

Chris:

Good afternoon or good morning everyone, wherever you are in the country. We at NCJA and with our partners here today, we hope that you and your families and your staffs and colleagues are all safe and well during this difficult time. We welcome you to the Courtroom Technology in the Age of Coronavirus: Supporting the Criminal Justice System as it Turns Digital webinar. The idea today is to talk about ways that we can tuck ourselves, if you will, change and adapt to our responsibilities to preserve and enhance justice in the new dynamic. First of all, a couple of rules of the road. We're all probably familiar with them by now. Please keep your computers on mute until you have a question to ask. Feel free to submit the questions through the question and answer icon at the bottom of your Zoom screen. If we can't get to your question today or we can't answer it because we don't have the answer, we will certainly get it for you and we will forward it to you.

Again, we are recording this for posterity's sake, more importantly so that it can be useful for other folks who don't have the opportunity to be here today. So again, what we want to do today is talk about with our experts that are on the screen, the recognized need to bring audience together to talk about the changing nature of court operations during the pandemic. We're really talking about a number of different dynamics. First of all, what do we do now? There are still people being arrested. There are still people needing to be prosecuted. There are still people who need to be defended. How do we do that in the current context?

Now that being said, the other dynamic is that a lot of cases are being moved to the future, three months, six months and the workload that we are going to be in the middle of in six months is going to be substantial. What resources do we have available to us to handle just the increase in volume in and of itself? And then the third dynamic is, how do we handle that increased volume in a context where we have to act very differently, that we need to keep ourselves safe, our staff safe, our clients safe, our victims safe? How do we do all of that with greater volume and greater concern with public health? It's a massive, massive challenge and we're glad that you're here today to help us talk about it. The system players, what can we do, get together to address the challenges and raise up practical solutions that can be funded through the new CESF program? Now, I'm going to talk more about the CESF program halfway through the webinar. But first of all, I wanted to take some time and ask some questions of our speakers today.

I'm going to start off with Kenneth Hardin. Kenneth is an assistant public defender at the Harris County Public Defender's office in Houston, Texas. Before joining the Public Defender's office there a year ago, Kenneth was a supervising attorney at the Orleans Public Defender's office in New Orleans, Louisiana where he practiced for the last nine years. Being born and raised in Louisiana, he received his undergraduate degree from LSU before graduating law school from Thurgood Marshall School of Law. Most recently, Kenneth has shifted his focus on increasing community awareness regarding the negative impacts of mass incarceration and he was featured on BET's the DA versus Black America as well as on 60 Minutes with Anderson Cooper discussing the impact of underfunded public defender offices.

Kenneth also co-hosted a full day seminar with the NFL and the New Orleans Saints on oppression in the criminal justice system and the challenges that public defenders have in changing that narrative. Kenneth is a recurring faculty at Harvard Trial Advocacy Program, the Allen Ray Bolin Trial Advocacy Workshop and Gideon's Promise. And in August of last year, Kenneth was the recipient of the 2019 Stephen Bright Public Defender Award, a national award given annually in recognition of attorneys and their contribution to improving the quality of indigent defense. So welcome, Kenneth. Let me start off with the basic question. How has your representation of clients changed in the face of COVID-19? What steps did courts take in Harris County to protect everyone involved in the criminal justice system?

Kenneth Hardin:

Sure. Thank you for having me and I'm honored to be here. To get to your question, I'm a career public defender so I really am born and bred on having a personal relationship and a sustainable relationship with my clients. It's changed dramatically for me in a sense that the human element, me, is taking out. There is no substitute for crying interaction face to face. There is no substitute for the privacy with a client. There's no substitute for confidentiality. There is no substitute for attorney client privilege. There's no substitute for that protection personally with your client and legally within a frame of ethics. So in that way, when you take that face to face interaction out, that has completely changed because when you're doing something via Zoom or via some type of electronic communication, there's a [inaudible 00:05:55] there. You may not see them but they're there.

There may be other sources or people that are there. There may be slip ups where things are on mute, where you may have your opposing party that are listening to protected information. There's so many different things that now has changed the conversation you have even electronically. So to go to what Harris County courts are doing, we're not in court right now. We're still more or less quarantined even though we're within the phase one of now opening back up to society. We are still working primarily from home although I do go to the office occasionally, which happens to be in our courthouse in Harris County. For those that are not familiar with Harris County, there are 294 counties in Texas, but Harris County is the primary County as far as within Houston, Texas, which as many of you may know is the third largest city in Houston. Harris County has been more or less the defining County as far as all things in Houston within the criminal justice room.

That being said, a lot of counties are operating off of what we're doing as far as my understanding. So what we're doing right now is a lot of virtual meetings through Zoom. We are logging into account similar to this one, and whenever we are contacted about a court matter or a court appointed, we appear. There are some rare circumstances where attorneys are still going to court, but for the most part, there are Zoom meetings. Clients are still being brought into court from the other end, from the Zoom, from the other end of the Zoom within the courtroom.

Many times I've seen clients wearing masks as they're brought in. But of course, most recently that has slowed down as has been a recent confirmation that a client was transferred even though he tested positive. So that is going to be a new wrinkle that we're going to see within the next week or two. But for the most part, I would have to say 90% of our communication is Zoom. Attorneys like myself, that really pried off interaction has changed dramatically. Some put a positive but a lot as far as the humanistic, the empathy, the way that we can actually represent our clients zealously, that has changed just because of the electronic form of communication now.

Chris:

Have you heard concerns from your clients about the security and the confidential nature of your conversations based on the fact that now it has to be done electronically?

Kenneth Hardin:

Yes, I have heard some concerns, although the predominant concerns has been obviously trying to get out. That's usually their primary concern. But once we get past that, then they start to express some concerns. But yes, they have been. That's why I still go to the office, so I can still hopefully catch them when they call me because there's been some issue with [inaudible 00:08:47] call. So I've been going to the office for that. That's why I'm still going. I know even though we're in a pandemic crisis because I just can't cut off my clients and I don't want my clients cut off from me.

Of course, they're all concerned about the virus. They're all concerned about catching it and they are concerned about the protection of some of the information that we discussed. But for the most part, a lot of my clients have been understanding because of course I don't, Securus, as far as on the phones, we already have an understanding not to discuss [inaudible 00:09:19] information, but they're concerned about Zoom. I know because I've been writing clients as another way of communicating and they write me. That's another way. So there are concerns that they have as far as information being protected.

Chris:

Yeah, I'm sure. Well, are there any cases actually being litigated or nothing's being litigated and if there are, do you think that clients are making decisions about how to proceed based as much about getting out of a place where there's a high density of illness as contrasted with making decisions based on their actual innocence or not?

Kenneth Hardin:

Absolutely. Not to offend a lot of the counterparts in the criminal justice system, but I've always had a doubt with a client's and their pleas because they did it. I think there are a lot of many influences that influence it, even absent of a virus. But with this virus being present, yes, I absolutely believe that we are the Boykin proceedings as we know them. Plea agreements within the Boykin proceedings, actually the validity of them are even more questionable now. Every plea in the world, there must be a threatening [inaudible 00:10:39] that can't be done without being threatened, coerced or forced into making the plea. What's more threatening or forcing or coercing than catching a plague in jail? There are clients that I have that would otherwise want to go tooth and nail to trial regardless of if they can afford bond or not. But then the presence of this virus has changed that mindset.

Also, to your other question that you addressed whether there're hearings still going on, as far as bond hearings, yes, there are bond hearings that are still going on, even unscheduled. Meaning that if you have a conversation with DA, that's one of the benefits of this Zoom because then as far as off docket matters, as long as you have the Zoom link, you can address bond right then and there. That's one of the pleasantries that you may not get otherwise physically, that's been going on. But most recently, I have not seen, of course there hasn't been trials because in Harris County, their jury services are suspended till June 30th. However, I have seen bond hearings with testimony from officers regarding the way that the evidence as far as in consideration of bond.

I have seen that happening in court where it's odd because you see a bunch of attorneys that are Zoomed in listening to this hearing that have no part in the case. Then you also have this officer that's testifying, but you have no idea. You have to trust if they're testifying from memory and not from any type of assistant document. That is going on. It is a little bit odd because then you have glitches where you may hear, they may hear the question or hear it wrong or whatever the case may be. That's going on. But as far as [inaudible 00:12:15] hearings with suppressions as far as I'm aware, they're entertaining that. But no trials as far as base trials that I'm aware of. Of course, there could be because Harris County is huge.

Chris:

Thank you, Kenneth. Let's move to the other side of the courtroom to the prosecutor. Mark Vargo is with us. He is the Pennington County South Dakota State's attorney. Mark began his prosecutorial career as an assistant state attorney for Janet Reno in Dade County where he was the deputy chief of the traffic division, a felony prosecutor and a member of the Robbery Unit which was formed to combat an

epidemic of tourist robberies. He moved to South Dakota where he served as a deputy state's attorney for three years. During which time he was primarily responsible for the prosecutions of child abuse and child sexual abuse in Pennington County. After a brief state and private practice, he moved to the United States attorney's office in Rapid City for 15 years. While there he prosecuted gun and drug cases for the Western half of South Dakota as well as violent crime and drug cases occurring in the Pine Ridge Indian reservation.

He was sworn in as Pennington County State's attorney in January 2013. His office has received national attention for its innovative approach and diversion of juveniles and young adults. He currently serves as the chair of NBAA's Legislative Committee. Mark, thank you for being here. I appreciate it. We have a lot of things in common. I spent my time as a local prosecutor, specialized in child abuse and sex crimes. Also did a stint in the US attorney's office, also did a stint in private practice and hated every minute of it. So, thank you. And as we spoke earlier, I was fortunate enough to work under Ms. Reno when she was Attorney General. But let's take a look at the district attorney side of things. As Kenneth was talking about the lack of connectivity to his clients, what immediately sprung to mind was you're probably facing the exact same things with victims and your stakeholders. An inability to connect with victims and witnesses and again, other stakeholders probably causes a significant and similar difficulty on your side of the courtroom.

Mark Vargo:

I would say there are certainly some similarities, but I have no doubt that Mr. Hardin's difficulties are even exacerbated compared to ours. My victims by and large, are not incarcerated. Although it's not infrequent. I suppose that we have offenses occurring in the jail, but we can do more things on our own schedule and our system without any danger that there's going to be a third party listening in or an error that accidentally shares information with a third party. So I certainly understand Mr. Hardin's concerns about some of the technology that could intrude on the attorney client relationship. We don't have that problem particularly. We certainly are not meeting with victims in person nearly as often as we would like. Because of the nature of the virus, we are not seeing certain types of cases almost at all. We are seeing, child abuse numbers for instance, have flatlined. We don't believe that that is because child abuse has taken a holiday during the COVID crisis. But because Rapid City public schools indicate that they have lost touch with 25% of our population.

25% of the kids in South Dakota entered a fairly early closure of the schools. 25% of those kids have been lost with the school system. So they are not in contact with the school system in any way. So the opportunity for somebody to observe and report certain types of crimes has fallen off. Domestic violence has spiked. So neither of those I think is terribly surprising to most of us. In South Dakota, we deal with blizzards every once in a while, mostly from October through May. We have seen an exacerbated version of that in terms of people getting locked down fever and when you're shut up in your own place, the people that tend to suffer are the people that are in there with you. We've absolutely had some issues as it comes to victims. We certainly have had less opportunity to speak to victims directly and to witnesses directly.

To understand exactly where we are, Pennington County has never closed. We have had our courts in operation. My attorneys have been attending court daily throughout the COVID crisis. We have tried to limit our exposure. Our defendants have largely been excused. Any case the defendant wishes to continue is being given a continuance. Defendants who are incarcerated are appearing by closed circuit television and the rooms that have been created to accomplish that in the jail are in fact [inaudible 00:17:29] and there is no deputy at the other end. As Mr. Hardin was talking about, we've actually addressed that particular problem. They're essentially in a little phone booth and so they can

appear in a way that allows them to have direct access to their attorney who has both the courtroom line and then a cell phone.

So there is certainly the risk of the attorney will be overheard, the attorney being in the courtroom. But our defendants in jail can appear by ITV and our defendants are allowed to appear by phone or other electronic means if they are not in custody. We have compromised in our preliminary hearings. Defendants are informed that the witnesses may also appear by phone or by ITV, other electronic mechanisms. If a defendant wishes to insist, for instance, at a preliminary hearing or his suppression hearing on the live appearance of the witnesses, their remedy is to continue that matter until such time as our COVID crisis has been resolved. We're under a standing order from the chief justice of the South Dakota Supreme Court, which has designated this as an emergency. Effectively, you would have to accept a fairly lengthy continuance if you wanted to insist on people being there in person. So we've tried to straddle a little bit of the concerns that a defendant might have, but also not wanting to force victims into a position where their rights can not be addressed unless they put their own health and safety at risk.

Chris:

So Mark, what are your financial concerns and challenges regarding the move to a more digitally based prosecutorial format?

Mark Vargo:

Some are fairly obvious. A lot of my staff is now working from home. My attorneys are supposed to be in the office only if they're in the courtroom or to pick up things that they need. There are very few things that they should have to do. So of my total of approximately 60 staff, I hope that we have between six and 10 people in the building at any given moment. We're really trying to keep our numbers very low here and reduce our population density. To do that, laptops became important, secondary monitors that we were sending home, all of those were costs. Then I've had another one that relates to the reality of COVID and local government, which is that we're worried about our tax base. As a County in South Dakota, we are principally property tax financed, but we do have some money that comes in from the state and the state having no income tax, is almost exclusively financed by sales taxes, which are obviously way down.

Any money that we're going to receive from the state are going to be reduced as are some other use taxes that the County does share in. I was asked just a month ago to make a 10% cut in my budget for calendar 2020. And since we were being asked this at the beginning of April, that realistically meant that I was making about a 15% cut in my perspective spending throughout the rest of the year. Now, some of that came fairly easily and naturally because of the crisis itself, we're not having jury trials. So I'm not as worried about expert witnesses. I'm not quite as worried about witness fees and travel. Certainly none of my attorneys are traveling for training or conferences at this point. But we have been put into a position where I informed my County commissioner they wanted 10% cuts, that I was going to cease testing, trace and other very small quantities of controlled substances. Principally around here, methamphetamine and offering those defendants misdemeanor resolutions if they would not insist that we tested the drugs and that was about a \$50,000 savings, which was about 1% of my budget.

I needed to do that. Then we have furloughed approximately half of our hourly staff at any given time. And by furlough, we are going with reduced hours. Realistically, I've actually got about 60% to 70% of my folks in terms of realtime hours working at any given moment from my hourly employees to save enough money to help the County over the perception that they may lose out in terms of property taxes over the course of the year. South Dakota's counties and cities are required by state constitution to have

balanced budgets. So spending shortfall or income shortfalls are not an excuse. We have to be balanced at the end of the year.

Chris:

Is it fair to say that you would anticipate or like to see a federal support financially moving forward for the next couple of years until we get past this?

Mark Vargo:

Absolutely. I think that one of the things that's particularly important relates to both that and what Mr. Hardin was addressing. It's all well and good to say that we can have group phone calls or that we can have a Zoom meeting, that everybody is seeing the same people on the screen. But for instance, even in the Zoom context and even if we get past the confidentiality concerns that might come up, what about the fact that the public is also allowed to be there? So we need to have something that's very much more like this where the panelists, Mr. Hardin is there for the defendant and I'm there for the prosecution. You are the defendant. I don't know, it just seems the beard, something about that.

If we're on the screen and we can all talk, that's great, but if there needs to be a mechanism by which the public can attend, like the participants who signed up ahead of time, only realistically, we don't ask people to sign up ahead of time to come witness a courtroom proceeding. For a lot of my victims, for a lot of Mr. Hardin's clients, I guarantee you that they probably would not navigate that well and then they would be shut out of what is to them an extremely important proceeding. So that kind of technology and sponsoring it and having somebody create it and knowing that they'll get paid for it, the counties can jump onto that later in the road and perhaps afford it, but creating it is something that I think takes a much more national approach.

Chris:

Thank you, Mark. Let's move to the broader court context. We'll go to Anne Jordan for this. Anne served as a prosecutor for six years in York County, Maine, in the district attorney's office there handling all types of misdemeanor and major felony cases including drug trafficking, arson, child abuse and sexual assault cases. She was a private practice litigator for 17 years, specializing in insurance fraud and animal welfare litigation. And then chair of Maine's Pardons Board under three different governors. We got to know Anne when she became the commissioner of public safety at cabinet level position under Governor Baldacci for nearly four years. As commissioner, served as the chair of the Maine Commission on Domestic Violence and Sexual Assault on the board of trustees of the Maine Criminal Justice Academy and as the state of Maine SAA. Anne is currently the manager of the criminal process and specialty dockets for the Maine Judicial Branch. I am very happy to say that Anne is also a member of the board of NCJA and we're very fortunate to have her as such.

Anne, let me start off asking this, in a minute I'm going to talk about funding made available by Congress in the stimulus use to support core technologies. But before I do that, can you describe who the SAAs are in each state and their role as a convener and funder?

Anne Jordan:

Sure. So, federal law that was passed many, many years ago back in the late '80s, each state was supposed to designate one or more persons to coordinate the criminal justice process, like a coordinating council to coordinate the various federal funds that come down from the federal government in the criminal justice arena. Some states have a single SAA like we do, which is based at

our department of public safety. Other states have divided up the SAA work depending on the structure of the government and whether they are a single unified type of system or they're more county based. The SAAs offer both criminal justice systems improvements planning as well as administration of all the various different kinds of grants such as the Stop Domestic Violence grants, the Byrne JAG Criminal Justice grants, the Prison Rape Production grants and other grants that moneys flow from the federal government down to the states.

Chris:

Anne, talk to us a little bit, if you would, about protecting victim's rights. The victim's right to speak, as Mark mentioned, physical limitations in jails, the importance of coordinating technology solution really across the system. That seems to be the key to success here is making sure that the fix is really are across the system and not just towards one end of it.

Anne Jordan:

Right. There really is a need for basically a universal plan for across the system that takes in all the partners. For instance, the courts can get in set up systems to have electronic technology. But if a victim doesn't have access to the internet or a phone in a safe place to be heard, or if there's not enough space at the jails to do this or in Maine, in many areas we have broadband issues. For instance, prior to all this, we have 16 counties in Maine and 15 County jails. We had three or four County jails that had no video arraignment technology. There was a scramble for them to get that. Just recently I spoke to the jail administrator in Washington County, Maine, which is the furthest most Eastern County, very, very rural, first place to see the sunrise in America.

They had to go out and purchase a laptop. Their considerations and issues were, where are we going to set this up where a defendant can have conversations with their lawyers in a confidential and safe area? As well as there were concerns about moving clients and moving these defendants between different areas of the jail. Knock on wood, we've been lucky. We have not had a single confirmed case of the virus in any of our jails in Maine. The sheriffs have been incredibly diligent, almost rabid about not letting extra people in to prevent any possible community spread. But it presents challenges. We are doing video arraignments. We are doing bail hearings and in the first two weeks on a reduced court schedule, we did over 900 bail review hearings in those first two weeks in Maine. But for victims, one of the concerns that have been expressed to me from the different advocacy groups is even if they have the technology and a computer and a phone, you don't know who's sitting across the room.

In cases where someone was trying to influence them, pressure them. And it's very difficult to look someone deeply in the eyes and get those hints that you get from victims and from witnesses. Something is not all right. We are holding certain probation revocation hearings upon the agreement of all the parties and using Google Meets. In our drug courts, we started immediately using Zoom, the HIPAA compliant Zoom version, [inaudible 00:29:52] Zoom so we could continue our regular drug court meetings because that population can be very fragile. And when times are tough and there's a lot more stresses and people are isolated, it can be even more difficult to keep them engaged in their treatment, to keep them going and to keep them from quite frankly going back to using and/or overdosing. Those are some of the things and concerns we have.

Chris:

Thank you, Anne. I'm going to spend a little bit of time now talking about, well, I'm sorry. Let me go back to one more question for you, Anne. This is going to be a question, Danielle, I'm going to tee this up for you too a little bit when we get to you. But for the SAAs in the audience, can you help us understand

who exactly is the applicant for this type of project, the kind of a project that would be helpful in this dynamic? Like the jail, the prosecutor, the defense agency. How do you recommend making those connections between the need and the funding available?

Anne Jordan:

Well, I think to make the connections, what would be very helpful is for the SAAs to convene a Zoom meeting to talk about these are the monies we have available, this is what's going on, these are the partnerships you can push. In Maine, they do push cooperative and working together with other agencies. So that one agency could be the primary applicant with distributions out to the others as part of a joint application. It doesn't do any good for the courts to get a bunch of equipment if it can't be used by the jails. We don't have public defenders. So we have that extra level of trying to figure out how the court appointed counsel can also be looped into this as private practitioners who take court appointed cases. The same goes for the domestic violence and the sexual assault advocacy groups.

The other thing our chief justice has done is he has convened a large stakeholders group that includes not only the usual groups you would expect, but he has also added in representatives from the press. He's added in representatives from the animal welfare groups. He's added in representatives from child protection and the mental health groups as well to ensure that everybody is talking and making suggestions and then any decisions made by the courts. The same thing could happen with SAAs. They could do the same kind of convening to make sure everybody's talking together so there aren't duplication of efforts or across efforts that actually block the others from achieving the goals they need to achieve.

Chris:

Thank you. I'm going to take just a couple of minutes and talk about the CESF program. The Coronavirus Emergency Supplemental Funding program that was issued through the Cares Act, which was passed at the end of March. Then we're going to go back to Danielle and ask her to talk about what some of the possibilities are out there. The Cares Act was passed, as I said, at the end of March. Congress appropriated \$850 million to help state local and tribal justice systems prevent, prepare for and respond to the Coronavirus. And those three components are the critical nature of the utilization of the funding. Congress did this by sending these funds through the Byrne JAG Assistance Grant Formula in order to move the money very quickly.

Now, to be clear, it's not exactly the same as Byrne JAG funding. It's the formula that's used, and it is administered through the state administering agencies. But there are slight differences. But it is the Byrne JAG Formula. It was utilized, the formula and the SAAs were utilized because Byrne JAG is a system which allows for flexibility and speed. That was really the key to success here, getting the money out as quickly as possible. Like Byrne JAG, the CESF is awarded based on the formula that considers both population and crime rate as reported by states and local enforcement jurisdictions.

Now, allowable uses. The purposes of the CESF are very broad. Again, goes back to those three elements. To prevent, prepare for and respond to Coronavirus in the state and local justice systems and also tangential to the justice system. So it was anticipated this money could be used with FEMA and other funds also. First and foremost, to address the needs of law enforcement to purchase and distribute PPEs, support sanitation or distancing measures for COVID testing in jails, et cetera, services for people who may be leaving jail early, short-term needs that respond to new circumstances created for the virus. But that might have more longevity such as equipment for video arraignments and other digital court services and/or smartphone apps that are being used effectively by probation and parole agencies to supervise people pre-trial or during re-entry.

Like Byrne JAG, the CESF has a state and local component. One portion goes directly to the state administering agencies based on the same Byrne JAG Formula. There are state criminal justice planning agencies in this role. They administer many of the federal grant programs. Now, many if not most of the SAAs, will sub-grant a portion of their CESF award open to the majority, to their local partners. Often through a competitive grant process. Every locality or law enforcement agency should be in touch with their SAA to learn from their timeline and options the possibility of the sub-grant. Timeline and process is going to be very jurisdictionally specific. How your individual states deal with it is going to be particular to your individual SAAs office.

SAAs also are encouraged to integrate the CESF into their strategic planning for their annual Byrne JAG program. Now, this is important because as we look forward, some of the changes that we're making to adapt to the Coronavirus will probably be permanent changes. I think that we will see the integration of technology moving forward, leftover in many circumstances in the next couple of years. So it'll be interesting to see how we adapt to these new technology changes, but that will all be part of what the SAA needs to consider in future years with their Byrne JAG funding. Now, the other portion of CESF funding goes directly from BJA to local governments based on their share of reported crime in the state.

If a County or city received an award directly from BJA and FY19, they're automatically eligible to apply for a CESF grant, but they need to apply by May 29th. There are other details about the program. Let me refer you to the NCJA website where we have a number of resources for more information. Again, you may have questions that we can answer during this call or follow up, but you can go to our website and we have a list of all the eligible entities, the amount of the proposed awards and a directory of the state SAAs. We have a recorded webinar on the CESF that will give you all the information and the links to the resources that you need.

So with that kind of primer on the CESF, let me go to Danielle. I'm looking for my bio here. Danielle is a principal court management consultant at the National Center for State Courts focusing on access to justice initiatives. She leads several large national projects for NCSC, including the Justice for All Initiative that works to support comprehensive access to justice strategic planning and implementation of 14 states across the country. An online dispute resolution and legal navigator project with the Civil Legal Modernization Unit of The Pew Charitable Trusts, and as the lead staff to the Conference of Chief Justices, Conference of State Court Administrators, Post Pandemic Planning Technology Working Group and Access and Fairness Committee. That's a lot.

Before joining NCSC, Danielle was the assistant director of Civil Justice Division of Administrative Office of Illinois where Danielle was responsible for leading and managing the Judicial Branch's work to promote, facilitate and enhance access to justice in Illinois with particular emphasis on efforts to remove barriers and increase the ease of interacting with courts by persons who cannot afford lawyers to represent their interests. So it seems we're at a perfect place for your expertise, Danielle. Where can interested courts, district attorneys and other participants find specific information about where to start regarding technologies to adopt, to response in the pandemic? It sounds like this is your alley.

Danielle:

Thank you for the opportunity to be with you, Chris, and the rest of the esteemed panel. So yes, this is a topic that I'm spending lots of hours on as all of you are. I serve as the staff for the newly created Post Pandemic Planning Technology Working Group, which is set up by the Conference of Chief Justices and the Conference of State Court Administrators led by Chief Justice Hecht in Texas and State Court Administrator, Joe Baxter in Rhode Island. Our goal is on the ncsc.org/pandemic website to share all sorts of really specific technological information.

Right now under resources, there are a whole bunch of initial best practices or considerations for different kinds of technological innovations for courts. The map of what innovations and court operation return to work policies are updated daily. So there are a lot of resources on the website and then the technology committee in particular has been spending the past couple of weeks and hopefully one more week in a really deep push to index innovations on everything from authentication of participation remotely to teleworking policies. And then to share really concrete details with people that are interested on our website. So there will be much more in the coming weeks.

Chris:

Are there any best practices or maybe at this point it's a little too early, so we'll call them suggestions that you have for courts and district attorneys that can lead in leveraging technology to advance tele justice, for lack of a better phrase, in their jurisdictions?

Danielle:

Well, we have four guiding principles that are informing our committee's work, which are the technology ought to play a role in all the responses to the pandemic in immediate and long-term thinking about what a responsible balance of that looks like. And that courts shouldn't return to the pre-pandemic operations, but use this as an opportunity to think about how to innovate and to expand the use of technology in that. But importantly, and to Kenneth's point earlier, but technology solutions have to be designed with the user center focus in mind. We have to think about the burdens that they place on all the stakeholders in the system. Then we also have to think about ways to bridge the digital divide whenever practical. Finally, that courts shouldn't just replace old processes with technologies equivalent, but really think about how to transform the system and make it better. So to be as forward thinking and make improvements and remove inefficiencies where they just don't make sense.

The challenge now is trying to figure out how to do that and I think it's a highly iterative process and a lot of courts are developing plans and this is version number one. And then there will be version number two and we'll learn as we go. But the beautiful thing is courts are collaborating in ways across state lines that we never did to this level. So there is a lot of sharing and learning of lessons and their laboratories up each to their own. But I think there are lots of things we can learn from them.

I just wanted to mention one quick thing while I have the floor, which is Mark's mentioned of making hearings publicly available. Two jurisdictions that have been on the fore in that area are the state of Texas as well as the state of Michigan who both have, the state of Texas's all court proceedings that are happening remotely or on a YouTube channel right now when they're live-streamed. Same with Michigan, although I think it's not exactly through YouTube, it maybe through another platform, but trying to make it available to the public of what is happening. I just wanted to mention those two things.

Chris:

It sounds like my assertion was vaguely correct in that what we're doing now in response to the pandemic, we will see some of that lasting and in fact, probably should last into the future. As such, as we look towards what we're doing now, we should, from a strategic planning standpoint for all of my SAAs who are on the call, from a strategic planning standpoint, we should really consider that moving forward. Not just the funding that we're using under the CESF, but ensuring that that's being transferred into the longer context of Byrne JAG funding moving forward.

Danielle:

Yes.

Chris:

[inaudible 00:44:25]. For the SAAs, again, I'll pose the same question to you that I asked Anne, for the SAAs in the audience, can you help us understand who exactly is the applicant for this type of project? Is it the administrative office of the courts, the jail, prosecutor, defense agency, and how would you recommend making those connections between those in need and the funding available?

Danielle:

I thought Anne's answer was marvelous and I agree completely. So I'll save a lot of time and say, I think the point, there are limited resources and in this moment should be deployed strategically and collaboratively where possible. You wouldn't want to prioritize one part of the system and then it wouldn't work in another. So the degree the SAA can use its convening power or to think about the relationship between the court and the public defender in a jurisdiction that has one and prosecutors and think about what is in the jails to try to make those resources deployed as seamlessly as possible, the better the longterm effect. I think courts are increasingly realizing the importance of engaging with all parties as these systems are being redesigned very quickly and in short order. So you could also, depending on the jurisdiction as the chief justice or a presiding judge to facilitate some of that discussion if the SAA itself didn't want to do it.

Chris:

Thank you. Those are all the questions that I have. Jeremiah, let me turn it back over to you at this point in time if there are some questions from the attendees on the webinar.

Jeremiah:

Thanks Chris. We do have a few questions and I wanted to start with one that I think is a good macro question. Thinking drunkenness, to Anne, Kenneth and Mark, are you guys in your offices viewing this as a long-term situation that needs long-term solutions or are you viewing this as a temporary situation that needs an emergency response until we can get back to business as normal?

Anne Jordan:

Both. Hey to say that to you, but both. We realize that we need to on this temporary emergency situation, providers keep justice available to parties, but we also realized that long-term, we need to make changes. So it's a combination of both.

Jeremiah:

Kenneth and Mark, do either of you have anything to add?

Kenneth Hardin:

They say you should never put anything in writing as attorneys, and I already did answer it in writing, but to emphasize that for those who haven't read my comments to that, I view it as both as well. Initially I was more on the short-term situation thinking that we push through this, but now we've learned more about this virus and its impact and that it's not going anywhere anytime soon. Now we need to address certain issues such as, okay, now how do we have these substantive hearings and constitutional protections? How do we have jury trials? How do we do some of these things that are obviously, that

face to face interaction just pretty much secures? I think we have to start thinking down the line and as each month goes, then this problem intensifies. I think we're now in the long game.

Mark Vargo:

I've said from the very beginning that I think that the best planning that we've done, even in the short-term are for those things that are sustainable. In terms of my office working remotely, I didn't want to just send people home and shuttle files back and forth to them, which we could probably get away with for a week or two. But we can't do it over the long-term. I think that the same has to apply to the courthouse. If you're looking at solutions for this, even though we're desperate now in the short-term, in South Dakota or Western South Dakota at least, is just now starting to see community transmission. We're months behind the coasts on this, which has given us an advantage in terms of being prepped. But if we don't do things now that we can sustain, I think that we will have lost a huge opportunity.

There are some things that we're looking at that probably we should've looked at for a while and it would be a shame if we instead did something drastic and short-term. I believe in this as a laboratory of ideas and I'll get to look around at the prosecutors around the nation and hopefully see some things that work. Mr. Hardin and his colleagues in Houston will no doubt try to figure out things that work for their clients and those will become popularized in public defender's offices and with CJA attorney. So the bottom line is I think it needs to be focused long-term, but obviously we have to deal with the short-term.

Jeremiah:

A quick follow up question. I know you guys can only speak to your jurisdictions, but do you see that there is a unity among all parts of the criminal justice system about what these long-term efficiencies or changes are going to be? Or are there fault lines and different perspectives on that right now?

Anne Jordan:

I don't know if I would call them fault lines as much as competing interests. There's a big difference between, to me a fault line is this huge crack that creates complete havoc. I think there is an incredible willingness to work with each other more so than I've seen in the past because we're all facing an incredibly difficult harsh tough situation and we're all trying our darnedest to do the best we can given the circumstances. So I'm seeing levels of cooperation increasing and levels of people pounding heads because that's the nature of the criminal justice system going down and people are trying to come up with solutions.

Kenneth Hardin:

I second Anne's response in that. I do see the level of adversarial coordination going down promoting more cohesiveness. I will say specifically in the defense attorney, more specifically public defender world, there's been more unity. I say that because one of the organizations I'm privileged to be a part of is Gideon's Promise. For those of you unaware, Gideon's Promise is a national organization that is pretty much a network of public defender offices. We meet weekly on Zoom to discuss things that are going on in various jurisdictions. Obviously some jurisdictions are smaller, some are bigger, some have different court responses, some have different barriers that other jurisdictions may be able to more or less respond to. Others weaknesses can be other strengths and other strengths can be weaknesses. I've found a lot of collaboration there.

Law Clarkson office is getting programs there for our students that are coming after us and how do we keep them involved? We're all developing a project to do that from various places and various cities. So on my part, I've been very, very blessed to see the brighter side of unity and how we do that. Of course there are some things that we can address as far as from the court side of it, as far as the implementation and how it's going to be implemented. But we can brainstorm. So I encourage all offices of all parties to do the same. We can try to pick the positive parts of this. I've been fortunate to be part of an organization it is.

Mark Vargo:

I would say that there's a reality to that. The public defender and the presiding judge and I meet weekly now during the COVID crisis, we used to do it more or less monthly. We have tried to find solutions that work. We've tried to find solutions that are sustainable. It's only natural though, that if you have a particular advantage under a rule, you'd hate to see that rule go away. So in South Dakota, for instance, the ingestion of the controlled substance is the same crime as the possession of the controlled substance. So if you have it in your pocket or you have it in your blood, the charges are the same, most prosecutors would be reluctant to give that up. Similarly though, our judge was looking at the question of whether he could go to six person juries to reduce the density in the courtroom. My public defenders had just about exploded. Whereas in Florida, other than capital cases, I don't think they've used those in, I don't know how long it is. When I started prosecuting during the Reagan administration we were using six person juries then. So it's been a while.

Anne Jordan:

I'd like to say here in Maine, I had a suggestion this morning from the president of the Prosecutors Association that the courts look to the Bar Association to help and coordinate and hire people on training folks on how to use these technologies. It's stressful enough as it is. And then when you're in your Zoom freezes up or your computer's not working properly, people don't want to use it because they don't trust it. That's just another idea that came forward this week about, well, let's try to get everybody together and get everybody comfortable and well-trained with use of these technologies and then you could move forward with creative solutions as well.

Jeremiah:

That's great.

Mark Vargo:

This crisis has given us the opportunity to have something where, for instance, as I said, we're making misdemeanor offers on what would otherwise be felony cases. One of the interns that has decided to work for free this summer since I all of a sudden couldn't pay him, is actually going to create us a database and we're going to track the results of those people compared to those that were received felony convictions and were placed on felony probation. So we'll have a much better idea of whether that felony versus misdemeanor resolution has impacts on the long-term behavioral changes that in theory, the criminal justice system is designed to effect. If we go look at it in two years and we see our recidivism rates are similar or lower, we may very well make some very serious changes based on what we thought were going to be some short-term solutions.

Jeremiah:

Chris, now a question for you on the CESF program, are those funds available for federally recognized tribes in addition to state and local governments?

Chris:

They are, yeah. Tribes, state and local governments. Another thing to realize is that a lot of the smaller communities may not even realize that they're eligible for the funding. We've tried it in NCJA real hard to kind of push that information out as much as we could. But there are still a lot of smaller places that don't realize the money is available. So anything you or we can do to help in that regard, we're more than happy to do that. Also, I just like to point out that we're having another call on Thursday at 11:30 Eastern for district attorneys specifically to talk to them about the CESF, to give them a primer on it so that they can try to maximize the potential of the CESF dollars in their jurisdiction too.

Jeremiah:

Great. So Mark and Kenneth, moving back to the changes you guys have seen in the way you do your work. One of the stresses a lot of parents have dealt with across the country is having their kids at home because there's no schools open. So they're not only dealing with a full time job, but also trying to find a way to keep their children occupied and in many instances continue to teach their children at home through a form of homeschooling. How has your offices dealt with that problem and what are the unique concerns that arise for attorneys that are involved in criminal justice matters when it comes to that particular point?

Kenneth Hardin:

That question is probably the most challenging to me. Specifically I don't have kids and I'm not married. But from what I've been seeing in my colleagues, I think a lot of people are still trying to answer that question. Obviously, what we're doing as an office is supporting those folks more. For example, I mentioned earlier that I go to the office, while I'll also go to the office, I'm very mindful of covering matters or getting access to certain files for colleagues that do have kids and have those demands as far as balancing being a teacher now in addition to be so whatever their place is within the criminal justice system. So our office is very supportive and have been dealing with that and we even coordinate and make sure how Mr. Vargo indicated that there's someone always in the office to handle those things.

For example, there are some places where pleas are still not, the idea of the plea system is not completely transitioned to zone. So there are some cases where we're still needing an attorney to go to court and so we, someone like myself would be a prime candidate to go on behalf of that attorney. That's a good suggestion. I think as far as there's anything further that we can do to assist with those parents that are in that situation, I think that's the discussion that we need to be consistently and constantly having because we're all affected by that and we all want to put our best foot forward and being the best representation that we can be regardless of your place or side in the criminal justice system.

Mark Vargo:

I'm pretty proud of us as an office in the sense that we have really made that possible. I have several people who are either immune compromised themselves or are caregivers for people who are immune compromised. In one case a child, in one case a father who lives with them. So we've done by setting ourselves up for a better work from home and by balancing it, just like Mr. Hardin said, with folks who are more capable of coming into the office. As a building, I feel like we've done an amazing job and I am very proud of that. I worry about the impact though, on both defendants and victims who do not have

those resources. I can't ask my victim, I don't necessarily have a place to tell them, well, you can leave your kids here when you're coming to court or you can leave your kids here.

We do not have a family justice center. We've been looking into that possibility. This might be, again, an impetus to move towards something that we were hoping to accomplish anyway, but I can certainly imagine that on the other side, defendants face similar difficulties. Dealing with their court problems is not just the court situation but other duties that they did not anticipate having during this timeframe. I think those questions remain largely unresolved. And for that, I think it's a much more than criminal justice response. That has to be a community response. The criminal justice system is not the place that we're going to figure out how to start programs and daycare programs and online versions of the same, though inevitably we'll deal with the failures of all of them.

Kenneth Hardin:

I will add to that, I think a priority that we need to have depending on how certain offices are funded is a priority to protect certain days to working at home even when the office is reopened. Because even whenever we start trickling back and I positively believe that's going to happen, you still have to consider some of the adjustment period for kids, for example, I keep referring to families getting back into school. So I think that we need to prioritize that to protect those dates where certain folks within the criminal justice systems can still confidently work from home until they transition back into what our new normal ends up becoming.

Mark Vargo:

I'm hopeful that our new normal will include a broadly expanded work from home policy. As I mentioned, snowstorms, our County doesn't pay people when they declare a snow emergency. So people can't come to work, but they also then don't get paid. You don't get an administrative day that day. If you can work from your kitchen table, then you don't bear the brunt of that financial loss. So I'm very hopeful that this will actually be easier. My immune compromised people should be back into the workflow if we get past COVID, which I'm not sure when that would be obviously, but we're hoping that this will be the worst of that and that this will be a recruiting tool. We had changes planned structurally to our building, I was having our buildings and grounds come build some offices and cut up some spaces and we've completely put that on hold. We are looking at the possibility of having far fewer offices and more people working remotely and we think that that might both help with recruiting, with parenting duties and just generally be a good thing for the County.

Jeremiah:

Danielle, has your team put together any resources, whether it be for prosecutors, defense attorneys or judges on this particular topic?

Danielle:

All right. For the Conference of Chief Justices and State Court Administrators, have put out the human resources group, just put out a model policy on teleworking. It's not unique to COVID, but it gets into a lot of these considerations. I just was looking, I don't think it's posted yet, but it should be within the coming few days.

Jeremiah:

That's great. So we are over time, but I think there's one last question that we have to ask before we wrap this up. Health experts are predicting that this situation could get worse in the United States. We talked about some great solutions now in the way we're responding, but what can we actually do to prepare if there's another wave of self isolation needed or another way of the spread of the Coronavirus? How do we deal with that as the criminal justice system?

Mark Vargo:

I think the answer is you start by pushing yourself out of your comfort zone and trying some things that maybe you wouldn't have. I was personally one of the people that was very much opposed to having people work from home. I have been pleasantly surprised. My grumpy old manness is now at question because I am very much in favor of it and I've seen a lot of really good things come out of it. So I think what you do is you start by doing things that you might not have tried otherwise because it might get worse. You try them out at a small scale and before the crisis looms immediate so that when it does hit, you're ready. We started our process really about the last of March, beginning of April is when I started sending people home and working from home. If we hadn't done that, we just had a police officer, the city bus driver, two Walmart workers and a Walgreen's worker tested positive in Rapid City here in the last couple of days.

It's going to get real here in a way that it has not been yet. We're still in just double digits of confirmed cases. So the bottom line is, if we hadn't done what we've done the last two months, we'd be dead in the water. I think what you have to do is start trying some things now. That first couple of weeks when we had lawyers working at home, most of them cheated and came to the office almost every day. But then they got used to it and they stopped doing that. By the time now when I'm worried about them staying home for their very serious health questions, we're ready and we can do it.

Anne Jordan:

I think the other thing we need to start thinking about as attorneys is do we need to continue to follow, this is the way things always have been and the way we handled cases? The typical exhibits, I'm showing you now what's been marked as exhibit 347. Is this accurate? And coming up with solutions for exhibits in videos and other matters to be handled electronically. Just because the old way of the rules was you had to give a paper copy to each person. And the exhibit doesn't mean we can't be doing it in different ways and with different methods.

This is the time really to be thinking those processes through so that when that second wave comes, we're ready to go and to keep things moving so that we're keeping an eye on, keeping cases moving, keeping people's rights and litigant's rights upfront because we can't forget that these are all human beings who are coming to court for a variety of reasons. Coming to court regularly is generally not a happy time, whether it's a civil or criminal case. Now when you add on all these other levels as well as the fears that people are having, whether they're victims or witnesses or defendants or police officers or clerks, that's real. And if there are ways we can be creative and modify our rules and our ways of doing things, I think we'll be better off.

Kenneth Hardin:

I love Anne's suggestion of being more familiar electronically of how we do things. So I won't piggyback on that. So my response is twofold from a selfish standpoint and a selfless standpoint. I think first, personally, make sure that we continue to take care of ourselves. Make sure that our immune systems are on point to the best of our abilities, of course. Because if you're not taking care of yourself mentally, emotionally and physically, you cannot do your job at the top of its capacity. You cannot. And if you're

not doing your job at the top of its capacity, people will suffer. The people we represent, the public receptor, whether it's complaining witnesses in your prosecutor, whether it is a client and you're a defense attorney. Professionally, I think that it reinforces some of the things that we probably should have been doing. But we need to really make sure that we're continually doing more now than ever. And that is memorializing, memorializing everything that goes on in your cases.

I hate to say this word because coming from New Orleans, I've had as many as 250 cases at one time. So I had to do this, triaging. We may have to triage and start to have a good idea of who's in jail, start with who's in jail and who is not. Start with the ages of the case. Then you start looking at some of the issues in these cases, and really making sure you understand your discovery and what you need versus what you have to be able to make a decision as to what role do this case is going to go down. That way you won't have a client that's sitting in jail months and years and so on and so forth.

So now with this time, as long as now that the laptop is glued to our thighs, we really have that time to really start to look through these things and be able to develop that. Because before, when we were going here, there, here, there, we don't. So let's maximize what this crisis has given us. Not that I'm thankful for it, but maximize what this crisis has given us so that we can make sure that we don't become this processing unit that the criminal justice system is notoriously being known for. Those are some of the things specifically within the defense world that we can do and that I hope that we take advantage of going forward.

Chris:

So with that, since we, I'm sorry Mark, go ahead.

Mark Vargo:

Well, something Kenneth just said resonated with me though in that triage. I think that we all have to sit back with the rules and the practices that we've always had and really take a new look at them and say, which of these are really important? Which of these procedural circumstances, which are these, evidentiary rules, which of these criminal offenses for that matter, which are the ones are the really important ones? And we've done some of that in recent times, I think, in the United States. But I think that this is a really good time to double down on that effort and as prosecutors to say, what is it about this that we need to do? Not just because it is a crime, but because why is it a crime and why do we want to address it? And so we need to be, I think, a little more active with our legislatures and our Congress emerging from this. That's another triage that I think it would be wise for us to do right now.

Chris:

Thank you, Mark. So we're at the end of our time. We're over the end of our time here. I just want to close by saying, in this crisis there are a lot of vulnerable communities out there. The elderly, the already ill, but the accused and the victims are also uniquely vulnerable during this time to their own issues. But I am really, really proud to work with folks like Mark and Danielle and Kenneth and Jeremiah and Anne in a system which is, as Anne pointed out, really is acting differently than we have previously, and a community and a profession that really is stepping up. Quite frankly, 25 years ago, I'm not sure I would have said we were capable of it, that defense attorneys and prosecutors were capable of the kind of necessary cooperation that's going on right now. But again, I'm real proud to be part of a community with you folks in adding our talents and our knowledge to helping with this crisis.

That being said, if there's anything that NCJA can do for anybody on the call in terms of connecting you with information, connecting you with the jurisdictions and the territories that have

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funding available to them. One question was asked, will we have a premier for defense attorneys? Absolutely, yes. We'll work with the folks on the public defender side and we'll put something together immediately for that. So with that, let me just say again, thank you for being on the call today. Please everyone, to yourselves, your families, your colleagues, stay safe and let us know if there's anything we can do to be helpful. Thank you.