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Remote Hearings: Let's Not Forget the Cost of What's Lost

James V. Noonan and Judge Patrick T. Stanton†*

Prior to the outbreak of the COVID-19 pandemic, courts, commentators, and academics were becoming increasingly interested in conducting court proceedings remotely. Even before the pandemic, national judicial groups such as the Conference of Chief Justices and the Conference of State Court Administrators had called on courts to use technology to improve the experience of litigants, especially self-represented litigants.¹

The pandemic supercharged that process. Most courts had to severely limit their operations. For months most civil matters were simply put on hold. “As case backlogs swelled, courts moved online, at a speed that has amazed—and sometimes alarmed—judges, prosecutors, and defense attorneys.”² Despite having almost no history of conducting civil court proceedings remotely, beginning in March 2020 every state and D.C.

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1. *How Courts Embraced Technology, Met Their Pandemic Challenge, and Revolutionized Their Operations*, PEW CHARITABLE TRS. (Dec. 1, 2021), <https://www.pewtrusts.org/en/research-and-analysis/reports/2021/12/how-courts-embraced-technology-met-the-pandemic-challenge-and-revolutionized-their-operations> [https://perma.cc/7RV4-8M5N].

2. Eric Scigliano, *Zoom Court Is Changing How Justice Is Served*, ATLANTIC (Apr. 13, 2021), <https://www.theatlantic.com/magazine/archive/2021/05/can-justice-be-served-on-zoom/618392> [https://perma.cc/ZT82-2VRT].

initiated online hearings at record rates. The Texas court system, which had never held a civil hearing via video before the pandemic, conducted 1.1 million remote proceedings across its civil and criminal divisions between March 2020 and February 2021.³ Michigan courts held more than 35,000 video hearings, totaling nearly 200,000 hours between April 1 and June 1, 2020, compared with no such hearings during the same two months in 2019.⁴ Even after the pandemic related restrictions were lifted, courts are still regularly conducting most of their hearings, arraignments, settlement conferences, and even civil case or minor criminal trials over Zoom and other meeting platforms.

The benefits of conducting court hearings remotely are well-documented. Remote proceedings are universally more accessible and more convenient for litigants, attorneys, and judges. No one any longer needs to miss hours of work or fight traffic to attend court. The time traveling to and sitting in court may now be spent on other personal and professional pursuits.

What has not been discussed with even close to the same enthusiasm are the costs and consequences of remote proceedings on the participants and the public. What will be lost by no longer having to appear in a courtroom before a judge to have one's plea heard? Litigants, represented and unrepresented alike, may not notice anything substantively different by not being present in a courtroom with the attendant ceremony and dignity of that setting. But the effects on attorneys, particularly young attorneys, and the judiciary are real and being felt right now. As remote proceedings take hold and become the main way cases are heard, court systems must recognize that the virtues of remote hearings are not without costs. As they design and retool their systems, courts need to keep these costs in mind and perhaps consider ways to ameliorate their adverse effects for the long-term health of the bar, the bench, and the court system in general.

REMOTE HEARINGS ARE GREAT FOR LITIGANTS, BUT NOT FOR ALL AND NOT IN EVERY CASE

Most of the discussion surrounding remote hearings has focused on the benefits it offers pro se litigants, and rightly so. Before remote proceedings became commonplace, courts reported very low participation by defendants in civil court proceedings. "From 2010 to 2019, more than 70% of respondents in debt collection suits across multiple jurisdictions failed to appear in court or respond to summonses,

3. PEW CHARITABLE TRS, *supra* note 1.

4. *Id.*

resulting in a default judgment for the plaintiff.”⁵ But since the pandemic, defendant participation in online proceedings has soared.

According to data reviewed by the Pew Charitable Trust, Arizona civil courts saw an 8 percent decline in the rate of default judgment resulting from litigants’ failure to appear compared with June 2019, indicating an increase in participation.⁶ In New Jersey’s criminal courts, the no-show rate fell from 20 percent in the first week of March 2020 to 0.3 percent the week of March 16, when the state began using virtual hearings, and Michigan reported that its rate dropped from 10.7 percent in April 2019 to 0.5 percent in April 2020.⁷ Reports of improved participation rates are consistent with national survey data in which judges cited increased participation as the leading improvement to come from the move to virtual proceedings.⁸ Although it cites no data, the Illinois Supreme Court also believes that “remote hearings have brought greater party participation, fewer defaults and failures to appear, and enhanced case management and scheduling.”⁹

No doubt a large part of the increase in defendant participation is due to the decreased cost and ease of participating in online proceedings. Litigants no longer need to take a day off work, find childcare, or make their way to the courthouse to attend their cases. They can log-in when their case is called and log-off when they are done. They need only devote a fraction of the time on court attendance than if they had appeared in person.

Research has also shown that unrepresented litigants are less anxious about attending court remotely. Online hearings lower the stress associated with scheduling and other logistic issues around court attendance.¹⁰ Some preliminary research suggest that remote sessions are

5. *How Debt Collectors Are Transforming the Business of State Courts*, PEW CHARITABLE TRS. (May 6, 2020), <https://www.pewtrusts.org/en/research-and-analysis/reports/2020/05/how-debt-collectors-are-transforming-the-business-of-state-courts> [<https://perma.cc/4B7H-RS3N>].

6. JOINT TECH. COMM. FOR THE CONF. OF STATE CT. ADM’RS, NAT’L ASS’N FOR CT. MGMT. & NAT’L CTR. FOR STATE CTS., JUDICIAL PERSPECTIVES ON ODR AND OTHER VIRTUAL COURT PROCESSES, https://www.ncsc.org/__data/assets/pdf_file/0023/34871/2020-05-18-Judicial-Perspectives.pdf [<https://perma.cc/W9QU-BMXH>].

7. *Will Remote Hearings Improve Appearance Rates?* NAT’L CTR. FOR STATE CTS. (May 13, 2020), <https://www.ncsc.org/newsroom/at-the-center/2020/may-13> [<https://perma.cc/T2YF-EPLC>].

8. JOINT TECH. COMM., *supra* note 6; NAT’L CTR. FOR STATE CTS., *supra* note 7.

9. *Remote Proceedings*, ILL. CTS., <https://www.illinoiscourts.gov/courts/additional-resources/remote-proceedings/> [<https://perma.cc/FQ44-6UTH>] (last visited Oct. 26, 2022).

10. See Tara Kunkel & Kristina Bryant, *Do Remote Hearings Help—Or Hurt—Access to Justice?* JUDICATURE (2022), <https://judicature.duke.edu/articles/do-remote-hearings-help-or-hurt-access-to-justice> [<https://perma.cc/4BWH-3QQS>] (“Respondents indicated their top three reasons for preferring remote court hearings were: 1) they were more comfortable talking in a virtual setting; 2) they were less anxious when they attended court remotely; and 3) remote hearings saved them

more user-friendly than in-person sessions. For instance, respondents who had transitioned from in-person to virtual hearings rated their comfort level for in-person hearings lower (3.88) than for virtual hearings (4.06).¹¹ Overall, 45 percent of the respondents indicated they would prefer to attend court 100 percent virtually but just 20 percent said they'd prefer in-person sessions only.¹²

Clients represented by counsel have also seen the benefits of remote hearings. The cost traditionally spent on sending attorneys to travel to outlying courthouses and the time an attorney spends waiting for his or her case to be called results in lower legal bills.¹³ This is especially true for the myriad routine matters that attorneys handle. Attorney's representing clients with multiple cases are able to attend several hearings at the same time and can pass the associated savings on to the client.

So, for good reasons, there is a lot of support for remote proceedings. But the costs of remote hearings seem largely to have been ignored. And, they are real. Take accessibility. An estimated forty-two million people do not have secure reliable broadband service, especially in rural areas. Most of those persons without reliable internet also tend to be economically disadvantaged, i.e., the very people that advocates of remote proceedings say are best served by the process. And while free internet access is readily accessible in such public spaces like libraries and courthouses, privacy is often lacking in those places. In sensitive cases like evictions, foreclosures, or child support proceedings, where personal and potentially embarrassing information may be disclosed, the lack of privacy could have a chilling effect on a litigant's willingness to be candid. Some litigants may also feel unsafe accessing attending trial remotely if they live in difficult environments. For example, persons living in potentially dangerous homes, such as in cases of domestic violence, may be unable to speak freely to their attorneys or truthfully explain their case to the court because of environmental pressures that are unique to remote hearings. The domestic abuser may be present just off-screen.

Even where there is private internet service, persons may not have the

or their loved ones [sic] time.”)

11. Tara Kunkel et al., *Adoption of Virtual Services in Judicially Led Diversion Programs: Final Findings*, RULO STRATEGIES (2022), https://www.ncsc.org/_data/assets/pdf_file/0027/72747/Adoption-of-Virtual-Services-in-Judicially-Led-Diversion-Programs-Final-Findings.pdf [<https://perma.cc/WCN8-AVAK>].

12. *Id.*

13. ILL. SUP. CT., ILLINOIS SUPREME COURT POLICY ON REMOTE COURT APPEARANCES IN CIVIL PROCEEDINGS (2020) https://www.illinoiscourts.gov/Resources/77204d09-8367-4b2b-994e-5f1a39644da8/ATJ_Commission_Policy_on_Remote_Court_Appearances_in_Civil_Proceedings.pdf [<https://perma.cc/929J-XHFG>].

confidence or skill to use online trial technology effectively. This is especially true of elderly people who may not be willing to even try. Non-English speakers or those who have literacy challenges may also find working with remote technology to be complicated. For persons with the skills and confidence to use the technology, the formality and dignity of the court proceeding may be undermined by background disturbances from crying children, barking dogs, police sirens, construction work, etc. These distractions may result in the judge taking the litigants case less seriously or paying them less attention.

Conducting hearings remotely may also interfere with a litigant's ability to communicate privately with counsel, self-advocate, and confront witnesses. Technology limits the importance of nonverbal communication, and even mundane technological glitches can significantly impact proceedings if material evidence or witnesses are unable to be seen and heard.¹⁴

To comply with the constitutional requirements that proceedings be open to the public, many courts have taken to live-streaming. Where once an interested spectator would have to travel to the courthouse to observe a court proceeding, he or she may now watch it in the comfort of their living room. The likelihood that one's family, friends, or neighbors will tune in to watch, or even record, a litigant's private affairs be discussed is much greater because it is much easier. In addition, one's personal information including psychological evaluations, medical reports, tax returns, and other information may be introduced in trials, which can be preserved forever via live streams which can be recorded. Because of the ease of availability, there is a greater risk of privacy invasions and unwarranted sharing of personal data. All of this raises the question whether remote proceedings may be "too public".

Finally, remote court proceedings might not be as efficient as commonly supposed. A Texas study found that when compared to in-person hearings, remote hearings took 34 percent longer than live hearings.¹⁵ Specifically, the average time for an in-person hearing was fifty-two minutes, whereas remote hearings took an average of seventy minutes to complete.¹⁶ It should come as no surprise. Holding hearings

14. J. Willie J. Epps Jr. & Cailynn D. Hayter, *Zoomed In to Justice: Remote Proceedings during a Pandemic*, A.B.A. (Nov. 22, 2021), https://www.americanbar.org/groups/gpsolo/publications/gpsolo_ereport/2021/november-2021/zoomed-to-justice-remote-proceedings-during-pandemic/ [<https://perma.cc/4SXR-5GRM>].

15. NAT'L CTR. FOR STATE CTS., *THE USE OF REMOTE HEARINGS IN TEXAS STATE COURTS: THE IMPACT ON JUDICIAL WORKLOAD* 6 (2021), https://www.ncsc.org/_media/ncsc/files/pdf/newsroom/TX-Remote-Hearing-Assessment-Report.pdf [<https://perma.cc/KU9M-HS77>].

16. *Id.*

over Zoom presents the same challenges that normal staff meetings do: people talk over each other, internet connections go out, people get distracted.

IT'S PREFERABLE FOR LAWYERS TOO . . . BUT AT SOME PROFESSIONAL
COST

Without doubt, attorneys prefer remote hearings to in-person attendance. "Just about everyone . . . agrees that they should keep handling the routine business—from scheduling and settlement conferences to contested traffic tickets and uncontested divorces—that fills most court time."¹⁷

In many ways making court attendance remote offers several economic advantages for attorneys. Increased efficiency is probably the most valuable. Attorneys are usually in front of their computers when attending remote proceedings, so they can work on other matters while waiting for their case to be called, which they cannot do when traveling to and from the courthouse. There is also less waiting around for other cases to start or finish because it is easier to schedule a hearing for an exact time. Think fifteen minutes rather than the hour or more one would typically have spent sitting in court. And if the judge needs to reschedule or postpone a hearing at the last minute, or there is a last minute request for a continuance, the attorney has not wasted a trip to the courthouse.

Being able to appear in different courts on the same day, or attend to different matters in the same courthouse on the same day, means attorneys can handle more cases. It presents opportunities for attorneys to increase the number of matters they can work on for existing clients and gives law firms a potentially much wider geographical footprint to market their services. Because they do not have to drive or fly to attend a court proceeding, attorneys may now take cases in more distant venues and even in other jurisdictions. Consequently, they would no longer have to rely on local counsel to attend court proceedings in remote courthouses.

Attorneys have also experienced a marked increase in their quality of life by being able to attend court remotely. Not having to travel to court means there is less time spent in traffic and the attendant stress of getting there on time. Not having to travel or spend time sitting in court waiting for one's case to be called also means there is more time available for other pursuits. Lawyers with children can be at home earlier and more often, leaving more time to share with the family, and generally supporting a better work-life balance.

17. Scigliano, *supra* note 2.

So, in many important ways remote hearings have been good for attorneys. But what's lost? What does it mean to an attorney's professional development that he or she is no longer appearing in person? Are there long-term consequences to lawyers, especially young lawyers, of working remotely from their apartment with little or no in-person contact with court personnel, judges, colleagues, and opposing counsel? There are of course winners, but who are the losers when court is moved online?

The atmosphere and dignified aura of the courtroom is simply not replicable over Zoom. While some commentators feel that America's courts "are burdened by weighty encrustations of complexity and habit, from black robes and 'All rise' to arcane trial procedures",¹⁸ others feel that the decorum and solemnity of the physical courtroom and its attendant customs is symbolic of the seriousness of the business that attorneys are engaged in. Because lawyers attending remote hearings often do so from home, or someplace other than their office, court attendance becomes a much more casual experience. When the decorum and dignity of the courtroom setting is lost or diminished, some loss of etiquette and respect for the court is likely to follow.

There are also many practical benefits to being physically present in the courthouse. In the days of live in-person hearings, sitting in the courtroom waiting for one's case to be called allowed the attorney to observe the demeanor of the judge and perhaps discern how the judge was deciding issues that might be relevant to that attorney's case. What arguments did the judge react favorably to; which were nonsense? This unique "preview" of the judge's thinking and mood gave attorneys a chance to reshape a point in their argument before the case was called. It is much more difficult to deduce the judge's thinking, or assess his or her mood, in a remote setting where the attorney and everyone else on the call is looking at a computer screen, and frequently both muted and their camera turned off. And with the time and opportunity to multi-task, the attorney is probably paying far less attention to what's occurring on the bench in the way they would have been when "stuck" in the courtroom.

The loss of the physical courtroom experience is particularly detrimental to the young attorney. It was often at the courthouse where one could catch up with colleagues. It is there that one sees how experienced attorneys handle themselves. Novice lawyers can see for themselves how cases are argued and how judges deliberate. They can watch seasoned attorneys grapple with curveballs thrown out by the judge and articulate complex legal theories on their feet. And there is no

18. *Id.*

substitute for the value of sitting shoulder to shoulder with a senior attorney at the counsel table.

With remote working there is no longer any “back in the office” discussion following court to discuss and deliberate court results with colleagues. In the remote work setting, the younger associate’s ability to roam the office and pop-by to discuss a case, brainstorm ideas, ask for guidance, or tap the shared expertise of senior attorneys is severely limited if not lost altogether. Senior attorneys and other mentors will need to work doubly hard to see that the younger attorneys have these opportunities and learn the courtroom skills that they would have otherwise learned on their feet at the courthouse.¹⁹

Another casualty of remote proceedings is the interaction with opposing counsel. In remote proceedings the attorneys log-off after their case is called instead of leaving the courtroom together. It was often in the hallways outside the courtroom, or on the walk back from court, where opponents discussed what had just been decided, ruminated over comments the judge made during the hearing, and considered what this might mean for the strength and weakness of the case. It was in these situations that cases settled on the “courthouse steps”. Indeed, “[m]any attorneys report that they miss interaction with opposing counsel because those interactions can facilitate better working relationships and sometimes settlement One attorney wonders if she has had more trials recently because she is not interacting with opposing counsel as much.”²⁰ And just as opposing counsel can sometimes be more aggressive over email while more congenial when on the phone, opposing counsel can be more aggressive or distant over Zoom compared to in-person.

The value of the face-to-face encounters with the judge cannot be underestimated either. There is a special space created when the attorney stands before the judge and presents his or her case. In those moments it feels like it is only you, opposing counsel, and the judge in the courtroom. With the attorneys standing directly before the bench, the judge is far more likely to be focused and present.

While most attorneys overwhelmingly favor online hearings, that is not

19. See Nick Jenner, *Lingering Side Effects: Young Lawyers and COVID-19*, L. PRAC. TODAY (Apr. 14, 2022), <https://www.lawpracticetoday.org/article/lingering-side-effects-young-lawyers-and-covid-19/> [https://perma.cc/Y4AB-XEWG] (“More senior practitioners must support young attorneys and provide them with the tools for success in the post-pandemic world, which starts with recognizing the issues and implementing changes to make up for the opportunities lost or diminished over the last two years.”).

20. Amanda R. Phillips, *The Future of Remote Proceedings*, MASS. BAR ASS’N (Feb. 2022), <https://www.massbar.org/publications/section-review/section-review-article/section-review-2022-january-february-2022/the-future-of-remote-proceedings> [https://perma.cc/4EH7-ZP2C].

true of all. Older attorneys, or attorneys who have not mastered remote technology, such as the now infamous “Cat Lawyer”²¹ are ill-served by remote proceedings where the lack of technological proficiency could give a false impression of an attorney’s competence and preparedness. Attorneys practicing in rural areas or remote jurisdictions attribute a lot of their business to serving as local counsel for attorneys practicing in large metropolitan areas who do not want to incur the time and expense of traveling.²² What happens to that source of business when Zoom allows the big city attorneys to appear in far-flung courts remotely? Will local counsel services be longer needed? Many counties and outlying courthouses may require in-court presence if only to help the local bar.

WHAT ABOUT ALL OF THOSE COURTHOUSES?

Traditionally, appearing in court meant going to the courthouse. Law firms and associated businesses located their offices around the courthouse. In large cities and small towns, the courthouse draws people from all over the county to the city or town center. Courthouses themselves are designed in such a way to convey the seriousness of the proceedings that occur within them. For instance, both the federal and Illinois state courts have specific regulations requiring the physical layout of the courtroom, like height requirements of courtroom ceilings and benches, to ensure that the solemnity of what happens in the courthouse is impressed upon the persons appearing in court.

If remote hearings become the norm, it is likely that courthouse spaces will be reconfigured and drastically reduced. If the post-COVID trend of handling all proceedings remotely continues, judges will not need to be physically in a courtroom to conduct hearings. Courtrooms will be used only for jury trials and complex bench trials that cannot be effectively conducted by video. With the reduced need for specialized courtroom space, there will be less need for large courthouse buildings. If this were to happen, there would be no need for law firms to locate their offices around the courthouse. City and town centers, which rely heavily on law firms to populate their downtowns, could be negatively impacted.

Converting to a “virtual” courthouse may also impact the availability and effectiveness of legal assistance for the indigent. Many courthouses are staffed with pro bono counsel who assist litigants in navigating the

21. Guardian News, *‘I’m Not a Cat’: Lawyer Gets Stuck on Zoom Kitten Filter during Court Case*, YOUTUBE (Feb. 9, 2021), <https://www.youtube.com/watch?v=IGOfzZOyl8> [<https://perma.cc/JN62-FGTM>].

22. See Charles R. Wolf, *Local Counsel in the Digital Age: The Rise of the Coverage Attorney*, 102 ILL. BAR J. 328 (2014), <https://www.isba.org/ibj/2014/07/localcounseldigitalagerisecoveragea> [<https://perma.cc/9TFD-4AVV>] (discussing law firms’ need too have “local counsel to make court appearances on their behalf”).

courthouse and provide legal advice and direction. When the person arrives at the courthouse, they can ask for help and will be directed to a live person to meet with and who is there to help. Obviously, there are myriad ways to provide legal assistance using remote access. But for those litigants who have difficulty navigating the technology or have language barriers, finding help while attending remote court can be daunting.

WHAT WILL THE IMPACT BE ON THE PUBLIC'S PERCEPTION OF THE COURTS?

Unlike the other branches of the government, the court has no inherent power. It cannot levy taxes or make laws. It has no police force and no army. Instead, it relies on the respect of the people for its "power" through a series of rituals meant to reinforce to the public the importance of the court proceedings. For example, when a judge enters the courtroom, a bailiff or sheriff's deputy announces the judge's presence and commands the lawyers, parties, and observers to rise, be quiet, and pay attention to the court proceedings. Similarly, everyone, including the judge, rises when a jury enters or exits a courtroom. People were often forbidden from using portable electronic devices while court was in session. While much of this may seem arcane, these rituals conveyed to all who were present that something important was happening.

Contrast this to the typical remote video hearing. The judge, if he or she is in control of the Zoom room, looks at a computer screen filled with individual participant "tiles." Before she even begins the call, she must review video tiles to determine who the participants are, ask them to change their screen names, and instruct them on how to turn on their cameras and microphones. The participants may be able to tell who the judge is based on what she's wearing—usually a robe—or her backdrop—usually a real bench or perhaps a virtual background. Otherwise, on the participants' Zoom screen, the judge is just another Zoom box on the screen.

Many people, including attorneys, appear in remote court from their cars, homes, workplaces, golf courses, and even bedrooms. They appear in all state of dress—some, but not all attorneys, appear in suits, but many also appear in casual clothes. Unless the judge insists that all cameras remain on, most participants have the cameras off and likely won't pay any attention to the court until their case is called. The participants, having saved the time and costs of court appearance, will likely perceive a remote court appearance as an improvement over an in-court appearance, with its costs, the strict rules, and norms of courthouse appearances. These factors, along with the data that litigants feel less

intimidated by virtual court appearances, may compel a reconsideration of the value gained from the trappings of the courthouse, its solemnity, and attendant rituals. Only time will tell.

While it has certainly been reported that litigants prefer remote court appearances, it is not yet clear how litigants perceive the fairness of remote proceedings. Judges aspire to practice procedural fairness, which emphasizes providing a fair and open process in which each litigant has the right to be treated with respect, to be listened to, and to be provided with an explanation of the decision. Studies have shown that where procedural fairness is practiced well, compliance with court orders is higher because litigants tend to hold the court in higher regard and have greater respect for the court's decisions.²³ Practicing procedural fairness is difficult enough in live court proceedings—largely because the judge has to be concerned with and conscience of how the court process may be perceived by the participants. In person, a judge can see how the litigant is reacting to the proceedings and may tailor his or her communication to connect with them.

In most remote proceedings, persons who are not actively addressing the court are quite literally “muted.” The judge cannot hear their reaction to what the judge says, the testimony of witnesses, or the arguments of counsel. When a party wishes to address the court, it often begins with what is now probably the most uttered phrase in the English language—“You’re muted.” A participant who has not yet mastered the technology may be chided by the court for mishandling the technology and perhaps appear to the court as incompetent. This is hardly conducive for making a person feel “heard” in court. In addition, given the typical practice of keeping parties muted when not speaking, it is not clear how free a litigant feels to speak up and be heard.

In addition, the introduction of documentary evidence in these settings can be problematic, especially for self-represented litigants. While it is relatively easy to “publish” admitted documents during a remote hearing through screen-sharing, this procedure only works where the documents have been scanned into the user's device and have been seen by the other side. In many cases, however, such as small claims or evictions, the parties normally bring to court various documents (e.g., pictures, screen shots) to help prove their case. In person, the court can quickly review the documents and decide on whether to admit or otherwise consider the documents. In a remote hearing, unless the litigant has already scanned

23. See Kevin Burke & Steve Leben, *Procedural Fairness: A Key Ingredient in Public Satisfaction*, 44 CT. REV.: J. AM. JUDGES ASS'N 4, 7 (2007), <https://digitalcommons.unl.edu/ajacourtreview/226/> [<https://perma.cc/U3LL-SY53>] (discussing unfair or unequal treatment in legal system).

the document so it can be displayed on the screen, those documents cannot be seen or examined by the other parties or the court. The proceedings may have to be continued to allow for the documents to be properly submitted. Or, worse, the documents will never be considered by the court.

FINALLY, WHAT ABOUT THE JUDGES?

All of these additional complications may distract the judge from her actual job—to hear the evidence, consider the applicable law, and make a ruling. If a large percentage of a judge's time and energy is spent managing the video conference—muting, unmuting, breakout rooms, waiting rooms, share screens—less time and attention is available for actually listening and communicating with the parties. As noted above, early studies have shown that Zoom hearings last longer than in person hearings. And, as anyone can attest, time spent sitting looking at a computer screen is more tiring than time spent in a room with other people. This may ultimately take a toll on the quality of judging.

Finally, is it good for the court system to have judges even more isolated than they were before from the people whose cases they decide? Courts have enacted strict rules against *ex parte* communication between lawyers, litigants, and judges such that judges tend to avoid interactions with the lawyers and parties who appear before them. Nonetheless, before the advent of remote hearings, judges would interact daily with people in their courtrooms and in the courthouse. There was room for collegiality—a human touch. Now, judges may spend the entire day either in chambers or in the courtroom without seeing anyone, except court personnel, in person. This isolation may not be good for a judge's mental health, and in turn, may not be good for the litigants who appear before that judge. An isolated person may have less empathy and patience, both of which are essential qualities of a good judge.

As court systems throughout the country come to terms with the fact that remote hearings are now a permanent fixture of the judicial process, and as they start building out their processes to deliver remote justice, they must not lose sight of what will be lost in a completely remote environment. They must keep in mind that being physically present in a courtroom, before a judge, is an experience with benefits and consequences that remote hearings can never duplicate. As eloquently voiced by A. Langdon (KC) during his inaugural speech as chairman of the Bar of England and Wales (2016):

The humanity of physical presence is, I suggest, an important component in the delivery of justice. . . . Being in the physical presence of a witness or a jury or a defendant or a judge or your lawyers . . . isn't

that fundamental to our innate sense of how justice should be delivered? . . . Justice has a human face, and it's not a face on a screen. . . . Many smaller cases benefit from getting everyone together in one place. The dynamic between the parties becomes evident; whether one side is unfairly dominating the other, whether one party is as well-heeled as the other.²⁴

24. Andrew Langdon KC, Chairman, Bar of Eng. and Wales, Inaugural Address (Dec. 14, 2016).

