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Providing Access to Justice in the Midst of a Pandemic

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In March of 2020, the California Judicial Branch faced what could arguably be viewed as the greatest disruption to standard courtroom operations in the Branch's history. Courthouses, the physical seat of the United States' centuries-long commitment to upholding civil liberties and due process, were suddenly and adversely impacted throughout the state by the SARS-Cov-2 virus (COVID). The Branch's longstanding focus of delivering an impartial, fair, and independent administration of justice in a corporeal setting was suddenly impeded by with the harsh consequences of a disease that reveled in such environments. Presiding Judges and Court Administrators had to quickly pivot and face a new, untraveled road, and ensure that access to justice, a fundamental right benefited to all Californians, somehow remained intact. Our Court believed that we could meet the twin demands of safety with access and continue providing a vital community service. It was certainly no easy feat.

At the start of the Pandemic, our Court reduced services for one week, keeping in place services that have an emergency need, while additional mitigation measures were put in place so that the Court could be open and operating as the fullest extent possible. During our closure week, we had to contend with a variety of challenging variables, including marking seats and hallways to maintain physical distancing, and restructuring seating and table placement for jury trials, coordinating mask policy for in-custody defendants, ensuring the sufficient distribution of physical barriers, implementing new remote viewing technologies for witnesses, experts, the public, and exhibits, and determining the number of individuals that we could physically accommodate within the courtroom. These accommodations had to be implemented quickly and without precedent.

The most obvious set of challenges facing court leadership was how to best resolve issues with jury trials. Because of the real threat to court users and prospective jurors inside a courthouse, jury trials were put on hold throughout the country at various stages of the Pandemic as regionalized surges of the virus necessitated a robust public health response.¹ Locally, our Court paused jury trials when our County was experiencing elevated numbers of COVID cases; most specifically when there was a surge of cases in the jail. Most weeks during the Pandemic, we were able to hold jury trials thanks to the robust mitigation measures we put in place. While some courts spearheaded the charge to conduct some trials remotely², our Court opted instead for hybrid, in-person trials and hearings with remote witnesses and experts where feasible. Our COVID-proofing measures also included staggering the arrival time of the prospective jurors,

¹ US Courts, "Court Suspending Jury Trials as COVID-19 Cases Surge," *US Courts*, November 20, 2020, <https://www.uscourts.gov/news/2020/11/20/courts-suspending-jury-trials-covid-19-cases-surge>

²Catherine Foti, "Jury Trials in the Time of COVID," *Forbes*, October 22, 2020 <https://www.forbes.com/sites/insider/2020/10/22/jury-trials-in-the-time-of-covid/?sh=61f6d49f7b8c>



using courtrooms for expanded jury assembly and jury deliberations, using forms for hardship claims, using courtroom audience seating as the jury box, repositioning furniture in the courtroom and ensuring that information about the changes were made available to the public through the posting of an informational video on the public website.

The impact these mitigation measures had on staff and court users was significant. One key issue for attorneys, clerks, reporters, jurors and judicial officers alike across all hearing types was the muffled speech that emanated from a courtroom full of participants in masks. Nuances of expression so often critical for reporters to capture an accurate record, for interpreters to effectively translate, or for attorneys to gauge intent and credibility, were now obfuscated.

Judicial officers and staff also had to quickly adapt to the deployment of new technology. While our Court had experience with using remote viewing for juvenile detention hearings, and with delivering remote workshops in our collaborative Self-Help Program, we rarely utilized the technology for criminal or civil matters. Several questions quickly surfaced to the forefront: where would we place the cameras to ensure adequate viewing coverage? Who would control operation of the recording in the courtroom? How would exhibits be handled? How quickly could we procure and deploy the equipment? How would Court proceed in the event of technical difficulties? Fortunately, we were able to address and mitigate these concerns and proceed.

Administrative impacts were numerous and presented their own unique challenges that required mitigation. Every point of public interaction became a decision point for how best to alleviate risk. Providing services at the front counter and modifying the counter's protective glass for restricted airflow, checking in jurors (and seating them) for jury service, utilizing courtrooms due to their size for jury rooms and public viewing areas, spacing out individuals who are waiting in hallways, ensuring that individuals who needed ADA services would still be appropriately accommodated, instituting temperature checks for staff and the public at courthouse entrances (to name but a few variables) all became distinct barriers that needed to be addressed and overcome. To facilitate public access, the Court has expended over \$53,000 to date on additional supplies for public health protection, including masks, sanitizer, dispensers, barriers, and signage. Janitorial costs grew significantly, increasing by nearly 50% as courtrooms, holding areas, public seating, and other frequent points of contact demanded additional disinfecting. Judicial officers and staff worked tirelessly to develop rules and policies to alleviate these everchanging conditions.

Our Court was fortunate in that we were able to meet these challenges as our existing infrastructure allowed us to adapt to the needs of the new socially distanced environment. The challenges presented by social distancing protocols head on. We had previously made investments to our case management system that allowed us to go completely "paperless" and accept filings electronically in several case types prior to the Pandemic. Our Court also had already deployed ticket-based queuing technology that eliminated large crowds standing in lines in our Clerks' Offices. Also of note, our judges were able to continue outreach events to local schools remotely through our Judges in the Classroom program throughout the school year, reaching 11 classes and 267 students. Because we had remote access to services already in place, we were able to accept documents through e-file, and have documents processed and returned in a timely manner, rather than close our doors due to COVID. We were able to facilitate attendance and



access to courtrooms through the use of video. We expanded the use of CourtCall, a video-conferencing platform already utilized by the courthouse, so that we could maintain courthouse safety with limited in-person appearances but still hold court proceedings in a timely manner. Our investment in technology, remote access tools, and a paperless filing system allowed vulnerable populations to have access to the Court, allowed judicial and staff resources to be safely preserved, and demonstrated to us areas of improvement that we will likely continue with going forward.

All of the lessons learned from the Pandemic, and our resulting adaptations in operations, administration, and information technology, were meaningfully leveraged when the Court held a highly anticipated and visible sentencing hearing on PG&E's controversial involvement with the 2018 Camp Fire that devastated the Town of Paradise³ and surrounding communities. The emotionally charged hearings, which featured detailed in-person accounts of the harrowing evacuation of the Town of Paradise from several members of the community, tested nearly every new feature of the Court's COVID operating environment including media interaction, internet streaming, social distancing, as well as our reworked staffing and security measures. A hearing of this magnitude would be demanding and complex in the most ordinary of circumstances, but framed against the backdrop of a deadly pandemic, the barriers to success were immense. Our prudence and planning were rewarded as we were able to see that our charge of ensuring access to justice, on a salient issue for our community, was honored.

COVID-19 continues to force the judicial system to recalibrate and respond to new realities that were previously never anticipated. As difficult as the Pandemic has been to navigate, it also highlighted the very best of our Branch and provided a groundwork for what is possible in the future. Through creativity, resolve, and forethought, we can continue our sacred commitment to the citizens of California.

³ Phil Helsel, "PG&E please guilty to 84 counts of manslaughter in devastating Camp Fire," *NBC News*, June 16, 2020, <https://www.nbcnews.com/news/us-news/pg-e-pleads-guilty-84-counts-manslaughter-devastating-camp-fire-n1231256>