the women's bar, I'd be particularly interested if they could also, while you're making the comments on the criminal law aspect of it, talk a little bit about if something is virtual, how you manage to serve order of protection, things of that nature, it'd be helpful if there was some ideas that will turn out on that as well. I'd appreciate it.

Deborah Rosenthal: Okay.

Melinda Katz: Thank you. Thank you very much.

Hon Craig Doran: Anybody else on the panel? Any questions for Ms. Rosenthal? Thank you so much and please extend our gratitude to your members. You reminded me that I should say, if anyone wishes to supplement their comments or if there's anyone within the sound of my voice that wants us to hear what they have to say, please submit written comments. The way to do that is to submit them to the email address, which is ppwg@nycourts.gov. N-Y-C-O-U-R-T-S dot G-O-V. PPWG stands for Pandemic Practices Working Group, in case you were wondering. We'll mention that a couple more times as we go, but we welcome your written submissions. We want to make sure that we leave no stone unturned. So Ms. Hechtkopf, I apologize, you're up. We're happy you're with us. Thank you so much. The floor is yours.

Helene Hechtkopf: Thank you for allowing me to speak today. I appreciate the opportunity. I'm a partner at Hogue Newman Regal and Kenney. We are a litigation boutique with about 20 lawyers located here in Manhattan. And I primarily.

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

Helene Hechtkopf: About 20 lawyers located here in Manhattan and I primarily practice commercial unemployment litigation. Most of my clients happen to be public entities for whatever information that gives you. On March 13th, 2020, when I didn't go back to my office for the first time, I thought this would be two, four weeks until I'd be back in the office. Our entire office and the court system continued to work as if, from our perspective, there had been no disruption. It was frankly amazing. There was technology old and new and the courts continued to administer justice really, from our perspective, in commercial cases mostly without delay. It was amazing.

During the past two and a half years I've had a wide variety of experiences and almost all of them have been extremely positive. I've done remote conferences

of pretty much every sort that you can imagine with a variety of courts. I've had oral arguments on really important cases, on really important motions. I've had countless depositions, I tried to count them up. I think it is over 50 remote depositions at this point. I've used a variety of different technologies, Zoom, Teams, WebEx, some proprietary systems. They've all worked and the testimony we've gotten, with very few exceptions, was probably, at least, as good as what we would've gotten had we been in a room together. Meanwhile, doing countless remote depositions you can do three of them in a day if they're short. The amount of money my clients have saved not having to send a variety of lawyers to travel, and lose a half a day of working time, and half day depositions is really amazing.

I've done settlement conferences in a variety of technologies now. I think I've done Teams, I've done Zoom, and we've done telephone. I don't think the results of those conferences, the settlement conferences, are any different than they would've been had we been there in person. The cases that would've settled, settled. The cases that weren't going to settle, still did not settle.

I had a remote bench trial during the height of the pandemic with a pro se litigant on the other side and it went shockingly smoothly. Especially, all things considered, the litigant chained smoke throughout the trial. Still, we got through it and everyone had a chance to say what they needed to say.

Also, in preparing to speak with a commission today I spoke with all of my partners to see if anybody had any information they wanted me to relay to you. Actually, what was surprising to me and maybe surprising, or maybe not, you've heard from a lot of people now is how much agreement I found among the people I spoke with about what really does work well and what we'd like to go back to doing in person. Everyone that I spoke with was highly in favor of most if not all regular court conferences happening over Teams or Zoom. It saves a lot of time, especially in the commercial litigation sphere, there's a lot of client money. Not having to go to court and sit around waiting for hours and hours for your case to be called to speak to a clerk or the judge for five minutes. It's a half a day if you go in person. When we do it on Teams or Zoom it could be 10, 15 minutes and that equals a lot of client money and the clients are happy to not have to send you down there.

May be surprising to me because I adapted very quickly. I know not everybody did, but I found a surprising preference for remote depositions in almost all circumstances. I'll add even my senior partners who have trouble adapting to new technology. At this point, they are all in favor of remote depositions and one of them emailed me saying that he thinks the default should be remote depositions unless you have good cause to do a deposition in person. He's a person that took a year and a half to learn how to mute on Zoom, but once you get there it makes a lot of sense.

Really even oral arguments on most motions work great on Teams or Zoom. You can see the judge's face, which is fantastic. You can see how they're reacting to

what you're saying and you're much closer up. There was even a preference for that for the most part. Mediation, most people said was preferable by Zoom or Teams and it actually makes it a lot easier to get your busy clients to show up. You don't have to tell them that they have to come down to court for a day or a half day. You say, "You have to be available on Teams" and that's a thing that they're used to now. That actually has been very successful from my opinion.

The other thing I found is that there's a very strong preference for doing trials in person. The remote trial that I did, I'm very grateful that it happened. It was a very interesting experience, but we like to be in person for trials. I think that's true remote... Sorry. Jury trials and bench trials, it's just good to be there and to see everyone's body language and to not have to worry about how you're going to get your exhibits in front of people. In person trials I think are very worthwhile.

From a commercial litigation perspective, what does the bar want going forward? People I've talked to would like, really, two things. We like clear rules for remote depositions. I think there's a lot of muddling through and that we're still muddling through. Who should be where? Should the witness be in the lawyer's office? What do you do when there is a problem with the connection and the witness is coming through fuzzy? Is that on the record? Is that off the record? How much time does that take? How do you handle breaks? Are people allowed to have breakout rooms during breaks? Where does the court... This has come up a bunch of times recently, but does the court reporter really need to be in the same state as the witness?

It seems it's become part of the standard stipulations that the court reporter muddles onto the record. They say it very fast. I don't think most people realize it, but they're allowing... They're asking you to waive the court reporter being in the same state as the witness, which was always the practice in the past. This court reporter and the witness had to be together. Clear rules about who is supposed to be where and how that's supposed to work would be very helpful.

Despite me having told you how great I think remote practice is what I want to see happen in the future is that our junior lawyers have a chance to develop their in-person courtroom skills, because the first time they show up in a courtroom shouldn't be when we go to trial. Then you have to elbow them to stand up when they're talking to the judge. They need a chance to be there, and to feel comfortable in the courtroom, and learn how to appropriately talk to the court.

I really hope... I thank the whole panel so much for being here and listening. We don't want to go back to 2019. I think there have been so many great advancements, and I really look forward to the way the court is developing in this hybrid world. Thank you all for being here today.

Hon Craig Doran:

Thank you so much for your comments. You have a very busy practice it sounds like. What did we do wrong? By we, I'll refer to the court system in Virginia.

What do you wish we did better at the time? Certainly, I'm putting you in a difficult spot, and I apologize, and you've been wonderful in your comments and very candid, but there had to have been some things early on that you experienced in your practice that you said, "Geez, why are they doing this? What are they thinking?"

Helene Hechtkopf: The only time I really had that happen is when I was unsure whether I had to physically go down to court. This is later in the pandemic when some parts were open, some parts were not open, and you get an eTrac notification appearance, and you're like, "I didn't think I had an appearance. Do they want me to show up in person? Am I supposed to be there? Is this a Teams thing? Or is it a not appearance at all?" You try calling the court and nobody answers the phone. Nobody responds to email.

I had this happen once where I sent an associate and I was like, "I don't know if you need to be there, but we're better off having a body there in case something is happening." She went and thankfully the door was locked and nobody was there. It was one of those things that shows up on eTrac as an appearance that is not a real appearance, but that was very stressful. On the whole, I think that this has been so much smoother than you could have imagined if you said in 2019, "Oh, don't worry about in 2020 the courts are going to shut down in the course of three days they're going to figure out how to do it." I think we all would've laughed. This is not a critique of the court system as a whole.

Hon Craig Doran: It's okay to critique the court system. You raise, I think, what will be one of our greatest challenges is we have to respect the autonomy of the judges presiding over their proceedings in their courtrooms, but we also have to be mindful of the need for some semblance of uniformity and being able to have some predictability for the practitioners to the entities that we work with so that your clients know what to expect, and know where to go, and know how the appearance is going to go. We're charged with trying to find that happy balance. Or that sweet spot, so to speak. But thank you for your perspective. Anybody on the panel?

Hon. Carolyn Walker Diallo: Yes, I do have a question.

Hon Craig Doran: Go ahead.

Hon. Carolyn Walker Diallo: Good morning.

Helene Hechtkopf: Morning.

Hon. Carolyn Walker Diallo: Thank you so much for your testimony. I had a quick question about your recommendations or suggestions. You mentioned that virtual calendar calls, and oral arguments virtually, settlement conferences have been successful during the pandemic, but you also raised the issue of junior attorneys needing

to have that experience. If it is true that all of that is great and the only time you would really come in would be for the trial, how do you suggest that we operate our system better to assist junior attorneys if, let's just say, everything remote... We know different courts... I'm in civil court housing, so it's a whole different world, whole different animal. But, based upon your testimony, do you have any suggestions or recommendations for that?

Helene Hechtkopf: I was thinking about that your Honor and I was wondering how. I recognize that I gave you two different, completely opposed recommendations. To me, this is my practice, we have a lot of things like discovery disputes that end up needing to be before court. That's a great opportunity for a junior lawyer to have an opportunity to argue, because despite us all feeling like they're very high stakes, in reality, most of those are very low stakes arguments. Being back in court for discovery disputes and minor disputes of that nature where you are actually seeing the judge and you're not doing it before a clerk is, I think, a great opportunity for junior lawyers to have a chance to get up there and argue and feel like they're being heard.

Hon. Carolyn Walker Diallo: Thank you so much.

Helene Hechtkopf: Thank you.

Hon. Carolyn Walaker Diallo: You're welcome.

Anthony Perri: Thank you again for your testimony. I wanted to just get some clarity about what courts your experiences were in. Is your firm's practice, your personal practice, primarily in any one type of state court and were there any differences between, say, whether experienced in the commercial division or Civil Supreme versus any other courts and what you took away from that?

Helene Hechtkopf: I'm primarily in New York Supreme, sometimes Kings County Supreme. I do a lot of also practice in federal court, so I have a lot of experience comparing the two systems. I had a case in the first department while this was happening. I had several cases at the second Circuit. Federal court, state court, downstate though.

Anthony Perri: Are there any lessons or experiences from, especially, working in federal court that you would either like to see us emulate and adopt or avoid practices that didn't work there?

Helene Hechtkopf: I actually thought that the state court system took on a lot of the benefits of federal court practice during the pandemic, in terms of becoming very flexible, and remote, and the way you could now email the court deputy and you get an answer. It's fantastic. It didn't always happen that way. I loved that. The thing I like about federal court is that when you need to show up and there's none of this, "I think I have to go to court, but I'm not really sure." That really sort of addresses the question of am I supposed to be there.

Thank you.

Hon Craig Doran: Anybody else? Thank you so much. Thanks for your perspective. We appreciate it very much.

Helene Hechtkopf: Thank you.

Hon Craig Doran: Mr. Islam. Whenever you're ready. The floor... Oh, yes. Mark Berman.

Mark Berman: Following up what Judge Walker-Diallo spoke about in [inaudible 00:47:16] mentioned about- periods for more junior- OCA to consider [inaudible 00:47:28] urgency- commercial- has been successful in their advocating for judges urging junior lawyers- files. I think, [inaudible 00:47:53] lawyers to participate virtually for experience, it will very much accelerate the process as opposed to doing it from a law firm side.

Hon Craig Doran: Thank you. That... It may have been difficult for folks on our livestream to hear what Mr. Berman, who's a member of our working group just indicated. I'm going to sum it up and we will certainly consider this. We've heard many comments across the state about the challenges that we will have if we continue to vigorously utilize virtual technology of what we need to be careful does not become a lost art of arguing a case, appearing in court in front of a judge. We all have an obligation to those younger attorneys to make sure that we don't allow the art to become lost and that we come up with creative ways to encourage the younger attorneys to become engaged in the arguments in court. Even with this new better-than-normal. Excellent comment. Thank you, Mr. Berman.

Mr. Islam, the floor is yours.

Rezwanul Islam: Thank you and thank you for allowing me for to testify today.

My name is Rezwanul Islam. I'm serving as the co-chair of the New York State Bar Association's President's Committee and Access to Justice. Our mission is to consider and implement methods of enhancing access by the indigent to the civil legal system. Among other things, the committee shall encourage lawyers to provide more legal services to the poor, pro bono publico, and shall work to obtain adequate funding for programs designed to assure that the poor have access to civil justice.

In November 2021, the PCAJ and the Committee on Legal Aid held a joint hearings inviting the public to discuss access to justice issues since the onset of the COVID 19 pandemic in relation to, family court, immigration proceedings, housing court, criminal justice proceedings, social security proceedings, state benefit proceedings, and the efficacy and equitability of remote proceedings, and the factors that race played throughout those considerations. We requested testimony regarding interrelationship in impact of high-volume

courts and their in-person court proceedings and operations and the effect that the digital divide had on low-income community members, court users, and providers of free legal assistance.

Groups from all over the state provided testimony on how COVID-19 impacted services and our clients, including representatives of 20 statewide legal services providers, law schools, the Deputy Chief Administrative Judge, Judge Edwina Mendelson, and the ROCA Office for Justice Initiatives, other access to justice organizations, bar associations, and individual attorneys. The testimony illustrated great difficulties faced by our clients in different venues and communities. After these hearings were held the PCAJ and Committee on Legal Aid established a working group of several attorneys to review and distill the information gathered at the hearings into an extensive report to highlight the common struggles our neighbors faced. I'd like now to take time to discuss that report.

Before I begin, I'd like to state that the views expressed in the working group report are solely those of the working group, but do not represent those of the New York State Bar Association unless and until adopted by the House of Delegates.

The report itself is broken into seven sections and it summarizes hearing testimony in the following areas. The number of people who cannot access court, family court, criminal court, and in rural courts. In the family courts, they found that there was lower rates of reunification through the pandemic and that one critique was, also, that systems were created to make sure that families... That if there's a neglect or child some sort of child abuse that the child would be removed, but no similar mechanism to reunite families. It was a big issue. In criminal courts, the in-person fingerprinting requirements really delayed justice for a lot of people that were in the jails. The other sections are the number of people who cannot access services, how COVID-19 highlighted concerns of race and racial inequality, virtual hearings, how the digital divide impacted indigent populations, language access concerns and 18B attorney concerns.

Based on the testimony, there are several recommendations that the working group has been able to make. Specifically, the convening of a NSBA OCA taskforce of court personnel and legal services practitioners to develop recommendations for a plan that can address issues, such as significant gaps of the ability to obtain orders of protection, increasing and improving user-friendly online information and instructions for those proceeding without counsel, addressing language access and literacy concerns. Delineating proceedings appropriate for virtual courts and those that must be conducted in courtrooms, such as witness examination and hearing testimony, whether litigants should be provided a choice between in person and virtual court appearances, addressing the digital divide, ensuring that that technology limitations are not held against the parties in a proceeding, developing an equitable e-filing system for pro se litigants, providing basic information in multiple languages in a written format

on the court's website and providing court notices in commonly spoken languages, offering live proceedings with full simultaneous interpretation. And where that is not possible, offering video proceedings with sequential interpretation of the entire proceedings. Prioritizing language access during telephonic hearings by allowing more time to allow for proper translations, increasing the hourly rates for 18B lawyers, and to provide incentives to bring more attorneys into the various programs available to the thousands of pro se clients coming to court.

The report also recommends that NSBA should increase its commitment to non-mitigation ways in which clients' needs can be addressed more quickly, such as supporting community legal education, increasing training on pre-litigation and non-litigation advocacy, exploring ways to help clients navigate the initial application investigation work required to secure clearances and licenses, exploring ways to help New Yorkers navigate various types of situations where they're required to provide information regarding convictions histories and addressing rap sheet errors, supporting legislation granting public defenders direct access to client rap sheets.

There are just some general recommendations for the future planning for preparedness needs to incorporate and facilitate access to services. Finally, support for equitable expansion of broadband access. That the New York City Bar Association has been... I'm sorry. Support for equitable expansion of broadband access across New York State, which has been a legislative goal of the association since 2020. New York State should invest in increasing access to broadband internet services in low-income and under-resourced communities across the state.

These hearings in the report cannot be completed without the support of then-President Andrew T. Brown, current President Sherry Wallach, and President-elect Richard Lewis. I'd also like to thank past PCAJ co-chairs Edwina Martin, Tiffany Liston, and past COLA chairs, Adriene Holder and Sal Curtin. I'd also like to thank current PCA vice chair Lynn Poster-Zimmerman and COLA chairs, Gretchen Gonzalez and Ara Mita, along with the entire group that drafted the report, Andrew Anborsky, Elon Fox, and Elizabeth Joyce.

On behalf of the New York State Bar Association's Presidents Committee and Access to Justice we look forward to a continued partnership with the Unified Court system, and the Office of Court Administration, and invite further collaboration with this commission. I would like to restate that the views expressed in the working group reporters solely those of the working group and did not represent those of the New York State Bar Association unless and until adopted by the House of Delegates.

I would also like to add, maybe I should have done that before this disclaimer, in response to your question earlier, Mr. Maldonado about witnesses in the courtroom. When we were presenting these, the report itself, we presented at the NSBA's partnership conference a couple of weeks ago to a group of legal

services attorneys. A lawyer from the Western New York area brought that exact point up that courtrooms should be open proceedings and that when you move into a virtual format it removes that of, I suppose, democracy from the court system. It should be... That is a consideration that we need to take into account when we are moving these things to virtual formats.

Roger Maldonado: Thank you. Actually, I have a different question for you. Given your testimony about the high-volume courts.

Rezwanul Islam: Sure.

Roger Maldonado: Did you receive any input from legal services attorneys or from judges as to whether during the time where remote proceedings only were taking place as to a comparison between access to justice. In particular, for those who are not represented by counsel. Now, and I say this only because there were many reports for many years, Housing Court, in particular, where it would be called either two- or three-Minute Justice. That all that the pro se litigant would have is two or three minutes in front of the judge. Did you get any input as to a comparison to pre pandemic and remote proceedings?

Rezwanul Islam: No, but the report details long delays in the criminal court system where things would constantly get adjourned and things wouldn't move along in the same way that they would before the pandemic. In the Housing Courts, there was a moratorium, so that a lot of things were delayed due to the moratorium and then court filings themselves were not able to proceed. The things that were able to be resolved the courts were trying to resolve.

Hon Craig Doran: Before, I look to the panelists for other questions I want to make sure that I invite you to submit your very thorough and detailed recommendations. Can you submit those in writing to that website I mentioned a little while ago?

Rezwanul Islam: Absolutely.

Hon Craig Doran: Okay. We appreciate your input, the input of your various committees. That's work that we will benefit from. We need to work together in these things and not duplicate work. It's a big state and an incredible area to cover. We really do need the resources of the state bar to help inform us. We're grateful for your input today and ongoing. Thank you.

Rezwanul Islam: Thank you.

Hon Craig Doran: Anybody on the panel have any questions for Mr. Islam? Okay. Thank you so much.

Ms. Salama. The floor is yours whenever you're ready. Staff attorney with the New York Civil Liberties Union. We're thrilled to have you with us today.

Veronica Salama: Thank you so much. Good morning and thank you again for the opportunity to testify as the Honorable Craig Doran mentioned. My name is Veronica Salama. I'm a staff attorney with the New York Civil Liberties Union and on behalf of the NYCLU I'm here to speak to you all today about the lack of public access to virtual civil proceedings in New York Supreme Courts.

I appreciate Mr. Maldonado's earlier question related to non-litigants and I also appreciate the honorable Craig Doran's earnest question of what did we do wrong? As this panel may be aware, the NYCLU has a strong organizational interest and a successful history litigating issues related to open judicial proceedings. On October 21st following our investigation of this issue in New York Supreme Courts we submitted a letter to the Office of Court Administration. Last week we had a productive conversation with acting counsel Mr. Anthony Perry and assistant counsel, Ms. Jessica Cherry, who is also here for the OCA regarding that lack of public access. They invited us to testify today about our concerns, which we're happy to do.

As folks here have mentioned, prior to COVID 19 pandemic public access to judicial proceedings, which is both a constitutional and a statutory right, was simple. It meant that the public could walk into a courtroom and sit in on a proceeding. Now, that we are over two and a half years into the pandemic, and as we've heard from my fellow witnesses this morning, virtual courtrooms, virtual proceedings are the new norm. Yet, since April of 2020 New York Supreme Courts have been routinely scheduling and conducting virtual proceedings for civil matters without providing the public access to freely attend and observe those proceedings. We know this firsthand.

New York Supreme Courts do not make streaming links or dial in numbers to virtual proceedings available to the public. The public can't attend those proceedings, they can't sit in on the virtual courtroom. Unlike, the individuals streaming this proceeding right now, which we are very grateful for, that you all have made it public. In fact, quite often the public is not even made aware of upcoming virtual proceedings, because NYSCEF dockets do not state when there is a calendared proceeding be it a conference or an argument. This is a problem and to quote OCA a problem of constitutional magnitude. The new location of the virtual courtroom does not change the judiciary's constitutional and statutory obligations to readily provide public access.

The four appellate division departments, as well as the court of appeals all understand this and amid the pandemic, they've provided live streaming access to all oral arguments and they've indicated that that is here to stay. State courts across the country, too, have long created virtual mechanisms for providing public access to trial level proceedings. The same is also true in the federal court system. As I mentioned, the same is true for this proceeding today. But New York Supreme courts have not followed suit.

I understand that this working group aims to make recommendations to the unified court system regarding future practices. While we certainly hope that

the subsequent report by this group touches on the public access issue, as we made clear in our conversation with OCA last week, we would not view such a report as a substitute to direct and immediate action by OCA. That's partly, because the New York State Supreme Court, New York State unified court system has long been aware of this problem and its affirmative obligation to the public.

There have already been three reports that identify the need for public access to virtual proceedings. The November 2020 Online Courts Working Group Report, the April 2021 Future Trials Working Group Report, even OCA's own virtual bench trial protocols promulgated in February of 2021. Every single one of those reports make recommendations related to public access and they identify the need to make it accessible across the system. Still, we have not seen any change. As I mentioned, we are in conversation with OCA about this issue and we do hope and expect to see immediate action.

I'm happy to take any questions. Thank you again.

Hon Craig Doran: Thank you so much. Anybody in the panel? Any questions for Ms. Salama?

Roger Maldonado: I do.

Hon Craig Doran: Go ahead Roger.

Roger Maldonado: Ms. Salama, I am aware that some judges, at least in the commercial division, post either on their website or... A notice to the general public, in theory, about the availability of access to online oral arguments. In fact, I was on one recently where there were a bunch of names there that I didn't recognize and ended up being members of the press. I realized that type of notice is not one that is generally designed to reach the general public. What sort of notice should judges be providing that would provide meaningful access to members of the general public to our remote proceedings?

Veronica Salama: I think the answer is twofold. I understand your question that what would provide notice to ongoing virtual proceedings? I think to the extent that there are uniform protocols across the state and clear information about ongoing protocols. Then, as well, the public should know that a given case has an upcoming virtual proceeding. They should have clear... There should be a clear mechanism for them to access it. I think, the 2021 Future Trials Working Group Report provides great detail about the state court trial level systems in California, in Texas, Indiana, Ohio all of which have provided streaming of some sort. I think, notice to the public includes both a mechanism by which they can be made aware of those virtual proceedings, as well as a mechanism that is akin to walking into the courtroom, to sitting in on that proceeding.

Roger Maldonado: Thank you.

Hon Craig Doran: Anybody else?

Thank you. I will assure you, as the chairman of this ongoing effort that our final report will address public access. As you know, there are technological challenges in doing that, but also legal impediments to permitting that in some instances. When we are permitting access in a courtroom, the judge presiding can control who's recording, who's not recording, who's taking a picture of the proceedings. Those of us among us who are district attorneys, or assistant district attorneys, or public defenders they understand the importance of confidentiality sometimes and being able to shield certain information from becoming known to the public. I don't say that as an excuse. I say that as a challenge when we offer at the trial level live stream of proceedings. I understand the appellate courts do it and frankly I love it. It's very easy. There are fixed cameras like there are today. It's really not intrusive, doesn't interrupt the proceedings. But there are those other legal considerations that have to be thought through as we do this.

Our final product will benefit from your input and I can assure you that we will address it and we understand the importance of providing public access. Frankly, I'm one who believes that we can do that in an even more vigorous way than the old fashioned-

Okay. Welcome back everybody. We have yet another distinguished panel which we very much look forward to hearing from. I will quickly introduce each of them and then we'll begin in a few moments with Mr. Tierney. We are honored to have with us today, Mr. Raymond Tierney, who is the Suffolk County District Attorney. Thank you for being here, sir.

Ray Tierney: Thank you.

Hon Craig Doran: We also have with us Mr. Alen Sputz who is the Deputy Commissioner for Family Court Legal Services with the New York City Administration for Children's Services. Very busy job. We're grateful that you took time to be with us today. Leonard Morin, who is a court interpreter with the New York County Criminal Courts. He is the chair of the court interpreter chapter of Local 1070, District Council 37 of the AFSCME. Thank you for being with us, sir. Your perspective is very important to us. Last, but certainly not least, Michael Clarke who is the director of the Legislative Affairs Unit for the New York City Police Department. You also have a very tough job and we appreciate you taking time out of your schedule to... Let's just say everybody has a tough job.

Everybody's very busy. By the way, you all know if you want something done right find someone who's busy. If you want to find out what's really happening find the people who have the most to do. We are grateful to everybody who's taken time out of their lives to give us their perspective on this very critical topic. Without any further ado, Mr. Tierney, the floor is yours. I don't know how many of you heard this morning. We'd like you to give us about five minutes of an overview of what you think about what the court system has done, the

justice system, generally, during the pandemic. What do you think we should keep moving forward? What do you think we should scrap? What do you think ought to be included in the playbook for the next time that court operations are interrupted for some reason? Mr. Tierney, the floor is yours. Thank you so much for being with us.

Ray Tierney:

Thank you. First and foremost, I want to thank Melinda Katz for her kind invitation to attend today's hearing and I want to thank DA Katz and all the panelists for their work on this important topic.

I want to preface my remarks by saying, which is probably pretty obvious, I'm talking from the perspective of the District Attorney in Suffolk County. I think, there are areas of practice that are different in Suffolk County from other areas in New York. I think the tough part for the panel is promulgating rules that are going to work in Schoharie County as well as New York County. I applaud you for undertaking that those efforts.

I took office as the Suffolk County District Attorney on January 1st, which was post-pandemic. Prior to that I was in Executive Assistant District Attorney in Brooklyn. I did supervise assistant district attorneys when the COVID-19 pandemic started and during, throughout the shutdowns. I think, first and foremost we learn that we must keep our courts open.

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

Ray Tierney:

I think, first and foremost, we learned that we must keep our courts open. We, in law enforcement, as DAs, we are responsible for public safety. Shutting down the courts, in particular arraignment courts, grand juries, and trial courts, jeopardizes both public safety as well as a defendant's rights.

Regarding arraignment courts, whether they be in person or virtual, these courts are vital. Without them, defendants cannot be speedily arraigned and police are tied up detaining defendants rather than out preventing crime. And this is particularly important in light of bail reform, and what I mean by that, regarding bail reform, where courts are statutorily unable to set bail in certain cases, I think we should consider virtual arraignments. They should be allowed in these instances to continue, pandemic or no pandemic.

I say that, especially as a practitioner in Suffolk County, where our Suffolk County courts are a little bit different, and Suffolk County is a little different than any other jurisdiction in the court. And by that, I mean, Suffolk County is the second largest county as far as area, land area, and it is the fourth as far as population. We have particular challenges with regard to speedy arraignments, particularly on our east end communities where we have justice courts. Virtual court proceedings assisted during the pandemic, and after, and it allowed defendants spread in remote parts of the county to more quickly access legal

services, including language assistance, and to be arraigned more quickly in cases where bail could not be set.

Even without the pandemic, these virtual arraignment options for all formal courts allow for better resource allocation for both prosecutors and institutional defenders, allowing criminal courts to proceed more quickly, which benefit both defendants and victims.

And again, I think especially in our east end, I think it's very effective. I'm more concerned doing it in instances where bail can be set, because I think that's a critical stage for the defendant, a particularly critical stage for the defendant. I would be more concerned about doing that in instances where we're seeking to incarcerate a person.

And then with regard to grand juries, again, grand juries need to be open and in-person. Without a functioning grand jury, defendants may be released and cases cannot move forward. Without indictments to keep violent offenders incarcerated, defendants will commit additional, potentially violent crimes. Victims remain at risk. Justice delayed is justice denied, and without indictments, trials cannot proceed. This delay causes the public to lose faith in the system.

Socially distanced, in-person options must remain to keep our grand juries operating. We should put our grand jurors in large areas, bring them together, again in large areas, for deliberations, but keep them working.

I would just like to say, when I worked in Brooklyn, we used a felony exam system. Quite frankly, I was really impressed with how well that system worked. I'm sure it was the same thing in Queens, but it was a tribute to DA Gonzalez, it was a tribute to the courts, to the court staff, to the institutional defenders, to the law enforcement, to corrections. Everybody really came together in a very difficult undertaking, putting that system in place in a very short period of time, and we did have success, and I was very impressed by that. I just don't think that's a long-term solution, and I'm also concerned when you use it in victim-sensitive cases, such as violent gangs or child sex abuse cases, I don't think that's viable for the long-term. I also think that I think it was mentioned earlier, an electronic filing system like the Feds have with PACER, I think that that would be particularly helpful in a pandemic situation.

And finally, I just want to say with our trial courts, trial courts must remain open. During future pandemics creative solutions, such as jury selection in small groups, putting spectators in overflow courtrooms to watch via high-definition video, witnesses testifying via video in certain definable instances, and spreading jurors out in the courtroom, must continue. Trials bring resolution which is necessary for our criminal justice system to function. Without the possibility of a trial, pleas wither, cases linger. Incarcerated defendants are due their day in court, our victims need the justice that this trial brings. And I think trials are the engine that drives our system, whether it be the criminal or the

civil system. Without trials, the court's business is not going to be conducted effectively.

I think limited virtual options, where they are fair and appropriate, should remain, as I discussed. Currently, our courts are still backlogged from shutdowns due to COVID. In our misdemeanor courts, we have about 40% of our cases are in warrant status, and we're still dealing with that backlog. But in the event of another emergency pandemic or otherwise, I believe our courts must remain open. We must learn the lessons from the past pandemic, and whatever methods are employed, we must adequately consider the rights and safety of the accused victims as well as the public.

Thank you. I'll take whatever questions anyone may have.

Hon Craig Doran:

Thank you. Mr. Tierney, I have one question that has come up frequently as we've talked across the state about the utilization of virtual technology in criminal matters. This is where I have learned a lot about other parts of the state other than where I normally sit, in terms of the differences in facilities, differences in where people who are incarcerated are being transported from/back to a courthouse, and what kind of a facility, the courthouse, a lot of variables. But one of the constants is, the criticism of utilizing virtual technology is, that it interferes with the relationship between attorney and client. I appreciate your suggestion that we utilize that technology only in cases where the defendant is not going to be incarcerated because it's one of those offenses where an appearance ticket had to have been written, but you still have to preserve and allow for the attorney-client contact. How do we do that in a virtual setting?

Ray Tierney:

Well, I think with the felony exam there were instances where, virtually, the defense attorney was allowed to meet with the client, so I think that you can do it. But I do take what you say, and I do think it's an excellent point, that there is a critical attorney-client relationship. It's sort of a Suffolk County centric problem, because if you look at the Hamptons, and somebody is out in the Hamptons and might do something that they ordinarily wouldn't do, and they're arrested, and now they have to stay for arraignment and you have the east end of Long Island, which is virtually a parking lot, and now you have to get the defendant to a courthouse, which is geographically remote, and you have to get the parties at the courthouse. And so you have a person waiting in custody for 12, 15 hours, when with the remote proceeding, it could be over in an hour.

So I think that's a Suffolk County-centric thing, but all the other concerns that you're talking about, I think they're very well taken, and they shouldn't be disregarded, because I do think that when you're talking about an accused defendant, they need to have that interaction to make the proper decision. I think other than that instance what I was talking about, I agree with you.

Hon Craig Doran:

Thank you. Anybody on the panel? Yeah. Go ahead.

Melinda Katz: So I want to thank DA Tierney for coming out from Suffolk. I was late today coming from Queens; I can't imagine what it was like coming from Suffolk. Those of you coming from upstate probably got here quicker. So, thank you.

So we've had a lot of testimony from defense attorneys and prosecutors about virtual arraignments, and virtual proceedings with suppression hearings, and all of that that can come with it. And just so you know, Judge Doran, during the pandemic we arranged, at long last, it took a little while, to get a phone from Rikers, where the defendant could mute and talk to his or her lawyer. You know how I feel about virtual, but that was a decent solution for the moment.

I just want to be clear on what you're asking. So when it's non-qualifying, and we also don't need to do anything like serve an order of protection, or anything like that, you're saying that the virtual arraignment works because there's no possibility of that person being incarcerated after that, or needing to have something served to him, like an order?

Ray Tierney: Yes, and in Suffolk County, with our orders, we serve them outside of court anyway. I think if you were to ask the defendant, you could get out in an hour or you could wait 12 hours, they're going to say, "I'll get out now."

Melinda Katz: Can you just do something for this committee? And I've asked all the prosecutor's offices to do the same thing. At some point, I don't know what our timing is, I'm interested in the administrative proceedings. It's been said by other prosecutor's offices that a lot of the administrative proceedings could be virtual as well. And I've asked them to put together maybe a quick and dirty list of what type of proceedings they could see being virtual, and which ones they absolutely would not want to see virtual.

Ray Tierney: Yeah.

Melinda Katz: It would be helpful if maybe you could have someone on your staff to do that.

Ray Tierney: I think, with regard to hearings, I think we have to be very careful. The earlier panelist was talking about virtual hearings, making the public accessible to it, and Judge, you had a great point, in the instance, I don't necessarily have a problem with virtual hearings or virtual court proceedings that are broadcast virtually, but my concern is when witnesses testify, especially in victim sensitive cases, because now you have the depiction of the witness, and the judge, and the court, we have no ability to control where that depiction goes. And I know in the instances of witnesses, that's all they're concern about, and the thought that they're going to testify and their likeness is going to be broadcast God knows where, that really is very chilling to them.

Melinda Katz: Thank you for your time today, DA.

Ray Tierney: Thank you. Thank you very much.

Hank Greenberg: Thank you very much, District Attorney Tierney, for being with us. I have two different questions, I'm very curious about what your response is, especially given your experience in Suffolk County. One, as you mentioned, e-filing in criminal matters, in the 1990s as Federal prosecutors, we were doing it. Is there e-filing in criminal matters in Suffolk County? If not, why not? That's one question, your thoughts about that.

And the other question is, at least in terms of the uses or expanded use in the criminal sphere of technology, is there any reason why, for example, with respect to traffic court matters, town/village courts, that some or significant part of those dockets could be handled either virtually or through some sort of technological platform?

Ray Tierney: Thank you. With regard to e-filing, there's no across the board e-filing in Suffolk County. I, too, was a Federal prosecutor and the PACER system is great, and the great thing about the PACER system is you have a record. So you don't get in this instance, where it was filed, no, it wasn't, you have document 46, either it's there or it's not. So I think it's really helpful with regard to clarifying the proceedings, and making sure a defendant has actual notice of everything that's being filed in the case. So, we don't have it, and my experience is similar to yours, I think we need it. Especially in the instances of the pandemic, it's really going to help when getting to the courthouse to file something is particularly difficult.

And then the second part is with regard to certain instances where you use virtual proceedings, I think the best part of the pandemic is it forced our system to come into the 21st century. So you can use these technologies, but in the instances of a trial, you could still have the trial public, in-person. But what you can do is you could use that technology to utilize overflow courtrooms to spread people out. In the instances of traffic court, I know that the litigants, rather than sit in traffic court all day and to be able to go to work and log in at a specific time, they would welcome that. So, when a defendant's rights, or a victim's rights, aren't directly implicated, I think we need to seriously look at how technology could assist us in our practice.

Hon Craig Doran: Anybody else?

I know we're running short on time and we're going to move on to Mr. Sputz in about 30 seconds. I just want to make a couple of points. There is a gentleman by the name of Jeffrey Carucci. Some people in this room know who he is. He is another one of those heroes, quiet heroes of the pandemic. He has dramatically enhanced our e-filing capabilities across the state. He's retiring shortly, and that is mixed news for all of us who depend upon him and his expertise but we know his office will be ready to take up the slack.

But during the pandemic, whether you felt it or not outside of the court system, we dramatically increased the e-filing capabilities. A point that deserves mentioning here though is that the court system depends upon the legislature,

still, to authorize e-filing. So we are still, and there are people here, Jessica Cherry being one of them, who can tell you chapter and verse about all of the legislative measures that the court system is endeavoring to propose to expand the authority that we have to have e-filing in the various courts.

But I also want to give proper mention to the EDDS or the Electronic Document Delivery System, which was really created overnight, in terms of time, to allow for the delivery of documents, not the filing of documents, but the delivery of documents to the court system during the pandemic. But that's an area that we will continue, or we will recommend we continue, even in those areas where e-filing may not yet have been authorized. We can still make it easier for litigants to get documents to a court in other creative ways. But I just wanted to mention all of that because it's important for folks to have that context that we continue to await legislative authorization, but I do know that the court system, and the pandemic did hold this up somewhat, is embarking upon some pilot programs with criminal e-filing.

So that is underway, we hear you, and we know that that's something we need to do to bring ourselves current. So it's in the works, but I'm sure our group will be making additional recommendations in that regard.

Mr. Sputz, I'm sorry for the delay. We're a couple minutes behind, but the floor is yours.

Alan Sputz:

Thank you. Thank you, Commission. Good morning. As mentioned, my name is Alan Sputz. I am the Deputy Commissioner of Family Court Legal Services, FCLS, at the New York City Administration for Children's Services, ACS. We appreciate that the Commission to reimagine the future of New York's courts is holding today's hearing, as well as others throughout the state, to gather stakeholder feedback on the technology practices and policies adopted in response to the COVID-19 pandemic and to make recommendations for the future.

ACS is the New York City Agency responsible for protecting and promoting the safety and wellbeing of New York City's families by providing child protection, prevention, foster care, juvenile justice, childcare, and other community supports. ACS regularly appears in Family Court on child welfare and some juvenile justice matters, and our comments today will focus on this.

I want to start by thanking all of the FCLS staff, as well as the ACS child protection and provider agency staff, family court staff, and all of our colleagues who represent parents and children, for their tireless efforts to transform our in-person system to largely virtual, and for all the work we did together to try to best meet the needs of the children, youth, parents, and families, particularly during the height of the pandemic in 2020. The work we do together could not stop for the pandemic and we are grateful for the partnerships and commitment to serving families.

While there are many challenges and obstacles to virtual proceedings, we also saw many benefits. ACS strongly believes that there are tremendous benefits to in-person proceedings in both child welfare and juvenile justice matters. However, we also believe that the availability of virtual proceedings should remain an option in the future. Today, I will focus on describing some of those benefits and then recommendations for the future.

The benefits for virtual proceedings, where appropriate. We believe that while there are some proceedings that should typically be held with all litigants in-person, there should also be flexibility to best meet the needs of all participants. We were able to see during the pandemic that for some participants it was much easier to participate remotely, and that a remote option can actually increase meaningful participation. Examples include working parents, children in school, or youth in college, who cannot or do not want to take time off the whole day but are able to log in for the remote proceedings.

In addition, for those with mobility issues or other disabilities or litigants living out of state, the option to participate remotely is invaluable. We also saw that for incarcerated parents in child welfare matters, and for some youth in juvenile justice matters, there are benefits to enabling remote participation. There are also benefits for staff and attorneys. For ACS case workers and our provider agency staff, remote appearances enable them to continue doing much of their work with children, youth, and families on the day of a court appearance as they just need to log on at the scheduled time. With in-person appearances, staff often need to spend much of their day traveling to family court and then waiting for their court appearance. This efficiency and scheduling also benefited attorneys on cases, and enables attorneys to be able to appear in more than one family court in a day.

One important benefit of remote proceedings is that when they are scheduled there are clear start and end times for each appearance. The court and the parties were largely able to maintain these time certain, which made the work we do more efficient as it eliminated much of the waiting for appearances that occur within in-person proceedings. This was helpful to all litigants and staff.

Some recommendations for the future. We believe that our ultimate goal must be to have a court system that helps meet the need for the meaningful participation, along with the best representation for all parties and cases in the family court. We believe this means maintaining the flexibility of remote option, while also returning to in-person appearances, particularly for contested critical hearings such as removal hearings, fact findings, termination of parental rights proceedings, juvenile delinquency dispositions, among others.

We recommend maintaining flexibility to best meet the needs of litigants even if certain types of hearings are presumptively in-person. This could help to accommodate the needs of some litigants who will not be able to attend court in-person. As we build a system that includes this flexibility, we need to take additional steps to ensure that remote court appearances best address the

needs of clients in a manner that is equitable. With the digital divide and families struggling with reliable Wi-Fi, we must ensure that family members, adults and children, are able to participate in remote proceedings.

In addition to locations in courthouses and attorney offices, we believe this requires creativity to develop locations in the community where litigants live. One option to explore is space in local libraries that could provide a computer, reliable Wi-Fi, and privacy. Another option would be to leverage the many community-based organizations throughout the city.

We also believe that there needs to be additional training of court staff on how to use all the functions of Microsoft Teams, and increased usage of the breakout rooms function. This would better enable litigants against privately speak to their attorneys, which we know is essential for quality and meaningful representation. These breakout rooms in court proceedings must also include interpreters whenever there is a language access need.

Finally, given the efficiency we have seen with remote proceedings, we do think that it would be helpful for attorney conferences and other types of meetings that do not involve actual court proceedings to continue to be held virtually when appropriate. Thank you for this opportunity to share our perspective. We look forward to continued collaboration with our court partners to strengthen the court system using the lessons we learned from the pandemic. Thank you.

Hon Craig Doran: Thank you, Mr. Sputz. Any questions from the panel? Go ahead.

Anthony Perri: I had a question. Thank you very much for being here. The family courts, I think, present a specific challenge with respect to using virtual appearances for youth being brought before the court. And I was wondering, either now or separately in follow up testimony, are there recommendations with respect to youth, especially children appearing virtually, how those sessions could be conducted so that sometimes the very serious nature of the appearance is communicated, and that the court and all the participants are best able to both communicate with the child, or be able to assess the needs of the child. The best practices from your perspective, lessons learned on that specific topic, I think, would be very helpful.

Alan Sputz: Sure. And with respect to abuse and neglect case, there's many different types of proceedings in family court, and so I think that that becomes relevant. So whether we're talking about a delinquency matter where a youth may be in detention, in a secured detention facility, has its issues. But, by and large, all children are also represented by counsel and there's an attorney for the child. That's not necessarily my attorneys at ACS, but I think that that relationship is critical between the child and their attorney, to be able to assess what is best for their participation on all the different types of cases in family court.

And I guess one overarching theme is that flexibility, I think, is the key, and that there isn't one size fits all, and that every case may require a different approach. And bear in mind that we're also talking about various ages of children who are participating in the proceedings. We firmly believe that they have a right to participate and be present. But again, some are nonverbal due to age, some are teenagers and may be in school. And so taking all those variables into consideration on each and every case, in a case-by-case determination, I think, is really critical and important in getting the input from the attorney for the child who has that unique relationship, in an attorney-client relationship with the child, to receive that input and decide how to proceed.

Hon Craig Doran: Anybody else? Go ahead, Roger.

Roger Juan Maldonado: Based on the answer you just gave, I take it that you would encourage the use, when appropriate, of hybrid proceedings to address the flexible needs, or how to flexibly address the needs. Did you have any considerations as to, in which proceedings a hybrid proceeding would not be appropriate?

Alan Sputz: Well, again, I think a hybrid approach is important and can be accomplished. I think it's challenging to have some actors, whether it's attorneys or litigants, in the courtroom and some who are not. But I think it's important to maintain that capability. I think, to your question, at least in family court, the overarching concern is to have meaningful participation. And I think that all counsel, including the judge, would prefer that somebody be able to participate and be present rather than not. And so that's a hybrid approach, appearing virtually, I think that's important, and I think as I mentioned in the testimony in family court, it's largely virtual through Microsoft Teams that there is the ability to have breakout rooms where counsel could try to communicate in a private manner with a participant who is not there, but the attorney is present.

Hon Craig Doran: Thank you. I have a quick request of you, and you don't have to answer this now, but you mentioned during your testimony presumption, and you indicated that, in your view, and I don't mean to, if I'm misstating what you said, correct me. There are proceedings in family court that should presumptively be in person, Article 10 proceedings, juvenile delinquency proceedings, et cetera. But that phrase presumption intrigues me because I think that's the door through which we might be able to go, to strike this balance of the need for some uniformity, some guidance, but also some individual discretion, on a case-by-case basis to the judge who's presiding over that proceeding.

So if we were to say that juvenile delinquency proceedings, fact finding hearings, and Article 10 matters, are presumptively in-person, the presumption may be overcome if the presiding official determines something, what should that something be? Or what should those factors be? What should that decision be based upon? So, if you have some ideas in that regard, submit them to ppwg@nycourts.gov, because that in my view, and I don't speak for the group, allows us, I think, a way that we might be able to strike that balance of providing some uniformity through presumptions, but allowing the judge who's hearing

the matter to deviate from those presumptions based upon factors. What should those factors be? So, that's your assignment, see if you can squeeze that in some time. Thank you.

Alan Sputz: I'm sure we'll be able to do that.

Melinda Katz: May I?

Hon Craig Doran: Thank you. Go ahead.

Melinda Katz: So, with the state law being the way it is, with raise the age of 16- and 17-year-olds going to family court unless a gun is displayed, whether it's a sex crime or serious physical injury, would your views on the virtual be the same for those cases? And criminal cases in general, as well as the family court, I guess I hate to say normal matters, but the ones that you deal with more so?

Alan Sputz: I guess let me preface this by saying ACS is the agency that operates the secure detention facilities. We have contract providers for non-secured detention, and we have contract providers for our close-to-home program. The New York City Law Department are the prosecutors and Legal Aid by and large are the defense, so I would certainly want their input. But again, going back to my basic premise, I think flexibility is the key with meaningful representation by lawyers. And I think that liberty is at stake on the juvenile delinquency cases. So I think, again, I would defer to the attorneys who are representing their clients to make an argument in court why or why not that it should be in-person or virtual. It is a bench trial on the delinquency cases, so I don't think you have the complexity of sitting a jury, so I think that takes one of the pieces out of the equation of trying to figure out how best to ensure a fair trial. I don't know if that answers your question, but.

Melinda Katz: Thank you.

Hon Craig Doran: Thank you very much, Mr. Sputz. Mr. Tierney?

Ray Tierney: My concern, with regard to juvenile proceedings, same thing with the grand jury, is those are sealed proceedings. So to do a virtual sealed proceeding brings up a whole host of other challenges. And I think that whatever is done with regard to that, you have to keep that consideration. Because I know, for instance, Microsoft Teams, they record, so you have to make sure that it's staying sealed.

Hon Craig Doran: Right. So you've raised one of the, and I know we're behind and I apologize, but one of the great challenges we have in this world, in a courtroom, anybody can walk in off the street and observe a juvenile delinquency proceeding, or an Article 10 juvenile abuse and neglect proceeding. You're right, those records are sealed, and the ability of someone to access the physical documents and even the calendars of the proceedings limited, but the proceeding itself is open to the

public. It's one of those difficult scenarios that we often have to navigate through. The use of virtual technology in those proceedings makes it even more challenging.

So, Ms. Salama has probably left, but the lady who was here earlier from the NY ACLU, they're advocating for public access, they would like us to provide the same access to the public that we provide in a courtroom if it was a live proceeding. But when you're talking about some of these very sensitive cases, that becomes very challenging. So, we're open to suggestions as to how to navigate through that, but we're going to have to figure it out at some point. So, thank you. Mr. Morin, I'm sorry we've cut into your time a little bit, but we won't cut you short. The floor is yours whenever you're ready.

Leonard Morin:

Thank you very much. Thank you very much on behalf of the Interpreter Chapter of Local 1070. Our local represents court interpreters and other titles in the court system, the Department of Probation and the District attorney's office. The adaptation to virtual proceedings meant for court interpreting that in majority what was done, simultaneously was done, completely consecutively. This was initially unavoidable because of the platform that the court system was using. First it was Skype for Business, and then it was Microsoft Teams, because those software don't have an interpreter channel and don't allow simultaneous interpreting.

There are different ways to avoid the consecutive mode when interpreting online by the use of remote simultaneous interpreting, also known as RSI. The Court Interpreter Chapter of Local 1070 believes that the court system should utilize this technology to eliminate obstacles to speech, such as people speaking over each other or interruptions, to allow for the interpretation. A stark example of this would be an attorney giving closing arguments and having to stop every one or two sentences to allow for the consecutive interpretation.

Generally, in-person proceedings are better for communication and hence better for accurate interpreting. But it appears that virtual proceedings are here to stay, so we have to take into account that we have to adapt to this in some shape or form. Although Teams doesn't allow for simultaneous interpreting inherently, it is possible to add-on an app such as Green Terp, which would allow the RSI remote simultaneous interpreting functionality. Zoom has this functionality natively in an interpreter channel, and by the court system purchasing a limited number of licenses, they could allow this capability for a vastly greater number of interpreted cases.

We're grateful to the Office of Language Access and OCA for issuing transmitter and receiver devices to all interpreters during the pandemic. These devices allow for three advantages in our work. One is that we can stay further away from people, thus remaining safer. And another is that the court users who are using our services, the Limited English Proficient individuals, LEP, as known in the [inaudible 01:44:31], are able to hear better. They're able to understand better. It also allows the interpreters to be less obtrusive during the

proceedings. Unfortunately, these devices that were issued to us only allow for one way communication, that is, the interpreter communicates to the LEP, and the LEP cannot communicate at a distance to the interpreter. This deficiency would be remedied if the court system were to purchase transceiver devices which allow two-way communication.

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

Leonard Morin: Transceiver devices which allow two-way communication such as the William Sound Digi-Wave 400 Transceiver. This is routine practice in some courts, for example, in the Southern district of New York, which is just a couple blocks away from where I work. One extremely positive development in the last half year or so is that many interpreters in several courts including mine, Manhattan Criminal, Manhattan Criminal Supreme, and Bronx Criminal among others have issued, or made available, infrared receiver devices to interpreters.

And this allows the interpreters to have crystal clear audio of what's being said in court. We have to understand absolutely everything that's said. We can't guess or summarize or improvise much like a court reporter can't do that. So unfortunately, there has been some resistance to providing this technology to interpreters in some courts and in some cases interpreters have had to purchase these devices in order to be able to take advantage of this technology.

We believe that all interpreters should have access to these devices, including per diems because they revolutionize our work and bring us much closer to full language access, which obviously is the court system's goal. And in closing, I'd just like to say that we believe that these recommendations would make language access fuller in the court system. And in closing, I'd just like to say I'd be happy to answer any questions now obviously, and subsequently you can be in contact with me if you like. I would be happy to talk further with you about these matters as would our union and the court interpreter chapter. Thank you.

Hon Craig Doran: Thank you Mr. Warren. Just very quickly before we go to the panel, could you please make sure that you submit particularly those items of equipment that you're suggesting be utilized. If you would submit that to that website I mentioned a little while ago, ppwg@nycourts.gov so that we can have that detail. We'd appreciate it.

Leonard Morin: Great. Thank you.

Hon Craig Doran: Anybody from the panel? Thank you so much for your input and please extend our gratitude to your members as well.

Leonard Morin: Thank you.

Hon Craig Doran: Mr. Clarke, Director of Legislative Affairs, I believe for the New York City Police Department. We're happy you're with us today. The floor is yours.

Michael Clarke:

Thank you so much. I appreciate it. Good morning, Justice Duran, Chair Greenberg, DA Katz, and members of the working group. Like Judge Doran said, I am Michael Clarke. I'm the director of the Legislative Affairs unit for the New York City Police Department. And on behalf of Commissioner Keechant L. Sewell, I am pleased to testify before this committee on the future administration of justice in the courts.

Initially, I want to thank the commission and working group for the opportunity to testify at this very important hearing. The department fully supports the smooth, safe, efficient, and fair operation of our judicial system and we look forward to working with the commission and other stakeholders of New York's courts as we consider possible policies and practices that advance that goal. For all of us, the COVID-19 pandemic was an unprecedented time in our state, exacting a heavy toll on all New Yorkers.

The court system and its partners worked together to implement practices that greatly reduced activity in the courthouses to minimize the spread of COVID-19. In the criminal court context that affects the NYPD, courts conducted virtual arraignments and this allowed judges, defense counsel and prosecutors to be at remote locations.

However, for the NYPD, our police officers were still required to transport those defendants who did not test positive for COVID-19 or were not experiencing symptoms to the central booking for arraignments. And those that were, were transferred at the beginning of the pandemic to some of the local community courts.

Virtual arraignments therefore did not materially affect our operations when it came to most arrests. We did find that virtual arraignments were particularly helpful when arraigning individuals in a hospital and when arraigning individuals who had actually tested positive for COVID-19.

However, since safeguarding the health of all our court proceeding participants has been and can use... Continues to be a shared objective, the department acknowledges the merit of any practice that reduces the possibility of exposure to a health hazard while maintaining a level of fairness that is essential to our judicial system.

While the worst of the pandemic is hopefully over, we continue to live in challenging times for New York City residents and businesses. Safety and crime continue to be a paramount concern, as our city and state fight their way back to normalcy, we face the challenge of restoring the public sense of safety and to meet such an enormous challenges. Every resource is crucial, especially since we have more than 2000 fewer officers today than we did in 2019.

Under Commissioner Sewell's leadership, we have attempted to maximize the number of officers patrolling our streets and subways by utilizing precise

deployment strategies and further into public safety. We're not... We are continuing painstakingly evaluating practices in an effort to best utilize our officers to not only respond to crime but to prevent it through community involvement interaction.

We all know that court appearances by police officer are essential to the criminal justice process and we have policies in place that ensure officers appear to court scheduling appear in court accordingly. However, there are often situations when a police officer appears at the courthouse only to eight hours for case to be called. And many instances the case is adjourned without the officer actually testifying.

The hours an officer travels to and from court and waiting to learn whether their testimony is needed as precious time that the officer can be out patrolling the streets and making communities, community contacts that will prove to be invaluable in preventing crime and making your neighborhood safer. So far this year, officers have been notified to appear for a hearing at trial more than 15,000 times. Most of those notifications do not result in an officer actually testifying. That results in thousands of days of officers that officers could have been patrolling our streets but were needlessly waiting in courts without ever appearing before a judge or jury.

The NYPD encourages the commission to explore ways to reduce the amount of times officers wait, spend waiting for potential hearings or trials, including the ways of technology can be deployed to more efficiently utilize our officer's time while maintaining fairness in the court system. Minimizing the time an officer spends waiting for a court appearance that may or may not occur serves to maximize the time the officer spends on the street protecting our public safety. During these challenging times, it is important to maximize every avenue to utilize technology to meet and even approve upon our collective goals of delivering a court system that efficiently promotes equity, justice, and safety.

The NYPD welcomes the opportunity to work with the commission, the working group, and other stakeholders of New York's courts to explore research and analyze the possible future of technology in the court for court appearances. Thank you for the opportunity to participate in this important discussion concerning the future of administration of justice in our courts.

Hon Craig Doran: Thank you very much Mr. Clarke, any comments, questions for Mr. Clarke?

Melinda Katz: I'll try one.

Hon Craig Doran: Right.

Melinda Katz: Mr. Clarke, thank you for being here today and we appreciate our partnership with the NYPD. So, the officer's time that is in the courtroom is something we keep hearing about all over the state, right? People show up in court, they are

waiting hours. Defense attorneys have the same issue. Is it the idea that we can't really get our timing right and I understand that because it's very... Look, it's hard for everyone involved in the case, right? Not only the NYPD but the witnesses. It's hard for everyone. If there's a choice between getting a better schedule and making sure we're not wasting the valuable time of the NYPD because it's very valuable to have them back on the street. And by the way, they're also testifying if they're active cops on other cases too. So for us, not having the right timing is crucial to our prosecutions as well. But if it was a choice of having a better timing system and doing it virtually, do you have a view of that or if you could think about that, that'd be great and get back to us either way.

Michael Clarke: Yeah. I think for us it is either or works, but if we had a better timing system where officers, and I guess there's two related points to this. So, there's the issue of sure you come in and you come in at nine and you testify at three and that's a smaller issue. I think the bigger issue is you come in at nine at three o'clock we find out the case is not going and then you leave.

So, I think that's... if we could figure out that issue to more effectively when we don't act we will now end up needing to use the officer's time, I think that's where we'd like to sort figure out the problem and better timing works as well. So, it's not so much going down to court if we know within a general frame when we're going to be there. I think that works and I understand that for trials and hearings that there's other competing factors about in person versus virtual arraignments. So, if we could figure out the timing, that'd be helpful. If in some cases, virtual arraignments or virtual appearances works, that could also be helpful. But I understand it's not-

Melinda Katz: So, Judge Doran.

Michael Clarke: Not for everything.

Melinda Katz: I'm sorry. Judge Doran, it does sound like predictability is the common theme in both civil and criminal. It's the predictability of the court system and how our modern technology that we learned about during COVID can perhaps that and you help that in the long run, at least it seems like that's the common theme throughout both.

Hon Craig Doran: I agree, we can certainly do better than we have done and we have to take advantage of what we learned and the technology that we've utilized. I'm thinking as you're talking criminal matter, every court there is lots of difficulty in the predictability area, but criminal court in particular, you don't know when a witness isn't going to show up or when there might be a last-minute plea negotiation and the defendant ends up pleading guilty.

A lot of times it's impossible to know that. But what we do need to drill into are those instances where using technology, perhaps we can be better suited to

make those determinations earlier on, I'm thinking, and this, I hate to suggest this out loud like this, but there really is not a good reason and we are doing it in many instances. I don't know how well it would work in the extremely busy high volume New York City courts, but we're making use of text messaging to let people know when their case is about to be called, so that they can be in the vicinity of the courtroom, the courthouse, et cetera.

I wonder if that's something we could utilize with your department to perhaps at least give them a ballpark, have the clerk input something that sends a message out that the case is going or it's been delayed, et cetera. I mean that doesn't help you a whole lot because your officer still needs to be sort at the ready to show up at the courthouse, but we can be better.

Michael Clarke: Yeah. I think that that's a possibility that could help. I think to your point, you can't predict we're all ready to go. We're sitting in the courtroom and the defendant changes their mind and they want to plead guilty and we're waiting outside. You can't always prevent that, but there could be to the extent there's more appearances that can be done virtually that frees up time in courthouses, frees up space in courthouses for trials and hearings to occur. Whereas I know frequently, at least in the New York City courts, it's prosecutors ready, defense is ready and there's no room to go to.

So, there's other ways where freeing up that space can help or some conferencing before the day of the... You're supposed to answer any trial where we can figure out whether people are actually ready. I was a prosecutor for five years, it's been a while since I've been a prosecutor, so I know the practice changes, but oftentimes we couldn't get in touch with the defense attorney or defense attorney couldn't get in touch with us for whatever reason, and then we found out Tuesday morning at nine o'clock whether we can actually go where we can maybe save people's times.

And I'm talking on behalf of the NYPD as a large witness organization, but I think the uncertainty for civilian witnesses isn't great and I'm sure that leads to some civilian witnesses sort of peeling away from participating when they have to constantly go down for adjournments. I'm sure it's not great for the defendants, the uncertainty.

Hon Craig Doran: That's true.

Michael Clarke: So, I think to the extent we can solidify that via technology or practice or however it does, however it happens, would I think benefit and prosecutors and defense as a prosecutor, I think more certainty would've benefited me and I'm sure defense attorneys would feel the same way.

Hon Craig Doran: Thank you and thank you all very much. We are a little bit behind. We're going to take about five minutes now between panels and let me just... So, you know, you're on deck. Next is our judges panel. So, if judges, Jolly, Crecca, Martinez

Alonso, and Crane could be making their way up here to the front table, we'd be grateful and we'll get started in about five minutes with the next panel of presenters. Thank you.

So, before we welcome our next distinguished panel of judges, I want to acknowledge our friends who are the leaders in our court system. We've already acknowledged a couple of whom are members of our working group, the Honorable Tamiko Amaker, who is here I know and Judge Amaker is the deputy chief administrative judge for management support. Also, I haven't checked the morning headlines, but I believe Judge Amaker is also the administrative judge for the New York City criminal courts talk about a multi-hat role.

Also, Judge Mendelson, who's been an active participant in so many of our endeavors, but Judge Mendelson's actually out of town on business, so she was unable to be here, but I would guess that she might be watching us on the live stream. So, we have to behave ourselves here. We also have to acknowledge the acting chief judge who I had the honor of working with during the pandemic, Judge Cannataro. Judge Cannataro and I shared the duties of drafting the protocols and procedures that led our court system through the pandemic. And I'm thrilled that he has embraced our efforts and has acknowledged our efforts and supported our efforts greatly.

And also the chief administrative judge, Larry Marks a friend to many in this room and someone who we hope enthusiastically receives our recommendations, but we also know that he supports our efforts. He's said that to me many times and has said that publicly that he looks forward to the recommendations of this group.

Also, two other deputy chief administrative judges that we need to acknowledge the Honorable Norman St. George who is the deputy chief administrative judge for the courts outside of New York City and the Honorable Deborah Kaplan, who is the deputy chief administrative judge for the courts inside New York City. And when we talk about those judges that are at the forefront of implementing these changes on a day-to-day basis, we definitely need them. Those judges I just mentioned to be co-conspirators in our efforts as we move forward in implementing what we hope will be a robust set of recommendations. So, with that acknowledgement of judges, we also are so pleased to welcome this next panel of presenters who are judges themselves and when we talk about knowing what's going on, where the rubber meets the road, we're about to hear from four folks who are going to give us what's really happening out there and I will mention each of them and then in a couple of seconds we're going to start with the Honorable Anne-Marie Jolly.

So, Judge Jolly is the administrative judge for all of the family courts in New York City and she's smiling right now, which we appreciate. Thank you. Thank you.

Anne-Marie Jolly:

You're welcome.

Hon Craig Doran: And my friend who I was privileged to serve alongside with for several years, the administrative judge from Suffolk County, the Honorable Andrew Crecca is with us and also from the New York County Criminal Court Judge Marisol Martinez Alonso is with us. Thank you for being here today.

Marisol Martinez Alonso: Thank you.

Hon Craig Doran: And last but not least, the Honorable Melissa Crane, who is a judge in the New York County Supreme Court in the commercial division. So, without any further ado, we'll ask Judge Jolly, the floor is yours whenever you're ready. And if you weren't here earlier, what we would ask you to do is give us five minutes of your most important points, things that you want us to remember. We might have some questions for you, you may have some questions for us and we will have plenty of time for all of that. So, Judge Jolly-

Anne-Marie Jolly: Thank you so much.

Hon Craig Doran: ... thanks for being here. The floor is yours.

Anne-Marie Jolly: Thank you so much for having me. Good morning, everyone. I really appreciate this opportunity to share with you some of the practices and procedures that were implemented in the New York City Family Court during the pandemic when in person proceedings were temporarily suspended. I think many if not all in the room recognize the critical and important work that is done in the New York City Family Court and the types of cases that are handled.

So, I won't go through and repeat those. When we were struck by the pandemic, we needed to refocus immediately in order to continue to do our jobs and provide families with continued swift meaningful access to justice while balancing the safety of all the parties involved, including the court users, advocates, agencies, and our staff on our side, extensive collaborative conversations were had internally as well as outside with the players including attorneys, agencies, and various advocates.

There was so much value in having those conversations. Because of those efforts, we were able to identify and address the issues that would be critical to our successful transition to virtual proceedings. And thanks to advancements in technology, we were able to swiftly and seamlessly transition to remote virtual proceedings. So much so that from March 2020 until October 2021, the New York City Family Court heard and completed over 102,000 cases.

At first, we focused on cases in which people were seeking orders of protection, cases in which the presentment agencies were seeking remands of young people, removing them from the care of their parents or young people who were charged with committing what would be acts, would be crimes but for their age in which there were remand applications being made rapidly, we

adapted to the use of technology. It's been mentioned earlier that we began with Skype and then transitioned through Teams.

We then were able to expand the types and numbers of cases that we were managing beyond those initial cases. During that time when the matters were heard remotely, our phenomenal land and tech personnel used their talents to ensure our use of the available technology to provide remote access, so that we could continue to hear and adjudicate matters virtually that involved figuring out how to ensure that the matters could be recorded from remote locations, not in the court, because we didn't have enough court reporters, we still don't have enough court reporters and in addition to that, we also offered various educational opportunities for the entire community, especially those who were not familiar with the use of the technology since we had to switch so quickly.

I want to take this moment since I have the microphone to commend, the New York City family court's judicial and non-judicial staff for their tremendous efforts during what was challenging both personally and professionally during the difficult times of the pandemic, their long hours of hard work, being involved in meetings and organizing their areas of responsibility and in communicating with external entities to learn what others were doing and to coordinate our efforts that was most essential, so that we could continue with our functioning at a time when so much was unknown to us.

Their tireless focus on the critical needs of the court and the needs of the people helped guide us, so we could be as successful as we could be during what was an unprecedented time. I also want to take advantage of the time and acknowledge as I believe Mr. Sputz did earlier, that the voices efforts in work of advocates committed agencies, court users impacted entities and community members helped us to navigate this world that was so foreign to everyone, so that we could continue and keep our focus on what the common goal was, which was to provide the best justice and access to justice that we could to those children and families who required court intervention.

The reliance and use of technology in the early days of the pandemic allowed us to meet the needs of the families with the implementation of technology. Newly filed matters were heard promptly. For years, we have been challenged with trying to commence cases at a certain time and end them at a certain time. Some of our jurors have been successful, some have not. We had no choice during the pandemic to be respectful of everyone's time.

Neither attorneys nor jurors could double or triple book their matters and court uses no longer had to take a whole day off from work, find childcare, miss a day's pay in order to participate in a court appearance. Gone were the days of overcrowded waiting areas and attorneys having to physically run to get to another court room.

In addition, court order, court users were also provided with interpreters for which we're grateful and sometimes they came across from different parts of

this state. We have noticed that virtual court appearances have increased participation by court users in some cases, especially child support matters as well as permanency hearings and the importance of that cannot be overstated.

We have young people, we have foster parents, we have parents participating in a way that we had not seen before probably for the reasons we described, I described earlier: losing a day's pay, transportation, all of that. So, in addition, as we transitioned to remote proceedings, we had not been collecting certain information, we were only collecting addresses. We were not really focused on collecting telephone numbers and email addresses.

And so, we changed our practice and now we collect all of that information and encourage court users to keep us updated if any of that is to change. The good thing with email address is if you have it, you have it. Most people, you're not paying for an email address. So, we are able to maintain that contact. This improved practice has allowed for greater more meaningful access to the courts for those families most in need.

And again, thanks to our technology that was available, our forward-thinking mediation department swiftly transitioned from in-person sessions to a virtual platform that offered ongoing mediation services throughout the pandemic. They didn't miss a beat. In addition, mediators can now mediate outside of their designated and assigned borough and that will help. That certainly helps families across the city and state resolve their disputes without protracted custody proceedings or court proceedings.

And after emerging from the pandemic, that was referenced earlier about electronic filing, we now have in place a pilot project in New York County affording individuals an opportunity to file electronically attorneys as well as unrepresented individuals have that as an option. It is a pilot and the goal is to expand to four more counties in the state and eventually expanded throughout the entire state of New York in each of the family courts. We have during this period of time, been able to hire more court attorney referees who are our jurors, who manage everything except juvenile delinquency cases, issues relating to incarceration, but they really manage the majority of the cases that we have.

Custody, visitation, guardianship, family offense, as well as support matters. But we also recognize that the benefit of virtual proceedings only helps those who have the technology. There are many challenges that individuals face. They might have a phone but they might not have the ability to use the video feature or download the apps or pay for the services. And so, ongoing access to the physical courtroom is appropriate and necessary and our courts are open. And there's also the need to find locations where individuals can go within their community.

We've been working collaboratively with Judge Mendelson's office, the Office for Justice Initiative. And in fact there's been a location identified where

individuals can go two days a week for family court matters and two days a week for housing court matters and that's in Red Hook Brooklyn. So far so good. And clearly there's some matters in family court that should be handled in person: trials, matters in which there need to be submission of evidence.

Court has to assess credibility. That's much more effective and efficient if that is done in person. Therefore, as we move forward to reimagine the future of our courts, I hope that we look at the individual needs of each court type because different courts operate differently and they meet different needs of the populations in their locations. And I hope that we recognize that one size does not fit all within our justice system and that even within our family court there are different case types that weren't in person or remote proceedings or hybrid proceedings. So, I thank you again for your time and this opportunity today.

Hon Craig Doran: Thank you so much Judge Jolly-

Anne-Marie Jolly: You're welcome.

Hon Craig Doran: ... It's overwhelming to listen to your experience and the experience of your colleagues in New York City. We appreciate you being here. I think that Mr. Greenberg has a question for you.

Anne-Marie Jolly: Yes.

Hank Greenberg: Hi, judge.

Anne-Marie Jolly: Good morning.

Hank Greenberg: And thank you for your extraordinary service to the courts and the people of the state.

Anne-Marie Jolly: Thank you.

Hank Greenberg: Two quick questions that are related in the New York City family courts, what percentage of the litigants are unrepresented and to the extent that you can assess what their preferences would be, the unrepresented litigants, any sense of whether they prefer virtual proceedings relative to coming to the courthouse?

Anne-Marie Jolly: Sure. I'm sure that more than half of the litigants who appear in court, in the majority of the cases that we manage, which are the visited, custody, visitation, family offense and support matters believe more than half of them are unrepresented. Anecdotally, I can tell you that the majority of them appear appreciate appearing remotely. We have found that there have been more meaningful orders, for example, in child support matters and fewer applications for the violation of... Orders of protection that were issued prior to full participation by respondents. And we also offer them the opportunity, the next

court date is, would you like to appear remotely? Would you like to appear in person? And the majority of the individuals who want to appear on those cases remotely.

Hank Greenberg: That's extraordinary. Thank you.

Anne-Marie Jolly: You're welcome.

Hon Craig Doran: Just a quick follow up to that.

Anne-Marie Jolly: Yes.

Hon Craig Doran: How do we reconcile somebody else, a witness earlier this morning also suggested that we might leave the determination to the litigants to decide whether they'd like to appear remotely, virtually, or in person. How do we reconcile that with what we're also hearing is the need for uniformity and predictability? We've had a couple of attorneys testify earlier that one of their greatest challenges is trying to figure out when they get up in the morning where they're supposed to be, do they turn on their computer or do they get on the subway and go to a courthouse? So how, one of our challenges, how do we reconcile that?

Anne-Marie Jolly: I think that since we're dealing with individual families and each situation is different, that the question and option should be presented to them unless the judge, the jury decides this case has to be conducted in person. We have been provided with a lot of technology and if we were to present them in every single case with the option and if it were hybrid, we probably would need more technology. But right now it's working. So, I don't see how, if we're dealing with individual families, individual needs, that we don't present that option to them.

Hon Craig Doran: Thank you.

Anne-Marie Jolly: You're welcome.

Hon Craig Doran: Anybody else? Any questions for Judge Jolly?

Thank you so much.

Anne-Marie Jolly: You're welcome.

Hon Craig Doran: Judge Crecca, the floor is yours.

Andrew Crecca: Tough act to follow. So, but good morning and thank you so much for having me here today and as an administrative judge. What I'd like to do today is share with all of you some examples of how Suffolk County's use of technology during the pandemic has led to really enhancing our court's work and serving the public going forward.

So, first thing I wanted to mention was what DA Tierney mentioned earlier and that is Suffolk under CPO 18220 has the ability to do virtual criminal arraignments. Now, we don't do that in our main courthouse and that is for our five Western towns, but as DA Tierney pointed out so aptly is we're a huge county. It's a lot of turf to cover and he's absolutely right. It can be daunting sometimes to get out east to our five East end towns and to our many village courts and justice courts out in that area.

And what we have found is virtual arraignments does exactly what he said. Instead of a defendant staying in custody for a whole day or even six, seven, eight hours waiting just to get released, arraignments are happening within an hour of arrest or two hours of arrest. And let's face it, most of the defendants who are arrested on the East end are bail eligible, I mean are award. And this really cuts down the time out there. Also, we have two of our Fire Island courts on Ocean Beach and Saltaire have no access in the winter. Sometimes there's no way to get there and the technology that we've used has allowed those proceedings to go forward too. So, it's just been a real godsend there in that sense. I still think criminal and personal arraignments are very, very important, but in these less serious matters it's really been a God a godsend.

So, I want, the next thing I wanted to talk about, which I think is one of my favorite technology uses that came out of the pandemic, is our countywide used to conduct hybrid proceedings. That's where one or more persons appear virtually while others appear in person. Having this option out of disposal has really been a game changer in a wide variety of cases.

As you may know, we have... And I think this is a statewide problem, we have a serious shortage of 18B attorneys assigned counsel in criminal cases and in family court it's even more exacerbated because not only are we short on 18B Council, but we have our panel, our AFC panel attorneys for the child panel is getting smaller and smaller and by providing these attorneys the opportunity to appear remotely, they can attend matters virtually between court appearances even in the courthouse.

Lots of them do it on their cellphone or on their laptop. That's really been very, very helpful, especially since, for example, our family court is both on the east end of the county and the west end of the county. We have two separate locations and that's a good 45 minutes to an hour drive between those two locations. It really has done a couple things. Number one is it has prevented adjournments in cases waiting or and delays for waiting for attorneys to appear and really sped things up, say it gets us to disposition quicker and also saves litigants money and it's more efficient for the court. In our civil proceedings, the enhanced technology has really been very helpful. Couple ways that that's happened. Number one is a lot of times in civil cases, an attorney only conference and again, our main civil center and Supreme Court is out in Riverhead and for some attorneys that can be well over an hour to get there.

This just allows attorneys for a quick discovery conference and things like that to operate a lot more efficiently, saves litigants a lot of money also. And in particular it's really been helpful enabling witnesses who might not otherwise have been able to testify. An expert witness from Boston saves litigant's money, things like that. We have, we've been very fortunate in Suffolk with the court modernization of initiative. Shang who many of you know our IT guru has really taken a liking to us.

We have all 80 of our courtrooms have audio upgrades, which really helps tremendously if you can't hear what's going on, doesn't do much good. The other thing is four of our courtrooms have received what we call the full-blown state of the art technology installed in them. And this allows attorneys to easily present evidence. It allows both the judge, the lawyers, the jury to all, they all have monitors and screens that either pop up or are there and they can see exhibits immediately. The judge can control who sees the exhibit if it's just being marked for ID. It's really wonderful and our judges have just started to use this technology and they are embracing it wholeheartedly. They love it and it really is increasing efficiency in our courts and again, it just saves litigants time and money.

Real quick, two other things, access to justice, a lot of our initiatives have really blossomed, if you will, post-pandemic for the simple reason that we've learned how to use...

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

Andrew Crecca:

technology a little differently. Judge Jolly was referring to the fact that some people in underserved communities need the ability to appear virtually, say, in a court. But they don't have the technology. We have our hub centers and our libraries where litigants can go, and not only get some legal advice, but also, they can use the technology in those libraries to appear in our courtrooms.

And most recently, Suffolk's piloted the Voice Project, which is basically iPads. And we put them at the Magnetometers, family court clerk's office, our help center. And they allow someone who speaks a different language to immediate on-the-spot interpreting with that person. That's really been really helpful, and it's been a real success. We've been piloting that for several months, and I'm hoping that's a technology that can spread throughout the court system. It's great. Think about somebody who walks into our court building, can't speak a word of English, dealing with a court officer, not knowing where to go. The ability for a court officer or a clerk to be able to communicate quickly with that person in any language has really been really wonderful.

Finally, one last point I want to make is how technology has enhanced our ability as administrators to manage the court. I think we forget about that sometimes. We're always focused on the courtroom, but the truth of the matter is, and anybody who's been an AJ, and I'm sure Judge Jolly can say that I host and attend countless meetings every day, and having technology available for those

meetings has really saved me countless hours, and travel time. Just this morning, I called a meeting on an issue that arose in my district for 3:30 today I've got people from all over the county appearing at the meeting on a large screen in my office, and that's really been another saver of time. Anthony Perri is smiling, because I often harass him by just hitting the Teams button, and calling him. But he does pick up, so thank you.

But again, just in closing, I want to say, a lot of these efficiencies have really been very helpful in what we do. And these are just a couple of examples of how technology has improved our court operations, and I think it's just something we need to embrace going forward. And I appreciate the time to speak to you, today.

Hon Craig Doran: Thank you very much, Judge Crecca. Anybody have any comments, questions?

Hon. Carolyn Walker Diallo: Yes. Thank you so much for your testimony. I have a quick question for you. So, when it comes to pro se litigants ... And Judge Jolly, you can jump in as well. We have been in the trenches together, Judge Jolly and I, as AJs of the Citywide courts. The question I have is many people that suggest this in my court, especially when we started to come back to in-person, but we were still doing a lot of virtual operations, had a big distrust of the virtual operations, even though we would say, "You can just call into this link, or Skype in, Zoom in." They just wanted to come to the courthouse because they didn't believe the virtual option. What can we do as we move forward and take the good things from the pandemic, which includes the technology, what can we do to get out to the community to let them know it's really safe? Because they would still show up, even though it's virtual, because they want to make sure. They're used to coming to the brick-and-mortar courthouse, and they feel like they will receive more justice that way. And these are the pro se litigants, not the attorneys, right?

Andrew Crecca: No, I understand. I think one of the things though, I think it's important that we still have that ability to have litigants come in in-person, number one. Number two is, every one of our family court courtrooms is set up for hybrid proceedings, and it happens throughout the day. And I think once litigants come there, and experience that, maybe the other side is appearing virtually or an attorney who's stuck out in another court is appearing virtually. When they see that, and they see how it works, they're more likely than to use the virtual appearance. And again, I think it's really important too that we leave that to a judge's discretion. Because I do think many, many instances call for an in-person proceeding or there can be nuances in matrimonial family cases, really any kind of case where we need the judge to have that discretion where you may need to see people face-to-face or she may need to.

Anne-Marie Jolly: So we have begun ... We've been working on our equal justice work, and we have internal committees which are soon to expand, and include agencies, advocates, and the community. And so, I think that part of how we'll be able to accomplish that is in our next phase, which includes the community. Because

we had to work internally, make sure we knew what we were going to be doing, and understand our focus. I do think that the next steps of reaching out, establishing better and different relationships with the community will help us to spread the word, first of all. Because I think some people still don't understand that we are physically open. I think because they don't see the long lines outside, which we don't want to happen again. But people have for years been used to the really long lines outside of our busier courts, and so they might walk by, and they think the court is closed. So, we want to have that conversation with them, and own it. And then, I think that we'll get some more feedback from the community, and maybe then they will trust the process or they can keep coming in.

Hon. Carolyn Walker Diallo: Exactly. Thank you, both of you.

Hon Craig Doran: Anybody else? Thank you. You talk about those collaborations. One of the things that the pandemic did for us but also virtual technology, it sort of motivated us, forced us into being better collaborators with the outside entities that we work with. That's an excellent point. Judge Crecca, thank you for your comments. One of the things that the virtual technology, perhaps a downside for you, having looked at you for months on end ...

Andrew Crecca: On TV?

Hon Craig Doran: ... as a box on my computer, and seeing you in-person now, you look much better in-person than you than you do on technology.

Andrew Crecca: Thank you, Judge Doran.

Hon Craig Doran: Yes. So, next, we're honored to hear from New York City criminal court Judge Marisol Martinez Alonso. The floor is yours. Thank you for being here today.

Marisol Martinez Alonso: Thank you for having me, and not fair, number three. So, after two great speakers, here I go. But again, I appreciate you all willing to listen regarding my experience as a criminal court judge. So, it is without question beyond impressive. I'm in awe. I'm sure everyone would agree how in the blink of an eye when this pandemic came, the tragedy it struck that no one was really prepared for. OCA was able to go completely virtual. I speak on behalf of myself, totally not tech savvy. But overnight, between the OCA administration, the court staff, IT, forget about it, big shout out to them. Within the blink of an eye I was home working from my living room on a laptop doing arraignments, preliminary hearings, all-purpose calendar parts. So, defendant's speedy trial rights were not on hold. We kept working. So, even though technically, the courtroom didn't allow the public to come in, we were able to work even from our own home, at least as a criminal court judge.

I couldn't believe it, how quickly it happened. Of course like anything else, when you first started the technology glitches started. But within the same day or

even days passing, everything was improved. Technology continues to improve even now. I mean I think we started with Skype, and then we moved on quickly to Teams. And I could already tell, better audio, better picture, less glitches, less audio, and picture issues coming up. So, that until this day is ... I am in awe, and it's very, very impressive that we were able to do that, and continue to serve justice without actually really closing our courtrooms. Because we were open, even if it was virtually.

In about two months that I worked from home, and at about June 2020, I started physically going back to work. I was still working virtual, so from chambers, from a laptop, but in my actual chambers continuing to do all-purpose calendar parts, arraignments, preliminary hearing. And it was amazing. I mean we had ... The court staff was a great assistance. The little court staff that was in the physical courtroom helping with the technology, IT in the background. We had interpreters, so everyone on one screen, the defendant, the attorney, the prosecutor, the court reporter working from home recording. So, that all came together. And as I said, I believe when we moved on to Teams, I think the technology got a little better. I was doing hearings where I was in awe seeing how evidence was being presented, documents were being shared, just in a real open courtroom. The attorney, the defendant, the judge, the prosecutor, all looking at the same piece of evidence that was going to be introduced. So, that was impressive.

Like I said, I'm not tech savvy, but I believe that I was able ... I was in shock that I was able to get the handle of this. And when I think about it, I think at some of the defendants for example, a little more difficult from their homes between help ... whether it was family helping them, the court staff helping them, their attorneys helping them, they were able to participate in their court proceeding. And I sometimes think about, like, "Okay, forget about not being tech savvy," but when you don't have the access or the ability to own a computer, what do you do, or how do I even get on a link? I have to be honest, we made it work. I've had proceedings before me when, especially when this first started, and the technology was not yet 100%, I was doing proceedings through the attorney's phone on FaceTime with this client, or even audio where a phone call would be made, and the attorney would affirm the person we're hearing is his client or her client. And basically, instead of their case getting old, and sitting, a year going by, their case was handled diligently, I think as best as possible in the situation we were in. And they were able to have their day in court. So, I had a lot of those situations.

Now at first, when it was all virtual, I always like to say I'm happy to, at least I'll speak on New York County, that were pretty much open to the public. And I'm in a physical courtroom, the attorneys appear before me. But I will say this. The fact that we have that capability, God forbid another pandemic, but forget that. We have the capability ... sometimes aside from COVID, sometimes there are people that cannot appear in a courtroom. Listen, "I'm getting a job for the first time after being laid off because of the pandemic. After two years I'm getting my first employment. If I miss out, I'm going to get fired. I'm going to get laid

off." We can accommodate those situations. We've accommodated those other medical issues, not just so much of the defendants, but sometimes the attorney's also medical issues. Or maybe they don't have medical issues but they have family members, or friends, or people that they live with that unfortunately can be exposed to serious illnesses. So they're scared of coming to court, which at this point, after what we went through, obviously, nobody is surprised at that. Childcare issues, even though mostly 100% live now, I have had situations where they've requested, "Judge, can my client appear virtually? A two-year-old, can't leave them alone."

"Of course." And we're able to move their case forward instead of just a waste of a calendar adjournment. The case is growing old, we're able ... Sure, we'll have it virtually. So, we kind of do both now. Obviously, the aim is all live appearances, and what makes everyone feel good about that ... at least I'm sure I speak on behalf of most is that we're live now because the pandemic, God willing, is at least behind us a bit in that sense. But this ability to be able to do this, and now years down the line where we've enhanced, and made the technology better, the fact that, God forbid, something wherever occur like this again, we wouldn't have to close. We could just go virtually. So, that's been my experience.

In the courtrooms, like I said today, I'm mostly all my attorneys, and defendants appear. But I still have some virtual, and also some hybrid, as they were saying, where maybe the defendant can be there but not the attorney or vice versa. And we have someone on the computer screen, and someone in court. We get everyone to agree that that's the way the defendant wants to go forward, and be represented. And we handle the case that way. I saw myself virtually disposing of many cases justly, with proper resolutions. We were taking pleas virtually, and the defendants didn't have to get an adjournment. They could go deal with their personal lives now or whatever issues they were suffering from based on the pandemic. Their case was closed. So, we did a lot of that.

Also I've had the experience of, believe it or not, having proceedings with defendants that financially can't appear. I've had a defendant in another country. I dealt with a case in France. The guy was in France. He had to go back. His mother was very ill, so he was in France. And I was able to do a virtual appearance with him, and we were able to resolve his matter that day. These are things that pre-pandemic, I wouldn't even know how to begin to explain or tell you what my thoughts were if we had to go virtual. So, that's why I say I'm just so impressed at how that happened so quickly overnight. But now, with that said, and God willing, the pandemic being behind us, I'm grateful that we have that ability to continue to have some virtual proceedings in the courtroom, if are needed, for whatever the reasons may be, or if, God forbid, something like this were ever to happen. So, that's been my experience during this time, and thank you so much.

Hon Craig Doran:

Thank you, Judge. You make a very important point, by the way, is our ability to remain flexible, and be ready. And some of that means practicing. So, even in

those courts, like criminal court where, because the statute requires it, much of what we do will need to be in-person. There are ways, and you've given us great examples, about how we can continue to be prepared, and be nimble, or be ready to convert, if necessary, and also on an ongoing basis, to accommodate litigants. So, thank you.

Marisol Martinez Alonso: Sure.

Hon Craig Doran: Anybody have any questions or comments? Hank?

Hank Greenberg: Hi, Judge. If you could help me to understand of the organization of the New York City criminal courts with some specific focus? We've heard from some defense lawyers, and others representing the accused, some pretty strong arguments about their hesitation to see virtual proceedings post-pandemic become the norm. And I'm just wondering in terms of the New York City criminal courts, is it possible to look at this not as a one-size-fits-all kind of thing, but that depending on the severity of the crime, and the kind of part you're talking about, a sliding scale, if you will? Let me give you an example. If we were talking about upstate New York in a traffic court matter, I speak for myself, I don't see any reason why that couldn't be done virtually. Obviously, if there's a trial, that's a different issue altogether. But 99 out of 100 cases, it's probably even a higher percentage don't go to trial. So, I'm wondering, when I think of at least New York City criminal courts, are there some parts where more a robust use of virtual proceedings would be less objectionable or actually more beneficial as opposed to serious offenses, significant felony charges, if you follow my line of thought?

Marisol Martinez Alonso: Yes. So, again, I truly do believe, at least from what I see in New York City criminal court, it has to be a case-by-case basis. Obviously, there's a big difference when someone's appearing for the first time, let's just say for a desk appearance ticket. They got a desk appearance ticket, and they're appearing for the first time, versus now there's going to be some victim impact panel statement on an assault trial, a different type of crime. I think, from what I've seen, I don't think there is a part that I've seen so far in near criminal court that it could just all be virtual, and not matter. I think obviously, in-person, everyone together in the same room being able to ... for many reasons, whether it's judge credibility, whether it's just more access to talk privately to their attorney. Whatever the reasons are, being in the same room I think is always better.

But it is a case-by-case basis. So, obviously if it can be done. And I don't think I ... At least, I've never had a situation where I've forced someone to appear virtually and the defendant or the defense attorney do not want that. We always get consent, make sure that that's how they want to do it. Obviously, we would hear them. But I don't think saying everyone in a specific part should go 100% virtual. I don't see that happening, because obviously everyone should have the right or is given the right to appear in-person in the courtroom. So, I would always have that option. I think that's how New York criminal court works with the exception where sometimes it's unfortunate, whatever reason,

whether it's a litigate an attorney, someone cannot appear in-person for some exceptional circumstance. And then, I think at that moment, I would at least as a judge, would be willing to allow the virtual appearance or vice versa.

Hon Craig Doran: Thank you. Anybody else? Anthony?

Anthony Perri: Thank you, Judge. I just had, I guess, a question of whether or not, Judge, you have recommendations with respect to ... One of the major complaints about pre-pandemic practices was the cattle calls, the long waits, the uncertainty, and we heard about it again today with respect to hearings. Do you have recommendations or ideas with respect to how we could get to a more reliable system, especially just taking trials out of the equation? Because there's so many factors that are beyond everyone's control with an actual criminal trial. But maybe even just with a suppression hearing or hearings in general, how we could maybe get to a place where we can more reliably schedule time, certain hearings so that resources could be more efficiently used.

Marisol Martinez Alonso: Well first, actually, during the pandemic, that's how it kind of worked in New York criminal court. We would have these time ... certain hearings, they would appear. We would go through them virtually, and move the case along. So far, the way I see it when it's live court, when it's not virtual, it's ... When everybody shows up at 9:30, we have different parts available, obviously, to do these hearings in-person, and trials. And as soon as both sides are ready, they're sent out. So, I don't honestly see a difference. I was impressed, when we were doing it virtual, how smoothly it ran, and minus some glitches. Because that's always ... When you're dealing with the technology, that's going to happen. But how we were able to actually get these hearings done pretty much around their scheduled time.

I think, for example, just the part that I usually sit in, obviously, post-pandemic, pre-pandemic is a live trial part. Everybody comes in at 9:30. The calendar is not big in that part. We usually try to keep it down to five cases, or the oldest matters. So, I don't have the parties waiting around if they're really ready. We're able to expedite, I'm able to send or filter out the cases to available trial and hearing judges. So, if that continues, every county having a part that deals with the oldest matters, and not make it such a huge calendar, I think that would have the same, I believe, efficiency that I saw when we were scheduling these pandemic hearings virtually. And then, that was happening.

Hon Craig Doran: Thank you so much, Judge.

Marisol Martinez Alonso: Thank you, again, for having me.

Hon Craig Doran: We appreciate your being with us. Thanks the Honorable Melissa Crane from the New York City Supreme Court Commercial Division. We're honored to have you with us. Judge Crane, the floor is yours.

Melissa Crane:

Thank you so much, and thank you all for the important work you're doing, and for your time today, appreciate it. So, I'm going to talk about virtual proceedings in relation to commercial cases only, and it's pretty much all good news. Just a bit on me. From 2017 until 2021, I presided in an IAS part over non-Commercial Division commercial cases. And in March of 2021, I was moved to the Commercial Division for New York County. So, I was in my IS part when the pandemic hit us, and I had a docket of hundreds and hundreds of commercial cases at the time.

But fortunately, we have a very devoted tech department who really stepped up in fairly short order. We were doing motions, oral argument over Skype. Remember Skype? And that quickly changed to Teams, and our court reporters were really invested. They really stepped up too, shout out to both tech and the court reporters. The court reporters, I think there have been challenges in the remote proceedings for them. And they really stepped up, and were the backbone of getting our virtual courts up and running. And because of their efforts, we didn't really miss a beat. And eventually, we added bench trials. And I'm really happy to report that the remote process for commercial cases has exceeded every expectation that I've had for them. And it's really been great for the high volume we have in your county.

One of the fears people have had, and I know I've heard it echoed here today, that a judge in a bench trial wouldn't be able to assess credibility as well over Teams. And I have not found that. I've actually found it to be easier, and here's why. In the courtroom, it's darker. The witness is all the way on my left in my peripheral vision, whereas on Teams, I'm looking directly at the witness. If I feel like it, I can blow up their face on spotlight, and I'm catching tells I never would've seen before. Although in a commercial case, it may not really matter, because the documents tell the story. And speaking of documents, the commercial cases are very document intensive, so much easier to deal with on Teams with the DocuShare feature. We are literally everyone, all sides, me, the witness, we're all on the same page. Because it's on the screen, and someone can highlight the relevant language. Compare that to the [inaudible 02:43:13] courtroom, the attorney has to hand out the document to the adversary, to me, the witness. Then we all shuffle through the document to get to the right page, and eventually, we're all on the right page.

There's a problem if you're using digital documents in the courtroom because there's no computers at council table, so they'd have to bring in their own laptops. A witness doesn't have one. So, if you're going to do it without Teams, you're going to have to throw it onto a movie screen, and hope for the best. It's also much easier to stay organized with the virtual documents, because you don't have paper everywhere. Interruptions are reduced to a minimum.

So, before, in the before days, I'd be doing a trial, and two to three times a day, at least, people would wander in with orders to show cause. That's gone away. Now, I just take my normal trial break, and then I switch Teams meetings. So, there's really no interruptions. And there's a lot of time saving also in not having

people shuffle in and out of the courtroom. And speaking of conferences actually, which is also not ... I'm not experiencing interruptions from that. I can hold them after hours, which is better. Because the attorneys have things to do on record time. I have things to do on record time, conferencing. We usually do after 5:00 now, unless it's a regularly scheduled conference with my court attorney. So, this year alone, I've done 12 trials, and decided 386 motions, and not a single one has been in-person.

Hon Craig Doran: Wow.

Melissa Crane: Now, I don't care whether it's remote or not because I'm in the courthouse anyway. The lawyers have a choice to come in, but the requests to come in are almost zero. I was supposed to start an in-person bench trial tomorrow. I hear it's settling. So, that's the end of that. Oh, it's better for witnesses. We've had witnesses testify from all over, Belgium, Turkey, Dominican Republic, a ton from London. And this is a cost savings for the clients, and it's much more convenient for the witnesses. And I've also noticed that witnesses are more forthcoming over Teams, maybe because they're more relaxed. But the things coming out of people's mouths have been quite surprising at times.

So, I think also, it's helpful for lawyers who are parents of young children. They can actually work from home. That's an added advantage. In terms of my efficiencies, I actually was able to preside over an entire trial while quarantined with COVID, so we didn't have to stop for that. I can literally be in two places at once. Like I said, if I'm on trial, and that OSC comes in, I just take a break, switch Teams links, and come back. When I'm on vacation, I don't have to find coverage for emergencies.

I will say not everyone agrees on the Commercial Division. Some of my colleagues do think, and I promised I'd say this for them, that there's ... They feel it's a better opportunity for lawyers to meet. You lose the networking. You probably are losing opportunities to settle cases, because they're not in-person, and that is a concern. I agree, it's harder for settlement. I find it harder to settle cases over Teams. It's harder. Usually, a commercial case is valued and settled, and 90% of them settle. If they're not, there's some emotional component usually, and it's harder to deal with that component when you're not in-person, and you're not right next to that person. It's probably better training for the young lawyers to be in-person, and probably something's lost in terms of the solemnity of the proceeding. But overall, they've been incredibly successful in commercial cases. There's always room for improvement. I have some tech ideas if anyone wants to talk to me after about it. But the bottom line is, New York's the financial center for this country, and these virtual proceedings present a real opportunity to cement that status, and maybe make New York the financial center of the world. So, we should continue.

Hon Craig Doran: Thank you.

Melissa Crane: Sure.

Hon Craig Doran: Excellent.

Anybody have any ... Hank?

Hank Greenberg: Well, Judge, I found your presentation to be extraordinary, and revelatory for me. I've not heard a jurist say what you did. By the way, I'm complimenting you. So, don't think this is skepticism at all. But I haven't heard a juror say before that they felt that they could make credibility assessments better virtually. And it's just common sense, understanding the configuration of a courtroom. I'm not surprised at what you've said. I'm a commercial litigator myself, so I'm not surprised.

Melissa Crane: I know.

Hank Greenberg: What you're hearing from, at least the bar, commercial litigators. So, thank you for that. And it was fascinating and important. I just want to ask one quick question though. And your point ... By the way, once upon a time, I clerked for Judge K, so the Commercial Division was for her, one of the crown jewels of the state court system, and she had such pride about it. So, what you were saying about New York being the commercial capital, and the opportunity in the Commercial Division to just shine, what Judge Crecca said about some of the courtrooms in Suffolk County, I think four, are courtrooms are the future, 21st century courtrooms, which is the norm in the federal judiciary, as we know. They have extraordinary resources. So, every courtroom is wired, magistrate judges, district court judges, right? For the Commercial Division, how many or what percentage of your courtrooms are 21st century courtrooms, if you will, from a technological point?

Melissa Crane: Sure. I know there's one. It is not mine. I know of one, and it is not mine. So, I don't know if there's more than that. I wish I had more tech in the courtroom, because eventually, I'm going to have to do a jury trial on a commercial case, and I don't think that's possible to do remotely. Although, I hear they're doing it in Florida. I'd love to take a crack at it, but I can't fathom how to do that well. So, we would need things in my courtroom to do that effectively.

Hank Greenberg: One follow up question, Mr. Chair, is that a resource issue?

Melissa Crane: I think so. Although now, it was a resource issue, as my understanding, I think now though, does it matter? Because if we're doing the bench trials on Teams, maybe we don't need it as much? And maybe all that we need is that one courtroom or two, maybe it's two, I don't know. So, that if I get an in-person, I'll just trade off with whoever judge that courtroom is.

Hank Greenberg: I'm just going to make an observation. We heard from a witness from Oneida County that talked about them having two 21st century courtrooms in Oneida County, four in Suffolk County. The Commercial Division of New York County has just one.

Melissa Crane: It may be more than that.

Hank Greenberg: Oh, okay. But ...

Melissa Crane: It's just not mine.

Hank Greenberg: No, no, no. It seems from my perspective, there should be more. There should certainly be more.

Hon Craig Doran: So Christine Sisario, who I know is listening to us right now ... She's not here but she's watching the livestream. She's the Director of Technology for the Office Court Administration.

Melissa Crane: Oh, thank you, thank you, thank you.

Hon Craig Doran: And I know that Christine is advocating for the expansion of technology, in all of these courtrooms. So, she hears what we're saying here. But the other footnote here, if you were listening to Judge Crecca, Shan Gro has to take a liking to your court. He's been putting all of his time and effort into Suffolk County. Christine, let's make sure that we stop treating Crecca so well.

Andrew Crecca: I may have just done myself in, but no, I think they're trying to roll it out. But I think one of the things this committee can do going forward is emphasize the importance of accelerating that. And I think that we now have so many ... a number of judges, let's put it that way, who are using this technology. And I can make one quick point on that. The technology is different for different courts. It may be different for a Commercial Division court. And we saw that when we set up some of us, we purposely picked different courtrooms. In a matrimonial part, for example, there's going to be different needs than there are, say, in a Supreme Court civil part that's doing [inaudible 02:52:21] cases, et cetera, or a criminal court.

Hon Craig Doran: Roger?

Roger Maldonado: Judge Crane, have you discussed with your fellow Commercial Division justices, what is the best way of providing litigants, attorneys, and the general public advanced notice of when a proceeding is going to be conducted remotely versus in-person, and to the extent that it's going to be conducted remotely, that there be access for the general public?

Melissa Crane: That's a really good question. So, in my part rules, it defaults to virtual unless you hear otherwise. And people are invited ... The litigants are invited to come in. It's not a problem. It just doesn't seem that anyone wants to. Where you referring to public, I think you mean press.

Roger Maldonado: Actually, I mean, not just the press.

Melissa Crane: Yeah, I mean, that's a reason-

Roger Maldonado: The press, I've seen participate in some of the oral arguments, but I have not seen anyone from the general public participate.

Melissa Crane: That's a problem. We stream when the press requests. And this is something I've been thinking a lot about actually. I don't know if it makes sense to have streaming just generally for some more important cases or just all of them. I mean, because it's supposed to be public, and there's a serious issue with it dropping out the way it's done now. I agree.

Roger Maldonado: Thank you.

Hon Craig Doran: Anybody else? Okay, thank you. This was a tremendous panel of presenters. We appreciate you very, very much, the important work that you do. Thanks for your input. It is now lunchtime, so we're going to take a break, and we will resume. For those of you watching the live stream, we will resume at 1:40.

Andrew Crecca: Nice to meet you, Judge.

Hon Craig Doran: So, if those that are on the next panel of presenters ...

Melissa Crane: Nice to meet you.

PART 5 OF 5 ENDS [02:54:19]