FEDERAL COURTS DURING THE COVID–19 PANDEMIC: BEST PRACTICES, OPPORTUNITIES FOR INNOVATION, AND LESSONS FOR THE FUTURE

HEARING

BEFORE THE

SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY, AND THE INTERNET

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

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C O N T E N T S

JUNE 25, 2020

FEDERAL COURTS DURING THE COVID–19 PANDEMIC: BEST PRACTICES, OPPORTUNITIES FOR INNOVATION, AND LESSONS FOR THE FUTURE

Thursday, June 25, 2020

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY, AND THE INTERNET

COMMITTEE ON THE JUDICIARY

Washington, DC

The Subcomittee met, pursuant to call, at 9:05 a.m., 2141 Rayburn Building, Hon. Henry C. "Hank" Johnson [Chair of the Subcommittee] presiding.

Present: Representatives Johnson of Georgia, Stanton, Correa, Roby, Chabot, Collins, Johnson of Louisiana, Biggs, and Cline.

Staff Present: Madeline Strasser, Chief Clerk; Anthony Valdez, Staff Assistant; John Williams, Parliamentarian; Jamie Simpson, Chief Counsel; Betsy Ferguson, Minority Senior Counsel; Caroline Nabity, Minority Counsel; Kiley Bidelman, Minority Clerk.

Mr. JOHNSON of Georgia. The Subcommittee will come to order. Without objection, the Chair is authorized to declare recesses of the Subcommittee at any time.

Welcome to this morning's hearing on "Federal courts During the COVID–19 Pandemic: Best Practices, Opportunities for Innovation, and Lessons for the Future."

Before we begin, I would like to remind Members that we have established an email address and a distribution list dedicated to circulating exhibits, motions, or other written materials that Members might want to offer as part of our hearing today.

If you would like to submit materials, please send them to the email address that has been previously distributed to your office and we will circulate the materials to Members and staff as quickly as we can.

I also ask unanimous consent that the following items be entered into the record: A letter to Chair Johnson and Ranking Member Roby from Bruce Stern, the President of the American Association for Justice, and the results of a study of a recent survey by the Federal Bar Association of its Members on legal practice in the COVID–19 era.

Without objection, so admitted.

[The information follows:]

MR. JOHNSON OF GEORGIA FOR THE RECORD

Statement of Bruce Stern, President

Oversight Hearing on "Federal Courts During the Covid-19 Pandemic: Best Practices, Opportunities for Innovation, and Lessons for the Future"

Courts, Intellectual Property, and the Internet Subcommittee

House Committee on the Judiciary

June 25, 2020

The American Association for Justice (AAJ) thanks Chairman Johnson and ranking member Roby for holding this hearing and submits this statement for inclusion in the record. AAJ is a national, voluntary bar association established in 1946 to strengthen the civil justice system, preserve the right to trial by jury, and protect access to the courts for those who have been wrongfully injured or killed, or whose rights have been violated. With members in the United States, Canada, and abroad, AAJ is the world's largest plaintiff trial bar. AAJ members primarily represent plaintiffs in personal injury and wrongful death actions, employment rights cases, consumer cases, class actions, and other civil actions, and regularly use the federal rules in their practice. AAJ members continue to litigate cases during the current COVID-19 pandemic, including wrongful death cases caused by police violence and egregious misconduct.

During national emergencies, it is vital that the courts continue to manage their civil dockets and move toward resolutions without undue influence or delay. While emergencies, such as the COVID-19 pandemic, call for flexibility, there must also be a commitment to moving cases forward. And as courts look to reopening and resuming operations, jurors and potential jurors along with witnesses, court personnel, attorneys, and their clients deserve clearly communicated information about enhanced safety protocols and cleaning measures.

I. Moving Cases Forward

We now know much more about adapting to online technology than we did at the start of the COVID-19 pandemic, and both courts and parties are working more effectively with available technology, such as virtual hearings and depositions. Since some states are in different phases of reopening than others[1] and it simply may be unsafe for some people to travel and risk exposure, it may be necessary to continue to use technology to conduct business until there is a cure or a vaccine for COVID-19.

[1] Additional closures may also be necessary as confirmed cases of COVID-19 are again rising in some states.

A. Technology use should be encouraged during a national emergency

During a national emergency, technology can contribute greatly to ensuring continued court functions. To ensure the health and safety of the court, parties, and jurors, points of direct, in-person contact may need to be reduced. A provision in the CARES Act, Pub L. No. 116-136 §15002(b),134 Stat. 281, 527 (2020), provided the authority to use video and telephone conferencing for certain proceedings in criminal cases and directed the Judicial Conference to develop emergency measures for the courts. Section 15003(b)(6) provides:

> NATIONAL EMERGENCIES GENERALLY.---The Judicial Conference of the United States and the Supreme Court of the United States shall consider rule amendments under chapter 131 of title 28, United States Code (commonly known as the "Rules Enabling Act"), that address emergency measures that may be taken by the Federal courts when the President declares a national emergency under the National Emergencies Act (50 U.S.C. 1601 et seq.).

While AAJ believes that direction should not have been limited to criminal cases, we applaud the Committee on Practice and Procedure for quickly seeking input from the bar and other interested parties to ensure that existing rules do not hamper parties' continued progress towards resolving civil cases. Civil rule changes should be made to simplify e-filing and the use of electronic signatures. Similarly, video conferencing technology should be encouraged, and not stymied or hampered by the federal rules. While not exhaustive, AAJ suggestions include:

1. Whether additional methods of service should be added to accommodate restrictions on travel, telework, and other limitations on movement that present additional challenges for service of process.

2. Addressing local rules that permit nonelectronic filing or other practices presenting unnecessary contact. Local rules permitting nonelectronic filing, as well as specific rules issued by certain judges requiring non-electronic filing, should be prohibited.

3. The use of videoconferencing should be considered routine and resources should be provided to courts who need to upgrade hardware or software platforms as well as security protocols. The civil rules currently provide that parties may stipulate, or a court may order, that a deposition be taken by telephone or other remote means. These types of rules need to be adapted so that its use is automatic or routine. For example, virtual hearings and motions should be considered as routine, especially during an emergency declaration.[2] Discovery should not be held up during an emergency event unless a witness is unavailable for good cause.[3]

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[2] *See* Fed. R. Civ. P. 12; 16.

[3] *See, e.g.*, Fed. R. Civ. P. 37, which should be adapted to compel discovery and avoid unnecessary delays during a national emergency situation.

B. Discovery should not be delayed during an emergency

Discovery is an essential part to civil litigation and most key aspects of discovery can proceed electronically without issue. In the COVID-19 emergency, AAJ members have anecdotally reported issues where defendants have used discovery to engage in unjustified and significant delay tactics. Regrettably, many defendants have used the pandemic as a default excuse for slowing or halting discovery altogether. Given the duration of the pandemic and potential for reasonable accommodation to proceed virtually, additional tools may be necessary to ensure that most discovery can and does proceed. For example, a pandemic or other emergency may require some additional time to complete discovery, but it should not be a bar to completion. Moreover, significant extensions of timelines in the current rules are unnecessary. The rules already provide for different timelines (see Fed. R. Civ P. 26(a)(1)(D)), and because discovery can be done electronically, specific extensions of deadlines by rule would only invite delay and are not necessary to include in emergency rulemaking. Moreover, courts may employ Fed. R. Civ. P. 16 to mandate more frequent discovery reports from the parties to ensure that discovery remains on track and the purpose of Fed. R. Civ. P. 1 ("to secure the just, speedy, and inexpensive determination of every action and proceeding") is not frustrated.

II. Protecting Juries and Witnesses

The Seventh Amendment to the United States Constitution provides a constitutional right to a trial by a jury of peers.[4] This right is fundamental, and courts should prioritize rules and safety protocols that allow jurors, witnesses, and parties to feel safe and at ease with participation. This includes creating a safe, virtual environment for court operations. When jury trials resume, courts need to reassure in clear, careful communication that they have addressed social distancing guidelines throughout the trial process, including jury selection, seating, and deliberation, and that similar considerations have been made and communicated to parties and witnesses.

A. Ensuring the safety of jurors. Courts must provide easy-to-understand communications to prospective jurors about the courts' procedures, including cleaning protocols during COVID-19. It is not enough for the court to include an updated sheet of information to prospective jurors relating to COVID-19; all information relevant to a prospective juror must be clearly communicated in one document. This means that there is not simply a COVID-19 update to an existing prospective juror document; it means that jurors must be provided relevant information in a concise, easy to understand format. Jurors should be told:

1. Whether any health screening questions will be asked upon arrival at the courthouse.
2. What items to bring with them and what will be provided by the court. For example, if jurors are required to wear masks, can they bring their own? Do they need to bring their own snacks and beverages? Will the court be providing wipes and hand sanitizer? Even if cleaning protocols are explained to jurors, some may prefer to clean their own space.

[4] U.S. Const. amend. VII.

3. What can they expect at the security screening? What cleaning protocols are being used to clean common spaces in the courthouse? If floor markers or elevator spots are being used, it can be helpful to alert people ahead of time to expect additional direction.
4. If jurors are seated for a multi-day trial, can their seat be designated or reserved for them for the duration of the trial?
5. Many screening protocols can be implemented ahead of jurors' arrival at the courthouse. While "fear" of the pandemic cannot become a new excuse for jurors not to serve, excuses from jury service may look very different during a pandemic and its aftermath than it did before. For example, there is limited childcare available right now, and schools face uncertainty for the fall with some schools operating on limited schedules. People with underlying health issues or living with or caring for loved ones with compromised immune systems and other health issues cannot risk exposure. Hospital and other health care workers may need to defer jury service generally. Not only does this require additional flexibility, but it also requires courts to consider ahead of time what constitutes a reasonable number of alternate jurors.

B. Provide space for witnesses. Courts should consider providing private conference spaces with secure internet access for witnesses and/or parties who need to be deposed or interviewed remotely, but who do not have adequate online access to do so. These rooms should be disinfected between uses and provide a means for witnesses without stable internet or electronic resources to be securely interviewed or deposed. With juries in need of larger conference spaces to accommodate social distancing, it may be possible that space could now be considered. It is vital that witnesses and parties who do not have internet access should not be disadvantaged or have their safety put at risk as a result.

C. Provide for remote appearances. During emergency operations or to ensure social distancing, the courts should encourage remote appearances whenever it makes sense to do so. AAJ has received anecdotal information from AAJ members that some judges are scheduling in-person appearances before their clients are comfortable traveling for hearings that could instead easily be conducted remotely. During a public health emergency, witnesses who are high-risk, with pre-existing conditions, disabilities, or other barriers, should not be subjected to unneeded adverse health risks due to travel. To that end, parties and courts should work together to determine the appropriate way to proceed to ensure the safety of witnesses while still protecting the rights of all parties.

III. Review Safety Protocols and Update as Necessary

AAJ believes it is vital to resume jury trials as soon as possible, yet there are many issues that should be addressed prior to any juror setting foot in a courthouse. While AAJ applauds the

federal judiciary for quickly issuing a report[5] to provide suggestions for courts regarding restarting jury trials, the report falls short in a couple of key areas. First, while designed to provide for maximum flexibility to individual courts by only providing suggestions, the report fails to "suggest" that courts explain why they are issuing guidance or safety protocols. There is no suggestion that court protocols be welcoming and reassuring in tone. While the report states that jurors must be comfortable in order to participate in trial, there is no suggestion that the courts communicate that they care about the wellbeing of everyone who needs to step foot in a courthouse and that protocols are in place to ensure the safety and health of jurors serving in their constitutionally-mandated role. This is a missed opportunity to encourage participation when potential jurors may already be feeling generally more anxious.

Second, the report has several recommendations that either are inconsistent within the same topic, or are unnecessarily complicated, and in at least one case, unsafe. Here are a few examples:

A. **Unsafe suggestion:** On p. 15, Subpoint B suggests or implies that in order to ensure that no one overhear jurors, who may need to speak louder due to social distancing: "Consider posting a CSO outside the courtroom door and locking the door." The statement implies that the Community Service Officer lock the jurors into the room. While many federal buildings now allow rooms to be locked from the inside, it is very dangerous, in the event of fire or other emergency to even imply that a room should be locked from the outside and that jurors must knock to get out.

B. **Missing the obvious:** AAJ applauds efforts by the courts to consider the impact of COVID-19 safety protocols and social distancing measures on people who are disabled. On p. 13, Subpoint 5 addresses hearing impaired staff and defendants and thus is located under a "Section L. Defendants in Criminal Trials", but the report itself has no mention of ADA compliance generally and to locate the suggestion for deaf or hearing-impaired persons participating in courtroom proceedings as a subpoint under "Defendants in Criminal Trials" not only makes the suggestion hard to find, it also makes the suggestion seem unimportant. The suggestion itself then provides "consider providing participants with clear face coverings or clear face shields to allow the mouth to be visible." Courts should also consider providing a qualified sign language interpreter or a transcription service, such as CART, which converts spoken words instantly into text.[6]

C. **Too many cooks in the kitchen:** The report contains references to lunch and snacks in four different sections. While some of these recommendations are pre- and post-jury selection, the recommendations are at times thorough, but may not work well together. Additionally, some of the recommendations are often beside the point and may be inconsistent with other safety protocols.

The report includes these references to lunch and snacks:

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[5] *Conducting Jury Trials and Convening Grand Juries in the Age of COVID-19,* published by the US Courts on June 10, 2020, https://www.uscourts.gov/news/2020/06/10/judiciary-issues-report-restarting-jury-trials

[6] The U.S. Department of Justice has issued regulations to enforce the Americans with Disabilities Act. 28 C.F.R. 35, 56 Fed. Reg. 35694 (June 26, 1991).

1. On p. 7, Subpoint F under X, "Consider advising jurors to bring their own writing instruments, reading materials, water bottles, snacks, and lunches." The point goes on to say that jurors should be instructed to keep their items separated from other jurors' similar items.[7]
2. On p. 8, Subpoint L under XI, "Decide how prospective jurors will eat lunch. Analyze the risks of allowing outside food, the use of the cafeteria, and allowing jurors to leave and return…..". If your court permits the use of vending machines, consider providing disposable gloves and add signage regarding the use of the gloves."[8]
3. On p. 14, Subpoint 3 at the bottom, "Consider a protocol for the use of the refrigerator and microwave in the jury room, such as clearly marked individual containers or bags and the use of gloves to access the refrigerator and microwave.[9]
4. On p. 15, Subpoint D, "Lunch/snacks: Consider having lunch delivered to jurors at their expense in order to avoid leaving the courthouse. Only if a judge enters an order that the jurors are to be sequestered for their safety because the virus is not contained in that community, may the lunch be charged to the juror fee appropriation."

These combined recommendations do not make jury service more enticing; if anything, they suggest that the court has not thought enough about disinfecting and cares more about saving money than being safe. For example, telling jurors that they will have to pay for their own lunches, and it will be delivered to them, is not encouraging of jury service. If courts decide that food delivery is the safest option, perhaps the federal courts should ask for a small additional appropriation to pay for it. Further, the safety protocols of asking jurors to pay for lunch are not explored in this guidance. Will the court require electronic payment? Is requiring a payment putting court personnel at risk by increasing interaction with jurors? Is this a disincentive towards ensuring a diverse jury pool that represents the community? Finally, some of the most obvious potential solutions are not mentioned, such as guidance recommending that jurors bring food and snacks from home, but that vending machines (or perhaps a cafeteria) is available to purchase coffee and other beverages. For people selected to serve on juries, it may be helpful to provide individual cubbies

[7] This would make sense to also reference storage of personal items, yet the report fails to do this. Nor is any mention made regarding what jurors should do with other practical items such as umbrellas or coats for when weather in more Northern climates turns chilly.

[8] If the courts are going to allow the use of vending machines, the recommendation might include providing hand sanitizer or wipes next the vending machines. Jurors may be more likely to use these products and disinfecting wipes would be a better choice than gloves, allowing the jurors to wipe their hands, wipe the vending keypad, and the outside packaging of the food or beverage dispensed.

[9] The suggestion for the use of the refrigerator and the microwave needs more specific detail. If courts are going to allow refrigerator and microwave use, the refrigerator must be large enough to accommodate lunches without jurors touching other jurors' lunches. Many people are not comfortable with others touching their food, even if it is wrapped. The same is true with the microwave. What if food is splattered in the microwave before lunch is over? Will someone be cleaning the lunch area or are jurors left to fend for themselves?

or storage areas for each juror to isolate their belongings for the duration of the trial. These storage areas could be potentially rented by the courts if permanent installation is not desired, and jurors could either be assigned to a space or assured of cleaning protocols that are used.

D. Masking issues: Courts need to diminish the culture war surrounding the use of masks, not contribute to it. The purpose of a mask is to prevent the wearer from spreading germs, yet several points in the guidance contribute to issues that are either not based on CDC guidance or current medical information. For example, suggestion III(B) asks each court to review whether it will provide PPE or whether the court will allow jurors to bring their own PPE, recognizing the risks involved in outside PPE such as contaminated PPE or controversial or inciteful personalized masks. So long as only the person handling the PPE is the mask wearer it should work to prevent the spread of COVID-19. If court personnel are concerned about a message displayed on a mask, a designated person can ask the wearer to switch to court provided PPE. This same request could be made or offered to anyone forgetting a mask or in need of a fresh one. The option of a fresh mask should be sufficient in most instances. The more important issue is whether the courts *will require that masks be worn and who must wear them.* Suggestion III(C) asks courts to consider if face coverings will be used during proceedings, whether all parties must agree to their use or if use will be a court-wide policy. If the jury is required to wear masks, but not all parties in the courtroom are required to do the same, the reasons for that policy must be explained to the jury. The courts should avoid any perception that the burden to avoid the spread of COVID-19 falls on the jury or that members of the jury may be bringing the virus to the courtroom, while courtroom personnel are permitted to work unmasked. Finally, on p. 13, suggestion L(3) is a reminder that a defendant in custody should not be seen in shackles, handcuffs, etc. Similarly, and regardless of whether the defendant appears in the courtroom or remotely, the defendant should not be the only person in the proceeding wearing a mask.

E. Health Questionnaires: Balancing the interests of health and privacy are complicated and require ongoing reflection. It is relevant for courts to review with potential and seated jurors whether they have or are experiencing any COVID-19 symptoms or have been exposed to someone with a COVID-19 diagnosis or to someone who has been asked to self-quarantine. However, asking detailed personal health questions in a supplemental jury survey needs to be carefully considered. In its attempt to keep jurors and court personnel safe, the jury questionnaire may deter potential jurors from service and may put sensitive health information at risk of public exposure.

1. Potential jurors may not feel comfortable providing medical information in a survey format, especially if the survey is unclear about who is reviewing the information, how the information is stored, and whether third parties

have access to it. Courts should not be asking for more medical information than a patient would need to answer in scheduling a routine medical visit.[10]

2. Explicitly asking questions on co-morbidity is especially insensitive,[11] and the answers, or even the implied inference that jury service may be harmful to persons with underlying health conditions may result in a potential jury pool that excludes Black people or other racial minorities, who are more likely to have an underlying health condition compared to the general population.[12]

IV. Federal Courts Should Ask Congress for Additional Resources

The COVID-19 pandemic has drastically impacted traditional court proceedings, necessitating technology adaptation, personal protective equipment (PPE), enhanced cleaning protocols, and even retrofitting of some courthouses to accommodate social distancing. The COVID-19 Judicial Task Force report on jury trials mentions funding and alludes to the fact that courts should use their existing traditional funding to pay for any necessary technology, PPE, or other reforms. However, this is a serious miscalculation and a failure to fully comprehend the new hardships now facing federal courts. It is imperative that the Administrative Office of the Courts request targeted and increased funding for federal courts to effectively address the issues created by the pandemic to ensure the courts can provide as close to normal operations as possible.

V. Public Access to Courts

Fundamental to our system of justice is open and public access to courts. Even in an emergency, the press must be able to access and report on important decisions, trials, and work of the courts for the public good. The press plays an important role in the institution of the court system because it "offers a view of the functioning of the institution with an eye, though it be asleep at times, toward ensuring proper conduct -- the watchdog role."[13] In fact, "the missions of the court system and the media are different but not incompatible," instead "the two institutions depend one on the other. Trials will only be fair so long as the press is free. Both have huge stakes in the status quo."[14] Without the press delivering an accurate account of court proceedings, and watching for potential misconduct, the public cannot rely on the third branch of government to deliver justice. Because of social

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[10] The questions used by physicians to schedule routine medical appointments generally ask whether the patient or someone in the patient's household are experiencing any symptoms of fever, cough, etc. or if the patient or a household member has been diagnosed with COVID-19. https://www.cdc.gov/coronavirus/2019-ncov/hcp/steps-to-prepare.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fhealthcare-facilities%2Fsteps-to-prepare.html.

[11] On p. 3, Suggestion IV(C), "…'Consider asking whether they suffer from a comorbidity that would make them a higher risk for infection if they were to become ill and require that condition be listed on their questionnaire."

[12] Just examining CDC guidance alone, there is a staggering amount of information to digest and consider, including COVID-19 hospital rates for members of racial and ethnic groups, how existing health disparities make members of many racial and ethnic minority groups especially vulnerable; and how racial and ethnic minorities are overrepresented in prisons and detention centers. See https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html.

[13] Steven Helle, *Publicity Does Not Equal Prejudice*, 85 Ill. B.J. 16, 21 (1997).

[14] *Id.*

distancing requirements, it may be necessary to seat the press in an adjacent room or provide for remote access to trials. The technological capabilities of courtrooms must provide or adapt for this.

AAJ thanks Chairman Johnson and members of the Committee for holding this hearing. AAJ members have continued to represent their clients during the COVID-19 pandemic, working virtually to provide remedies and justice for those who are injured. As stakeholders, AAJ and its members will continue to work cooperatively with Congress and the courts to resume jury trials as soon as its safe to do so while taking all necessary precautions to protect those entering the courthouse.

Federal Bar Association Member Survey

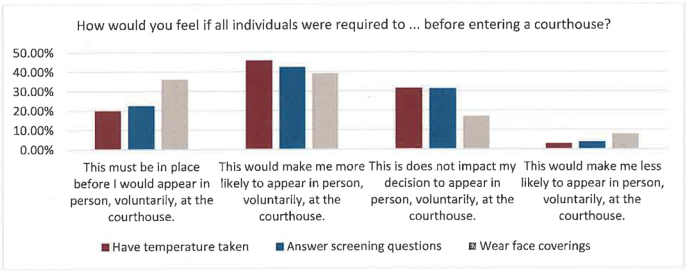
Legal Practice in the COVID-19 Era Survey Findings

As new challenges continue to arise during these unsettling times, the FBA remains dedicated to providing resources and support to our members. In an effort to learn more about its members' needs and how the legal profession is adapting to the COVID-19 era, the FBA conducted a national survey of its 17,000 members from June 1 to June 10, 2020. The 28-question survey focused on court operations, practice concerns, and bar programming.

The data was collected in a manner to protect the anonymity of survey respondents. No personally identifiable information was collected or stored or is included in this report. All results are published in aggregate form with no identifiable information. Based on the 519 respondents in the survey, there is a 5 percent margin of error associated with the survey.

Court Operations and Proceedings

There was significant support among respondents for requiring persons entering courthouses to wear face coverings. Seventy-five percent of respondents indicated that the measure "must be in place" or "would make me more likely to appear" in court. Substantial support (65%) also existed for courthouse use of COVID-19 screening questions when persons enter courthouses. Less support (45%) existed for temperature-checking upon entry.



Approximately 70% of respondents said they were able to participate in a mediation or court proceeding by video conferencing service without significant interruption. Since the health crisis began, 27% of respondents have participated in a remote court proceeding either by telephone, video conference, or both while 26% of respondents have had settlement conferences continued until in-person proceedings resume. Of the respondents who have participated in remote court proceedings, most were very satisfied or satisfied with the process.

Approximately 40% of respondents indicated their federal district court planned to resume in-person proceedings within the next three months or have already resumed in-person proceedings, while one-third of respondents (38%) reported that their federal court had not yet announced specific plans on the resumption of in-person proceedings.

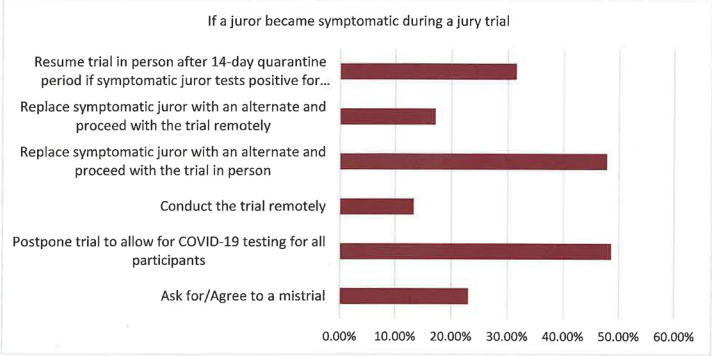
There was widespread concern (81%) among respondents about the health and safety of participants if in-person proceedings resume. Additional concerns involved the ability to judge the credibility of witnesses wearing face coverings (53%) and the impact of disruption to proceedings, particularly jury trials, if the court later suspends them due to COVID-19 concerns (47%). Approximately 40 percent (39.4%) of the respondents expressed concern about the court's ability to select a jury if the jurors are wearing face coverings.

When asked about what precautions would make respondents feel comfortable about conducting in-person proceedings at the courthouse, respondents most favored the availability of hand sanitizer at counsel table (88%) and limits on the number of attorneys at counsel table during trial (73%). Support for other measures included: spatial limits where arguments could be made in the courtroom (53%); the required wearing of face coverings in court by the parties (51%); prohibiting the physical exchange of documents during the proceedings (48%); required wearing of face coverings by witnesses during the

proceedings (36%); and having witnesses testify by video from another location in the courthouse (27%).

A majority of respondents (59%) said they would not be open to conducting a remote jury trial, if the option were available. Almost half of respondents (47%) said they would be less likely to participate in a jury trial if voir dire were conducted through video conferencing. Most respondents indicated that they have not waived the right to a jury trial in any of their cases during the health crisis.

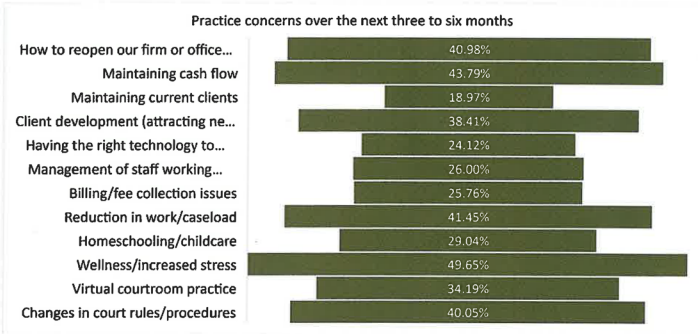
If a juror became symptomatic during a jury trial, respondents most frequently favored postponing the trial to permit COVID-19 testing of all participants (49%) and replacing the symptomatic juror with an alternate and proceeding with the trial in person (48%).



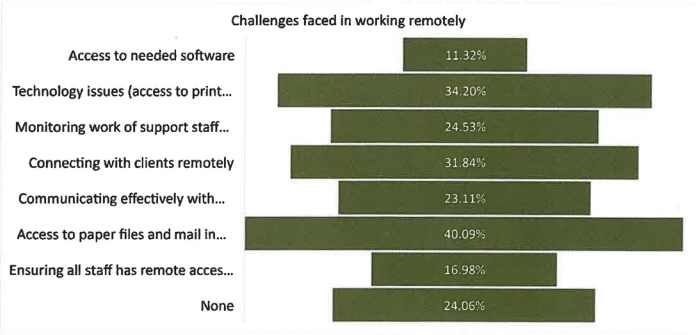
Among the challenges faced by respondents in working with the courts, the most common involved inconsistencies in procedures between courts/judges and staying current with changing court directives.

Practice Concerns

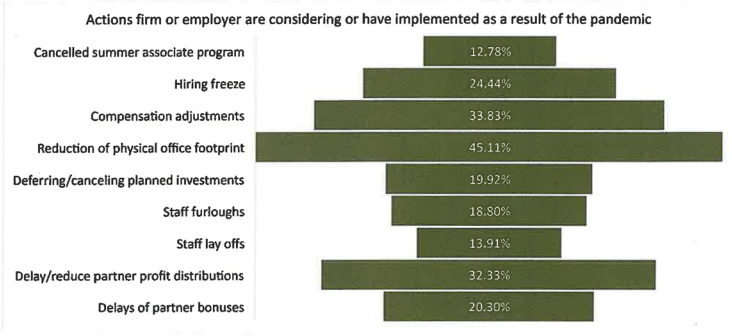
Respondents identified increased personal stress and cash flow concerns as the most significant concerns they faced over the next three to six months as a result of the pandemic. Reduction in work or caseload and how to reopen their office effectively and safely were also significant concerns over the next three to six months.



Access to paper files and mail in the office (40%) as well as technology issues (34%) were the most significant challenges respondents are facing in working remotely. Respondents also marked communicating effectively and working with staff remotely as challenges they are facing in a telework environment.



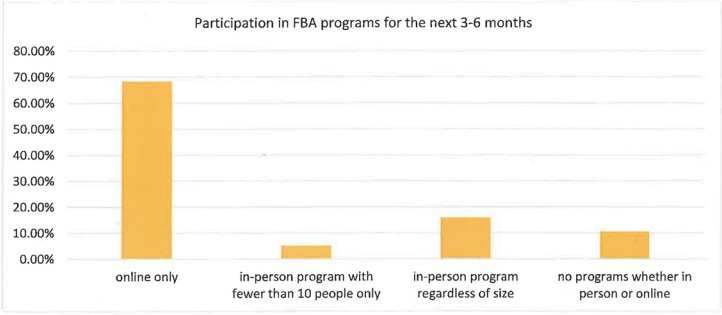
Physical reduction of the law office footprint represented the most frequently identified action their firm or employer had implemented or was considering in response to the pandemic. (45.1%) Compensation adjustments (e.g., pay cuts, shifts to part time) and delays or reductions in partner profit distributions were being considered by one-third of respondents.



Bar Programming

Technology tools (61%) and how to effectively practice law remotely (54%) represented the most helpful educational/training topics to respondents. Respondents also indicated that insight into the legal issues or lawsuits that might arise from the crisis would also be helpful (47%). The survey also included an open-ended question: How else can the FBA support you and the federal legal community in the COVID-19 era? Feedback received generally addressed CLE topics and delivery, re-opening of the courts, and technology tools and uses.

An overwhelming majority (68%) of respondents plan to attend programs offered online only and do not expect to participate in any in-person programs for the next three to six months.



The FBA's Annual Meeting and Convention* is scheduled to be held September 9–12 in Charleston, S.C. More than 60% of respondents preferred an online only format for the annual meeting, while 27% of respondents would prefer a combination of online and in-person programming. Less than 20% of respondents would be willing to travel to attend the annual meeting this September. **The FBA is evaluating alternative formats for the Annual Meeting and Convention.*

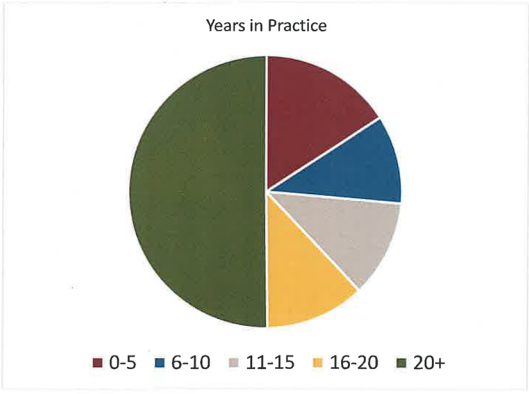
Conclusion

The survey questions along with responses (excluding open-ended responses that may include identifiable data) are included as an appendix to this summary. The information received will help guide future FBA programming and benefits. Thank you to all who participated in this survey. If you wish to speak to a staff member regarding the survey or offer feedback for programming and benefits, please email fba@fedbar.org.

Respondent Data

Six questions were included in the survey to capture demographics of respondents. This data is included below in lists and graphs.

Current Practice/Employment Setting	% of Respondents
Private Practice	69.35%
Judiciary	5.97%
Government	12.14%
For-profit corporation or business (in-house counsel)	1.16%
For-profit corporation or business (nonlegal)	.58%
Law school	.58%
Nonprofit organization	2.50%
Retired	3.47%
Recent law school graduate, currently unemployed	.96%
Unemployed	.39%



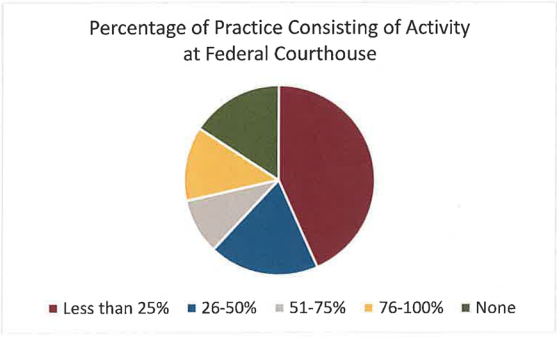
Circuit	% of Respondents	% of FBA membership
First	7.51%	4.58%
Second	5.01%	5.43%
Third	4.05%	3.91%
Fourth	10.21%	8.43%
Fifth	12.52%	16.03%
Sixth	10.21%	10.02%
Seventh	4.82%	4.77%
Eighth	5.01%	5.97%
Ninth	17.92%	16.16%
Tenth	3.66%	7.68%
Eleventh	14.84%	12.52%
D.C.	4.24%	4.38%

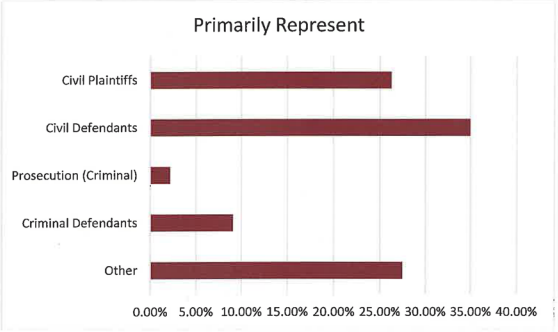
Practice Primarily in	% of Respondents
District of Alaska	0.58%
Middle District of Alabama	0.19%
Northern District of Alabama	0.39%
Southern District of Alabama	0.00%
Eastern District of Arkansas	0.00%
Western District of Arkansas	0.00%
District of Arizona	2.12%
Central District of California	3.66%
Eastern District of California	1.73%
Northern District of California	1.73%
Southern District of California	3.47%
District of Colorado	0.39%
District of Connecticut	0.19%
District of Columbia	3.85%

District of Delaware	1.16%
Middle District of Florida	5.01%
Northern District of Florida	0.00%
Southern District of Florida	6.55%
Middle District of Georgia	0.00%
Northern District of Georgia	2.31%
Southern District of Georgia	0.77%
District of Guam	0.00%
District of Hawaii	1.35%
District of Idaho	1.35%
Central District of Illinois	0.19%
Northern District of Illinois	4.24%
Southern District of Illinois	0.00%
Northern District of Indiana	0.39%
Southern District of Indiana	0.00%
Northern District of Iowa	0.00%
Southern District of Iowa	0.00%
District of Kansas	0.19%
Eastern District of Kentucky	0.00%
Western District of Kentucky	0.19%
Western District of Louisiana	1.35%
Eastern District of Louisiana	4.82%
Middle District of Louisiana	0.77%
District of Massachusetts	2.12%
District of Maine	0.19%
District of Maryland	2.31%
Eastern District of Michigan	1.35%
Western District of Michigan	0.77%

District of Minnesota	3.85%
Eastern District of Missouri	0.19%
Western District of Missouri	0.39%
Northern Mariana Islands	0.00%
Northern District of Mississippi	0.00%
Southern District of Mississippi	0.19%
District of Montana	0.00%
Eastern District of North Carolina	0.96%
Middle District of North Carolina	0.39%
Western District of North Carolina	0.39%
District of North Dakota	0.39%
District of Nebraska	0.39%
District of New Hampshire	0.00%
District of New Jersey	0.58%
District of New Mexico	0.39%
District of Nevada	0.39%
Eastern District of New York	2.12%
Northern District of New York	0.19%
Southern District of New York	2.12%
Western District of New York	0.00%
Southern District of Ohio	2.70%
Northern District of Ohio	3.85%
Eastern District of Oklahoma	0.00%
Northern District of Oklahoma	0.39%
Western District of Oklahoma	1.73%
District of Oregon	1.16%
Eastern District of Pennsylvania	0.77%
Middle District of Pennsylvania	0.96%

Western District of Pennsylvania	0.39%
District of Puerto Rico	4.62%
District of Rhode Island	0.58%
District of South Carolina	2.12%
District of South Dakota	0.00%
Eastern District of Tennessee	0.77%
Middle District of Tennessee	0.19%
Western District of Tennessee	0.39%
Eastern District of Texas	0.00%
Northern District of Texas	1.16%
Southern District of Texas	1.16%
Western District of Texas	2.70%
District of Utah	1.16%
Eastern District of Virginia	3.08%
Western District of Virginia	0.77%
District of the Virgin Islands	0.00%
District of Vermont	0.39%
Eastern District of Washington	0.00%
Western District of Washington	0.19%
Eastern District of Wisconsin	0.00%
Western District of Wisconsin	0.00%
Northern District of West Virginia	0.19%
Southern District of West Virginia	0.00%
District of Wyoming	0.00%


Percentage of Practice Consisting of Activity at Federal Courthouse
Less than 25%
26-50%
51-75%
76-100%
None


Primarily Represent
Civil Plaintiffs
Civil Defendants
Prosecution (Criminal)
Criminal Defendants
Other
0.00% 5.00% 10.00% 15.00% 20.00% 25.00% 30.00% 35.00% 40.00%

Mr. JOHNSON of Georgia. I will now recognize myself for an opening statement.

Welcome to the subcommittee's hearing on the "Federal courts During the COVID–19 Pandemic Best Practices, Opportunities for Innovation, and Lessons for the Future."

For more than 70 years, Congress has provided that, quote, "All courts of the United States shall be deemed to be always open," end quote. That congressional mandate and the deeper principles it embodies has been sorely tested by the pandemic sweeping across the country.

The idea of open justice is fundamental in any constitutional democracy. The concept encompasses a range of meanings, but today I want to focus on three.

First, open justice means that our courts must be open for business, able to not just receive complaints and motions but also to hear arguments, hold trials, and issue decisions without the undue delay that can rob any ruling of its value.

Second, open justice means that our courts must be open to the public because justice made in the dark isn't really justice at all.

Third, open justice means that our courts must be safe and accessible to all.

Our judiciary is decentralized by design and inclined towards incrementalism. So it is to their credit that our Federal courts moved relatively quickly to maintain their operations and protect health and safety in the face of the coronavirus.

Judges and court administrators had to make tough decisions that probably saved lives. They closed courthouses, postponed trials, and held hearings by phone and in video.

One court even held the Federal Judiciary's first virtual bench trial. With their courtrooms closed, many judges opened their proceedings to the public through live video and audio.

Even the Supreme Court, which has been committed to closing itself off from the public, allowed live audio broadcasts of its arguments.

With four months of experience behind us and the reality that we are still in only the first wave of the virus, it has become clear that the courts and Congress need to do much more if we want the courts to be truly open during this pandemic and after.

It is also clear that we can do more to insulate the judiciary against future emergencies, whether that is a second or third wave, or a future pandemic.

There is an alarming backlog of motions and trials that, if not addressed, could effectively decide cases against parties who cannot afford to wait for a judgment.

The judiciary's historical resistance to embracing available information technology options could force court personnel, litigants, and witnesses into unsafe courthouses to attend proceedings that could have been held remotely.

The risk of infection could shut the public and the media out of live proceedings that could have—that could have been held remotely. The risk of infection could shut the public and the media out of live proceedings and the lack of publicity about alternatives could shut them out of remote proceedings.

The Supreme Court might return to its practice of forcing people to wait in long lines to cycle through a tiny packed courtroom. These threats to open justice will force the judiciary to make some uncomfortable choices.

There is a powerful desire to get back to normal, but the courts will put people at risk if they simply try to revert to how they operated before the pandemic.

Instead, the judiciary should meet this crisis by exploring how to make the court more open, more effective, and safer than ever before, both during the pandemic and beyond.

It can start by following the increasingly well-worn path marked by many innovative State, local, and Federal judges.

The coronavirus has forced us all to ask what kind of government are we? What kind of government should we be? Most importantly, what kind of government will we be?

Our Federal courts are no exception. I hope today's hearing will help us find answers that preserve justice, promote public confidence in the courts, and protect the Rule of law.

It is now my pleasure to recognize the Ranking Member of the Subcommittee, the gentlewoman from Alabama, Ms. Roby, for her opening statement.

Ms. ROBY. I thank you, Mr. Chair.

Good morning, and thank you to all of our witnesses for participating in today's hearing.

I want to first express my deep condolences to all who have been impacted by the COVID–19 pandemic. Over 120,000 Americans have died from coronavirus and many more continue to be infected. I and my family, we are praying for the families and loved ones and those who have lost their lives, and for anyone who has been impacted by this terrible virus.

Turning to today's hearing, I want to thank Chair Johnson for convening this hearing on a very timely and important topic and will say it is nice to be back in our Committee hearing room.

The entire Federal Government including the judicial branch has had to react to health challenges posed by the deadly COVID–19 virus.

In particular, the Federal Judiciary has had to close courthouses, halt jury trials, and suspend in-person proceedings, given social distancing guidelines and health concerns.

We know that COVID–19 has not affected each state, city, or jurisdiction the same. As Federal, district, and appellate courts begin to consider how to safely reopen, we need to ensure the Federal Judiciary is prepared to assist courts across the country as they start planning how in-person proceedings will look like, moving ahead.

I look forward today to hearing about the work the Judicial Conference and the Administrative Office of the U.S. Courts, have done to help and provide guidance to Federal courts during this challenging time.

Both the Judicial Conference and the Administrative Office of the U.S. Courts play critical roles in supporting an efficient, effective, and productive Federal Judiciary.

I also hope that today we have the opportunity to discuss how Congress can support the Administrative Office of Courts in their continuing response to the pandemic.

I anticipate that some of our witnesses may decide on the use of permanent remote technology in the courtroom even after the country recovers from COVID–19.

However, as I mentioned in my remarks last September at the subcommittee's hearing on judicial transparency, I have deep concerns about the use of cameras in the courtroom and the live broadcasts of court proceedings.

As we consider the use of technology in the court, we need to ensure that the judiciary is fully prepared to utilize that technology and adequate safeguards need to be in place.

We also need to remember that some courts and jurisdictions may not be readily equipped with the technological capabilities required to participate in remote judicial proceedings.

For example, parts of my district in Alabama are rural and securing access to quality broadband can be a real challenge.

So, while we discuss the reopening of the judicial system, we need to consider the best practices of how courthouses can safely reopen under proper social distancing guidelines so that the needed proceedings in our courts can continue.

I look forward to hearing from all of our witnesses today and I thank you for your time to testify this morning.

Thank you, Mr. Chair, and I yield back.

Mr. JOHNSON of Georgia. Thank you.

We will now introduce our witnesses. To begin, yield to the gentleman from Arizona, Mr. Stanton, who will introduce Judge Campbell.

Mr. STANTON. Thank you very much, Mr. Chair.

It is my honor to introduce Judge David Campbell from the District of Arizona. Judge Campbell has been a United States District court judge for the District of Arizona since 2003 and a Senior Judge since 2018.

He currently Chairs of the Committee on Rules of Practice and Procedure for the U.S. Federal courts, which oversees the work of five advisory committees on the Federal Rules of Civil, Criminal, Bankruptcy, and Appellate Procedure, and the Federal Rules of Evidence.

He served as Chair of the Advisory Committee on the Federal Rules of Civil Procedure from 2011 to 2015 and as a Member of the Committee from 2005 to 2011.

Judge Campbell is a Member of the American Law Institute, a Fellow of the American Bar Foundation, and a Board Member of the Judicial College of Arizona, and I am proud to have a fellow Arizonan here today to represent our courts in front of Congress.

Welcome, Judge Campbell.

Mr. JOHNSON of Georgia. Thank you, Mr. Stanton. Welcome, Judge Campbell.

Next, we will go to Chief Justice Bridget McCormack. She joined the Michigan Supreme Court in 2013 and became Chief Justice in 2019.

Before her election to the court, she served as a clinical professor of law, associate dean clinical affairs, and co-director of the Innocence Clinic at the University of Michigan Law School.

Prior to joining the University of Michigan Law School faculty, she was a Cover Fellow at Yale Law School. Before that, she

worked as a staff attorney with the Office of the Appellate Defender and as a Senior Trial Attorney with the Criminal Defense Division of the Legal Aid Society in New York City.

Chief Justice McCormack received her BA from Trinity College and her JD from New York University School of Law.

Welcome, Judge McCormack.

Judge Jeremy Fogel became the first Executive Director of the Berkeley Judicial Institute in 2018. Prior to his appointment at Berkeley, he served as director of the Federal Judicial Center as a United States District Judge for the Northern District of California, and as a judge for the Santa Clara County Superior and Municipal Courts.

He received his BA from Stanford University and his JD from Harvard Law School. Judge Fogel has received many accolades, including the President's Award for outstanding service to the California judiciary from the California Judges Association and recognition from the Santa Clara County Bar Association for exemplifying the highest standards of professionalism in the judiciary.

Welcome, Judge Fogel.

Last but not least, we have Melissa Wasser, or Ms. Wasser. I am sorry.

Melissa Wasser is a Policy Analyst at the Reporters Committee for Freedom of the Press. Prior to joining the Reporters Committee she worked as a law Fellow for the American Constitution Society and legal extern to the Ohio House Democratic Caucus in the Ohio House of Representatives.

She is a former Human Rights Campaign McCleary Law Fellow and a recipient of the Michael E. Moritz Leadership Award in Law.

Ms. Wasser received her BA from Youngstown State University and JD and MA in Public Policy and Management from the Ohio State University. Welcome.

Before proceeding with testimony, I hereby remind the witnesses that all of your written and oral statements made to the Subcommittee in connection with this hearing are subject to 18 USC 1001.

Please note that your written statements will be offered into the record in its entirety. I ask that you summarize your testimony in five minutes, and to help you stay within that time there is a timing light that I am not sure is visible to you. If it is not visible to you, I will tap the gavel when you have 30 seconds left and when you have 10 seconds left I will tap it a little louder.

Judge Campbell, you may begin.

TESTIMONY OF DAVID G. CAMPBELL

Judge CAMPBELL. Chair Johnson, Ranking Member Roby, and Members of the Subcommittee, good morning and thank you for inviting the judiciary to testify on how the Federal courts are responding to the COVID–19 pandemic.

I appear today on behalf of the Judicial Conference of the United States. Like other institutions, the operations of the Federal Judiciary have been seriously disrupted by the pandemic.

I am pleased to report, however, that judges in District, Bankruptcy, and Appellate Courts continue to hold hearings, issue decisions, and resolve cases.

Jury trials and grand jury proceedings have been postponed in most districts. Other proceedings continue to the greatest extent possible through video and telephone conferencing.

In February, the Administrative Office of the U.S. Courts established a COVID–19 task force to monitor the impact of the virus on court operations and provide guidance and resources to courts on emerging issues.

A COVID–19 website was established on the judiciary's Intranet, which addresses pandemic-related information and resources on a wide range of relevant topics.

Circuit and District courts used these resources to meet their local needs.

On April 24th, the AO published recovery guidelines for phased reopening of the courts. These include gating criteria and a real-time dashboard courts can use to obtain information about conditions in their own communities.

The AO also established an Internet hub on its website to keep the public informed about court operations, and some 20,000 court employees are teleworking through the court's virtual private network.

For the courts, reconvening of jury trials is a priority. Individual courts are developing jury procedures for their unique situations that seek to minimize health risks for all participants.

On June 14th, a subgroup of the AO's task force provided a detailed and helpful report on conducting jury trials and convening grand juries during the pandemic. Many Federal courts are also communicating with their State court counterparts to exchange relevant information and best practices.

It is difficult to predict the extent of the case backlog that will result from the pandemic. Some delays will result from the fact that jury trials have been postponed and will require priority attention when they can resume.

Of course, Bankruptcy Courts will likely see a surge in filings that will affect their caseloads.

We very much appreciate the $7.5 million in supplemental appropriations you provided in the CARES Act to address immediate technology needs and increased costs in our probation and pretrial services programs.

On April 28th, the Judicial Conference submitted a supplemental funding request for $36.6 million to address urgent needs such as enhanced cleaning of court facilities, health screening at courthouse entrances, technology infrastructure, costs associated with supervision of offenders released from prison early, and security costs.

Attachment One to my written statement provides additional details on this request.

The Judicial Conference also identified 17 legislative proposals to address immediate COVID–19 impacts and post-pandemic operations. We ask that you please consider these proposals carefully. They are summarized in Attachment Two to my written statement.

Thank you for working with us to craft provisions in the CARES Act that made it possible to hold video and audio proceedings temporarily during the pandemic for many pretrial events and criminal cases.

These provisions have worked well during the emergency and have allowed courts to continue processing criminal cases.

The CARES Act also directs the Judicial Conference and the Supreme Court to consider whether various sets of Rules should be amended to include emergency procedures. That work is already underway through the Rules Committees of the Federal courts.

Mr. Chair, thank you for the opportunity to address these issues. I will do my best to respond to any questions.

[The statement of Judge Campbell follows:]

STATEMENT OF

THE HONORABLE DAVID G. CAMPBELL

SENIOR JUDGE, UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

ON BEHALF OF
THE JUDICIAL CONFERENCE
OF THE UNITED STATES

BEFORE THE SUBCOMMITTEE ON COURTS,
INTELLECTUAL PROPERTY, AND THE INTERNET
OF THE
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

HEARING ON FEDERAL COURTS DURING THE COVID-19 PANDEMIC: BEST PRACTICES, OPPORTUNITIES FOR INNOVATION, AND LESSONS FOR THE FUTURE

JUNE 25, 2020

Administrative Office of the U.S. Courts, Office of Legislative Affairs
Thurgood Marshall Federal Judiciary Building, Washington, DC 20544
202-502-1700

Chair Johnson, Ranking Member Roby, and Members of the Subcommittee:

Good morning, I am David Campbell, Senior United States District Judge for the District of Arizona. Thank you for inviting the Judiciary to testify on how the Federal courts are responding to the COVID–19 pandemic. I appear today on behalf of the Judicial Conference of the United States, the national policy-making body for the Federal courts. I currently serve as Chair of the Judicial Conference Committee on Rules of Practice and Procedure for the Federal courts, which studies the operation and effect of the Federal rules of practice and procedure and oversees the work of the five Advisory Committees on the Federal Rules of Civil, Criminal, Bankruptcy, and Appellate Procedure, and on the Federal Rules of Evidence. I previously served as Chair of the Advisory Committee on Civil Rules from 2011 to 2015, and as a Member of the Advisory Committee from 2005 to 2011. I am personally familiar with the practices and procedures used in Federal courts and the process by which they are revised and updated.

Additional information in this statement has been provided by knowledgeable persons within the Administrative Office of the United States Courts (AO).

Let me begin by thanking the Members of this Subcommittee as well as the Full Committee for your longstanding support of the Federal Judiciary. Your commitment to the Federal Court system, as demonstrated by the resources and funding Congress has provided, is very much appreciated by the judges, their staff, and support personnel. Today's hearing is another demonstration of that commitment, and we appreciate the opportunity to discuss how the Judiciary is addressing the challenges resulting from the current nationwide emergency.

Like other institutions throughout the United States and the world, the operations of the Federal Judiciary have been impacted by the COVID–19 pandemic. I am pleased to report, however, that the Federal courts continue to operate in all categories of cases despite unprecedented challenges. Jury trials and grand jury proceedings have been postponed in most districts, but civil, criminal, bankruptcy, and appellate proceedings continue to the greatest extent practicable through video and telephone conferencing technology. Judiciary personnel nationwide are teleworking, and the AO continues to provide support to the courts.

I will now discuss each of the topics in the title of today's hearing, namely, the Federal Judiciary's efforts to institute best practices in response to the pandemic, opportunities for innovation identified as a result of those efforts, and lessons for the future, with a particular focus on civil proceedings.

I. BEST PRACTICES

The primary goal of the Judiciary, of course, is to fulfill its constitutional mission of providing justice in individual cases and maintaining the rule of law. Through a combination of advanced planning, use of technology, and the dedication of thousands of judicial personnel, the Federal Judiciary responded rapidly to the pandemic and enabled courts to continue operating while ensuring the health and safety of the public and court personnel. By necessity, this has been and continues to be implemented through local, court-specific approaches, reflecting the disparate nature and evolving impact of the pandemic.

A. Advanced Planning

Prior to the current pandemic, the Federal Judiciary had in place an emergency preparedness program that greatly facilitated the Judiciary's rapid response to this situation. Pandemic planning and direction have been a component of the Federal Judiciary's Emergency Management Program since 2005—part of its Continuity of Operations Plans (COOP). Because of this planning, the Federal Judiciary was able to begin responding to the pandemic in January of this year.

Courts have been employing COOP plans for many years, but in 2005 a Pandemic Annex was provided to them by the AO. The Annex includes templates and instructional materials developed by the AO to help courts navigate a pandemic. These materials assisted each court unit in making informed decisions about how to continue proceedings during the COVID–19 pandemic.

B. Federal Judiciary COVID–19 Task Force

In January 2020, the Federal Judiciary began preparations for the COVID–19 pandemic through AO communications with the courts. On February 18, 2020, the AO established the Federal Judiciary COVID–19 Task Force (Task Force). The Task Force consists of Chief District Judges and Court Unit Executives; a Federal Defender; staff from AO program offices; and representatives from the General Serv-

ices Administration, the U.S. Marshals Service, the Executive Office for U.S. Attorneys, and the Federal Protective Service. The Task Force monitors and assesses the impact of the virus on court operations nationally and provides advice on emerging issues presented by the pandemic. It serves as a point of contact for, and coordinates communication with, Courts, Court Units, Federal Defenders, and AO offices. It can request, obtain, and disseminate information and guidance relating to the coronavirus and its impact on the Judiciary in an expeditious manner. The Task Force meets weekly and its leadership meets daily. A representative of the Task Force also serves on the American Bar Association's COVID–19 Task Force to ensure coordination with the legal community. [1]

As more fully described below, the Task Force coordinates an extensive COVID–19 resource website on the Judiciary's Intranet. The website includes current infonnation on the spread of the COVID–19 virus, links to key health information, answers to frequently asked questions (FAQs), a collection of court-implemented best practices, additional guidance, templates, and resources. In addition, the Task Force has coordinated meetings with the Bureau of Prisons, U.S. Marshals Service, and Judiciary Officials.

C. Guidance and Related Informational Materials

To date, the AO has assisted in drafting, staffing, and issuing of more than 429 guidance and policy FAQs on issues such as bankruptcy administration, budgets, conferences, court interpreting, court reporting, facilities and security, finance and internal control, financial disclosure, health, human resources and benefits, information technology, jury duty, naturalization ceremonies, probation and pretrial services, procurement, telework, and travel. Sixty-five memos on a variety of topics have been issued to courts since the pandemic began. Districts and circuits use these resources to assess and meet their localized needs and operations. Many of these resources have been made publicly available on the Judiciary's *www.uscourts.gov* website. For example, guidance on the following topics have been made available to the public:

- Court operations during the pandemic; [2]
- Teleconferencing during the pandemic; [3]
- Court orders and updates on court operations; [4]
- Media access to Federal courts; [5]
- Suspension of jury trials during the pandemic; [6]
- Restarting jury trials; [7] and
- Reopening guidelines. [8]

D. Support Services Provided by the AO

Throughout the COVID–19 pandemic, the AO has provided support to courts on continuity of operations, including guidance on technology, human resources, and budget issues. It provides updates from the Centers for Disease Control and Prevention, and coordinated with the Federal Emergency Management Agency to obtain over one million cloth reusable masks which were shipped to court units across the country for use by court employees and visitors to courthouses and judiciary offices.

On April 24, 2020, the AO published the "Federal Judiciary COVID–19 Recovery Guidelines." The Guidelines include three gating criteria for courts to consider be-

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[1] In addition to the Task Force, the Judicial Conference's Committee on Federal-State Jurisdiction serves as the conduit for communication on matters of mutual concern between the Federal Judiciary and State courts and their support organizations such as the National Center for State Courts, the Conference of Chief Justices, and the State Justice Institute. The Committee has four State Chief Justices as Members (currently, the Chief Justices of Ohio, Minnesota, Indiana and Florida), and the President of the National Center for State Courts attends the meetings of the Committee as an invited guest. Federal judges from this Committee attend the Conference of Chief Justices meetings, and Committee Staff coordinate with National Center Staff on issues of mutual concern.

[2] *https://www.uscourts.gov/news/2020/04/08/courts-deliver-justice-virtually-amid-coronavirus-outbreak.*

[3] *https://www.uscourts.gov/news/2020/03/31/judiciary-authorizes-videoaudio-access-during-covid-19-pandemic.*

[4] *https://www.uscourts.gov/about-Federal-courts/court-website-links/court-order-and-updates-during-covid19-pandemic.*

[5] *https://www.uscourts.gov/news/2020/04/03/judiciary-provides-public-media-access-electronic-court-proceedings.*

[6] *https://www.uscourts.gov/news/2020/03/26/courts-suspend-jury-trial-response-coronavirus.*

[7] *https://www.uscourts.gov/news/2020/06/10/judiciary-issues-report-restarting-jury-trials.*

[8] *https://www.uscourts.gov/news/2020/04/27/courts-begin-consider-guidelines-reopening.*

fore proceeding to a phased re-opening (four phases of reconstitution are contemplated): (1) The number of COVID–19 confirmed or suspected cases in the court facility within a 14-day period; (2) a sustained downward trend of cumulative daily COVID–19 cases over a 14-day period in the community; and (3) the rescission of local orders restricting movement or requiring shelter in-place. The AO has created national dashboards for each of these criteria, displayed at the county level, to enable courts to make these determinations on a real-time basis.

To keep the public informed about court operations throughout the United States, on March 12, 2020 the AO established an Internet hub on its public website, *uscourts.gov*. This hub provides near-daily updates on the operational status of individual courts, including closures, restrictions on accessibility, and the availability of court proceedings through remote access. Courts have provided similar information on their individual websites.

II. OPPORTUNITIES FOR INNOVATION

Much like Congress—through its adoption of H. Res. 965 to permit Members and Witnesses to participate remotely in hearings—the Federal Judiciary has used technology to ensure continuity of operations while protecting the health and safety of the public and judiciary personnel. Telephone and video technology has been used in civil cases to continue court proceedings and facilitate public and media access. There are challenges, including concerns about the security of media platforms, an inability to conduct jury trials, and some scheduling delays.

A. Technology

Recognizing that the pandemic would require courts to close courthouses or restrict access, the Judicial Conference acted on March 29, 2020, to temporarily authorize the use of video and teleconferencing technologies under certain circumstances.[9] Courts are now using a variety of platforms to provide audio and video access to civil proceedings. Judicial staff and AO support personnel have worked quickly resolve technical and logistical issues as they arise, including, for example, expanding network capacity to handle bandwidth strains when multiple judges are holding hearings simultaneously, obtaining licenses for certain platforms, and ensuring that courts have necessary equipment.

The AO has taken steps to strengthen the Federal Judiciary's Infomiation Technology (IT) infrastructure to accommodate telework across the Judiciary. The AO is monitoring connectivity closely and steadily seeing approximately 20,000 simultaneous connections through its virtual private network (VPN) services. Although some problems have been reported, the systems are performing well given the unprecedented number of remote workers.

The AO has also increased capacity. This includes the doubling of internet bandwidth and significant increases in telephone audio bridges and video conferencing licenses, including more than 2,000 additional audio conference numbers. The increases provided a level of assurance that court proceedings were accessible to those with an interest in attending.

The courts are conscious of their obligation to ensure public and media access to civil proceedings. That access normally is afforded by open courtrooms—a form of access currently limited or eliminated by local measures required to protect the health and safety of litigants, attorneys, witnesses, members of the public, the press, and court employees. Fortunately, teleconference technology has allowed the public and the media to listen to civil proceedings they are unable to attend in person.

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[9] Judicial Conference policy generally prohibits the broadcasting of proceedings in Federal Trial Courts (JCUS–SEP 94, pp. 46–47; Guide to Judiciary Policy, Vol. 10, Ch. 4). The Executive Committee of the Judicial Conference, however, approved a temporary exception to the policy to allow a judge to authorize the use of teleconference technology to provide the public and the media audio access to court proceedings while public access to Federal courthouses generally, or with respect to a particular district, is restricted due to health and safety concerns during the Coronavirus Disease (COVID–19) pandemic. This authorization will expire upon a finding by the Judicial Conference that the emergency conditions due to the emergency declared by the President with respect to COVID–19 are no longer materially affecting the functioning of the Federal courts generally or a particular district.

B. Challenges

The Federal Judiciary has encountered various challenges in its effort to continue to operate during the COVID–19 pandemic. I will highlight three: The security of media platforms, the conduct of jury trials, and potential caseload backlogs.

The AO has been closely monitoring the security and privacy of media platforms utilized by the Judiciary. As you know, the surge in videoconferencing has made it a target for hackers. The AO provides recommendations and support to courts using videoconferencing to conduct Judiciary business, enabling them to secure their hearings.

The use of videoconferencing has been particularly challenging in court hearings with detained defendants and in facilitating attorney/client communications, both with Federal Detainees in local jails and defendants in the Bureau of Prisons (BOP). Local jails and BOP facilities have not always had videoconference software or software compatible with courts or defender offices. Delays in attorney/client communication because of a lack of videoconference capacity is something we continue to address—additional funding would help to alleviate some of these issues and assure that our Sixth Amendment obligations are upheld.

The COVID–19 pandemic has significantly impacted jury trials and caseload backlogs.

As noted above, jury trials—which require numerous potential jurors to assemble at a courthouse for jury selection and require selected jurors to attend trials for multiple days—present serious health risks to jurors and to all other trial participants during a time of publicly-transmitted infections. As a result, jury trials have been largely stopped during the pandemic. Restrictions on court access and the limitations of technology have also forced judges and court staff to prioritize other matters such as essential proceedings in criminal cases. We appreciate that Congress has expressed specific concern for public defenders and panel attorneys during the pandemic—the defense team does face greater COVID–19 risks than some other stakeholders.

Reconvening jury trials is a judicial priority. Individual courts are developing protocols tailored to meet the conditions in their district's courthouses that will minimize health and safety risks for all participants in the jury selection process and the conduct of juries. Courts recognize that jurors must be given reasonable assurance of their safety before participating in the jury process. Jurors must be comfortable during a trial and be able to focus on the evidence, arguments, and court instructions, and not the risk of a COVID–19 infection. Defenders and panel attorneys need adequate time and space to communicate with their incarcerated clients in a constitutionally effective way without fear of contracting the virus. There is no one-size-fits-all approach. Each court is assessing information from local health authorities, the AO, and the Centers for Disease Control and Prevention in developing its plan to resume jury trials.

The AO is providing guidance on this issue. On June 14, 2020, a Jury Subgroup of the AO's COVID–19 Task Force issued a report titled "Conducting Jury Trials and Convening Grand Juries During the Pandemic." The report identifies issues and provides detailed recommendations for courts to consider as they reconvene grand and petit juries.[10] Both the main COVID–19 Task Force and the Jury Subgroup continue to monitor developments concerning the pandemic' s impact on the courts' ability to conduct jury trials.

Despite these disruptions to normal court operations, judges in every court type—district, bankruptcy, and appellate—continue to hold hearings, issue decisions, and resolve cases on their dockets. They continue to review filings and to conduct hearings with parties and counsel using teleconference or videoconference technology.

It is difficult at this stage to predict when courts will be able to resume normal operations and, thus, the extent of any backlog that will result from the pandemic. Our hope is that the Judiciary's ability to continue operations during this period will minimize delays to case progress and mitigate any backlog as much as possible.

C. Bankruptcy Issues

The COVID–19 pandemic has in some respects had a chilling effect on the commencement of new cases, particularly consumer bankruptcy case filings. While business bankruptcy filings in May 2020 increased by 48 percent compared to the same period last year, consumer filings were significantly lower.

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[10] *https://www.uscourts.gov/sites/default/files/combined_jury_trial_post_covid_doc_6.10.20.pdf.*

Whether, as predicted by many experts, there will be a massive surge in bankruptcy filings depends on the pandemic's impact on the unemployment rate and the timeliness of the nation's economic recovery. Americans have lost more than twice as many jobs (16,800,000) from March to mid-April than during the entirety of the Great Recession, and it took 24 months for the latter losses to peak. Moreover, the unemployment numbers do not reflect the likely higher number of individuals who have had their work hours reduced, with corresponding reductions in income.

The impact of the pandemic on small businesses is likely to be severe, notwithstanding the Federal stimulus and relief programs. Many small businesses lack the kind of banking relationships that ease the application process, and many will be reluctant to assume more debt, even if the debt may be forgivable.

Yet, another factor is consumer debt, which is at its highest absolute level in 75 years and at its historically highest level relative to personal income. Because interest rates have been and continue to be historically low, however, household debt service as a percentage of disposable income one of the leading bankruptcy indicators—is at its historical low. While interest rates are not anticipated to rise in the foreseeable future, the impact of the pandemic on household income virtually guarantees that household debt service will consume a much larger share of consumers' budgets, ultimately leading to an increase in bankruptcy filings.

All of this suggests that bankruptcy filings may increase very significantly across the country.[11] Significant increases in bankruptcy filings will place an even greater strain on staffing resources across the Judiciary and may require a request for supplemental funding to address backlogs and delays.

Earlier this year, the Chair of the House Judiciary Committee along with other Members of Congress asked the Judicial Conference to issue rules or guidance directing bankruptcy courts to adopt modified practices and procedures for electronic signatures, to permit remote appearances for section 341 meetings and other hearings, and to waive all fees associated with remote appearances.[12]

As AO Director James Duff explained in his response, this request was referred to the appropriate Judicial Conference committees for further consideration and action, as appropriate. In addition, Director Duff reported that many bankruptcy courts have entered general orders and revised procedures on a variety of topics, including courthouse closures and clerk's office operations, section 341 meetings of creditors, deadlines and time periods in pending cases, electronic signature requirements, access to telephonic and video technology for conducting hearings, and the implementation of changes to bankruptcy statutes in recent legislation, including the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law, No. 116–136 (2020) and the Small Business Reorganization Act of 2019, Public Law, No. 116–54 (2019). These orders are compiled centrally and updated regularly on *uscourts.gov*.

As Director Duff noted, nearly every bankruptcy court in the country has entered orders or provided guidance suspending or modifying "wet signature" requirements to allow for contactless signing and submission of documents during the crisis. Each court continues to evaluate its individual circumstances, and those of the states and communities in which they serve, and will continue to issue revised guidance to ensure that the bankruptcy system operates safely and efficiently.

Although the Judicial Conference is responsible for prescribing fees in bankruptcy cases pursuant to 28 U.S.C. 1930(b), in addition to the filing fees to commence a bankruptcy case established by section 1930(a), the Conference has not imposed any fees on parties who wish to appear in bankruptcy proceedings by telephone or video conference. Many bankruptcy courts do, however, use third parties such as Court Solutions, Court Call, or similar vendors to provide critical network and conferencing technologies for remote hearings. These vendors set their own fees, and have procedures for waiving fees so indigent litigants can participate in remote hearings free of charge. Courts are working to ensure that no one is denied the right to be heard when appearing remotely during the pandemic, and the AO has encouraged courts to offer technologies that are accessible to all.

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[11] Historically, there has always been a lag between economic difficulties and surges in bankruptcy filings. Typically, it takes average consumers about six to 18 months to file for bankruptcy after recognizing that they are in trouble.

[12] A detailed explanation of the Conference's rulemaking efforts in response to the COVID–19 pandemic appears in section III of this statement.

D. Federal Judiciary Supplemental Funding Request and Legislative Proposals

In recognition of the unprecedented demands imposed on the Federal Judiciary by the COVID–19 pandemic, the Judicial Conference submitted a supplemental funding request and package of legislative proposals to Congress on April 28, 2020. Among the most serious challenges faced by the Federal Judiciary is the need for funds to respond to the COVID–19 pandemic. The supplemental funding request seeks $36.6 million in appropriations.

The Federal Judiciary very much appreciates the $7.5 million in supplemental appropriations Congress provided in the CARES Act to address immediate information technology needs and increased testing and treatment costs in our probation and pretrial services program. After our request for that funding, we worked with courts and Federal defender organizations nationwide to identify supplemental appropriations needs associated with COVID–19 pandemic prevention, preparedness, and response. The $36.6 million will address urgent needs such as enhanced cleaning of court facilities, health screening at courthouse entrances, information technology hardware and infrastructure associated with expanded telework and video conferencing, costs associated with probation and pretrial supervision of offenders released from prison early under the First Step Act and defendants on pretrial release, and security-related costs.

Enclosure 1 provides additional details of this request: Courts' Salaries and Expenses Account ($25.0 million), Defender Services ($9.4 million), and Court Security ($2.2 million). We note that overall requirements for the courts' salaries and expenses total $52.5 million, however we have identified $27.5 million in available balances as a partial offset, resulting in a net supplemental appropriations request of $25.0 million for this account.

The Judicial Conference has also identified 17 legislative proposals to address immediate COVID–19 impacts and post-pandemic operations. The Conference has requested that these provisions be included in the next supplemental appropriations bill or similar COVID–19 response legislation.

Enclosure 2 provides a detailed list of these proposals and an explanation of why they are urgently needed to assist the Federal Judiciary' s ongoing efforts to respond to the COVID–19 national emergency. All of these proposals have been approved by the Judicial Conference and draft legislative text is provided for each. The underlying objective behind every proposal is to ensure that the Federal Judiciary continues to meet its constitutional mandate while protecting the health and safety of court personnel, litigants, and the public. Of particular, relevance to this Subcommittee are proposals to ensure adequate judicial resources by converting temporary judgeships to permanent status and requesting a prudent number of new judgeships to meet anticipated caseload increases.

The AO also wishes to highlight a proposal that addresses a growing leave-management issue, as exacerbated by the COVID–19 national emergency, and which corrects a fundamental disparity between the treatment of certain senior court unit executives and their counterparts in the executive and legislative branches. As you can understand, many judicial branch Senior Executives have been required to undertake extraordinary and extended efforts, without taking any annual leave, to ensure the Federal Judiciary continues to function during the COVID–19 pandemic. It is highly unlikely that these employees will be able to take time off now or in the next several months. We have submitted a proposal, which is contained in the bipartisan H.R. 5735—the "Judicial Branch Senior Executive Leave Efficiency and Modernization Act of 2020"—that would extend the authority to carryover up to 720 hours of annual leave to a defined class of Senior Court Executives. Currently, these court executives may carryover only 240 hours of annual leave, unlike most comparable senior level executives in the executive and legislative branches who are allowed up to 720 hours of carryover. The proposal was introduced on January 30, 2020 by Representative Jamie Raskin and Subcommittee Ranking Member Martha Roby, for which we are very grateful.

The Judicial Branch's 30,000 dedicated professionals—like public and private sector workers everywhere—continue to perform their duties admirably during this period of great uncertainty. As Congress looks to address the COVID–19 related needs of Federal agencies, State and local governments, businesses, and individuals, we ask that you consider the supplemental funding and legislative items included in this request to ensure the Judicial Branch has the resources needed to respond and recover from this pandemic.

III. LESSONS FOR THE FUTURE

With respect to lessons for the future, I will focus on the Judicial Conference's rulemaking efforts in response to the COVID–19 pandemic and future national emergencies. When the COVID–19 pandemic was declared a national emergency and the normal operations of government and business were disrupted throughout the country, the impact on the Federal courts was significant. Our justice system has long been based on in-person proceedings where intereste1 parties not only observe but participate in the hearings and decisions that affect their lives. This is particularly critical in criminal cases, where the Constitution guarantees the defendant's right to be present in the courtroom at all important steps of his or her case, to confront witnesses who testify against the defendant, to be represented by counsel with whom the defendant can communicate confidentially, and to have the charges against him or her decided by a jury of their peers who have been selected with the defendant's participation. Suddenly, this time-honored system of in-person proceedings presented serious health risks to all participants and had to be discontinued while the nation sought to control the spread of the virus. The courts were required, on short notice, to create a nationally available and secure infrastructure that would allow them to continue operations remotely through the virtual participation of parties, their lawyers, witnesses, the public, and the press. This required not only technical innovations and adjustments, but also changes to our rules and procedures. These changes had to address immediately needs without damaging our carefully crafted system of justice.

Congress was responsive to these needs, and worked with us in crafting provisions for the CARES Act that made video and audio proceedings available during the pandemic for many pretrial events in criminal cases. Section 15002 of the Act permits Federal courts, with the consent of the defendant, to hold initial appearances, preliminary hearings, detention hearings, changes of plea, and even sentencings by video conference, or by telephone conferences if video conference is not reasonably available. This authorization is temporary, and will expire when the pandemic ends. To possibly avoid the need for urgent legislation in future emergencies, the CARES Act directs the Judicial Conference and Supreme Court to consider whether the various sets of rules should be amended to include emergency procedures. That work is already under way through the rules committees of the Federal courts. The Rules Enabling Act establishes the procedures for amending the Federal Rules of Civil, Criminal, Appellate, and Bankruptcy Procedure and the Federal Rules of Evidence. There are six rules committees that implement these procedures, including one Advisory Committee for each of the five sets of rules and the Committee on Rules of Practice and Procedure (also known as the Standing Committee) which oversees the work of the advisory committees.

Proposed amendments to a particular set of rules are studied carefully by the Advisory Committee responsible for those rules, often through a Subcommittee and through empirical research when warranted. The proposed amendments are then evaluated in public meetings by the Full Advisory Committee whose membership is comprised of judges, lawyers, law professors, and government representatives. If the amendments seem justified and appropriate, they are published nationally for a six-month public comment period and are addressed in public hearings held by the Advisory Committee. To become effective, the amendments must be finally approved by the relevant Advisory Committee, the Standing Committee, the Judicial Conference of the United States, and the Supreme Court. The proposed amendments are then presented to Congress for six months before becoming effective, during which time Congress can act to reject or amend the proposals. This process is designed to be careful and thorough, to obtain input from all interested parties, and to produce balanced and fully-informed decisions.

In response your direction in the CARES Act, the Rules Committees have started considering possible amendments to the Federal Rules of Civil, Criminal, Appellate, and Bankruptcy Procedure and the Federal Rules of Evidence. The committees began by soliciting public comments during the month of May from lawyers, judges, parties, and the public on challenges encountered during the COVID–19 pandemic in State and Federal courts, and on solutions developed to deal with those challenges. The committees specifically sought to learn about problems that could not be addressed through the existing rules or where the rules themselves interfered with practical solutions. The deadline for submitting comments was June 1, 2020. Many comments were received and are posted on the Judiciary's website (*https://www.uscourts.gov/rules-policies/proposed-amendments-published-pubIic-comment/invitation-comment-emergency-rulemaking*).

Comments regarding the civil rules span more than 150 pages. They include suggestions for expediting the service of process to begin a case and the service of pa-

pers during the case, the use of remote technology for case management and other hearings, the adjustment of deadlines for completing pretrial tasks, procedures for taking depositions remotely, and procedures for conducting trials, both to the court and before juries, in ways that are safe for all participants, including the use of remote technology.

Each of the five advisory committees has established a subcommittee to review possible emergency procedures. Those subcommittees have started their work. As Chair of the Standing Committee, I have asked the Advisory Committees to develop proposed emergency-procedure amendments for consideration at their fall 2020 meetings. These proposals will also be addressed at the January meeting of the Standing Committee. The schedule then calls for the Advisory Committees to refine their proposals into publication-ready versions that can be addressed at their Spring 2021 meetings and reviewed by the Standing Committee next June. If the advisory and Standing Committees conclude that proposed amendments may be warranted, the proposals will be published for public comment in August 2021. Under the Rules Enabling Act procedures, any amendments produced by this process would take effect in December 2023 if Congress took no contrary action.

This schedule may seem slow to those not familiar with Federal court rulemaking, but the Rules Enabling Act is designed to be deliberative, inclusive, and careful, as it should be for procedures that so significantly affect the rights of our citizens. It is important to keep in mind that these amendments, if they are adopted, will address future emergencies—they are not being pursued as a means for solving the current challenges presented by the COVID–19 pandemic.

Mr. Chair, thank you again for the opportunity to discuss how the Judiciary is addressing the COVID–19 pandemic. I am happy to respond to your questions.

Enclosure 1
Supplemental Funding

Judiciary

Emergency Supplemental Request for COVID–19 Impact

Courts of Appeals, District courts, and Other Judicial Services
Salaries and Expenses

Legislative Language:

For an additional amount for "Salaries and Expenses", $25,000,000, to prevent, prepare for, and respond to coronavirus, domestically or internationally: Provided, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 25l(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

Description of Request:

The Judiciary requests $25.0 million in net additional emergency supplemental appropriations in the courts' Salaries and Expenses account to address COVID–19 pandemic impacts in Appellate, District, and Bankruptcy Courts, and in probation and pretrial services offices. To identify these additional requirements, the Administrative Office received input from courts and probation and pretrial services offices nationwide on additional COVID–19 funding needs. After analyzing those requests, the Administrative Office has identified additional COVID–19 requirements totaling $52.5 million, partially offset by $27.5 million of available balances, resulting in a *Net Supplemental Appropriations* request of $25.0 million, to address the following emergent needs:

—*Enhanced Cleaning.* $15.1 million is for enhanced cleaning of courthouses and court facilities. GSA provides regular cleaning of court facilities in accordance with tenant occupancy agreements but will only cover the cost of enhanced cleaning when there is a confirmed or suspected COVID–19 event and then only the area(s) accessed by the infected person(s). The Judiciary requires funding for enhanced cleaning of all court facilities nationwide to ensure the health and safety of Judiciary personnel, litigants, and the public. Enhanced cleaning would begin prior to reoccupancy of court facilities and be repeated as exposure incidents occur.

—*Health Screening at Courthouse Entrances.* $15.0 million is for health screening at courthouse entrances utilizing the contract vehicle established by GSA for this purpose. Screening would be provided for 8 weeks.

—*IT Infrastructure Costs.* $11.2 million is for hardware, software, licenses, and contract services to support the Judiciary's National IT infrastructure to address increased demand due to expanded telework and videoconferencing, as well as costs associated with continuing to support current IT system hosting environments due to pandemic-related delays in migrating to cloud hosting.

—*Telework and Videoconferencing Equipment.* $7.8 million is for laptops, printers, and peripherals to enable court and probation and pretrial services personnel to be fully telework capable, and for videoconferencing equipment in courts and detention facilities to facilitate holding criminal proceedings via electronic versus in-person means.

—*Probation and Pretrial Services Supervision Cost.* $1.6 million is for increased costs associated with supervision of offenders released from prison and defendants on pretrial release, including mental health and drug testing and treatment, location monitoring, and Second Chance Act related expenses such as temporary housing for offenders/defendants.

—*Other Costs.* $1.8 million is for miscellaneous equipment and supplies.

As identified above, $25.0 million in additional supplemental appropriations, combined with $27.5 million in available Judiciary balances, would enable the Judiciary to fund these COVID–19 emergency requirements totaling $52.5 million.

Judiciary

Emergency Supplemental Request for COVID–19 Impact

Courts of Appeals, District courts, and Other Judicial Services Defender Services

Legislative Language:

For an additional amount for "Defender Services", $9,400,000, to prevent, prepare for, and respond to coronavirus, domestically or internationally: Provided, that such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

Description of Request:

The Judiciary requests $9.4 million in additional emergency supplemental appropriations in the Defender Services account to address COVID–19 pandemic impacts in Federal defender organizations, which provide legal representation and other services to persons who are financially unable to obtain them in criminal and related matters in Federal court. To identify these additional requirements, the Administrative Office received input from Federal defender organizations nationwide on additional COVID–19 funding needs. After analyzing those requests, the Administrative Office has identified additional COVID–19 requirements totaling $9.4 million to address the following emergency needs:

—*IT Equipment and Infrastructure Upgrades.* $7.9 million is for hardware, software, and contract services to enable Federal defender organization personnel to be fully telework capable, to support the Federal Defender National IT infrastructure to address increased demand due to expanded telework and videoconferencing, and for telecommunications upgrades to enable remote management of Federal Defender Organization phone systems.

—*Enhanced Cleaning.* $1.5 million is for enhanced cleaning of Federal defender organizations' office space. GSA provides regular cleaning of Federal public defender offices in accordance with tenant occupancy agreements but will only cover the cost of enhanced cleaning when there is a confirmed or suspected COVID–19 event and then only the area(s) accessed by the infected person(s). The Judiciary requires funding for enhanced cleaning of all Federal Public Defender offices and grant-funded Community Defender offices to ensure the health and safety of Federal Defender organization personnel and their clients.

Judiciary

Emergency Supplemental Request for COVID–19 Impact

Courts of Appeals, District courts, and Other Judicial Services
Court Security

Legislative Language:

For an additional amount for "Court Security", $2,200,000, to prevent, prepare for, and respond to coronavirus, domestically or internationally: Provided, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

Description of Request:

The Judiciary requests $2.2 million in emergency supplemental appropriations in the Court Security account to address security related COVID–19 pandemic impacts in the Federal courts. The funding will address the following needs:

—*Remote Security*. $1.8 million is for software and equipment that will enable court staff to renew security certificates for Judiciary Personal Identity Verification–Interoperable (PIV–I) cards remotely. This software and equipment will allow court staff currently teleworking to reset their security pins for digital signatures due to pin expiration or for other reasons without having to risk health and safety by physically going to the office.

—*Personal Protective Equipment*. $0.4 million is to purchase personal protective equipment (gloves, masks, hand sanitizer, disinfecting wipes, etc.) for court security officers.

Enclosure 2
Legislative Provisions

Probation Resources on Higher-Risk Offenders

Description: Allow the courts to terminate the supervised release term of an inmate who is no longer a threat and would not benefit from continued supervision. Inmates who have been compassionately released elderly home confinement program or prerelease custody or supervised release for risk and needs assessment, would not need to wait for the statutorily required completion of one year.

Justification: As more inmates are released during the COVID–19 pandemic, placing an increased burden on court probation services, this legislative proposal would allow courts to terminate the period of supervised release of an offender who does not require intensive probation supervision prior to the current minimum of one year. This proposal would relieve probation officers of some of their unnecessary workload, allowing them to focus their limited resources where most needed. Legislative and policy developments, such as the First Step Act, the CARES Act, and the Attorney General's directives to the BOP, are resulting in even more of these cases burdening Probation Officers and costing taxpayer money which is unnecessary for many compassionate, elderly, and other release cases. An extended period of supervision in the community is generally unnecessary to ensure public safety and may even, in some cases, be counterproductive.

Application: Section 3583(e)(l) of title 18 currently specifies that early termination of supervision may occur only after one year when warranted by the conduct of the defendant released and the interest of justice. With an increasing number of persons being released from incarceration early and spending an extended period of time on prerelease confinement as a result of recently enacted laws, including persons under compassionate release or who have served a period of prerelease custody under 34 U.S.C. 6054I(g) (elderly home confinement program), 18 U.S.C. 3624(c) (prerelease custody), or 18 U.S.C. 3624(g) (prerelease custody or supervised release for risk and needs assessment system participant), the one-year waiting period may be too long for the best interest of the defendant, public safety, and the Administration of the criminal justice system. These offenders include many elderly and terminally ill persons who, independently of their own conduct, may be physically incapacitated, dying, or aged to the point that they are no longer a risk to the community and cannot meaningfully engage in the supervision process. In addition, the requirement is sometimes redundant because probation officers would be providing supervision and assistance to persons on supervised release who have already received such services during the period of home confinement. Relieving the responsibility of

supervision in these cases would alleviate workload demands on probation officers and allow them to focus on higher priority cases.

Proposed Legislative Language:

SEC.__ ALLOWING EARLY TERMINATION OF SUPERVISED RELEASE

Section 3583(e)(1) of title 18, United States Code, is amended by inserting after "the interest of justice" the following:

> "except that in the case of a defendant released from imprisonment under sections 3582(c)(l), 3624(c), or 3624(g) of that title or under section 60541(g) of title 34, United States Code, terminate a term of supervised release and discharge the defendant at any time, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of supervised release, if it is satisfied that such action is in.the interest of justice."

Keeping Non-Dangerous Defendants Out of Prison Prior to Trial

Description: Reduce unnecessary pretrial detention of certain low-risk defendants charged with drug trafficking offenses by: (1) Limiting the application of the presumption of detention to defendants whose criminal history suggests that they pose a higher risk of failing to appear for court proceedings or that they may be a danger to the community; and (2) removing the presumption from other low-risk defendants.

Justification: The COVID–19 pandemic has created dire circumstances in many Federal prisons, including those in which the Attorney General has declared an emergency. This proposal would help by allowing some defendants, who would ordinarily be required to be detained, to be placed under community supervision while awaiting trial. Efforts are being made at the Bureau of Prisons, pursuant to the Attorney General's directives, to release as many prisoners as possible to home confinement under the compassionate release program and to take the virus into account when making pre-trial release recommendations. Congress has also authorized additional compassionate releases in the CARES Act.

Application: This provision reduces unnecessary pretrial detention of certain low-risk defendants charged with drug trafficking offenses by limiting the application of the presumption of detention to defendants whose criminal history suggests that they pose a higher risk of failing to appear for court proceedings or that they may be a danger to the community. Section 3142(e) of title 18 creates a presumption that certain defendants should be detained pending trial because a court cannot craft conditions of community supervision that would reasonably assure both the safety of the community and the defendant's appearance at court proceedings. The statute identifies several categories of defendants to whom this presumption applies, including those charged with specific drug trafficking offenses, and places the burden on a defendant to rebut the presumption for detention. In keeping with its support of evidence-based supervision practices, the Administrative Office of the U.S. Courts conducted a study analyzing data collected from a ten-year period. The study reveals that a sizeable segment of low-risk defendants falls into the category of drug traffickers subject to the presumption of detention. The study concluded that these defendants are detained at a high rate, even when their criminal histories and other applicable risk factors indicate that they pose a low risk of either reoffending or absconding while on pretrial release, and arguably should be released for pretrial supervision.

Legal, policy, and budgetary factors—including the presumption of innocence and the relative costs of incarceration versus pretrial supervision—support reducing unnecessary pretrial detention. Therefore, the Judicial Conference endorsed limiting the application of the presumption of detention to defendants who meet these particular criteria, which would enable judges to make pretrial release decisions for low-risk defendants on a case-by-case basis. No defendant would be automatically released into the community if this proposal were enacted.

Proposed Legislative Language:

SEC.__ REDUCING UNNECESSARY PRETRIAL DETENTION OF LOW-RISK DEFENDANTS

Section 3142(e)(3)(A) of title 18, United States Code, is amended by inserting the following before the semicolon:

> "and such person has previously been convicted of two or more offenses described in subsection (f)(l) of this section, or two or more State or local offenses that would have been offenses described in subsection (f)(1) of this section if a circumstance giving rise to Federal jurisdiction had existed, or a combination of such offenses."

Compassionate Release Requests in District courts Before Administrative Exhaustion by Reducing Unnecessary Electronic Monitoring

Description: To allow filing compassionate release motions directly to District court without 30-day exhaustion of administrative remedies if waiting would cause irreparable harn to inmates during the National Emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 *et seq.*) with respect to COVID–19 and ending 30 days after the National Emergency terminates.

Justification: District courts are severely constrained by the statute's Administrative Exhaustion Provision, especially in the midst of the COVID–19 pandemic. The 30-day lapse requirement in particular has prevented District courts from timely reviewing the petitions of vulnerable inmates who claim serious and irreparable harm to their health. According to reports from defenders working with Bureau of Prison (BOP) facilities across the country, there have been significant delays in BOP's response to requests for compassionate release. These delays assume that the requests can even be made. For example, inmates in transit often do not have a warden to whom they can submit a compassionate release request. Likewise, inmates in a number of jurisdictions have reported wardens or case managers refusing to even accept such requests, rendering the Administrative Exhaustion Process practically unavailable. Inmates at the BOP Federal Correctional Complex in Oakdale, Louisiana (F.C.C. Oakdale) have reported that their compassionate release requests have been returned to them unanswered. Attorney General William Barr named F.C.C. Oakdale as one of three BOP institutions that needed to focus on releasing vulnerable inmates because of the acute, deadly, and widespread COVID–19 outbreak. The first BOP inmate COVID-related death sadly occurred at F.C.C. Oakdale. The Office of the Warden at Taft Correctional Institution in Taft, California went so far as to issue an official memo stating that administrative requests would not be answered and that "no further requests would be addressed."

Application: Amend 18 U.S.C. 3582 to allow a defendant, once he or she has filed a request for compassionate release relief with the BOP, to file a motion for compassionate release directly in the District court before 30 days have lapsed if the exhaustion of administrative remedies would be futile or the 30-day lapse would cause serious harm to the defendant's health due to the COVID–19 pandemic. This legislation would be effective during the national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 *et seq.*) with respect to COVID–19 and end 30 days after the National Emergency terminates.

Proposed Legislative Language:

SEC.__ COMPASSIONATE RELEASE REQUESTS BEFORE ADMINISTRATIVE EXHAUSTION

Subsection (c)(1)(A) of section 3582 of title 18, United States Code, is amended as follows:

> The court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier, *or, effective during the National Emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.*) with respect to COVID–19 and end 30 days after the National Emergency terminates,

upon motion by the defendant submitted to the court upon a showing that administrative exhaustion would be futile or that the 30-day lapse would cause serious harm to the defendant's health, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that—

Focusing Scarce Electronic Monitoring Resources on Higher Risk Offenders

Description: Allow district judges to waive the electronic monitoring condition required for pretrial release in certain cases when a more restrictive condition of confinement and monitoring is imposed on an offender, so that scarce monitoring equipment and probation officer resources can be applied where most needed.

Justification: This provision would lessen the extreme pressures being faced by probation offices, especially the electronic location monitoring provision, caused by the COVID–19 pandemic emergency.

Application: This provision allows district judges to waive the electronic monitoring condition required for pretrial release in certain cases when a more restrictive condition is imposed on an offender thus allowing monitoring equipment and probation officer time to focus on where it is needed more. As part of the Adam Walsh Child Protection and Safety Act of 2006 (Pub. L., No. 109–248), section 3142(c)(l)(B) of title 18, was amended to require the court to impose electronic monitoring as a condition of pretrial release in any case that involves a minor victim under various title 18 offenses or a failure to register offenses under 18 U.S.C. 2250. The condition is required, however, even if the court imposes another, more restrictive condition such as residing in a halfway house or participating in a residential treatment program. The Adam Walsh Act was enacted, among other things, "[to] protect children from sexual exploitation and violent crime, to prevent child abuse and child pornography, [and] to promote Internet safety." Elimination of the requirement to impose an electronic monitoring condition in cases where the defendant is confined and monitored in a secure residential setting would not jeopardize these goals. Moreover, installing the electronic monitoring equipment in halfway houses and treatment facilities carries unnecessary costs consisting of equipment rental, monitoring time, and labor.

Proposed Legislative Language:

SEC.__ EFFICIENT USE OF ELECTRONIC MONITORING CONDITIONS

The first undesignated paragraph of section 3142(c)(1)(B) of title 18, United States Code, is amended by adding the following after the reference to (viii) in (xiv):

"except that the electronic monitoring condition may be waived if the judicial officer determines that a more restrictive condition is necessary to ensure the appearance of the person as required or to ensure the safety of any other person and the community."

Focusing Pretrial Officer Resources on Higher Risk Defendants by Eliminating Mandatory Reports That Have No Use

Description: Authorizes a District court to direct that a pretrial services bail report need not be prepared in certain cases where the report would not be useful in the court's determination of release or detention because the defendant is already in custody or has a detainer.

Justification: This legislative proposal would help reduce workload burdens on probation and pretrial services offices caused by the COVID–19 pandemic emergency, and allow pretrial services to be deployed where more needed.

Application: This proposal authorizes a District court to direct that a pretrial services bail report not be prepared in certain cases where the report would not be useful in the court's determination of release or detention. Section 3154(1) of title 18 directs officers to prepare bail reports on each person charged with an offense, "except that a District court may direct that information not be collected, verified, or reported under this paragraph on individuals charged with class A misdemeanors as defined in section 3559(a)(6) of [Title 18]." This exception does not apply to felony offenses, even though certain defendants appearing before the courts have little or

no chance of being released pending trial. For example, defendants who are already serving sentences in Federal, State, or local custody on other charges would not be eligible for pretrial release, nor would most defendants who are illegal aliens subject to an immigration detainer.

This amendment to section 3154(1) would give the court discretion to waive the preparation of a pretrial services report in cases where the report would have little or no bearing on the court's release decision, thereby conserving the resources of the probation or pretrial services office. Specifically, the court could waive the bail report requirement if the defendant is subject to an ICE detainer or if the defendant is already in Federal, State, or local custody in connection with a previous conviction.

Proposed Legislative Language:

SEC.__ WAIVER OPTION FOR UNNECESSARY BAIL REPORTS

Section 3154(1) of title 18, United States Code, is amended by inserting before the end of the sentence:

> "individuals described in section 3142(d)(l)(B) of this title, or individuals who are already in Federal, State, or local custody in connection with a previous conviction."

Focusing Probation Officer Resources Where Most Needed by Eliminating Duplicative Notifications

Description: Eliminate the duplicate notification requirement for victims to reduce the informational burden on victims and focus Probation Officer resources where most needed.

Justification: This legislative proposal would help reduce workload burdens on probation and pretrial services offices caused by the COVID–19 pandemic emergency.

Application: This proposal streamlines victim notification requirements to reduce the burden on victims and increase governmental efficiency. As part of the Mandatory Victims Restitution Act of 1996, Probation Officers are required by 18 U.S.C. 3664(d)(2) to provide the victims of an offense with notice of the defendant's conviction, the sentence date, and the victim's opportunity to submit an impact statement. The officer is also required to provide the victim with an affidavit form to submit a claim for restitution. In a similar fashion, the Crime Victims' Rights Act directs the "officers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime [to] make their best efforts to see that crime victims are notified of, and accorded, the rights described in [the Act]." As a result of these two provisions, it is not uncommon for probation officers to contact victims to provide notice and seek a statement after employees of an executive branch agency have already done so. This duplication of effort is wasteful, and sometimes confuses or upsets victims, who may already be overwhelmed by the criminal justice system. Amending section 3664(d)(2) to eliminate the current duplication of efforts in cases with identifiable victims will conserve resources and provide victims with a single point of contact. Because the executive branch already has an obligation under section 3771(c)(1) and would most likely have contact with such victims long before sentencing, it makes sense to eliminate the redundant duties assigned to probation officers. In the event the executive branch agencies failed to contact a victim, the Probation Officer would then provide the notice.

Proposed Legislative Language:

SEC.__ STREAMLINING VICTIM NOTIFICATION PROVISIONS

Section 3664(d)(2) of title 18, United States Code, is amended by inserting the following undesignated paragraph after section 3664(d)(2)((B):

> "The required notice and provision of an affidavit form in foregoing subparagraphs (A) and (B) may be excused if a person identified in section 3771(c)(1) has already provided notice and an affidavit form to the victim."

Maximizing Use of Probation Resources on Higher Risk Offenders by Clarifying Obligations for Prerelease Custody

Description: To maximize the use of probation resources by hannonizing the standard for the three circumstances under which the probation system is authorized to supervise inmates in the custody of the Bureau of Prisons (BOP) who have been placed on prerelease custody to be "to the extent practicable."

Justification: The differing language for all three provisions creates inconsistent requirements for U.S. probation's involvement in assisting inmates on prelease custody. Amending the more compulsory language of 18 U.S.C. 3624(c) and 34 U.S.C. 60541(g) to track the more permissive language of 18 U.S.C. 3624(g) would clarify and harmonize the various obligations of the probation system to assist inmates on prelease custody. More importantly, the probation system does not always have the resources to supervise prelease inmates. The lack of resources is even more of an issue under the expanded release authorities of the First Step Act and in response to the COVID–19 pandemic. Additionally, any arrangement to supervise prerelease inmates should be jointly agreed to by the BOP and the probation system.

Application: There are three different statutory provisions that discuss the obligation of the probation system to assist inmates on prerelease custody: 18 U.S.C. 3624(c) and (g), and 34 U.S.C. 60541(g). Under the three provisions, Probation Officers are authorized to supervise inmates in the custody of the BOP who have been placed on prerelease custody. However, all three provisions set forth different degrees to which officer assistance is authorized. If an individual is released under 18 U.S.C. 3624(c), then the U.S. probation system must, "to the extent practicable," offer assistance to the individual during prerelease custody. In comparison, if an individual is released under 18 U.S.C. 3624(g), then the BOP must, "to the greatest extent practicable," enter into an agreement with the U.S. probation system to supervise the individual, and the probation system must "to the greatest extent practicable" offer assistance to any prisoner not under its supervisions during prerelease custody. If an individual is released under the elderly and family reunification for certain nonviolent offenders pilot program, pursuant to 34 U.S.C. 60541(g), probation "shall provide such assistance and carry out such functions as the Attorney General may request in monitoring, supervising, providing services to, and evaluating" that individual. The three standards should be made consistent by amending 18 U.S.C. 3624(c) and 34 U.S.C. 1(g) to require the probation system to provide assistance only "to the extent practicable."

Proposed Legislative Language:

SEC.__ CLARIFYING AND HARMONIZING THE OBLIGATION OF THE U.S. PROBATION SYSTEM TO ASSIST INMATES ON PRERELEASE CUSTODY

(a) Section 3624(c)(3) of title 18, United States Code, is amended by striking "shall" and inserting "should" after "The United States Probation System."

(b) Section 3624(g)(7) of title 18, United States Code, is amended by striking "shall" after "Bureau of Prisons" and inserting "should" in its place, and by striking "greatest" before "extent practicable."

(c) Section 3624(g)(8) oftitle 18, United States Code, is amended by striking "shall" after "United States Probation and Pretrial Services" and replacing it with "should," and by striking "greatest."

(d) Section 60541(g)(4) of title 34, United States code is amended by striking "shall provide" and inserting in its place "should, to the extent practicable, provide."

Increase the Speed of Consideration of Compassionate Release Motions

Description: Facilitate provision of medical records needed in compassionate release motions to courts, probation officers, and defense counsel in a prompt manner or as ordered by the court so that a defendant's motions can be decided as quickly as possible.

Justification: The First Step Act expanded compassionate release procedures by authorizing an inmate to file a motion directly with the court based on the earlier of exhaustion of administrative remedies or the lapse of 30 days from the warden's receipt of a request. The expanded procedures, as well as the recent COVID–19 pandemic, have led to an increase in requests for compassionate release to both the Bureau of Prisons (BOP) and the courts. With the increased number of requests, there

have been delays in providing inmate medical records to the courts, defense counsel, and probation offices in a timely manner to assess whether an inmate may qualify for compassionate release based on medical needs.

Application: At present there have been delays obtaining inmates' medical records by the courts, probation officers, defense counsel, and inmates themselves due to limited BOP staff and the increase in such motions due to COVID–19. Under this provision, 18 U.S.C. 3582(c)(1)(A) would be amended to add that if a motion for modification of an imposed term of imprisonment includes as a basis for relief that medical conditions warrant such a reduction, the defendant's BOP medical records must be made accessible "promptly" or in a time frame ordered by the court, to the court, the probation office, the attorney for the government, and the attorney for the inmate. Under 34 U.S.C. 60541(d)(5), the BOP is already directed to "provide the United States Probation and Pretrial Services System with relevant information on the medical care needs and the mental health treatment needs of inmates scheduled for release from custody." The proposed amended to section 3582 would be an expansion of this requirement and include an explicit directive that medical records be provided.

Proposed Legislative Language:

SEC.__ INCREASING ACCESS TO BOP MEDICAL RECORDS FOR COMPASSIONATE RELEASE MOTIONS

Section 3582(c)(1)(A) of title 18, United States Code, is amended by inserting the following after "Sentencing Commission" and before the semicolon:

> "If a motion for reduction of the imprisonment term includes as a basis for relief that the defendant's medical condition warrants a reduction, the Bureau of Prisons shall promptly produce the defendant's Bureau of Prisons medical records to the court, the probation office, the attorney for the government, and the attorney for the inmate. If additional time is required by the Bureau of Prisons to produce such records, they shall be produced in a time frame ordered by the court."

Preserve Existing Article III Judicial Resources

Description: Preserve and maximize existing judicial resource by converting existing temporary judgeships to permanent status.

Justification: When the courts reconstitute after the COVID–19 pandemic, the strain will be even greater since there will be a backlog of cases that could not be adjudicated during the pandemic. The conversion of temporary judgeships will ensure these judicial resources are not lost and would help ease that strain by providing permanent help, in particular, courts where help is needed now more than ever. The Judiciary requested this change prior to the pandemic; however, the pandemic has highlighted the strain that many courts are experiencing due to overwhelming caseloads and an inadequate number of judges.

Application: Convert the following eight existing temporary judgeships to permanent status:

1—Kansas
1—Missouri Eastern
1—Arizona
1—California Central
1—Florida Southern
1—New Mexico
1—North Carolina Western
1—Texas Eastern

For your information, two additional temporary judgeships exist—one each in Alabama Northern and Hawaii.

Proposed Legislative Language:

A bill has been introduced in the Senate to accomplish the conversion of the eight temporary judgeships requested by this proposal. S. 3086, the "Temporary Judgeship Conversion Act of 2019," was introduced by Senator Moran (KS) on December 18, 2019 and referred to the Senate Committee on the Judiciary. That bill language follows:

SEC.__ DISTRICT JUDGES FOR THE DISTRICT COURTS

(a) *In General.* The existing judgeships for the district of Kansas and the eastern district of Missouri authorized by section 203(c) of the Judicial Improvements Act of 1990 (Pub. L. 101–650; 28 U.S.C. 133 note) and the existing judgeships for the eastern district of Texas, the district of Arizona, the central district of California, the southern district of Florida, the western district of North Carolina, and the district of New Mexico authorized by section 312(c) of the 21st Century Department of Justice Appropriations Authorization Act (Pub. L. 107–273; 28 U.S.C. 133 note), as of the effective date of this Act, shall be authorized under section 133 of title 28, United States Code, and the incumbents in those offices shall hold the office under section 133 of title 28, United States Code, as amended by this Act.

(b) *Tables.* In order that the table contained in section 133(a) of title 28, United States Code, will, with respect to each judicial district, reflect the changes in the total number of permanent district judgeships authorized as a result of subsection (a)—

(1) The item relating to Arizona is amended to read as follows:

"Arizona ..... 1";

(2) The item relating to California is amended to read as follows:

"California:
Northern 14
Eastern 6
Central 28
Southern ..... 13";

(3) The item relating to Florida is amended to read as follows:

"Florida:
Northern 4
Middle 15
Southern ..... 18";

(4) The item relating to Kansas is amended to read as follows:

"Kansas ..... 6"

(5) The item relating to Missouri is amended to read as follows:

"Missouri:
Eastern 7
Western 5
Eastern and Western ..... 2";

(6) The item relating to New Mexico is amended to read as follows:

"New Mexico ..... 7";

(7) The item relating to North Carolina is amended to read as follows:

"North Carolina:
Eastern 4
Middle 4
Western ..... 5" and

(8) By striking the item relating to Texas and inserting the following:

"Texas:
Northern 12
Southern 19
Eastern 8
Western ..... 13".

Emergency Supplemental Judgeships

Description: It has been decades since the Judiciary's judgeships needs were comprehensively addressed by Congress, and the pandemic has further highlighted the strain many courts are experiencing due to overwhelming caseloads and an inadequate number of judges. This proposal would add seven additional judgeships to a subset of courts that are in extreme need.

Justification: When the courts reconstitute after the COVID–19 pandemic, the strain will be even greater since there will be a backlog of cases that could not be adjudicated during the pandemic. Two of the districts in extreme need of additional

judgeships, the Eastern District of California and the District of Arizona, have declared judicial emergencies (under 18 U.S.C. 3714) due to the effects of the pandemic. These declarations were made because those two courts have calendars that are so congested that they are unable to meet certain statutory time limits to hear cases. Those time limits are suspended due to the anticipated backlog of cases. All seven of these additional judgeships will be paramount to their courts post-pandemic to help those courts reconstitute and recover.

Application: The Judiciary requested additional judgeships prior to the pandemic. Seven additional judgeships, which were included in the Judicial Conference judgeships request submitted last year, would be added as follows:

1—Indiana Southern
1—Delaware
1—New Jersey
1—Texas Western
1—Arizona
1—Florida Southern
1—California Eastern

Proposed Legislative Language: See attached language.

SEC.__ DISTRICT JUDGES FOR THE DISTRICT COURTS

(a) The President shall appoint, by and with the advice and consent of the Senate:

(1) 1 additional District Judge for the District of Arizona;
(2) 1 additional District Judge for the Eastern District of California;
(3) 1 additional District Judge for the District of Delaware;
(4) 1 additional District Judge for the Southern District of Florida;
(5) 1 additional District Judge for the Southern District oflndiana;
(6) 1 additional District Judge for the District of New Jersey;
(7) 1 additional District Judge for the Western District of Texas.

(b) *Tables.* In order that the table contained in section 133(a) of title 28, United States Code, will, with respect to each Judicial district, reflect the change in the total number of permanent district judgeships authorized as a result of subsection (a)—

(1) The item relating to Arizona is amended to read as follows:

''Arizona	13'';

(2) The item relating to California is amended to read as follows:

''California:	
Northern	14
Eastern	7
Central	7
Southern	13″;

(3) The item relating to Delaware is amended to read as follows:

''Delaware	5'';

(4) The item relating to Florida is amended to read as follows:

''Florida:	
Northern	4
Middle	15
Southern	18;

(5) The item relating to Indiana is amended to read as follows:

''Indiana:	
Northern	5
Southern	6

(6) The item relating to New Jersey is amended to read as follows:

''New Jersey	18''; and

(7) By striking the item relating to Texas and inserting the following:

''Texas:	
Northern	12
Southern	19
Eastern	7
Western	4''.

(c) *Authorization of Appropriations.*

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act, including such sums as may be necessary to provide appropriate space and facilities for the judicial positions created by this Act.

Additional Senior Judge Resources for the U.S. Territorial District courts

Description: Amend the retirement provisions for judges of the Federal District courts of the U.S. territories to permit judges of those courts who have completed a full term and have at least 15 years of service to immediately serve the court as Senior Judges.

Justification: This provision will have an immediate benefit to the judiciary by allowing a judge who has just completed his term on the U.S. District court for the Virgin Islands to assume senior status at once (and be able to assist the court with its caseload) rather than having to wait a number of years until attaining age 65, as required under current law. This wiU provide an additional resource to the comt at a time when the ability for visitin g judges to travel to fill the gap is effectively nullified given the prevalence of COVID–19 and associated shelter-in-place orders. The territorial District courts have active dockets. Increasing the availability of senior judges, as provided for in this proposal, would provide a key resource for the Federal Judiciary in the Territories during this time of crisis and will ensure continued functioning of the territorial District courts without disruption of functions or compromise of Constitutional safeguards.

Application: There are three U.S. District courts in the U.S. territories—Guam, the Virgin Island, and the Nolthem Maliana Islands (NMI), with four judgeships (two in the Virgin Islands and one each in Guam and NMI). The judges of these courts are appointed by the President and confirmed by the Senate for a term of 10-years or until their successor is appointed. The current retirement statute does not allow district judges in the territories who have completed a term of service to immediately enter senior service if they are under the age of 65. This provision would allow judges who have completed a term and have at least 15 year of service to serve the court as Senior Judges before reaching age 65. Currently, Guam and the Virgin Islands have no senior judges. NMI has one senior judge who lives in Idaho and cannot now travel to NMI. If the term of service for each of the current judges in the Territories ends during the course of this pandemic, under the current statutory scheme, none of the judges would be able to serve as a Senior Judge. This provision would provide, over the next 16 months, as many as four Senior Judges—two for the Virgin Islands, one for Guam, and one for NMI.

Proposed Legislative Language:

A bill has been introduced in the House to accomplish this proposal. H.R. 6593, the "Territorial Judgeship Retirement Equity Act of 2020," was introduced by Delegates San Nicolas (Guam), Sablan (Northern Marianas Islands), and Plaskett (Virgin Islands), on April 21, 2020. See attached bill.

(Original Signature of Member)

116TH CONGRESS
2D SESSION

H. R. _____

To amend certain retirement provisions for judges serving in territorial district courts, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. SAN NICOLAS introduced the following bill; which was referred to the Committee on _____

A BILL

To amend certain retirement provisions for judges serving in territorial district courts, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Territorial Judgeship Retirement Equity Act of 2020".

SEC. 2. RETIREMENT FOR JUDGES IN TERRITORIES AND POSSESSIONS.

(a) JUDGES IN TERRITORIES AND POSSESSIONS.—Section 373 of title 28, United States Code, is amended—

(1) by striking subsection (a) and redesignating subsection (b) as subsection (a);

(2) in subsection (a), as redesignated by paragraph (1), by striking "The age and service requirements for retirement under subsection (a) of this section" and inserting "IN GENERAL—A judge of the District Court of Guam, the District Court of the Northern Mariana Islands, or the District Court of the Virgin Islands who retires from office after attaining the age and meeting the service requirements (whether continuous or otherwise) of this subsection shall during the remainder of the judge's lifetime receive an annuity equal to the salary the judge is receiving at the time the judge retires. The age and service requirements for retirement under this subsection";

(3) by inserting after subsection (a), as redesignated by paragraph (1), the following new subsection:

"(b) SPECIAL RULE FOR RETIREMENT FOR JUDGES IN TERRITORIES AND POSSESSIONS.—

"(1) IN GENERAL.—Notwithstanding subsection (a), a judge of the District Court of Guam, the District Court of the Northern Mariana Islands, or the District Court of the Virgin Islands, who is not re-

appointed following the expiration of the term of office of such judge, and who retires upon the completion of such term shall, upon attaining the age of fifty years and during the remainder of the judge's lifetime, receive an annuity equal to the salary the judge is receiving at the time the judge retires, if—

"(A) such judge has served a term of ten years as a judge on a court identified in this subsection;

"(B) such judge advised the President, in writing, that they are willing to accept reappointment as a judge on the court on which the judge is serving—

"(i) not earlier than nine months and not later than six months before the date that is ten years after the date on which the judge was appointed to the court on which the judge is serving; and

"(ii) not later than sixty days after each Congress is convened following the Congress that is in session at the time of the initial notification required under clause (i);

A judge or former judge who is receiving an annuity pursuant to this subsection and who

thereafter accepts compensation for civil office or employment by the Government of the United States (other than the performance of judicial duties pursuant to recall under subsection (c)) or in the practice of law represents (or supervises or directs the representation of) a client in making any civil claim against the United States or any agency thereof shall forfeit all rights to an annuity under this subsection for the period in which such compensation is received or legal representation is undertaken.

"(2) APPLICATION DATE.—

"(A) IN GENERAL.—A judge of the District Court of Guam, the District Court of the Northern Mariana Islands, or the District Court of the Virgin Islands, in active service, shall be subject to the requirements of this subsection beginning on January 1, 2019.

"(B) EXCEPTION TO ADVICE REQUIREMENT.—A judge of the District Court of Guam, the District Court of the Northern Mariana Islands, or the District Court of the Virgin Islands, in active service on January 1, 2019,

shall be deemed to have met the advice requirement under paragraph (1)(B).";

(4) in subsection (c)—

(A) in the matter preceding paragraph (1) by inserting "REQUIREMENTS FOR SENIOR JUDGE";

(B) in paragraph (1)—

(i) by striking "Any" and inserting "A"; and

(ii) by striking "this section may elect to become a senior judge of the court upon which he served before retiring." and inserting "subsection (a) or (b), with 15 years or more of judicial service (whether continuous or otherwise), may elect to become a senior judge of the court upon which the judge served before retiring. Any judge or former judge who is receiving an annuity pursuant to subsection (b) , with less than 15 years of judicial service (whether continuous or otherwise), may elect to become a senior judge of the court upon which the judge served before retiring upon attaining the age of sixty-five years.";

(C) in paragraph (2), by striking "he" and inserting "the judge";

(D) in paragraph (3), by striking "he" and inserting "the senior judge";

(E) in paragraph (4)—

(i) by striking "Any" and inserting "A"; and

(ii) by striking "subsection (a) of this section" and inserting "subsection (a) or (b)"; and

(F) in paragraph (5), by striking "Any" and inserting "A";

(5) in subsection (d), by striking "Any" and inserting "EMPLOYMENT OF SENIOR JUDGE—A";

(6) in subsection (f), by striking "Service" and inserting "COMPUTATION OF AGGREGATE JUDICIAL SERVICE—Service"

(7) in subsection (e)—

(A) by striking "Any" and inserting "MENTAL OR PHYSICAL DISABILITY—A";

(B) by striking "who is removed by the President of the United States" and inserting "who has served at least five years (whether continuous or otherwise) and who retires or is removed from office";

(C) by striking "or who is not reappointed (as judge of such court),";

(D) by striking ", upon attaining the age of sixty-five years or upon relinquishing office if he is then beyond the age of sixty-five years, (1) if his judicial service, continuous or otherwise, aggregates fifteen years or more, to receive during the remainder of his life an annuity equal to the salary he received when he left office, or (2) if his judicial service, continuous or otherwise, aggregated less than fifteen years but not less than ten years,";

(E) by striking "his life an annuity equal to that proportion of such salary which the aggregate number of his years of his judicial service bears to fifteen." and inserting "the judge's lifetime—"; and

(F) by adding at the end the following new paragraphs:

"(1) an annuity equal to 50 percent of the salary payable to a judge on a court identified in this subsection in regular active service, if before retirement or removal such judge served less than 10 years; or

"(2) an annuity equal to the salary payable to a judge on a court identified in this subsection in regular active service, if before retirement or removal such judge served at least 10 years.'"; and

(8) in subsection (g)—

(A) by striking "Any retired judge" and inserting "COST OF LIVING ADJUSTMENT—A retired judge";

(B) by striking "under subsection (a)" and inserting "under subsection (a) or (b), with at least 15 years of judicial service (whether continuous or otherwise), or is entitled to receive an annuity under subsection (e)";

(C) by striking "him" and inserting "such judge"; and

(D) by striking "95" and inserting "100".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

Eliminating Inefficient and Unfair Annual Leave Treatment for Senior Court Executives, as Exacerbated by the COVID–19 National Emergency

Description: This proposal addresses a fundamental disparity, as exacerbated by the COVID–19 national emergency, between the treatment of certain Senior Court Unit Executives and their counterparts in the Executive and Legislative Branches with respect to their ability to carryover unused annual leave in excess of 240 hours. The proposal would allow certain Court Unit Executives to carryover up to 720 hours of annual leave like most comparable Senior Level Executives in the Executive and Legislative Branches. Currently, Court Unit Executives may only carryover 240 hours of annual leave.

Justification: In direct response to the COVID–19 pandemic, many judicial branch Senior Executives have been required to undertake extraordinary and extended efforts, without taking any annual leave, to ensure the Federal Judiciary continues to function and meet its constitutional mandates. Thus, it is highly unlikely that these employees will be able to take time off now or in the next several months, at a minimum. Based on preliminary information on both leave taken and future leave requests made by Senior Court executives for the period January 1–April 30 of this year, their current and anticipated leave usage is less than 50 percent of the leave taken and/or planned for the comparable period in both 2018 and 2019.

Application: Senior executives within the Federal Government are often unable to use all their accrued annual leave given their critical management responsibilities. For this reason, Senior Executives throughout the Executive and Legislative Branches have long been granted statutory authority to carry over up to 720 hours of accrued annual leave for use in future years. Unfortunately, similar authority has not been extended to Senior Executives in the Federal courts, the Federal Judicial Center, or the U.S. Sentencing Commission, even as these Senior Executives experience similar management demands and significant limitations on their ability to take leave. This proposal addresses this disparity by extending to specified Senior Court Executives the same authority to carryover up to 720 hours of annual leave as is currently authorized for Senior Executives throughout the rest of the Federal Government.

Legislation: This proposal principally consists of the text of H.R. 5735, the "Judicial Branch Senior Executive Leave Efficiency and Modernization Act of 2020," a bipartisan measure that would extend the authority to carryover up to 720 hours of annual leave to Circuit Executives, District court Executives, Clerks of Court, Chief Probation Officers, Chief Pretrial Services Officers, Senior Staff Attorneys, Chief Pre-argument Attorneys, Bankruptcy Administrators, and Circuit Librarians as well as a limited number of specific senior positions within the Federal Judicial Center and the Sentencing Commission. In addition, the proposal would apply to the Clerk of the Foreign Intelligence Surveillance Court, the Clerk of the Bankruptcy Appellate Panel, and the Clerk and Panel Executive of the Judicial Panel on Multidistrict Litigation. H.R. 5735 was introduced on January 30, 2020 by Representatives Jamie Raskin (MD) and Martha Roby (AL). Proposed bill language is attached.

SEC.__ CARRYOVER OF ANNUAL LEAVE FOR CERTAIN SENIOR POSITIONS IN THE JUDICIAL BRANCH OF GOVERNMENT

Paragraph (1) of section 6394(f) of title 5, United States Code, is amended—

(1) subparagraph (G), by striking "or" at the end;

(2) in the first subparagraph (H) (relating to Library of Congress positions), by striking the period at the end and inserting a semicolon;

(3) by redesignating the second subparagraph (H) (relating to positions in the United States Secret Service Uniformed Division) as subparagraph (I);

(4) in subparagraph (I), as redesignated by paragraph (3), by striking the period at the end and inserting "; or"; and

(5) by adding at the end the following:

"(J) any of the following possition within the Judicial Branch of Government:

"(i) Bankruptcy Administrator as described in section 302(d)(3)(I) of Public Law 99–554.

"(ii) Circuit Executive appointed under section 332(e) of title 28.

"(iii) Chief Circuit Librarian appointed under section 713(a) of title 28.

"(iv) Senior Staff Attorney appointed under section 715(a) of title 28.

"(v) Federal Public Defender appointed under section 3006A(g)(2)(A) of title 18.

"(vi) Chief Pretrial Services officer appointed under section 3152(c) of title 18.

"(vii) Chief Probation Officer appointed under section 3602(c) of title 18.

"(viii) Any Clerk appointed pursuant to section 156(b), 711(a), 751(a), 791(a), or 871 of title 28, but not including any Chief Deputy Clerk, Assistant Clerk, or Deputy Clerk appointed under such sections. "(ix) District court Executive.

"(x) Chief Circuit Mediator.

"(xi) The Director, the Deputy Director, the Director of the Education Division, the Director of the Research Division, and the Director of the Information Technology Office within the Federal Judicial Center.

"(xii) The Staff Director, the Deputy Staff Director, the General Counsel, the Director of Education and Sentencing Practices, the Director of Research and Data, the Director of Legislative and Public Affairs, and the Director of Administration within the United States Sentencing Commission.

(xiii) The Clerk of Court for the United States Foreign Intelligence Surveillance Court.

"(xiv) The Clerk of Court and Panel Executive for the United States Judicial Panel on Multidistrict Litigation.

"(xv) The Clerk of Court for the Bankruptcy Appellate Panel."

Amendments to Statutory Bankruptcy Code Deadlines

Description: Provide Bankruptcy Courts with authority to extend and toll statutory deadlines and time periods during the COVID–19 National Emergency, where there is currently no flexibility to do so in either the Bankruptcy Code or other Federal statutes.

Justification: Courts, Clerks, and parties may be unable to meet statutory deadlines or Act as required within those time periods due to emergency conditions as a result of the COVID–19 National Emergency declaration that materially affect the functioning of a particular bankruptcy court.

Application: Provide Bankruptcy Courts with authority to extend and toll statutory deadlines and time periods during the COVID–19 National Emergency, where there is currently no flexibility to do so in either the Bankruptcy Code or other Federal statutes, upon a finding that the emergency conditions due to the National Emergency declaration materially affect the functioning of a particular Bankruptcy Court. While some Bankruptcy Courts have entered general orders based on the COVID–19 crisis that extend certain statutory deadlines, many Bankruptcy Judges have stated that they feel uncomfortable with the scope of their apparent authority pursuant to general orders, and that a statutory fix is necessary. The Bankruptcy Code includes many deadlines for the court, the Clerk, and parties in bankruptcy cases, as well as time periods that expire by operation of law.

Proposed Legislative Language: See attached language.

SEC.__ EXTENSION OF TIME IN BANKRUPTCY CASES

(a) *Definition.* In this section, the term "covered emergency period" means the period beginning on the date on which the President declared a national emergency under the National Emergencies Act (50 U.S.C. 1601 *et seq.*) with respect to the Coronavirus Disease 2019 (COVID–19) and ending on the date that is 30 days after the date on which the national emergency declaration terminates.

(b) *Emergency Authority to Extend Deadlines and Time Periods.*

(1) When a provision of title 11 or chapter 6 of title 28, United States Code:

(A) Requires or allows a Court, Clerk, or any party in interest to take an action, to commence a proceeding, to file a motion, to file or send a document, or to hold a hearing by a specified deadline, or

(B) creates or sets forth a time period that ends or expires by operation of law; and

(2) the Chief Judge of a Bankruptcy Court (or, if the Chief Judge is unavailable, the most senior available active Bankruptcy Judge or the Chief Judge or Circuit Justice of the circuit that includes the Bankruptcy Court) finds that emergency conditions due to the National Emergency declared by the President of the United States under the National Emergencies Act (50 U.S.C. 1601 *et seq.*) with respect to the Coronavirus Disease 2019 (COVID–19) will materially affect the functioning of a particular Bankruptcy Court of the United States; then

(3) the Judge or Justice making the finding in subsection (b)(2) of this section may:

(A) Extend or toll such deadline or time period for all cases and proceedings in the district (or specific cases or proceedings), for a period of time not to exceed the duration of the emergency or major disaster declaration; or

(B) authorize any other judge in the district to extend or toll such deadline or time period in a specific case or proceeding, for a period of time not to exceed the duration of the emergency or major disaster declaration.

(c) *Deadlines and Time Periods Upon Termination of Emergency Authority.* Upon termination of the authority under subsection (e) of this section, any deadline or time period extended or tolled under subsection (b)(3) of this section shall be extended or tolled beyond the date on which such authority under subsection (e) terminates for an additional period that is the later of: (1) Thirty (30) days or (2) the period of time originally required, imposed, or allowed by title 11 or chapter 6 of title 28, or applicable non-bankruptcy law. On request of a party in interest, and for good cause shown after notice and a hearing, the court may shorten the length of an additional period under this subsection.

(d) *Exceptions to Emergency Authority.* On request of a party in interest, and for good cause shown after notice and a hearing, the Court may in a specific case or proceeding waive any extension or tolling of a deadline or time period under subsection (b) or (c) of this section.

(e) *Termination of Emergency Authority.* The authority and specific authorizations provided under subsection (b) of this section shall terminate on the earlier of—

(1) the last day of the covered emergency period; or

(2) the date on which the Chief Judge of the Bankruptcy Court (or, if the Chief Judge is unavailable, the most Senior available active Bankruptcy Judge or the Chief Judge or Circuit Justice of the Circuit that includes the Bankruptcy Court) finds that emergency conditions no longer materially affect the functioning of that particular Bankruptcy Court.

Authorize 60-Day Extension of Statutory Deadline for Dodd-Frank Report as a Result of COVID–19 National Emergency

Description: This proposal would extend for approximately 60 days the date on which this report is due from July 21, 2020 to September 18, 2020. Pursuant to 12 U.S.C. 5382(e)(l), the Director of the Administrative Office of the U.S. Courts (AO) must study and submit to Congress a report on the bankruptcy and orderly liquidation process for financial companies under the Bankruptcy Code. In recognition of the fact that the completion of this study—which requires comprehensive input from various parties in the bankruptcy community as well as from the Federal Judiciary—will likely be impeded by the COVID–19 pandemic.

Justification: To assist in the preparation of this study, the AO Director appointed a Dodd-Frank Study Working Group in 2019, whose Members are primarily Bankruptcy Judges sitting in New York, Delaware, Michigan, and Maryland, areas where the COVID–19 pandemic has been particularly devastating. In turn, the Task Force's ability to obtain the information from the bankruptcy community necessary to complete this study and prepare the report may be delayed. Accordingly, the proposal seeks an approximate 60-day extension of the statutory due date to ensure compliance.

Application: As amended, the change would provide an approximate 60-day extension to submit the report required by section 5382(e)(l), from July 21, 2020 to September 18, 2020.

Proposed Legislative Language:

SEC.__ EXTENSION OF STATUTORY DEADLINE FOR DODD–FRANK REPORT

> "The deadline set by 12 U.S.C. 5382(e)(2), of no later than July 21, 2020, for the Administrative Office of the United States Courts to submit to the Committee on Banking, Housing, and Urban Affairs and the Committee on the Judiciary of the Senate and the Committee on Financial Services and the Committee on the Judiciary of the House of Representatives a report summarizing the results of the studies conducted under 12 U.S.C. 5382(e)(l), is hereby extended to September 18, 2020."

Ensuring Adequate Bankruptcy Judicial Resources

Description: Convert fourteen temporary bankruptcy judgeships to permanent status.

Justification: The economic impact of the COVID–19 pandemic in some respects exceeds that of the 2008 Great Recession. More than one in ten Americans is unemployed and various industries have been particularly devastated, including the retail, travel, and automotive sectors, among others. The expected increase in bankruptcy reorganization cases, particularly in Delaware, will likely result in a significant workload increase as these cases often involve very complex and time-consuming matters that require extensive judicial resources. The districts included in this request demonstrated a need for conversion of these positions to permanent status prior to the COVID–19 pandemic. Filings across the nation, including in each of the districts included in this request, are expected to increase significantly during the recovery from COVID–19. These temporary judgeships have expired or are due to expire in 2022 and 2024.

Application: Convert the following 14 temporary bankruptcy judgeships to permanent status:

7—Delaware
2—Puerto Rico
2—Michigan Eastern
I—Maryland
1—Florida Middle
1—Florida Southern

Proposed Legislative Language: *See* Attached Language.

SEC.__ CONVERSION OF EXISTING TEMPORARY BANKRUPTCY JUDGESHIPS

(a) *District of Delaware*—
(1) The four (4) temporary bankruptcy judgeships authorized for the District of Delaware pursuant to section 1223(b)(l)(C) of Public Law 109–8 (2005), as extended by section 2(a)(l)(C) of Public Law 112–121 (2012) and further extended by section 1002(a)(l)(A) of Division B of Public Law 115–72 (2017) (28 U.S.C. 152 note), are converted to permanent bankruptcy judgeships under section 152(a)(2) of title 28, United States Code.
(2) The two (2) temporary bankruptcy judgeships authorized for the district of Delaware pursuant to section 1003(a)(1) of Division B of Public Law 115–72 (2017) (28 U.S.C. 152 note), are converted to permanent bankruptcy judgeships under section 152(a)(2) of title 28, United States Code.
(3) The temporary bankruptcy judgeship authorized for the District of Delaware pursuant to section 3(a)(3) of Public Law 102–361 (1992), as amended by section 307 of title III of Public Law 104–317 (1996), and as extended by section 1223(c)(I) of Public Law 109–8 (2005), further extended by section 2(b)(1) of Public Law 112–121 (2012), and further extended by section 1002(b)(l) of Division B of Public Law 115–72 (2017) (28 U.S.C. 152 note), is converted to a permanent bankruptcy judgeship under section I52(a)(2) of title 28, United States Code.
(b) *Middle District of Florida*—The temporary bankruptcy judgeship authorized for the middle district of Florida pursuant to section 1003(a)(2) of Division B of Public Law 115–72 (2017) (28 U.S.C. 152 note), is converted to a permanent bankruptcy judgeship under section 152(a)(2) of title 28, United States Code.
(c) *Southern District of Florida*—One (1) of the temporary bankruptcy judgeships authorized for the Southern District of Florida pursuant to section 1223(b)(l)(D) of Public Law 109–8 (2005), as extended by section 2(a)(l)(D) of Public Law 112–121 (2012) and further extended by section 1002(a)(l)(B) of Division B of Public Law 115–72 (2017) (28 U.S.C. 152 note), is converted to a permanent bankruptcy judgeship under section 152(a)(2) of title 28, United States Code.
(d) *District of Maryland*—One (1) of the temporary bankruptcy judgeships authorized for the district of Maryland pursuant to section 1223(b)(l)(F) of Public Law 109–8 (2005), as extended by section (a)(l)(F) of Public Law 112–121 (2012) (28 U.S.C. 152 note), is converted to a permanent bankruptcy judgeship under section 152(a)(2) of title 28, United States Code.
(e) *Eastern District of Michigan*—
(1) The temporary bankruptcy judgeship authorized for the Eastern District of Michigan pursuant to section 1223(b)(1)(G) of Public Law 109–8 (2005), as extended by section 2(a)(1)(G) of Public Law 112–121 (2012) and further extended by section 1002(a)(1)(D) of Division B of Public Law 115–72 (2017) (28 U.S.C. 152 note), is converted to a permanent bankruptcy judgeship under section 152(a)(2) of title 28, United States Code.
(2) The temporary bankruptcy judgeship authorized for the eastern district of Michigan pursuant to section 1003(a)(3) of Division B of Public Law 115–72 (2017)

(28 U.S.C. 152 note), is converted to a permanent bankruptcy judgeship under section 152(a)(2) of title 28, United States Code.

(f) *District of Puerto Rico*—

(1) The temporary bankruptcy judgeship authorized for the district of Puerto Rico pursuant to section 3(a)(7) of Public Law 102–361 (1992), as amended by section 307 of title III of Public Law 104–317 (1996), and as extended by section 1223(c)(l) of Public Law 109–8 (2005), further extended by section 2(b)(l) of Public Law 112–121 (2012),and further extended by section 1002(b)(1) of Division B of Public Law 115–72 (2017) (28 U.S.C. 152 note), is converted to a permanent bankruptcy judgeship under section 152(a)(2) of title 28, United States Code.

(2) The temporary bankruptcy judgeship authorized for the district of Puerto Rico pursuant to section 1223(b)(1)(P) of Public Law 109–8 (2005), as extended by section 2(a)(l)(M) of Public Law 112–121 (2012) and further extended by section 1002(a)(l)(G) of Division B of Public Law 115–72 (2017) (28 U.S.C. 152 note), is converted to a permanent bankruptcy judgeship under section 152(a)(2) of title 28, United States Code.

(g) *Technical Amendments*. Section 152(a)(2) of title 28, United States Code, is amended—

(1) in the item relating to the district of Delaware, by striking "1" and inserting "8";

(2) in the item relating to the middle district of Florida, by striking "8" and inserting "9";

(3) in the item relating to the southern district of Florida, by striking "5" and inserting "6";

(4) in the item relating to the district of Maryland, by striking "4" and inserting "5";

(5) in the item relating to the eastern district of Michigan, by striking "4" and inserting "6"; and

(6) in the item relating to the district of Puerto Rico, by striking "2" and inserting "4."

Temporary Suspension of the POWER Act Event Requirements

Description: Allow the suspension of the pro-bono legal education event requirements under the POWER Act for public safety reasons during the COVID–19 pandemic.

Justification: Judges and court personnel have canceled or postponed public events, including naturalization ceremonies, due to the COVID–19 pandemic. While public events emphasizing the importance of pro-bono services in domestic abuses cases are important, courts do not want to jeopardize public health by holding such events until health officials confirm that it is safe to do so.

Application: The POWER Act of 2018 requires courts to hold annual public events highlighting the importance of pro bono representation in domestic abuse cases. An annual report is due to Congress before the end of the calendar year. This proposal would allow the suspension of the requirement to hold public events under the POWER Act during the COVID–19 pandemic if the chief judge of a district makes a finding that to do so would jeopardize public health and safety.

Proposed Legislative Language:

SEC.__ TEMPORARY SUSPENSION OF THE POWER ACT EVENT REQUIREMENTS

Section 3 of the POWER Act, Public Law 115–237, is amended to add section (d) as follows:

(d) *Protecting Public Health and Safety*. Notwithstanding this section, the Chief Judge, or his or her designee, for each Judicial District is not required to conduct any public event promoting pro bono legal services during fiscal year 2020 if the chief judge notifies the Director of the Administrative Office of the United States Courts by September 30 that conducting a public event would jeopardize public health or safety or violate State or local orders restricting public gatherings. A Chief Judge who provides notice pursuant to this provision is not required to submit a report under section 4.

Add a Federal Defender as an *Ex-officio*, Non-voting Member of the U.S. Sentencing Commission

Description: Add a Federal Defender as an ex officio, nonvoting member of the U.S. Sentencing Commission.

Justification: During the pandemic, and in the aftermath of the pandemic, there will be a need to address what the "new normal" looks like in terms of appropriate sentencing policies and practices for the Federal courts and the Sentencing Commission will serve a unique role in addressing these issues. One of the Commission's principal purposes is to establish sentencing policies and practices for the Federal courts. Each year, the Commission reviews and refines the guidelines in light of congressional action, decisions from Courts of Appeals, sentencing-related research, and input from the criminal justice community. Given the legislative changes that have already taken place in response to the pandemic, and the likelihood of even more legislative changes, there will be a need to reevaluate existing sentencing policies and practices for the Federal courts.

Federal defenders are working on the front lines of the pandemic within the Federal court system and have unique experiences and perspectives to contribute to any potential reevaluation of existing sentencing policies and practices—including the use of conditions of confinement as a factor in determining a sentence—especially given the adversary nature of our criminal justice system. The need for a defender voice is great, especially given that the Attorney General and U.S. Parole Commission have existing ex-officio, nonvoting members. Adding a Defender as an ex-officio, nonvoting member will help to make policy discussions more robust and assure that the any policy changes following the COVID–19 pandemic are truly representative of all the stakeholders within the criminal justice system.

Application: Support the existing JCUS policy of adding a Defender as an ex-officio, nonvoting member of the U.S. Sentencing Commission.

Proposed Legislative Language:

SEC.__ FEDERAL DEFENDER REPRESENTATNE AS A NON–VOTING MEMBER OF THE U.S. SENTENCING COMMISSION.

(a) Subsection (a) of section 991 of title 28, United States Code, is amended by striking "one nonvoting member" at the end of the first sentence and inserting "two nonvoting Members.", and by inserting before the last sentence the following new sentence: "A Federal defender representative designated by the Judicial Conference of the United States shall be a nonvoting member of the Commission."

(b) The final sentence of section 235(b)(5) of title II, Public Law No. 98–473 as amended, is amended by striking the phrase "nine Members, including two ex-officio, nonvoting Members" and inserting "ten Members, including three nonvoting Members."

Mr. JOHNSON of Georgia. Thank you, Judge Campbell.

Chief Justice McCormack, you may begin.

TESTIMONY OF BRIDGET M. McCORMACK

Judge MCCORMACK. Thank you for the invitation to testify and for the opportunity to talk about how Michigan's judiciary has responded to the COVID–19 crisis.

Let me first put our workload in context. Michigan has 242 trial courts that adjudicate almost 3 million cases each year. Our courthouses are high density places, and also, unlike restaurants and salons, they are not places people generally have a choice about whether to visit.

We had to figure out how to maintain access to justice and also keep the public and our court employees safe.

Public trust is the only currency courts have. The rule of law is, after all, just a set of ideas that are only as good as our collective faith in them. With a great majority of litigants unrepresented, we

build that trust in our courtrooms by what we do and how we do it.

In three months, we have changed more than in the past three decades and now, seeing the benefits of innovation, we have a unique opportunity to create long-term and much-needed change for our justice system.

This pandemic was not the disruption that any of us wanted. It might be the disruption we needed to transform our judiciary into a more accessible, transparent, efficient, and customer-friendly branch of government.

We had a bit of a head start in Michigan. Before the pandemic, our administrative team at the Supreme Court had invested in outfitting every courtroom in the State with a video conferencing system and every judge with a Zoom license.

In mid-March, on a dime our team moved our entire workforce to remote work. From home offices, kitchen tables, and basement rec rooms, our management analysts and information technology teams have been working overtime to provide policy advice, practical guidelines, and technical support to transition a statewide judiciary to virtual courtrooms.

Michigan's court system is not like the Federal Judiciary with one funding source and one case management system. Our nonunified system of 242 courts has 160 different funding units, nearly two dozen case management systems, and 560 different elected judges.

Despite this byzantine system, since April 1st, judges have held well over 50,000 Zoom hearings and are approaching 350,000 hours of online proceedings. To maintain public access, these hearings are live streamed to YouTube.

For easy public access to them, we have built a virtual courtroom directory, which is a clickable map that allows people to watch any judge in the state.

This directory has been used more than 25,000 times in the past month alone. One hearing in particular, which had high public interest, had over 8,000 viewers at one point.

We also pioneered an online dispute resolution platform that allows residents to resolve disputes with or without a mediator on a phone, tablet, or laptop instead of going to court.

Our free My Resolve service will soon be available to every resident in the state. We also are pilot testing text messages to notify the public of court events and payments.

Dentists do it. Why not judges?

Our online legal resource center, Michigan Legal Help, is helping 10,000 visitors each day in addition to their regular toolkits. They have more than 30 COVID–19 related resources with the most popular providing information regarding unemployment insurance.

We have issued a series of emergency orders to guide and support the trial court's transformation in response to the crisis, removing barriers to remote proceedings and innovating new processes.

For one example, we transformed how courts will handle the eviction backlog proceedings once we expect once moratoria ends at the end of this month.

Our order protects public health, rationalizes case processing, and connects litigants to the resources available to resolve these cases, including $60 million from the CARES Act. Thank you very much.

Virtual courtrooms are making our judiciary more accessible to the public. Litigants can appear in courts—excuse me, lawyers can appear in courts in faraway parts of the State all in the same morning.

Litigants can appear in court without having to miss work. I talked to a judge recently who had a criminal defendant take a plea in a misdemeanor in a break room from his job in a different state. He was grateful that he did not have to miss a day of work and grateful to be able to take responsibility and get on with his life.

Litigants who have disabilities don't have to worry about figuring out how to make it to court. Transportation, parking, childcare, and job responsibilities are not barriers to remote proceeding participation. It turns out Zoom is less intimidating for parties who appear without lawyers. At least this is what we have learned so far.

There is something about the equalizing nature of all of the Zoom boxes being the same size that makes people feel more heard and more respected. Maybe it is just less intimidating.

Looking to the future, we cannot retool old ways to get people back into courthouses where access to justice is an ongoing problem.

Instead, we must focus our resources on bringing justice to people where they live and where they work. We must rebuild what we do from the ground up and create a 21st century justice system that is accessible, effective, transparent, efficient, and fair.

By embracing innovation, collaboration, agility, and user-centric design, we will do just that.

I look forward to answering any questions that you have and thank you again for the opportunity to address you.

[The statement of Judge McCormack follows:]

MICHIGAN SUPREME COURT

BRIDGET M. McCORMACK
CHIEF JUSTICE

MICHIGAN HALL OF JUSTICE
925 WEST OTTAWA STREET
LANSING, MICHIGAN 48915

Michigan Supreme Court Chief Justice Bridget M. McCormack
Testimony
U.S. House Committee on the Judiciary
Subcommittee on Courts, Intellectual Property, and the Internet
"Federal Courts during the Covid-19 Pandemic: Best Practices, Opportunities for Innovation, and Lessons for the Future"
June 25, 2020 - 9:00 a.m.

Thank you for the invitation to testify and for the opportunity to talk about how Michigan's judiciary has responded to the COVID-19 crisis.

Let me put our workload in context. Michigan has 242 trial courts throughout the state that adjudicate almost three million cases each year. That means, of course, that our courthouses are high density places, and also, unlike restaurants and salons, they are not places people generally have a choice about whether to visit. This means it was critical for us to figure out how to maintain access to justice and also keep the public and our court employees safe.

Public trust is the only currency courts have. The Rule of Law is, after all, just a set of ideas that are only as good as our collective faith in them. We work to build that trust in our courtrooms with our actions and with our words. That requires cooperation, coordination, and a commitment to treating everyone with dignity and respect. In this pandemic it has meant doing all of that while keeping the public safe and also keeping the doors of the justice system open to all.

I am very proud of how judges in Michigan and in other states have stepped up to the challenge, shared ideas, showed remarkable creativity, and shattered the notion that judges aren't flexible, patient, or open to change. Because in three months, we have changed more than in the past three decades, and now that we know innovation is possible, we have a unique opportunity to create long-term and much-needed change for our justice system.

Ultimately, this pandemic was not the disruption we wanted, but it is the disruption we needed to transform our judiciary into a more accessible, more transparent, more efficient, more customer-friendly branch of government.

With unique and acute pressure to protect public health, judicial leaders are finding creative ways to adapt to COVID-19 – with technology and with simplifying processes. For example, jurisdictions across the country are: expediting the process of a first hearing after an arrest; making determinations immediately on detention or release, so as not to unnecessarily detain a person; and using technology to move processes forward (e.g., holding prompt hearings online or over the phone, communicating decisions more efficiently by e-mail and resolving issues with quick information sharing in protected digital formats).

When we take the hundreds, even thousands, of emergency responses we are seeing in courts across the country and put them together, a new portrait of our justice system emerges with updated technology, modernized rules, and automated processes that enhance the delivery of justice.

For example, switching to more automated processes results in a more efficient and resilient system for both the public and courts. Automation will yield significant savings by reducing burdensome workloads while centralized processes will build efficiency. Once we all see that documents can be electronically filed and transmitted instead of slowly and physically moving through every hand in the judicial process, large-scale change will become not just possible but inevitable.

Consider what we have accomplished in Michigan. Even before the pandemic, our team had invested in outfitting every courtroom with a videoconferencing system and every judge with a Zoom license. Like everyone else, on a dime our team at the Michigan Supreme Court moved our entire workforce to remote work. From home offices, kitchen tables, and basement rec rooms, our management analysts and information technology team have been working overtime to provide policy advice, practical guidelines, and technical support to help Michigan's third branch of government seamlessly make the transition to statewide virtual courtrooms.

We quickly partnered with our County Clerks (who keep our records) and county commissions (who fund our local courts) in a Virtual Courtroom Task Force that provided rapid response best practices for remote operations. By working together with partners at all levels of government, Michigan has become a national model for virtual justice.

And Michigan's court system is not like the federal judiciary– with one funding source, one case management system, and one key administrative decision-maker in Washington DC. Far from it. Our non-unified system of 242 courts has 160 funding units, nearly two dozen case management systems, and some 560 elected judges. And 83 independently elected County Clerks who keep circuit court records but don't work for the court system.

But despite this Byzantine system, since April 1, judges and other court officers have held well over 50,000 Zoom meetings and are approaching 350,000 hours of hearings held online. And to maintain public access to court proceedings, virtual hearings conducted by Zoom are being livestreamed to YouTube. To make public access to those livestreams easy, our tech team set up a Virtual Courtroom Directory with a clickable map so that users can click on their county, find their judge and watch. This directory has been used more than 25,000 times in the past month alone.

For the first time, the Michigan Supreme Court held oral argument by Zoom as have our Court of Appeals and Court of Claims. These hearings have hundreds and even thousands of viewers.

While court proceedings have moved online, we have also pioneered an online dispute resolution platform that allows residents to resolve disputes with or without a mediator on a phone, tablet, or laptop instead of going to court. By the end of June, our groundbreaking, the MI-Resolve service will be available to every resident and at no cost. You can see your doctor online, you can order groceries online, and now, in Michigan, you can resolve disputes online without hiring a lawyer, without the burden of taking off work or arranging child care but with a greater likelihood of achieving a satisfactory outcome.

Before the pandemic our online legal resource center, Michigan Legal Help, was already helping more than 1.5 million visitors each year. Now, the service is helping 10,000 visitors each day and in addition to their regular tool kits, they have more than 30 COVID-19 related resources with the most popular providing information regarding unemployment insurance. And their statewide network of walk-in legal help centers provide access to computers, the internet, and "navigators" to help guide users in finding the right resources on issues ranging from divorce to landlord/tenant issues.

We are pilot testing the use of text messages to notify the public of hearing or other court events. Dentists and cable guys do it, why not courts?

To support these policy initiatives the Court has issued a series of emergency administrative orders to remove barriers to remote proceedings and protect public health during the pandemic. We have unanimously approved 18 administrative orders, which extended deadlines, expanded authority for remote work by judicial officers, delayed jury trials, extended PPOs, and required courts to follow specific guidelines in order to beginning the return to full capacity.

In one of these orders we dramatically transformed how courts will handle eviction proceedings as moratoria end. Since most all such actions were stayed during the pandemic, our court system is expecting a flood of more than 75,000 filings when various limits on evictions are lifted. Our order focuses on making sure that the health of all participants is protected, cases are filed and disposed of in a reasonable period of time, and defendants are made aware of their right to legal counsel and the availability of and connection to resources to help pay rent, including $60 million from the CARES Act approved by Congress.

We have assembled a group to study lessons learned during the crisis but anecdotally, I have heard example after example of how virtual courtrooms have made our judiciary more accessible to the public. Lawyers can appear in courts in faraway parts of the state all in the same morning. Litigants can appear in court while they are on break from their job, never missing a day of work. Virtual proceedings are much easier for individuals with disabilities because they don't have to travel.

For all litigants, transportation, parking, child care and job responsibilities are not a barrier to participation in an online proceeding. And Zoom is less intimidating for parties who appear without a lawyer and represent themselves. There is something equalizing and less intimidating about the screens in Zoom all being the same size.

These innovations, required by our public health crisis, are making our entire judiciary more accessible, more efficient, and more transparent. Looking to the future, we cannot retool old ways to get people back into courthouses where all the old problems of lack of access persist. Instead, we must focus resources on bringing justice to people where they live and work. We have a chance to rebuild what we do from the ground up and create a 21st century justice system that is accessible, effective, transparent, efficient, and fair. By embracing innovation, collaboration, agility and user-centric design, we will do just that.

Mr. JOHNSON of Georgia. Thank you, Chief Justice McCormack. Next, Judge Fogel. You may begin.

TESTIMONY OF JEREMY FOGEL

Judge FOGEL. Thank you, Mr. Chair.

Mr. Chair, Ranking Member Roby, and Members of the subcommittee, I am honored to be here with you, and I am going to summarize my statement in three respects.

This crisis that we are all dealing with has been devastating to so many people in so many ways, and I think it is also important to recognize that it presents an opportunity.

We have been forced—the judiciary, along with many other institutions, has been forced to do things differently. It has been forced to do things that it would not have contemplated had this crisis not occurred.

The result of it having done it is that there is an enormous amount of data. The experience that the Federal courts have already had, the experience that the State courts have had, all of that has given us information about how these processes actually work, what is beneficial about them, what isn't beneficial about them, where the technical glitches are, and I think it would be a shame if we did not take advantage of that.

One of the things I am going to suggest that the Subcommittee consider is formalizing the idea of a study of this data so that we can look at it in a thoughtful and critical way.

Judge Campbell is an old friend and I have immense respect for the processes of the—of the Rules Committee. So I think it normal times it produces very well-considered and thoughtful work that avoids unintended consequences.

It also reflects a certain small C conservative nature that the Federal Judiciary has, and we are faced with a situation now where that typical approach is not quite as feasible as it normally is.

So, we have to figure out a way to proceed with care and thoughtfulness and deliberation but at the same time recognize that we are working with a very much shortened time frame because of the conditions that we are in and the backlog that is continuing to build up.

I think I want to pick up on a point that Ranking Member Roby made at the beginning. There are several different dimensions of this problem. I describe them in a meeting we had yesterday.

There are vectors. There are forces that are at work, and one of them, certainly, is access. It is the idea that the public has a right to see what is going on and that people have to have the ability to get into court. So, the use of virtual technologies to increase access or provide access is an absolutely critical value, a critical principle.

Equally important is efficiency. We have to get the work done, and Chair Johnson referred to that in his opening remarks that the work has to be done in a timely way so that people don't wait forever for justice that can't wait.

So, the value of efficiency is very important.

Finally, and I think this goes to Ranking Member Roby's point, there is this whole idea of the quality, the value, the core values of the judiciary.

What really matters people need to be heard. People need to be seen. People need to be respected. There are socioeconomic differences in terms of who can get virtual access to what kinds of proceedings and it is something that the courts need to think about.

How do you do this in a rural area? How do you do this in a place where people don't have internet access or it is not readily available to them? What kinds of proceedings just really aren't that amenable to virtual justice?

You are sentencing someone to prison for 20 years. Do you really want to do it that way? How do you do a constitutional jury trial in a criminal case?

All of this, to me, is imperative that we study these issues. We think about them with care and we not waste the opportunity that the current crisis has presented to us.

So, I think if I were to have a wish list, one would be that the Subcommittee recommend and authorize that type of study is a far-reaching study of the many aspects of this problem, and secondly, that it do—it needs to, and this echoes something Judge Campbell said, provide the legislative authorization to continue experimentation, to suspend rules that need to be suspended or give the judiciary these leeway to continue the experimenting that it is doing.

I agree with Chief Justice McCormack that I don't think we are ever going back to where we were before. I think that is—maybe some people would like that to happen.

I think that is unlikely to happen, and we have to anticipate a new normal and we have to build that new normal with the same kind of care and deliberation that we built the old normal.

Thank you very much. It has been an honor to be with you, and I look forward to answering whatever questions you have of me.

[The statement of Judge Fogel follows:]

EXPANDING ELECTRONIC ACCESS TO THE FEDERAL COURTS: THE UNEXPECTED OPPORTUNITY

PRESENTED BY THE COVID–19 PANDEMIC

Hon. Jeremy Fogel (ret.)
Executive Director, Berkeley Judicial Institute,
Berkeley Law School

Chair Johnson and Ranking Member Roby:

My name is Jeremy Fogel. Since September 2018, I have served as the Executive Director of the Berkeley Judicial Institute (BJI), a center at Berkeley Law School whose mission is to build bridges between judges and academics and to promote an ethical, resilient and independent judiciary. Before that, I was a Judge of the California State and Federal trial courts for thirty-seven years. From 2011 to 2018, I was the Director of the Federal Judicial Center (FJC) here in Washington. The FJC is responsible for both professional education and applied research on behalf of the Federal Judiciary. Its governing board is chaired by the Chief Justice of the United States.

The COVID–19 pandemic has had a dramatic disruptive effect on our Federal and State Judicial systems. Courthouses have been closed; legal proceedings have been conducted with minimal staffing, held remotely, or postponed for months; and court personnel have scrambled to work effectively from home.

The Federal courts, which long have been resistant to electronic access and virtual proceedings, have been forced to implement emergency measures to facilitate them. The Federal Judiciary deserves much credit for its ongoing efforts to deal with this unprecedented situation. It has recognized the severity of the challenge and has faced it with its customary competence and care. It would be disappointing if the measures it has taken simply were abandoned wholesale when the current emergency has passed. While it goes without saying that their primary concern must the health and safety of their users and personnel, the courts also have an unexpected and unprecedented opportunity to study the costs and benefits of new ways of doing their work.

History teaches us that a crisis often can be the catalyst of innovations that endure long after the crisis itself has ended. The emergency programs that were implemented to mitigate the worst effects of the Great Depression permanently transformed our understanding of the role of government, and in so doing they left a legacy ranging from rural electrification to economic guardrails to Social Security. It is doubtful that any of these changes would have occurred, at least when and how they did, had the disruption of our nation's economy been less severe.

Even in this politically polarized age, our Federal courts are widely respected for their independence, the professionalism of their judges and staff, and the seriousness with which they approach their work. Social and partisan controversies aside, in my experience the great majority of Federal Judges do their best to decide the great majority of cases on the basis of competent evidence and applicable legal principles. This is not true in much of the rest of the world.

The Federal courts also are a "small c" conservative institution. The same seriousness that inspires Federal Judges to produce high-quality work also leads them to be reflexively cautious about structural change. Always concerned (and properly so) about the unintended consequences of different ways of doing things, the Federal Judiciary tends to consider new ideas infrequently, at great length and in granular detail. Even the pilot projects it occasionally undertakes to study potential innovations tend to be carefully limited in scope and to produce modest, incremental results.

Such caution can have great value in normal times, but a disruption on the scale of the COVID–19 pandemic changes everything. The public access to court proceedings guaranteed by the Constitution has been impossible, at least in a physical sense, in the context of shelter-in-place orders and the potential risks to court users and staff. Jury trials and in-person oral arguments have been impracticable, movement of in-custody criminal defendants is fraught with logistical problems, and public visits to courtrooms and court clerk's offices have not been a realistic option. Even the United States Supreme Court, which long has refused to permit any real-time transmission of its proceedings, now has conducted telephonic hearings and has provided a live feed of those hearings to the news media and thus to the public. Most would agree that the importance of the remaining cases on the Court's docket made such a step necessary. While some of the dynamics of oral argument have changed, the Court's forced experiment has not had the negative impact on the dignity of the Court's proceedings that some had feared.

On March 31, the Administrative Office of the United States Courts (AO) issued detailed guidance enabling circuit, district and bankruptcy courts to use video and audio technology to provide court users and the public with remote access in non-criminal matters. On April 2, the AO published additional guidance permitting electronic access to most criminal proceedings notwithstanding Federal Rule of Criminal Procedure 53, which prohibits such access. Both directives stressed that these departures from normal practice are intended to be temporary and will terminate once the current national emergency has passed. This limitation was understandable, as only limited authority to bypass existing rules was granted by Congress under the CARES Act.

Unfortunately, while courts and other services have begun a slow process of reopening in some parts of the country, it likely will be many more months before full court operations can resume safely nationwide. In the meantime, the expanded implementation of electronic access to court operations already has produced—and will continue to produce—a bounty of illuminating data concerning each of the principal areas of concern that have been cited in the past to support judicial reservations about greater use of virtual proceedings.

One of those areas of concern is privacy. Understandably, courts are reluctant to see images of witnesses, parties, lawyers, jurors, and judges appearing widely on the Internet or on social media. The exigencies of the present situation have required courts to think about practical ways of balancing these privacy interests with the transparency provided by virtual public access. The AO's April 2 guidance for criminal matters touched on this issue by making clear that while certain proceedings

may be seen or heard over dedicated electronic media, full Internet streaming is not authorized. Interestingly, at least some of the virtual platforms with which courts have experimented since then actually can be configured to ensure more privacy than is possible in many in-person proceedings.

A related area of concern is security. Even in normal times, when physical public access to courthouses essentially is unrestricted, courts still routinely use metal detectors to screen visitors, and the identity of certain witnesses—usually cooperating witnesses in criminal cases—can be shielded from public disclosure after appropriate findings by a judge. The experience of the current emergency already has helped courts improve their ability to secure their electronic portals and to prevent harmful or unauthorized access to sensitive proceedings or information.

Public access to the courts is not the only Constitutional right implicated by the greater use of virtual technologies. At the outset of the pandemic, California's State courts struggled with the question of whether a defendant may be arraigned remotely on a criminal charge without waiving his or her right to be personally present; a majority of the state's Judicial Council concluded that even under the present exigent circumstances, a defendant may insist on an in-person proceeding. Although no published decision has addressed the issue, it is extremely doubtful that a remotely-conducted criminal jury trial would satisfy the Constitution's right of confrontation, at least without the informed consent of everyone involved. That said, the current situation has given the Federal courts an opportunity to think broadly and concretely about the Constitutional requirements and limitations relevant to remote proceedings.

Federal judges also worry about impact of virtual court operations on the nature and quality of their own day-to-day work. They have expressed concern that lawyers who appear remotely will be less candid than they would be in person, and that judges' ability to assess parties' and lawyers' non-verbal cues such as facial expressions and body language will be diminished. Perhaps influenced by their experience with other proceedings that occur away from the courthouse, such as depositions in civil cases, they fear that lawyers will have less incentive to cooperate and Act professionally when not in the immediate presence of the judge and each other. For appellate judges, who sit on panels with other judges, there is trepidation about the impact of virtual hearings on collaboration and collegiality. The restrictions resulting from the COVID–19 pandemic have created a situation in which the validity of these apprehensions is being tested. So far, while trial court judges report that some proceedings are more amenable to virtual platforms than others, most appellate judges seem reasonably comfortable with working and collaborating remotely. Some have suggested that continued use of virtual hearings would make them more efficient by reducing travel between places of holding court.

The importance of the data that has been and will continue to be generated with respect to these questions is not academic. For at least a decade, the Federal courts have recognized that the costs associated with civil litigation are unacceptably high and have skewed access to justice in favor of well-funded parties. Thoughtfully designed and carefully implemented procedures for virtual proceedings (most likely other than jury trials) could reduce that cost substantially by limiting the time lawyers and parties spend attending and traveling to and from in-person proceedings or waiting for a judge to get through a crowded docket. The experience of the State courts suggests strongly that parties in cases with smaller amounts of money at issue actually may prefer having the ability to appear virtually. On the criminal side, recognizing that many defendants will choose to waive their right to be physically present at hearings that affect neither their custodial status nor the disposition of their case, virtual proceedings could result in substantial savings in inmate transportation costs and a reduced burden on the U.S. Marshals and other law enforcement officers who are responsible for the security of in-person hearings.

There also is the overarching issue of public trust and confidence in the courts. While the Federal courts consistently do better than the other branches of government in public opinion polls, a closer look at the polling data shows that confidence in the courts has declined in recent years and that relatively few people outside the legal profession understand what judges actually do. There is a widespread (and mistaken) perception that judges simply decide every case on the basis of their political inclinations. There also are significant differences in the level of confidence among different socio-economic groups.

An obvious antidote to such negativity is greater transparency. As noted earlier, the Federal courts are a strong, value-centered institution with a good story to tell. Virtual technologies have potential not only for court users but also in the critically important role of public education. While it certainly may make more sense to put some types of proceedings on line than others, treating courthouse walls as an outer

boundary for obtaining real-time information is increasingly hard to justify in this digital age.

Finally, despite this generally positive view of the potential benefits of greater use of virtual proceedings in the Federal courts, I would be remiss if I did not acknowledge the fundamental importance of procedural justice. It is important that litigants not only be heard but also that to the extent possible they feel heard, that they were listened to well and treated with respect. As we are learning from the experience of the State courts, litigants in some types of proceedings actually have a more positive experience with virtual proceedings than they have had previously with in-person court appearances. There also are indications that a person's physical presence at some types of proceedings—for example, bail and detention hearings—clearly works to their benefit. Some litigants lack the resources to take full dvantage of virtual platforms. There are some matters, such as sentencing hearings in criminal cases, in which, quite apart from Constitutional considerations, the experience of in-person communication adds an important sense of immediacy and gravity to the event.

The leadership of the Federal courts should take full advantage of the opportunity that its response to the COVID–19 pandemic has presented. It should conduct a thorough review of its experience over the course of the present emergency and Act boldly, creatively and thoughtfully on the basis of what it learns. I encourage your Subcommittee to explore legislation that will encourage and facilitate that effort, including authorization of relevant research and extension of the courts' authority to conduct and provide public access to virtual proceedings.

Thank you very much for inviting me to be here today.

Mr. JOHNSON of Georgia. Thank you.

Last but not least, Ms. Wasser. Please begin.

TESTIMONY OF MELISSA WASSER

Ms. WASSER. Thank you, Chair.

Thank you, Chair Johnson, Ranking Member Roby, and Members of the Subcommittee.

Good morning. My name is Melissa Wasser and I am a policy analyst with the Reporters Committee for Freedom of the Press, a nonprofit organization that has been defending the First amendment rights of journalists since 1970.

Again, thank you for giving me the opportunity to testify here today and thank you for your leadership on increasing court access throughout the Federal Judiciary.

Today in my statement I will recommend that Congress provide support and guidance to broaden remote access, both in audio and video, to Federal court proceedings and ensure that these advances in transparency survive both in future crises and become a fixture of public access to judicial proceedings generally.

The Reporters Committee has long championed the public's constitutional and common law rights of access to judicial records and proceedings, and we have been monitoring the response of Federal courts around the country to the COVID–19 pandemic.

As mentioned by the other witnesses, this pandemic has changed the daily operations of Federal courts across the country as they strive to protect the health and safety of court employees, litigants, attorneys, Members of the Judiciary, and the public.

I would note that press and public access to judicial proceedings and court records is no less important during times of crisis.

In response to the ongoing pandemic, many judicial proceedings typically held in open court have been held remotely. To facilitate public access to these proceedings, the Judicial Conference temporarily approved the use of teleconferencing to provide the press and public audio access to civil proceedings.

Courts and judges across the country have relied on this guidance to provide remote access for the press and public but have implemented the policy in different ways.

The United States Supreme Court also approved public access, hearing 10 oral arguments by telephone in May 2020 for the first time in the court's history.

The public has demonstrated an abiding interest in these proceedings. Within a few hours of the Supreme Court hearing oral argument in two cases involving the President's tax returns on May 12th, SCOTUS Blog reported that approximately 500,000 people tuned into the live stream oral arguments.

As of yesterday, an estimated 1.9 million people have listened to at least one of the Supreme Court's recorded oral arguments online, compared to the 50 Members of the public who normally make it into the courtroom.

Similarly, many of the videos posted by the U.S. Court of Appeals for the Ninth Circuit, which regularly live stream video of its oral arguments even before the pandemic, have hundreds of viewers, enough to fill several courtrooms.

The Reporters Committee urges Congress to consider legislation that would permit courts to permanently remove barriers for the broadcast or streaming of proceedings in the Federal Judiciary.

Congress should enact legislation to ensure that all Federal trial and Appellate courts have sufficient funding to continue providing live audio and video access to all public proceedings beyond the pandemic, and that courts are able to enact revisions to any contrary policy including the Judicial Conference's cameras in the courtroom policy.

This would include passing H.R. 6017, the 21st Century Courts Act, which would require live audio and an online archive of Supreme Court oral arguments and opinion readings along with all Federal Appellate proceedings; H.R. 5645, the Eyes on the Courts Act of 2020, requiring cameras in all Supreme Court and Federal Appellate court proceedings; and last but not least, H.R. 6642, the Court Access Amid the Pandemic Act, which would require any oral arguments in Circuit courts and District courts be made public in real time via video teleconferencing and telephone conferencing, and be permanently archived on the internet.

While Supreme Court justices have expressed concern in the past that live audio and video could potentially hurt the sanctity and tradition of the court and that the Supreme Court is unique and need not follow trends with respect to public access in the lower courts, the recent demand for streaming of the court's oral arguments last month clearly shows that the American public wants to know about its tremendously important work.

According to recently released polls, 83 percent of Americans supported regular live stream audio at the Supreme Court with nearly 70 percent calling for all courts to allow cameras in the courtroom.

Additionally, public notice of when remote proceedings will take place and how Members of the public can observe them is crucial. We have noticed that courts have been inconsistent in this respect during the COVID–19 pandemic.

Uniformity in the matter in which courts provide such public notice would help remove an obstacle for Members of the press and public exercising their rights of access.

So, in sum, the Reporters Committee believes that increased public access to the nation's Federal courts including the Supreme Court is, on balance, an important step to promote accountability, transparency, efficiency, and an informed electorate.

I would like to thank the Subcommittee for including me in this very important conversation surrounding court access and I look forward to any—answering any questions that you may have.

[The statement of Ms. Wasser follows:]

Testimony of Melissa Wasser, Policy Analyst, The Reporters Committee for Freedom of the Press

I am Melissa Wasser, a policy analyst at the Reporters Committee for Freedom of the Press (the "Reporters Committee"), a nonprofit organization that has been defending the First amendment rights of journalists since 1970. Thank you for giving me the opportunity to testify. My CV is attached. I have a brief statement for the record, which I can supplement after the hearing if the Committee seeks additional information.

I. FEDERAL COURTS DURING THE COVID–19 PANDEMIC

The Reporters Committee has long championed the public's constitutional and common law rights of access to Judicial records and proceedings, and has been monitoring the response of State and Federal courts around the country to the current public health crisis.[1] The pandemic has changed the daily operations of Federal courts across the country as they strive to protect the health and safety of court employees, litigants, attorneys, Members of the Judiciary, and the public. Like all public institutions, the Federal Judiciary took proactive steps to fight the spread of COVID–19, including limiting public access to court proceedings.

In doing so, Federal courts also took laudable steps to facilitate remote press and public access to judicial proceedings. Press and public access to Judicial Proceedings and Court records is no less important during times of crisis. Indeed, at such times, visibility into the operations of the government, including the judiciary, is all the more crucial.

The Reporters Committee urges the Federal Judiciary to continue to ensure that the public's ability to meaningfully observe Judicial Proceedings is not curtailed due to resbictions on physical access to courthouses both now and in future times of crisis. The Reporters Committee further urges courts and Congress to preserve these advances toward greater transparency once the current crisis is over.

While our advocacy extends to both civil and criminal proceedings, our comments below focus on civil matters given the subject of this hearing.

By attending judicial proceedings, the preplays a key role in ensuring "an informed and enlightened public opinion."[2] The public relies on the press to observe at first hand the operations of . . . government" and report on them.[3] An informed public is an essential component of a healthy democracy.[4]

In response to the ongoing COVID–19 pandemic, many judicial proceedings typically held in open court have been held remotely—either telephonically or by video conference. To facilitate public access to such proceedings, the Judicial Conference temporarily approved the use of teleconferencing to provide the press and public audio access to civil proceedings.[5]

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[1] FP State and Federal court responses to COVID–19 from the Reporters Committee for freedom of the press (*www.rcfp.org/covidl9*), Reporters Committee for Freedom of the Press, *http://bit1.y/3dNpQSJO* (collecting standing orders from all Federal courts (last visited June 23, 2020).

[2] *Grosjean* v. *Am. Press Co.*, 297 U.S. 233, 247 (1936).

[3] *See Cox Broad. Corp.* v. *Cohn*, 420 U.S. 469, 491 (1975).

[4] *See Minneapolis Star & Tribune Co.* v. *Minn. Comm'r of Revenue,* 460 U.S. 575, 585 (1983).

[5] *See Judiciary Authorizes Video/Audio Access During COVID–19 Pandemic*, United States Courts (Mar. 31, 2020), *http://penna.cc/7HAG-L2FB*; *Judiciary Provides Public, Media Access to Electronic Court Proceedings*, United States Courts (Apr. 3, 2020), *https://pem1a.cc/VM68-R6N7.*

Courts and judges across the country relied on the Judicial Conference's guidance to provide remote access for the press and public but have implemented the policy in different ways. The United States Supreme Court also approved public access issuing a pres release on April 13 stating that it would bear 10 oral argmnents by telephone in May 2020, for the first time in the court's history. It explained that "[t]he Court anticipates providing a live audio feed of these arguments to news media"[6] and media feeds were made available to the public.

II. REMOTE ACCESS DURING COVID–19 HAS DEMONSTRATED THE INTENSE PUBLIC INTEREST IN THE OPERATIONS OF THE FEDERAL COURTS GENERALLY

As noted, courts around the country have provided virtual access to proceedings during the COVID–19 pandemic in different ways.

Several judges have affirmatively provided public access to proceedings in which the public interest is strong. For example, Judge Preska of the U.S. District court for the Southern District of New York directed the parties in a civil matter to file the dial-in information for a telephonic hearing on the public docket.[7] Similarly, Judge Boasberg of the U.S. District court for the District of Columbia granted requests by reporters to listen to a telephonic hearing related to a coronavirus lawsuit and provided members of the news media with dial-in access.[8]

A number of courts have taken a universal approach to providing remote access for the news media and public. As Chief Judge Howell of the U.S. District court for the District of Columbia stated, her court "is committed to providing the public and the media with access to public court proceedings, including those held by video or teleconference."[9] Many other District courts have made similar commitments, implementing policies requiring that all remote proceedings be made available to the public.[10]

The public has demonstrated an abiding interest in these proceedings. For instance, SCOTUSblog reported that within a few hours of the argument session, approximately 500,000 people tuned into livestreamed oral arguments before the Supreme Court on May 12, 2020, in *Trump* v. *Mazars USA LLP*, No. 19–715, and *Trump* v. *Vance*, No. 19–635.[11] As of June 23, 2020, an estimated 1.9 million people have listened to at least one of the Supreme Court's recorded oral arguments online, compared to the usual 50 Members of the public who are able to physically attend an oral argument in person.[12]

Similarly, many of the videos posted by the U.S. Court of Appeals for the Ninth Circuit, which regularly livestreamed video of its oral arguments even before the pandemic, have hundreds of viewers, enough to fill several courtrooms.[13] Guidance and support from Congress would help broaden remote access to proceedings at all levels of the Federal Judiciary, and ensure that these advances in transparency survive both in future crises and become a fixture of public access to judicial proceedings generally.

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[6] *See, e.g.,* Press Release, Supreme Court of the United States, May Teleconference Oral Arguments (Apr. 13, 2020), *http://perma.cc/CB72-ESH9*.

[7] *See Giuffre* v. *Maxwell*, 1:15–cv–7433–LAP, ECF No. 1039 (S.D.N.Y. Mar. 30, 2020); ECF No. 1041 (S.D.N.Y. Mar. 30, 2020 listing dial-in information).

[8] *See* Ann E. Marimow, *Federal Courts Shuttered by Coronavirus Can Hold Hearings by Video and Teleconference in Criminal Cases*, Wash. Post (Mar. 31, 2020, 5:59 p.m.), *https://wapo.st/2Xlrg6w*.

[9] *See id.*

[10] *See, e.g., MGO 20–13 Suspension of Court Proceedings Effective May 1, 2020,* U.S. District court District of Alaska (Apr. 21, 2020), *https://perma.cc/YM2L-NO98* (providing that a toll-free conference line will be publicly available for civil and criminal proceedings); *In re: Public and Media Access to Judicial Proceedings During COVID–19 Pandemic*, U.S. District court, District of Columbia (Apr. 8, 2020), *https://penna.cc/F99Q-5RTA* (providing that video and audio access to judicial proceedings will be available for the public); *Notice Regarding Public Access to Telephonic Hearings During COVID–19 Outbreak*, U.S. District court, Eastern District of Wisconsin, *https://peerma.cc/98CR-TN7M* (last visited June 23, 2020).

[11] Amy Howe, *Courtroom Access: Where Do We Go From Here?*, SCOTUSblog (May 13, 2020, 12:37 p.m.), *https://pema.cc/THX9F8XJ*.

[12] *SCOTUS Oral Argument Numbers*, Reporters Committee for Freedom of the Press, *https://bit.ly/2TUl5m* (last visited June 23, 2020).

[13] *See United States Court of Appeals for the Ninth Circuit*, YouTube, *https://bit.ly/2TgQf2Y* (last visited May 17, 2020).

III. RECOMMENDATIONS AND BEST PRACTICES

A. Provide Support and Guidance To Allow Courts at All Levels To Broadcast or Stream Live Proceedings in Future Crises and During Normal Operation

The Reporters Committee urges Congress to consider legislation that would permit the courts to permanently remove barriers for the broadcast or streaming of proceedings in the Federal Judiciary. Congress should enact legislation to ensure that all Federal trial and Appellate courts have sufficient funding to continue providing live audio and video access to all public proceedings and that courts are able to enact revisions to any contrary policy, including the Judicial Conference's "Cameras in the Courtroom" policy. [14]

These policies have served as a barrier to public access in the past. For instance, at least one Federal appellate court gave the Judicial Conference's policy against broadcasting civil proceedings "substantial weight" in holding that local rules did not permit a Federal District court judge to allow broadcasting of proceedings in a specific civil case. [15]

Congress could provide guidance and support for courts to allow the broadcast or streaming of judicial proceedings. That guidance and support would empower the Judicial Conference to remove this hurdle, allowing District courts to quickly adapt to any future emergency necessitating remote proceedings, to experiment with finding the best technological means for broadcasting or streaming proceedings, and to simultaneously realize many of the benefits to public access that have been highlighted by the Judicial Conference's recent temporary approval in light of COVID–19.

The Judicial Conference implemented the "Cameras in Courtroom" policy in 2016, after the conclusion of a four-year pilot program that introduced cameras into 14 District courtrooms from 2011–2015. [16] The Federal Judicial Center's report on that pilot program found that more than 70 percent of participating judges and attorneys favored recording court proceedings. [17] By the end of the pilot program, more judges were in support of cameras in the courtroom than against, [18] and most judges and attorneys said they would be in favor of permitting video recordings of civil proceedings. [19]

Further, many judges and attorneys who participated in the pilot program also expressed surprise that the cameras were as unobtrusive as they were. [20] Now that many more judges have conducted remote and recorded proceedings as a result of the COVID–19 pandemic, Congress should ensure that additional funding is available for courtroom technology, specifically for live video and audio access of court proceedings at the Appellate and trial level.

Moreover, allowing courts to permanently broadcast and stream judicial proceedings will prepare courts to easily transition to operating remotely in future national crises. Before the pandemic several Federal appellate courts regularly provided live audio or video of oral arguments and archived those recordings. [21] In response to the COVID–19 pandemic, more Federal Appellate courts, including the Supreme Court have turned to live audio of oral arguments. [22]

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[14] *See* History of Cameras in Courts, United States Courts, *https://perma.cc/HM4A-35F9* (last visited June 23, 2020). In some cases, District courts incorporate Judicial Conference policies into local rules or general orders. *See* General Order 58, United States District court, Northern District of California (Sept. 1.5, 2015), *http://perma.cc/ET6L-JWRV*. Even if they are not directlly incorporated, the Judicial Conference' policy conclusions are at the ve1y least entitled to respectful consideration." *See Hollingsworth* v. *Peny*, 558 U.S. 183, 193 (2010) (citation omitted).

[15] *See In re Sony BMG Music Entm't*, 564 F.3d l, 6–7 (1st Cir. 2009) (noting that Judicial Conference policies are "not lightly to be discounted, disregarded, or dismissed").

[16] *See History of Cameras in Courts*, United States Courts, *https://perma.cc/HM4A-35F9* (last visited June 23, 2020).

[17] *See* Molly Treadway Johnson *et al.*, Fed. Judicial Ctr., Video Recording Courtroom Proceedings in United States District courts: Report on a Pilot Project 33–34, 55 (2015).

[18] *Id.* at 33–34.

[19] *Id.* at 36, 44–45.

[20] *Id.* at 40–41.

[21] *See* News Release, United States Court of Appeals for the District of Columbia Circuit, Court to Provide Live Audio Streaming of All Arguments at Start of 2018–2019 Term (May 23, 20I8), *https://perma.cc/Y9W9-G65P*; Audio and Video, United States Court of Appeals for the Ninth Circuit, *https://www.ca9.uscorts.gov/media/* (last visited June 23, 2020).

[22] *See, e.g., Press Release, Supreme Court of the United States, May Teleconference Oral Arguments (Apr.13, 2020), https://perma.cc/CB72-ESH9*: Advisory, United States Court of Appeals

Continued

For arguments in which counsel for the parties or the court themselves participated remotely during the COVID–19 pandemic, those appellate courts that regularly livestreamed their oral arguments—such as the Ninth and District of Columbia Circuits—were able to quickly adapt to remote, livestreamed proceedings. A permanent policy permitting the broadcast or streaming of proceedings at the District court level would be similarly beneficial.

B. Ensure Uniform and Effective Public Notice of Remote Court Prnceedings During COVID–19 and Beyond

To ensure meaningful public access, public notice of when remote proceedings will take place and how members of the public can observe them is crucial. Courts have been inconsistent in this respect during the COVID–19 pandemic. Many District court policies now make clear that presiding judges should provide a publicly accessible link to remote hearings and other proceedings on the docket for the relevant matter, or upon request. Other courts have posted links to remote proceedings on their websites—an approach that has the advantage of reaching a broader swath of the public, as it does not require a PACER account to access.

Unfortunately, however, during the pandemic, some members of the press have reported difficulty in obtaining information about when certain proceedings were to take place or have been required to request access to proceedings on a case-by-case basis.

This uncertain terrain poses challenges for journalists and other members of the public attempting to observe specific court proceedings that, absent COVID–19 restrictions, they would have been able to attend in person. The Reporters Committee urges Congress to support efforts to ensure that whenever proceedings that would normally be held in open court must instead be held remotely due to a national crisis or otherwise, courts should provide effective public notice of those proceedings, including instructions for how members of the press and public can easily observe them. Uniformity in the manner in which courts provide such notice would remove an obstacle for members of the press and public exercising their rights of access.

C. Pass H.R. 6017, H.R. 5645, and R.R. 6642

Three pending bills would increase public access to the Federal courts:

H.R. 6017, known as the "Twenty-First Century Courts Act," would require live audio and an online archive of "each oral argument and opinion reading" before the Supreme Court be "made available for public transmission over the Internet."[23] It would also create live audio and archival requirements for all Federal Appellate proceedings.[24]

H.R. 5645, known as the "Eyes on the Courts Act of 2020," would require that cameras be allowed in all Supreme Court and Federal Appellate court proceedings.[25]

H.R. 6642, known as the "Court Access Amid the Pandemic Act," would require any oral arguments in Circuit courts and District courts be made public in real time via video teleconferencing and telephone conferencing and be permanently archived on the internet.[26]

While Supreme Court justices have expressed concern in the past that live audio and video could potentially hurt the sanctity and tradition of the court, and that the Supreme Court is unique and need not follow trends with respect to public access in the lower courts, the recent demand for streaming of the court's oral arguments in May 2020 clearly shows the American public wants to know about its tremendously important work.

Further, there is no indication that the livestreaming has had a deleterious effect on the court's operations—quite the contrary. If anything, the manifest public interest in the court's deliberations has had a beneficial effect on how the public views access to the Federal Judiciary. According to recently released polls, 83 percent of Americans supported regular live-streamed audio at the Supreme Court, and nearly 70 percent called for all courts to allow cameras in the courtroom.[27] Finally, it is

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for the Federal Circuit, Availability of Live Audio Access to April 2020 Court Session (Apr. 1, 2020), *https://perma.cc/7F8J-N8JG*.

[23] H.R. 6017, 116th Cong. 5 (2019).

[24] *Id.*

[25] H.R. 5645, 116th Cong. (2020).

[26] H.R. 6642, 116th Cong. (2020).

[27] *See* Kalvis Golde, Public Approves of Live Access to Supreme Court Arguments, Polls Show, SCOTUSblog (May 21, 2020, 3:20 p.m.), *http://perma.cc/2GDB-P2C7*; *see also* Poll: 83% of

worth noting the important role that C–SPAN has played in facilitating audio access for the public to recent Supreme Court arguments. Just as C–SPAN has provided visibility into the operations of Congress, it has now taken up that mantle with respect to the Supreme Court. It should be permitted to continue to do so.

In sum, the Reporters Committee believes that increased public access to the nation's Federal courts, including the Supreme Court, is, on balance, an important step to promote accountability, transparency, and an informed electorate.

I want to thank the Committee for including me in this important conversation surrounding court access and look forward to answering any questions you may have.

Mr. JOHNSON of Georgia. Thank you.

I understand that we are having some problems with my microphone on the WebEx platform and so we are going to take a pause to see if we can work that out.

I must apologize to everyone. I was pretty strict on the 30-second tapping at your four minutes and 30-second mark for you, Judge Campbell, and also for you, Judge Fogel. I started slipping with Chief Justice McCormack and I just totally failed with Ms. Wasser. So, I apologize. I couldn't help myself, it was getting so good.

So, at this time, we will take a brief recess so that we can fix our problem here. We will recess briefly.

[Recess.]

Mr. JOHNSON of Georgia. The hearing is back, and we will now proceed under the five-minute rule with questions. I will begin by recognizing myself for five minutes.

Judge Fogel, Rule One of the Federal Rules of Civil Procedure establishes that the rules must be construed to secure the, quote, "just, speedy, and inexpensive determination of every action and proceeding," end quote.

How should those three values animate the Federal Judiciary's approach to using a virtual—to using virtual technologies during the pandemic and beyond?

Judge FOGEL. Thank you, Mr. Chair.

Rule One is the basis of everything else. That is the way it has always been interpreted, and all of the other Federal rules need to emanate from those core values in Rule One.

So, my personal view of this is that the—particularly during the pandemic but, hopefully, even afterwards, if we can use virtual technologies to honor those values more fully we should.

I think the Federal Judiciary ought to do that, and that is really why I have gotten so interested in this issue because I think this is not necessarily consistent with the institutional conservatism of the Federal courts. I think there is a tremendous opportunity here.

The one caveat I have, really, is in the area of procedural justice and the data that we have so far is interesting. As Chief Justice McCormack pointed out in some of the proceedings in the State courts, people actually are happier to appear virtually.

They don't have to take a day off of work. They don't have to travel. The default rates in debt collection cases and evictions and things like that have gone down enormously because of the availability of virtual proceedings.

Americans Support SCOTUS's Decision to Livestream; 70% Want to Keep Live Audio Post-Pandemic, Fix the Court (May 20, 2020), *https://perma.cc/9G5R-P673.*

So, that is a good thing. The Federal courts don't do a lot of those kinds of cases except in bankruptcy, and the bankruptcy judges that I have spoken with are actually quite receptive to ways to expand virtual proceedings for many of the same reasons, particularly individual bankruptcies.

I think sometimes virtual technology can help us. I think we need to be careful and I say this is not a one-size-fits-all situation.

There are proceedings where I think honoring the values of Rule One requires some type of more somber, more solemn type of situation, and sentencings come to mind. I think there may be constitutional limits when we talk about the confrontation in criminal cases.

Essentially, Mr. Chair, I think there is a tremendous potential here for using modern technology to better implement Rule One.

Mr. JOHNSON of Georgia. Thank you.

Chief Justice McCormack, would you respond to the same question?

Judge MCCORMACK. Yeah. Thank you very much.

There are hard questions and I think I agree with everything Judge Fogel said. So, let me start there. There are definitely areas where there are conflicting values that we are going to have to spend some time thinking about, talking about with stakeholders, and figuring out our way through.

Judge Fogel is absolutely correct that there are some proceedings for which remote platforms will not be appropriate. My court just issued a unanimous opinion this week holding that a witness's testimony at a criminal trial by Skype violated the defendant's Sixth Amendment right to confrontation.

There will be proceedings that are not appropriate for remote platforms. As everybody knows, a lot of what we do, especially in State courts, are not jury trials or criminal jury trials.

The high volume dockets, especially the ones that we are going to see a lot of in the coming months because of backlogs, like evictions and debt collection cases and other District court cases will be not only appropriate for remote platforms but will increase participation.

Judge Fogel is correct that we have seen in jurisdictions that are using remote platforms in these high volume dockets much higher rates of participation, whiche obviously, enhances the first-order values that you are asking about.

How we proceed in those more difficult cases is something we are going to all have to think about and work through.

We want to be able to give people options because even if a litigant has a right to insist on in-person participation there will be some that are interested in waiving that.

So, what we are working on in Michigan is best practices to give people options. We have just finished a jury trial by Zoom, it was a hypothetical jury trial.

We had real lawyers and a real judge acting in those roles, but we had a member of our staff playing the criminal defendant.

We had volunteers, family members and law students, play the jurors and we did it so, we could develop best practices for the litigants who are interested in proceeding that way rather than waiting until they could do it safely.

There is a lot to figure out. I want to come back to where I started, which is it is a tremendous opportunity for us to figure out how we can do a lot of what we do better, more transparently and more accessibility.

Mr. JOHNSON of Georgia. Thank you. My time has expired.

I now call upon my colleague, Congresswoman Roby, for five minutes.

Ms. ROBY. Again, thank you all to our witnesses for being with us today.

Judge Campbell, during the pandemic there has been an increase in the use of technology that we have discussed here today by Federal courts and the general public alike.

However, there are valid security concerns surrounding the use of technology platforms such as Zoom.

Judge Campbell, if you will, tell the Committee how have Federal courts and the Judicial Conference worked to address those security concerns?

Judge CAMPBELL. Thank you, Congresswoman.

There has been a significant increase in the use of video and audio technology during the pandemic, and I agree with Judge Fogel and Chief Justice McCormack that it is a very valuable learning experience.

In fact, it was the Federal courts that went to Congress and asked for the ability to use audio and video proceedings in criminal cases where it wasn't authorized under the existing rules.

There has been concern about the security of video conferencing platforms. Technical experts at the Administrative Office of the Courts have worked with IT specialists in each of the individual District and Circuit courts.

They have vetted different video platforms for security, for the ability of outsiders to hack or disrupt proceedings, and the Administrative Office has made recommendations to local courts as to which kinds of video platforms were the most secure and ought to be preferred in those proceedings and I think the courts have been using those.

I think the technology platforms are improving as the pandemic goes on. We have been very conscious of security and the technology experts within the Federal courts have been quite active in ensuring that the tools that are used are secure.

Ms. ROBY. So, while the COVID–19 pandemic may have necessitated the use of technology in some instances, some commentators and there has been arguments made here today that both the Federal and State courts alike should be using technology in the courtroom even after the pandemic passes.

However, as I mentioned in my opening statement and has, again, been brought up since then, not every jurisdiction may be equipped to administer remote technology.

Again, I have already mentioned this, but some jurisdictions may have unreliable Internet connection or poor access to quality broadband.

So, Judge Campbell, I am going to give you an opportunity as well to weigh in on this issue.

Judge CAMPBELL. Just a few thoughts in response to that, Congresswoman.

We have heard of and are aware of the fact that there are jurisdictions where the ability to connect to the necessary locations has been limited by technology.

We have heard that is particularly true where Federal detainees are housed in local jail facilities or detention facilities that have not had video conferencing capability or have had limited telephone capability.

The courts have worked with those facilities so that the video and teleconferencing proceedings in criminal cases could go forward. Progress has been made.

There are still clear limitations by matters external to the court, such as, the availability of broadband or the funding of a local facility where individuals are housed.

I will note that I understand an important part of this proceeding focuses on civil cases, and before the pandemic arrived Federal judges were using technology in civil cases relatively frequently to conduct hearings for case management, for oral arguments.

It is a very common thing in my court for participants to call in to proceedings if they are from out of town, and a lot of pretrial work in the civil side was already done by technology.

Obviously, we are doing a lot more of it now, and I agree with the points made by the speakers already that there is much we can learn from the experience we are having in the pandemic.

Ms. ROBY. I would just say, given all of these limitations, we have got to ensure that courtrooms are ready to reopen for those who may not be able to participate in remote Judicial proceedings. So, if you want to weigh in on that as well.

Judge CAMPBELL. I agree with that, and the question of how to reopen courtrooms and how to conduct proceedings carefully is a very difficult one, a critical one.

Every District court in the United States is investigating and developing policies for how you bring in 60 people for jury selection, how you then seat a 12- or 14-person criminal jury that will be together for two weeks, and how in that process you keep the jurors safe, how you socially distance, how you limit exposure to a lot of things in trial that would normally be presenting health risks.

Who do you screen at the front, how do you determine a set criteria for who is allowed into the courthouse. All of those issues are being explored.

Policies are being developed. We want to reopen the courtrooms as soon as possible consistent with public health, and courts are working on the basis of their local circumstances to develop those policies.

Ms. ROBY. I have gone over my time, Mr. Chair. I appreciate that.

I would just ask that this Subcommittee be kept informed every step of the way about what this looks like. Obviously, it is important for us to know the things that the Judiciary is putting into place as it relates to best practices, moving forward, and understanding the urgency as well as these cases continue to backlog.

So, thank you, Mr. Chair, for letting me go over. I yield back.

Mr. JOHNSON of Georgia. Thank you.

Next, the gentleman from Arizona, Mr. Stanton, for five minutes.

Mr. STANTON. Thank you so much, Mr. Chair, for hosting this critically important hearing and thank you for the outstanding witnesses for being with us here today.

COVID–19 has presented challenging hardships to our Federal court operations. Maintaining fair and equitable access to our justice system continues to be of utmost importance, and I commend the judiciary for being innovative in its response.

However, we must be vigilant that the courts are considering how its adaptations are affecting underserved communities. One of these critically important communities is people living in Indian Country.

My home State of Arizona is fortunate to have a significant Native American presence with 21 tribal nations in our state. Sadly, COVID–19 has hit these communities hard.

For example, the Navajo Nation has one of the highest per capita rates in the country, which has resulted in curfews and lockdowns. With a high infection rate coupled with a limited Internet access and vast rural areas, I am concerned that people living in Indian Country are experiencing unique difficulties in accessing the Federal courts.

Given the significant presence in Indian Country—the significant Federal presence in Indian Country, I want to ask specifically how the judicial system is accounting for challenges present there. I want to ensure that their needs are thoughtfully, thoroughly, and equitably addressed.

I have a question for Judge Campbell. You have been a judge in Arizona for nearly two decades and have presided over a variety of areas.

We are fortunate that someone with your experience and expertise serves on the Committee on Rules of Practice and Procedure, and I notice that both the Committee on Federal Judiciary COVID–19 Task Force have representatives from important stakeholders.

Do you know if the Federal Judiciary COVID–19 Task Force or the Committee on Rules of Practice and Procedure have tribal representation?

Judge CAMPBELL. Thank you, Congressman Stanton, and thank you for your support of the courts in Arizona.

There is not, to my knowledge, tribal representation on the committees within the Federal Judiciary that oversee the rules of practice and procedure.

Those committees consists of Federal judges, academics, and practicing lawyers who are appointed for a term of years to work on the committees, and I am not aware of a Native American who is present on those committees.

The AO Task Force consists of Chief District Judges, Court Unit Executives, a Representative of the Federal Public Defenders, a Representative of the U.S. Attorney's Office, a Representative of the U.S. Marshalls and the General Services Administration.

I know that task force has reached out and sought input from courts around the country on issues that they are dealing with.

As you know, Congressman Stanton, our Chief Judge in Arizona, Chief Judge Murray Snow, is very conscious of the needs of Indian Country. He has been communicating with the Administrative Office about those needs.

He has developed some innovations for the Federal courts to reach out to Indian Country including holding jury trials on the Navajo reservation, which has happened under his leadership.

Of course, we have as a member of our court a Federal District Judge, Diane Humetewa, who is a Member of the Hopi Tribe, and brings that unique perspective to our court and to the Federal courts, generally.

So, my hope is that the courts that deal with Native American populations will be active as I believe ours is in helping the Federal court system understand those needs and serve them better.

Mr. STANTON. Thank you for that answer, and I do agree that Judge Snow is very concerned about those issues. I would ask that you would consider advocating for adding a tribal representative to both the task force and the committee.

I think that would be—the communities, our country would be better served if that was the case, particularly for the unique role that Federal courts play in Indian Country and Arizona around the country.

Then one final question for Judge Campbell or anyone else. What work is being done to ensure Native American representation on juries, particularly those that originate in Indian Country?

Judge CAMPBELL. Well, I can respond to that briefly, Congressman.

In Arizona, when we hold jury trials in criminal cases or civil cases, we divide the State into three different jury districts.

We have a northern Arizona jury district that encompasses the Navajo reservation and a number of other Native American Lands, and when an event occurs in northern Arizona, whether it is a civil or a criminal matter, the jury is drawn from that northern Arizona area specifically for the purpose of including everybody within those areas including Native Americans.

So, it is typical when we have cases that arise in northern Arizona we will have Native American Members of the jury.

I think there is a need to increase their participation, to reach out to those communities and encourage their participation, and that is something that Chief Judge Snow is doing quite actively and Judge Humetewa is also.

Mr. STANTON. I think I am out of time so I will yield back.

Thank you, Mr. Chair.

Mr. JOHNSON of Georgia. Thank you.

The gentleman from Virginia, Mr. Cline, is recognized for five minutes.

Mr. CLINE. Thank you, Mr. Chair.

The COVID–19 crisis has caused many of us to change the way we perform everyday duties. Whether it is teleworking, Zoom calls, or wearing masks in public settings or ordering everyday essentials online, our way of life has changed drastically in just a few short months.

For our judiciary system, the challenges that these changes have caused have been monumental, with Federal and State courts grappling with how to best continue their essential operations while keeping everyone involved safe.

It is my understanding that the Administrative Office of U.S. Courts has sought to assist the Federal Circuit courts in their re-

sponse to the crisis by issuing guidance and acting as a repository of information, and for that I am very grateful for the leadership role that the AO has undertaken.

Although many Federal and State courts have closed courthouses and stopped court proceedings, we must remain mindful of the rights of those who come before our court system seeking justice.

One of the ways that we, in Congress, have sought to support our court system during this time is through passage of the CARES Act, which permits the Federal Judiciary to conduct criminal proceedings via audio or video conference subject to certain constraints.

For example, if the Judicial Conference finds that the COVID–19 emergency will materially affect the functioning of Federal courts, the Chief Judges of Federal District courts may authorize the use of video teleconferencing, or telephone conferencing if video teleconferencing is not reasonably available for criminal proceedings in certain instances.

So to assist with these changes, the CARES Act appropriated a total of $7.5 million to the Federal Judiciary to address immediate information technology needs and increased testing and treatment costs for the pretrial and probation programs: $500,000 to the Supreme Court, $1 million to defender services, $6 million to Federal courts and other judicial services to prevent, prepare for, and respond to coronavirus.

While I support transparency in our government, I do remain concerned about the impact that cameras in the courtroom could have on proceedings.

However, as an advocate of same-day audio, I was thrilled to see the Supreme Court allow for real-time audio of their oral arguments this sessions. This is a worthy reform to our Federal Judiciary and I hope that it will remain in place long after the coronavirus crisis ends.

I thank the witnesses for their time today to discuss the challenges that the coronavirus has caused, and I would like to ask Judge Campbell, due to the pandemic, many courts have had to suspend or stop jury trials in light of pressing health concerns.

It is my understanding that the Judicial Task Force for COVID–19 convened a working group to consider how grand juries and juries may safely reconvene as courts reopen.

What are some of the most important considerations for courts to considers as they restart grand jury and jury trials?

Judge CAMPBELL. Thank you, Congressman.

The subgroup of the AO Task Force that you mentioned produced a booklet of 10 or 12 single-spaced pages of recommendations on the kinds of steps that courts can take to ensure the health and safety of jurors when they return to the courtroom.

It is really very detailed. In fact, I reviewed it carefully because I had a jury trial scheduled to start next Monday. We had postponed it in light of the rising infection rates in Arizona.

It is a very detailed description of the measures that should be taken to ensure that jurors aren't infected when they come for jury service, even down to detail of how many people should be in an elevators, where you should put markings on the floor for jurors to

stand, where you should put markings on the bench in the courtroom for jurors to be six feet apart, the use of Plexiglas screens.

It is a very detailed document. Equally important, I believe, is that Federal and State courts as well be able to assure jurors that when they come to court their health will be protected.

So, every Federal court has been directed to prepare a public notice—ours is about a page and a half—that sets forth in detail the steps we will take to ensure the jurors' safety when they come to our courthouse, and that goes out with every jury summons so the jurors know we are taking those steps and, hopefully, can ensure their safety when they come.

There have been two jury trials held recently, one in the Northern District of Texas and one in the Eastern District of Texas. They were held last week.

The procedures followed. The precautions taken have been shared with the Federal courts generally, and we will continue to watch and learn as we go through the process of resuming jury trials.

Mr. STANTON. Thank you.

Mr. Chair, I yield back.

Mr. JOHNSON of Georgia. Thank you.

I will now recognize the gentleman from California, Mr. Correa, for five minutes.

Mr. CORREA. Thank you, Mr. Chair, for holding this most important hearing.

As I listen to our witnesses—and again, thank you very much for being here today. As I listen to your testimony I am reminded of that saying that justice denied by delaying justice. I am also thinking back to my experience in government, which is government usually manages by crisis. It is very difficult for government to manage beyond the next day.

I am also thinking about 9/11. We never really went back to being the same after 9/11. As I think about COVID–19, I suspect and I hope that we will not go back to business as usual after COVID–19.

With that being said, as I think about your operation today, essentially, assuring that our court systems work well, assuring that we have due process, we talk about a study. We talk about studying what we are doing today.

Yet, I don't think your branch of government has the luxury of time to study the issue. I think right now—I suspect that right now your local courts, courts at all level, are managing this crisis by adopting, by changing.

So, I would say that we don't have the time to study the issue. Our libraries are full of studies that after those studies are concluded they are just put away and we move on to the next crisis.

I would ask all of you could you begin to give us a list of those best practices that are being implemented right now that will change for the better the way our court system actually operates.

Ms. Wasser, I want to say that I was very delighted to hear that public participation, public interest in the judiciary system has actually gone up. If there is a silver lining in this crisis, it is that people are watching proceedings today online.

Chief Justice McCormack, you mentioned the word dentists, which brought back some very negative emotions to my psyche, and I am thinking to myself probably most Americans would look at a courtroom the same way. I don't want to go do jury duty. I don't want to go near that building, just like you would with a dentist.

So, again, I ask all of you in general what are the best practices that you are implementing right now that we could advance on that could be permanent to make sure we better the way courts operate in the United States?

Open it up for an answer.

Judge FOGEL. May I—

Mr. CORREA. Yes.

Judge FOGEL. This is Judge Fogel. Congressman, I think that is an excellent question.

One of my answer to your question about study, because I was probably the person who emphasized that the most, is not something that would be done over years of time and sit on a shelf.

I think you are quite right that there is urgency here. I think one of the real assets that the Federal courts have is they have resources to look carefully at what they are doing and produce exactly the type of list of best practices that you are asking for.

I don't think it can be done on the fly, but I think it can be done relatively soon through the type of applied research that the Federal courts are very good at.

In fact, the agency that I had the privilege of directing for seven years at the Federal Judicial Center that is what it does. That is one of its two major missions. One of them is education for judges in court management and the other is applied research.

I think working with the committees and the task forces with Judge Campbell, the Task Force, the rest of the Judicial Conference, that is exactly the type of reflective product to come out, and I think it could come out in a matter of months rather than a matter of years and I think it is exactly the type of guidance that we need: What have we learned, what are the best practices, what should we keep, and what should we stop doing.

That is exactly the right questions and the good news is that the Federal courts actually have an ability to do that type of applied research.

So, that is what I would say.

Judge MCCORMACK. Let me jump in as well. I also appreciate the question and it is an excellent question.

I agree with you that a lot of people view courts like dentists' office. They are not usually looking forward to going there.

I always say usually when people are in court something traumatic and stressful is happening in their lives. Not always. We do have adoptions. Sometimes people need to get married in courts. That can be fun.

Usually something traumatic and stressful is happening, and so how the courts treat people, going back to my opening, is the whole ballgame.

I always say we are kind of failing trust in government. How we treat the 3 million different, the 6 million people who need their cases resolved in our courts every year gives us an opportunity to

really grow faith in government or erode it, depending on what we do.

So, the best practices that we are learning right now we actually are immediately putting out there. Let me refer you to the National Center for State courts' post-pandemic. It has got a big long name—Rapid Response Technology Innovation Committee. I don't even know if that is the right name.

I co-Chair it with the talented court administrator from the State of Texas, David Slayton, and we have already produced a series of best practices, best technologies, and put it out there for State courts across the country, and we meet weekly in three subcommittees to update it.

We are actually doing exactly what you think we should be doing, I want you to know, and we are also doing it in a way that is not necessarily perfectly comfortable for judges and lawyers.

I always say, we were trained to move slowly. We are small conservative for lots of normative cultural and important reasons, frankly.

Yet, we are right now having to Act like entrepreneurs, and it is for the benefit of the people of the country who need to use our courts to resolve really important disputes in their lives, often without lawyers.

The transparency we are seeing from remote proceedings, the accessibility we are seeing from remote proceedings, and the way in which people feel less intimidated and more able to participate are easy answers to your questions.

I think the harder answer is we have to continue to be capturing those best practices and sharing them widely.

Thank you for the question. We are working on it.

Mr. CORREA. Thank you, Mr. Chair. I am out of time.

Mr. JOHNSON of Georgia. Thank you. We will embark upon a second round of questions and I will begin by asking Ms. Wasser that you note in your testimony that courts have taken different approaches to adopting the Judicial Conferences guidance on providing access to public and the media.

What issues have members of the press run into under this disparate court by court approach?

Ms. WASSER. Sure. Thank you, Chair, for the question.

So, at the beginning of the COVID–19 pandemic, we were seeing some disparities with reporters noting how they could receive public notice of remote proceedings, whether that be a link posted on their website, which would be the most publicly accessible, or trying to figure out how, outside of being noted on a pacer on the docket to call in to these proceedings.

There were some instances where, I believe it was at the District court level, there was remote access made available for the attorneys and the litigants, but not a member of the public line or not a press access line.

I would say in response to Representative Correa's question, this would be for a best practices standpoint an opportunity to make notice more widely available.

This is something as easy as posting a link on the front of a court website to make sure that members of the public and members of

the press are able to access it and that would also help increase public participation.

I mean, also seeing this as a possible opportunity for long-term investment, Congress has an opportunity here to provide support and guidance through funding, maybe through the appropriations process, to allow all levels of the Federal courts to broadcast and live stream their proceedings while also making notice more widely available.

I will note Ranking Member Roby's concern about her district and lack of access to broadband, and I appreciate and I understand that concern.

A potential fix there would be the ability to, if they can't stream video or even stream audio without the access to broadband, that they provide a dial-in number, giving members of the press and the public the opportunity to be able to access the proceeding during remote times and, as courthouses start to reopen, this would help prevent someone who is asymptomatic from coming into the courtroom but still being able to access the proceeding at home.

So, I think there are real opportunities here to move forward, especially on the notice front.

I would also mention, I know a couple people have mentioned studies. We can look and see what the courts are doing now. All of the circuit courts except the Sixth Circuit have live audio available as of yesterday. So, moving forward, we can see what has worked with live audio and start to take incremental steps from there.

Mr. JOHNSON of Georgia. Yes, thank you.

We are only limited by the imagination of the judicial branch in terms of its requests for funding for any particular programs that it may deem appropriate for the Judicial branch. We are only limited in terms of that imagination.

Ms. Wasser and Chief Justice McCormack, if you would address this issue. What message to the public would the Supreme Court send if it decided to stop broadcasting its proceedings and what message would the court send if it expanded public access by allowing live video, not just audio, of its proceedings?

If I might impose upon you, Chief Justice McCormack.

Judge MCCORMACK. Yeah, thank you for that question.

I am on record as being in favor of live streaming proceedings at the Supreme Court as well as in the Courts of Appeals.

My court, the Michigan Supreme Court, has been live streaming our proceedings for many years, from long before I joined it in 2012.

The reason we do it is because Michigan is a big State and people who live far away from Lansing, but are citizens of our State have, in our view, the right to see what their court is doing and how they are doing it.

It feels, to me, like it builds trust and confidence in our branch, which, as I said, is the only currency we have. So, transparency is the way to build that and I think it only increases the confidence in the court's work.

One hundred percent of the time 50 percent of the people don't like our decisions. We usually end up disappointing everybody by the end of a term.

If they believe that we are operating fairly, that we are listening, that we are treating everybody with dignity and respect, they will have faith in our outcomes, whether it is their favorite outcome or not, and that is the big benefit of transparency.

I will say that some of the cases we hear in live stream, I think the only person watching is my dad, and he just wants to see me. He lives in North Carolina.

So, they don't all have the same amount of public interest. They should all have the same accessibility to everybody who lives in our State and, frankly, everybody who lives anywhere.

As I said, I believe it builds trust and confidence in the work the courts do, and that is the whole ballgame.

Mr. JOHNSON of Georgia. Thank you.

Ms. Wasser, if you would respond.

Ms. WASSER. Yes, thank you, Chair.

I would echo the sentiments of the Chief Justice. I think the Supreme Court, if they do decide to extend a video or even live audio access, it promotes a message of transparency.

It helps extend the gains of transparency that have been made due to the situation of this pandemic. Increasing public access is something that is extremely important to help promote accountability and promote transparency.

I think they also send a message of strengthening our democracy. As the Chief Justice mentioned, being able to view these proceedings or listen to them via audio would send a strong message that the public does have an interest in what the court is doing.

We have seen in the past that justices have repeatedly said there is no demand for this or they don't believe that people would really understand this part of the process with oral argument.

What we have seen from the 10 oral arguments being live streamed in May was that simply isn't true. People want this access.

They want to know what the nation's highest court is doing, and it helps better inform their decisions moving forward in how they decide to trust and build confidence in the judiciary.

I think it is very important, moving forward, that they continue to extend this access. I believe they have also made comments about lawyers potentially grandstanding, that is why they didn't even want audio.

In my home State of Ohio, I know the Ohio Supreme Court has been also live streaming and broadcasting their oral arguments, and I believe it only happened once in 15 years that a lawyer has grandstanded for the camera and the justices told him to stop and they haven't had a problem since.

We can look back on the audio files of those 10 cases in May that there was no grandstanding. There were just people talking through these cases. It was easy to understand for the American public and it really builds trust in the Federal Judiciary.

Mr. JOHNSON of Georgia. Thank you. I will now recognize the gentlelady from Alabama for her questions.

Ms. ROBY. Again, thank you all for your testimony here today and your willingness to answer our questions.

Judge Campbell, the Judicial Conference of the United States submitted a letter to Members of Congress on April 28th of this

year with a long list of legislative proposals in response to COVID–19.

He very specifically submitted by the Judicial Conference is to convert temporary judgeships into permanent judgeships. So can you briefly discuss this proposal and describe how it would help the Federal Judiciary respond to the ramifications of the pandemic?

Mr. Chair, I will just note this is already part of the record because it is part of Judge Campbell's testimony.

Judge CAMPBELL. Yes, thank you, Congresswoman.

There are two parts to that request that have been made. One part focuses on bankruptcy court. We are expecting that there will be a surge in bankruptcy filings because of the unfortunate economic outfall of the pandemic.

There are 14 temporary bankruptcy positions that are identified by the courts and we request that those be made permanent positions. That will allow additional and permanent judicial resources in those districts where they are needed.

There are also temporary Federal judgeships, which—some of which have been temporary for a long time. One in my district has been temporary for 17 years.

Those typically are extended one year at a time and the courts don't know whether they will be extended or not, and if they are not extended and the judge retires then the position is not filled.

So, even courts with burgeoning and demanding dockets face the prospect of actually losing judges if a temporary judgeship is not extended.

So, that is why we have asked that in these areas of great need districts that are very busy and bankruptcy courts that are going to be very busy, the Congress make permanent these judgeships which currently are only temporary.

Ms. ROBY. I appreciate that.

There is other legislative proposals in this letter. So, I just want to give you an opportunity if there is something that you would like to highlight for us in the time I have remaining.

Again, thank you very much for your testimony, all of you here today.

Judge Campbell?

Judge CAMPBELL. Thank you.

I don't think that I will attempt to identify any particular of the 17 proposals. There are a wide range of issues that are addressed. They have all been developed in consultation with courts around the country.

A number of them affect Federal public defenders and their needs which are, obviously, critical during the time of the pandemic.

So, I would simply request that please review and consider all of them. The Conference considers them all important.

I would like to add one point in response to what Congressman Correa asked a few minutes ago about best practices.

I mentioned that there is a location on the Federal courts' Intranet where courts can go for information, and one of the categories of information on that Intranet are court orders and local practices—best practices, in effect—and if a judge goes there or a district goes there on the Intranet the judge can find, literally, hun-

dreds of orders from courts around the country that reflect the best practice, and the Administrative Office is also trying to synthesize information from courts and get those out.

So, there is a very conscious effort to learn from each other and to learn from the State courts as we go through this unique time.

Ms. ROBY. Thank you.

Mr. Chair, I yield back.

Mr. JOHNSON of Georgia. Thank you. I now recognize the gentleman from Virginia for five minutes.

Mr. CLINE. Mr. Chair, I just want to thank the Witnesses for participating. I don't have any further questions at this time.

I will yield back.

Mr. JOHNSON of Georgia. Thank you.

The gentleman from California is now recognized.

Mr. CORREA. Thank you, Mr. Chair.

I, first, wanted to clarify. We talk about access to the courts, and Chief Justice McCormack, you mentioned being on the record to supporting video live streaming of your courtroom in the appeal courts.

What about the lower courts? Do you feel the same way about having those live streamed?

Judge MCCORMACK. I do, which is not to say that there should not be exceptions. There are exceptions right now in public courtrooms for when we do not provide access.

You can guess what those are. Protecting witnesses who need protection is something we have a sophisticated process for doing in our courtrooms throughout the country, and we can do it in our virtual courtrooms as well, and we should.

For routine matters, live streaming processes in courtrooms including trial court rooms should be the norm. Again, it builds confidence.

In Michigan, you can go on the Michigan Supreme Court website. You can click on the virtual courtroom directory. You can then click on any county in the State, see which courts are operating, and then click on the live feed, which is a YouTube feed, and watch those courts operate.

The press can do it. The public can do it. Family members of litigants who are immuno-compromised and can't make it to court can do it.

It is, in my view, really important to building confidence in the work that this branch does and, like I said, I believe when we build confidence in our work we are really building trust in government.

Mr. CORREA. Totally agree.

Judge Campbell, the same question to you. Any thoughts about local courts having those proceedings online and viewed by the public?

[Pause.]

Judge CAMPBELL. Okay. Does that work?

Mr. CORREA. Yes.

Judge CAMPBELL. All right. Thank you, Congressman.

As you know, it has been the policy of the Judicial Conference since the mid–1990s not to live broadcast District court proceedings and there is actually a Federal Rule of criminal procedure that addresses that as well.

The policy of the Judicial Conference has been to allow Courts of Appeals to make decisions on what they will live stream, and as Ms. Wasser indicated a few minutes ago, many of them do that as a routine basis and most of them are doing it now during the pandemic.

That has been the policy and remains the policy of the Judicial Conference. I think it is also absolutely true, though, that we are learning from the pandemic. Judges are doing more video and teleconferencing proceedings.

I agree with Judge Fogel there is much to be learned from that process. The policy that exists now is not to allow broadcasting from trial courts.

Mr. CORREA. Same question to you, Judge Fogel.

Mr. JOHNSON of Georgia. If you will unmute.

Judge FOGEL. Thank you. Thank you very much, Congressman Correa. I was a District Judge for 20 years, and before that I was on the State court in California where the default was the opposite, where everything was presumed to be open and capable of being transmitted.

Frankly, I agree, particularly on reflection, having been out of the judiciary for a couple years, with what Chief Justice McCormack said. There are situations where you have to be careful—privacy, cooperating witnesses, things like that, where it is just not appropriate.

In general, I think sunshine is a good thing, and the Federal courts have been forced to do something which is outside their comfort zone as a result of COVID and that is exactly the type of thing that they should take the opportunity to think about again.

The outcome, of course, is up the Judicial Conference and it is up to them to decide what policy they think makes sense. Now, we have some actual data as to what has occurred when these proceedings have been open.

It is something that ought to be looked at and reflected upon and thought about in terms of what we do, going forward.

Mr. CORREA. Ms. Wasser, the same question.

Ms. WASSER. Sure. Thank you, Congressman.

I would echo the sentence made by my fellow witnesses. There should be a presumption of openness here. I agree with the other witnesses that there would be some situations in which District courts would need to take into consideration privacy of witnesses.

District courts could also keep broadcast restrictions in place to stop the rebroadcasting of video access. I would note that there was a pilot program sent by the Judicial Conference in 14 District courts over four years. I believe, in 2011 to 2015, and the results of those show that a lot of the participating judges and attorneys actually favored court proceedings—more than 70 percent, in fact.

At the end of that pilot program more judges were in support of cameras in the courtroom than against and most judges and attorneys said they would be in favor of permitting video recordings of civil proceedings. We note that in our written testimony that we submitted.

Another thing to note at the District court level with that pilot program was that many judges and attorneys were actually quite surprised that cameras were as unobtrusive as they were.

So, moving forward, I don't see any problem with increasing access at the District court level, although I would ask that Congress provide that support and guidance to the Judicial Conference and work with the Judicial Conference to possibly amend the cameras in the courtroom policy because other witnesses have mentioned and you, Representative, have mentioned we are not going back to our old normal and this is the new normal.

Sunlight is the best disinfectant, and regardless of whether there is a pandemic or not, we would advocate that you do what is most accessible for the American people.

Mr. CORREA. Thank you very much. I thank the witnesses.

Mr. Chair, I yield.

Mr. JOHNSON of Georgia. Thank you.

The Chair will now recognize the gentleman from Ohio, Mr. Chabot, for five minutes.

Mr. CHABOT. I thank Chair, and I want to thank the witnesses for being with us, if not in person at least through this procedure today.

While this hearing is focused on how Federal courts have handled their work during the pandemic that has kept most at home, it provides a great opportunity to raise the importance of allowing cameras in courtrooms to maintain or improve public access to court proceedings.

Earlier in my tenure as a Member of Congress and a Member of this Committee, I introduced legislation, the Sunshine in the Courtroom Act, and in fact, I believe, along with now Senator Chuck Schumer on this Committee we introduced it together and we have introduced it with other Members over the years, and it would have allowed Federal judges to permit audio and visual coverage of court proceedings in all Federal courtrooms at the discretion of the judge. If a judge didn't want to do it then it didn't have to happen. Overall, it would be available.

In this Congress, Chair Nadler and I introduced H.R. 5645, the Eyes on the Courtroom Act. This important legislation will require that cameras be allowed in all Supreme Court and Federal Appellate Court proceedings unless a Presiding Judge determined that permitting cameras would violate the due process rights of a party or would otherwise not be in the interests of justice.

We, as Members of Congress, have our proceedings televised on C–SPAN, for example, streamed on YouTube and on each Committee website. In fact, this very Subcommittee hearing today is being streamed right now.

Most of our official actions can be reviewed by anyone including by judges. In my opinion, the same should be true of our Federal Judiciary.

While all of our activities are recorded and preserved for review by the public, Federal judges who judge our decisions, largely do so in private and that is despite the fact that nearly all of states, including my State of Ohio, allow cameras in their courtrooms without incident or spectacle, although there were lots of predictions early on of all of the terrible things that would happen and, for the most part, they have not happened.

As such, I think the Federal courts should be brought into the modern world as well. An informed citizenry is essential to our con-

stitutional system of checks and balances and I think the American people deserve an opportunity to see how our court system works, just as they can proceedings before this body.

I would like to ask, I think, Justice McCormack—Madam Chief Justice, I understand that for the period between April 1st and June 1st, trial courts in your State held over 35,000 meetings on Zoom, totaling more than 200,000 hours of hearing.

How has that worked for those proceedings and how have courts in Michigan worked to address security concerns, for example?

Judge MCCORMACK. Thank you for the question and thank you for your work on transparency in our branch.

I share your concerns. I believe that when the public sees courts working, it builds confidence in what we do. Even if they don't like the particular outcome, they will understand it and respect it, and that is the whole ballgame.

In Michigan, our live streaming of thousands and thousands of hours of trial court proceedings has gone extremely well. We are collecting information from litigants and lawyers and judges.

There are a number of judges who have been able to keep almost current in their dockets as a result of the remote technology platform. Litigants report really appreciating the opportunities that the platform gives them to feel on equal footing and they report feeling being treated with dignity and respect, which we know underscores public trust in the outcomes even when they are not their favored outcomes.

Lawyers are overwhelmingly happy with the efficiency it provides. A lawyer can appear in courtrooms in faraway places of a State all in one morning.

Mr. CHABOT. All right. Thank you, Judge. I don't mean to cut you off there but I have got about 20 seconds left.

Could I just go to the other witnesses real quickly and say would you favor this type of legislation allowing the Federal courts to have cameras there?

I see nodding by one.

Judge FOGEL. Congressman, speaking in my personal capacity, I would. I think trial judges are in a position to make a discretionary determination as to whether it makes sense in a particular case. I don't think they should be precluded from doing it.

Mr. CHABOT. Thank you.

Mr. Chair, could the other two weight in? Thank you.

If the other two would like to weigh in we would welcome it.

Judge CAMPBELL. Congressman, as you know, it is the policy of the Judicial Conference not to broadcast proceedings from trial courts, although Courts of Appeals do so and are permitted to.

That has been the considered judgment of a very diverse group of judges on the Judicial Conference for years and remains the Conference policy at this time.

Mr. CHABOT. Thank you.

Would the final witness like to—

Ms. WASSER. Absolutely, Congressman. We would welcome that legislation. We specifically do mention it in our testimony.

In addition to your legislation to require cameras in the Supreme Court, we would also advocate for the 21st Century Courts Act, which is co-sponsored by the Chair, requiring the live audio of the

Supreme Court not only in oral arguments but also in opinion readings as well, and also creating a live audio archive for Federal Appellate proceedings, along with H.R. 6642, the Court Access Amid the Pandemic Act, which would require the oral arguments in Federal, Appellate, and District courts made public.

We would also ask Congress to provide guidance and support to the Judicial Conference to talk through a possible amendment to that cameras in the courtroom policy to allow broadcast or streaming in District courts.

Mr. CHABOT. Thank you very much. It has been said, Mr. Chair, that sunshine is the best disinfectant and I tend to share that point of view.

Thank you for your indulgence, and I yield back.

Mr. JOHNSON of Georgia. I thank the gentleman.

With that, we will conclude today's hearing. Thank you to the panelists for your appearance today.

Without objection, all Members will have five legislative days to submit additional written questions for the witnesses or additional materials for the record.

This hearing is adjourned.

[Whereupon, at 10:46 a.m., the Subcommittee was adjourned.]

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