

**HISTORICAL SOCIETY *of the* NEW YORK COURTS**

**Dispensing Justice from a Distance: Journal of the NYS Courts During the  
2020 Pandemic**

**Interview with Hon. Janet DiFiore, Hon. Lawrence K. Marks, & Hon.  
Jonathan Lippman  
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**Jonathan Lippman:** Welcome to this continuing series on *Dispensing Justice from a Distance* sponsored by the Historical Society of the New York State Courts and focusing on the historic 2020 COVID-19 pandemic and how the New York State courts and the legal community have responded to the difficult challenges of delivering justice and serving the needs of litigants and clients during this unprecedented public health crisis. I am Jonathan Lippman, I'm the president of the Historical Society and the former Chief Judge of the State. I am honored and privileged to interview today my extraordinary successor, Chief Judge Janet DiFiore and our wonderful Chief Administrative Judge Lawrence Marks both of whom I have worked so closely with over so many years, and how lucky we are to have Chief Judge DiFiore and Judge Marks leading the courts here in New York and around the country in responding to the, again, unprecedented challenges of the pandemic. They are truly our frontline heroes along with the judges and non-judicial personnel working around the state and the courts and the entire legal community who have been faced with this crisis, which we've never seen before.

Let me start by asking you question about the initial response of the court system. Chief Judge, let me ask you, starting in early March, you've achieved so much before that, your excellence initiative, presumptive ADR, the historic proposal to amend the state constitution to restructure the New York Courts. All of a sudden, we had this pandemic that is reverberating around every courthouse and every courtroom in the state. Chief Judge, what were you thinking? How does one respond to this

overnight when the instinct of everyone seems to be just to close the courts? What were you thinking, Chief? How do you deal with it?

**Janet DiFiore:**

First, thank you Judge Lippmann for taking the time to do this. It's important that we document how the crisis unfolded as it impacts the courts. Judge Marks and I are very pleased to be here today. Let me say from the outset that there was never a moment when we considered closing the courts. Obviously, we provide a critical service that can't be provided in any other forum. It was important at the time, particularly because we had no idea what we were facing, that we communicated to the public that government and particularly the courts were open and that the rule of law was and would remain fully intact. We agreed that that was particularly important as we all knew and sensed the enormity of what was coming and what was in front of us.

And right from the start, Judge Marks and I agreed that our operational imperative was to keep the courts open, at least in the very beginning for central and emergency operations, but always prioritizing the health and safety of our judges, of our staff, of the lawyers, the litigants who needed to come to our courts to access those critical services. In March, to your point, we did scale back and we scaled back on a dime. Almost overnight, we scaled back. At first, we were just entertaining emergency and essential operations. That's where it all began, one dark night in the beginning of March.

**JL:**

What a long road it's been since then? Let's stay with the early period, and Judge Marks, apropos of what the Chief has just been saying, on March 22nd, the Governor issued a mandatory stay at home order in New York. What was going on in your mind, again, as the Chief just indicated, you were both determined not to close the courts? But how do you deal with access to the courts at a time where there's such public safety issues are involved? How do you manage the crisis and go towards a virtual court system, as the Chief says, almost overnight? What was going through your

mind, and how do you make this flip in terms of the management of the courts of one day where everything is in-person and the next day where there are safety issues involved with people being inside a courthouse as personnel being inside a courthouse?

**Lawrence K. Marks:** Well, the first thing we really had to do because the pandemic came on us really so quickly and so suddenly. As we all know, the New York State court system in normal times, literally tens of thousands of people come into our buildings across the 62 counties. We have over 300 court facilities. Clearly, we had to address that problem and drastically reduce the foot traffic given the dire health and safety concerns. We really had to come up with a list of what these essential and emergency matters were. And we were able to do that. That was not an easy thing to do, and we had to do it very quickly, but essentially, we limited in defined essential and emergency as matters that related to public safety and that related to individual constitutional rights and civil liberties.

For example, for people who were arrested, we had to bring them before a judge to be arraigned. For someone who was the victim of domestic violence, we needed to provide a process by which they could receive an order of protection. For a tenant who had been allegedly, illegally locked out of their home, we needed to provide access to justice so that emergency situation could be addressed. For the first week or barely less than a week, we had to handle, because we were not immediately set up to go virtual, we had to handle these essential emergency proceedings in-person, but literally, I think it was six days. We were able to take that all virtual. We designated a limited number of judges and a limited number of court staff to handle these matters and things proceeded for the next several weeks.

But of course, limiting access to a very small number of cases that's a tiny percentage of our overall business in the courts, maybe 1%, possibly less than that. We realized that we needed to figuratively open the courthouse

doors to a greater number of cases, the vast percentage of the nonessential cases. By the way, everyone who has a case in the courts considers their case essential. It was very difficult, as I said, to delineate between essential and non-essential but we were forced to do that given the dire nature of the health emergency. In the month of February, before this all happened, it was unimaginable that we would have to be doing this and that we would be able to do it so quickly.

But within literally, two, two and a half weeks' time, we were able to set up judges and court staff who were working from home to set them up with computers and a technology platform that would allow them to conduct at least some business virtually from the safety of their homes. We always did have some staff, court officers and court clerks in the buildings who had to deal with the files. The buildings were open to the public, so that if someone wanted to come in and observe an arraignment, they would be able to come to the court and view the arraignment, for example, on a monitor. The press, of course, took advantage of that as well. There was always some activity in the courthouses but other than that, everything was done virtually.

That happened very quickly. The unsung heroes and maybe not so unsung, but the heroes of this, I've always felt were our technology people who literally 24/7 were able to set up this virtual process across the state, across our enormous court system. So, by the second week in April, the middle of April, we were able to get a lot of business done virtually. Thousands of court conferences where judges were able to resolve issues, resolve disputes within the case, thousands and thousands of cases being settled or otherwise disposed of. All this was possible because of the technology operation that we were able to put in place very quickly.

**JL:**

Okay. But let me ask both of you, during the same period, March, April, when this was all unfolding, this is all to some degree about leadership and communication and leaders have to be visible. How do you get the

message across? At this time, the two of you are in charge of leading a court system. How do you get across and what is it at a time when New York is the epicenter of the pandemic around the country, how do you do that? How do you be a leader and how do you convey your message at a time like this?

**JD:**

I think that's a very important piece of this discussion. As you know, our court system has been described as the most complex, busiest court system in the country. It really is an accurate statement. I think that leadership and communication go together hand in glove, and we have a very layered leadership structure on both the judicial side and on the administrative side. It is very important for a leader, whichever level, whether you're the Chief Administrative Judge, whether you're an Administrative Judge, a Supervising Judge, the Chief Clerk in your building, that leaders be informed, knowledgeable and competent at their core, but that they are visible and communicating. Particularly during this time, folks were nervous. They were on the verge of panicking; you could feel it. It was a palpable feeling wherever we went and whoever we spoke to, and we had to have a plan and we had to communicate that plan.

But we had to build the plan. So one of the first things we did and it was that I phoned -- this was in the very early days -- I phoned the Governor for two reasons. Number one, I wanted to assure him that the New York State courts would be open for business and the rule of law would be honored and respected because we had no idea what we were facing, what was coming at us, and that I wanted to make sure that we were establishing an open line of communication immediately. He really was marvelous. He was calm, he was steady. He pledged that there would be open communication, of course, and that we have access to all of his agencies and the information that we needed. That allowed us to understand what was so rapidly unfolding and still so clear at the time. You have to remember, we didn't even realize in March, we didn't know

that this was a community-spread virus, that this was an airborne virus. Larry and I were just commenting about this. We were looking back over some of our materials and there's this iconic photograph of me and Judge Marks standing in the Criminal Court in Manhattan. There we were, we had on gloves but no masks, just the opposite of where we were supposed to be at the time. For us in leadership, and again, there were so many structures of leadership, what we did was we assembled, right in the beginning, our entire leadership team. I will never forget that meeting that night, we were at Beaver Street and we took the largest conference room we have there. We must have had 30 or 40 people in the room and on the phone.

When I stood up to speak to everyone, I could see the looks on everyone's faces like, "What is going on here?" We spoke about, and we all acknowledged that we had some very troubled days ahead, that we didn't know what the contours of what those days were going to look like, that we had to come together and coalesce as a very uniform and disciplined team, that hundreds of decisions would have to be made, we anticipated, some very quickly and without a lot of information. And because of that, we had to be in constant communication with each other and everyone, no matter which corner of the state you were from, we had to all be together in that process. Most importantly, I just felt this intuitively and in my gut that we were going to face something that the courts are not accustomed to.

We are largely a reactive body. We react to what's presented to us. We had to be two things. We had to be very proactive and bold in our moves operationally. In addition, we had to be prepared to be nimble and flexible on a moment's notice. And Judge Marks and I kept repeating to everyone who would listen, "Look, we could work very hard on trying to put a plan together but on a moment's notice, we might have to scrap that plan and move to something else very quickly." That did come to pass. That did

happen on several occasions over the course of us managing through this terrible crisis.

**JL:** Well, let me follow up on your remarks on this whole issue of leadership. What about decision-making in that, you have to factor in, during the time that you were both doing this, you were to factor in the public health data and guidance. How did that play into decision-making during this period of time?

**JD:** Well, obviously, the public health and safety was at the core and the foundation of every single thing we did. We couldn't put a plan in place unless we work confident and convinced that we had at our disposal, and part of the decision-making process was this is a safe plan. We could ask our judges, our professional staff to participate in this plan. We really didn't have the luxury of time. As an ordinary matter, I take a lot of satisfaction in decision-making. I enjoy the process of identifying a problem, working to find a solution, and then pulling the lever to put that decision in place. There's a lot of air and space between identifying a problem and making the decision and pulling the lever. We did not have that. There wasn't time for lots of discussion. It had to be quick while based on all of the facts and information we had at our disposal. A lot of this had to be intuitive as well, and very cautious and protective of people's health and safety. But we had a lot to fall back on. We had very experienced leaders on our team. We had been together for several years now. We had the guidance of the Governor and his staff and access to all the information they had. We had the CDC guidance that we were following meticulously, and we also wound up hiring our own consultant and epidemiologist. And Larry, if you want to pick up a little bit on that, please do, but it was a very interactive and iterative process.

**LM:** If you look at this in stages, the first stage was dramatically scaling back to handling these essential emergency applications, which as I said before,

very quickly we were able to transition to virtual proceedings. Then when we expanded to non-essential matters, the 99% of the rest of the cases that we handle, that was all done virtually as well. We acted with extreme caution, as the Chief Judge said, the overarching principle was protecting people's health and safety. It wasn't until we were in the position where we felt we were prepared to expand what we were doing and take the first steps towards returning to in-person operations, that's really where we felt we needed expert advice and guidance. We did retain a Ph.D. in epidemiology to guide us through the steps of beginning to return to in-person operations. That's where we really felt we needed expert guidance and assistance.

**JL:** Let me follow up on, at the same time that you were doing that, this idea, we talked a little bit about before, of leveraging technology and going to these virtual courts, the same time you think about these health issues, where people are in the courts and all of that, how do you transform one of the largest brick and mortar court systems in the country to a, in large part, a virtual system using the technology and how are those virtual courts doing now? Are they here to stay or are we just counting the days that we could go to a totally in-person system again? How did that happen and what's the thinking today about what's going on?

**JD:** That's a two-part question. How did it happen and what's the future for that? In late 2018, 2019, we announced a five-year court technology modernization plan. The goal of the plan is to equip every courthouse in the state with the latest technology. We have these gigantic mobile units that can be moved around in a courthouse. They're really phenomenal. I think at the time that the pandemic struck, about half of our courts around the state had already been equipped with those units. We had a fair amount of the foundation in place. And then the bell went off and we were rushing to do virtual courts all around the state. We have, and I don't want to say this too loudly because I would hate for anyone to steal them away from



us, the most extraordinary tech team in Christine Sisario and Sheng Guo. These two work nonstop and they worked nonstop then, and they were running around from courthouse to courthouse, imagine, at a time when we had no idea what was hitting us in terms of public health, and they went around the State and they are single-handedly the leaders in getting us up and running on the virtual technology piece. And then of course -- Larry could fill us in a little bit more on this -- we expanded the filing. We created this new system called the EDDS system, which stands for, I think, it's Electronic Document Delivery System, which is a very clever system that we are using now to streamline and accelerate our proceedings in Family Court. As you can imagine, those Family Court judges and staff around the State have been enormously stressed almost to capacity, I would suggest, trying to move those cases, which have a hundred different parties in order to advance issues in those cases. They've really done a hero's job in the Family Court.

Judge Marks, maybe you want to talk a little bit about the e-filing.

**JL:** Go ahead Judge Marks, sure.

**LM:** We've had e-filing in New York courts for a number of years. The process for implementing it can be somewhat burdensome. There are statutory requirements. It's not a process where you can snap your fingers and the next day have e-filing system in place. But necessity being the mother of invention, we expanded e-filing at a record pace out of necessity and where we weren't able to implement e-filing for legal or other reasons, we did establish a side-by-side alternative system, which the Chief Judge just mentioned that to some extent replicates the benefits and the virtues of e-filing. But the second part of your question just briefly, is this temporary? All this technology and these virtual proceedings. I firmly believe we're looking at the future and we've crossed the Rubicon with technology. We have judges who never turned on their computers before who are daily conducting scores of conferences and settling cases

and conducting much of their business entirely virtually. And I would be shocked once we're through this pandemic, if we took a step backward. I think the judges see the value in it. The litigants see the value in it. The lawyers see the value in it, and I think this is a way. And it's not appropriate or suitable for all court proceedings. We could talk about that a little bit if there's time, but for much of what we do, the routine day-to-day court conferences, virtual technology is the future as far as I'm concerned.

**JL:** Let me talk about an area that we touched on before. We talked about leadership, and you both describing how you did certain things, the virtual and the in-person and the health. In terms of your leadership team, how did you get those messages carried out to judges and staff throughout the state? In other words, you went day-by-day, doing all these very nuanced, difficult acts of decision-making. As time went on, how did you make sure that what's happening in all of the distant jurisdictions had some common thread to it based on the decisions that the leadership was making?

**JD:** As you know, we have a very layered leadership structure. It's the Chief Judge at the top; the Chief Administrative Judge; and the two Deputy Chief Administrative Judges, one outside of the City, one for the courts inside the City; and then the Administrative Judges below that. And on the professional management side, a similar structure. What we did was we knew, to my point before, that we would have to make quick decisions. There were complicated decisions. We needed to hear from everybody who would weigh in on their particular expertise, the needs of their local communities. We established a daily meeting, and we still do these meetings. We have a one o'clock, what we call the State Ops meeting. Up until a couple of weeks ago, it was the entire leadership structure from the State. Recently, we've scaled that back a little bit with a proviso to everyone.

We may be returning to that model. Hopefully, God-willing, we don't

have to but we might have to. Every day, there would be meetings in the morning to figure out what happened the day before, what issues had been presented throughout the State the day before. We'd get on our call at one o'clock and we'd literally go around the phone table and talk to each of the judges and the professional staff about their areas of responsibility. We'd all learn from each other. Again, we are a statewide system and any rules that we make, of course, they have to be applicable statewide, any protocols we put in place for all of our UCS [Unified Court System] folks, but we also had to have a nod to local culture and knowledge and capability. New York City is very different from some of the counties that are outside the City, particularly in the very rural locations, but we all had to be on the same team.

Judge Lippman, I think you know this from the many years that we've been together. I am a very ordered and disciplined person. I like to make decisions hearing from everybody in the room. I love to hear the dissent. I'm not a yes person, I don't like yes people. We like to hear those decisions, vet them out, and then once the decisions are made, we have to move forward and execute on those decisions. Again, be prepared, the very next hour, day, minute to roll back those decisions. That is the way that we have been managing through this crisis. It has been enormously stressful for our leaders. Most of them have not, and no one is looking for this accolade, but most of them have worked every single day since the beginning of March under the most stressful of circumstances because we know that every iteration of our plan impacts the health and safety of the individuals we need to make the plan go forward.

It affects their families. People are going home to elderly parents, young children, folks with illnesses. It has been an enormous responsibility and every single one of our leaders, Judge Lippman, most of them who you would be so very proud of them, everyone has stood up to the task.

**JL:** It brings to mind when hearing you both talk about how you did this, the leadership structure and how you get those decisions down, we learned a lot during 9/11 that informed things that went on subsequently to that in terms of leading the court system structure and communication, all of the above. I would think particularly going into the era where someday -- hopefully in the near future -- we'll have a restructured, certainly to a significant degree, merged court system. The lessons learned here and obviously, you're still learning, we all are, will they inform the future of what you've had to go through in terms of leading the court system? Does that inform what the courts will look like 10 years, 20 years down the line?

**JD:** There's no question they'll inform the future. As we said earlier, I'm so pleased that the Historical Society is sponsoring this accounting of how this unfolded. One of the first things when the pandemic hit, Judge Marks told me, "We have an after-action plan from 9/11." We pulled it, I read it. I'm sure Judge Marks refreshed his recollection by going through it. This is a very different emergency than 9/11 was, and they're all equally on par in terms of impact on people. But this was something that is so... You can't see it. You can't feel it in front of you. It almost felt like we were operating with a cloth in front of our eyes. You had no idea what was coming, so you had to plan for the absolute worst. And at the time, we didn't even know what the absolute worst could possibly be.

**JL:** Go ahead, Judge Marks.

**LM:** I was involved in court administration during 9/11 and worked with you, Judge Lippman, as you know. 9/11 was an extraordinarily traumatic incident but this is far more complex. It's far more pervasive. It's much longer in duration. The direct impact of 9/11 was really here in Manhattan in New York County. This is statewide, nationwide, worldwide. It's continuing. We're back in a resurgence now, of course. But one other

point about our structure, which you asked and did that help us, did that impede us? The structure of the court system in New York, it's been helpful, and it's been unhelpful. It's been helpful in that unlike some other court systems around the country, we do have constitutionally and structurally centralized leadership and centralized control of our budget. That's the modern trend in court administration. We are fortunate that we have a strong central management structurally and constitutionally, but where we found that carrying out our plans in exercising our leadership has been frustrated, that's in the constitutional structure of our trial courts. As most of us know, we have 11 separate and distinct trial courts in this State, more than any other state in the country. It has made it difficult in their day-to-day examples of this where it's been difficult to move resources around most efficiently and most productively to help us deal with this crisis.

**JD:** That has inspired us and fortified us to educate our partners in the Legislature about the absolute importance to deconstruct the current system and allow us the room to use our resources in a smart way. We are really very hamstrung. I'm hoping that this is the object lesson, a very tough one, for our partners in the Legislature to understand the compelling need to reorganize the court system.

**JL:** I can certainly see how instructive it is in that regard. What we've all been talking about all these years, you've lived it out with all its problems. Let me take a micro issue that fundamental to the court system but a less all-encompassing in terms of vision, what about this business with the restarting grand juries and the petit juries? How did you do that successfully and what happens now with the new spike and all of that? The jury system is central to what we do. Tell us a little bit about that.

**JD:** From day one, our immediate focus was clearing out our buildings and operating virtually, we always had our eye on and I've always worked on

a parallel track, not only to run virtually but also with an eye toward the restoration of in-person proceedings, particularly the right to trial by a jury of your peers, which is the fundamental foundation of our entire system. That is a solemn obligation that we take very seriously. We have always pushed back in that direction, trying to figure out how that can be accomplished. As you have seen and followed, we've gotten a fair amount of pushback on that, and from some very surprising places, and I'll leave it at that for now. But to be fair, when you make consequential decisions, there will be disagreement on how to go about that. But I am extremely confident in our focus on restoring in-person operations.

We started restoring grand jury in the summertime. We started outside the City. That followed in the late summer inside the City. Then we started summoning petit jurors to restart jury trials in, I believe it was September outside the City. We followed shortly after that inside the City. We were extremely careful in the planning at the restart of our in-person operations and getting back to the restoration of the impaneling of grand jurors. The grand jury is at the heart of our criminal justice system. We have a lot of people who are arrested and detained and need to have their cases advanced. That became a priority.

Judge Marks was really in charge of leading the detailed plan and approach to the restoration and the very careful way in which that was accomplished. Maybe Judge Marks, you'll talk a little bit about how we put the plan in place, how we constantly monitored the progress of the plan and all of the adjustments we made.

**LM:**

Very carefully and deliberately, we didn't rush into this. We wanted to get it all right, particularly all the safety measures that we needed to put in place. And we asked for constant feedback from the participants, the lawyers and the jurors themselves and the feedback overwhelmingly was very positive. They felt that they were safe in coming into the courthouses and participating in presentations and deliberations. One thing that I think

most of us were a little surprised, even in normal times, you don't always get everyone who's called in for jury service to show up. As a result, we always call in more than we need. We found, fairly quickly and early on, that I think in some instances, we were getting a greater percentage of people showing up for jury service than we do in normal times.

There's a number of theories about that but that was an interesting surprise for us. So, it all went well. This experiment with in-person grand juries and jury trials, unfortunately, we have had to step back in the last week or two because of the resurgence, but we were hoping that, that will be a brief pause and we'll be able to return to a program that had been proceeding very successfully.

**JL:**

Let me switch gears a little bit towards the issue of access to justice.

During a time of pandemic, Chief Judge, I am so inspired by your commitment on that issue, which is so important to me too. You've been just spectacular on every regard. But what happens now? It's hard enough to get access to justice in normal times. And now we have this pandemic. How do you deal with that? And what's the future of access to justice given the economic and health damage that's taken place from a pandemic? How has that affected this thing, which is so central to what the court system does that people should have access to justice and access to the courts? How has that played out during the pandemic?

**JD:**

We are very focused on ensuring access and we'll never take our eye off of that ball, but it's been very challenging and worrisome. The pandemic, everyone who is aware of what's going on, has intensified and exacerbated the ordinary problems that people face and particularly low-income people and trying to just negotiate the necessities of life. And we have folks who are struggling in Housing Court, in Family Court, on family violence issues, and particularly, which is one of my focuses, in the child welfare cases. But we have had a fantastic response from the legal service providers, from the pro bono lawyers and of course, the judges who handle

these cases recognize the imperative and the need without having been told what exactly that is. I really want to stress the legal service providers and the pro bono attorneys who have done an absolutely amazing job in our Family Courts, in our Matrimonial Courts and Surrogate's Courts and Housing Courts.

The real problem though is not motivating people to focus on these issues and getting the correct technology in place for people to be able to access the courts. But the problem is the digital divide. That is something we alone cannot solve. Certainly, we can pave the road into the courthouse and open the doors but not fully. We have been thinking and worrying about all sorts of options. Edwina Mendelson, who is our Deputy Chief Administrative Judge for Justice Initiatives has not, for a moment, taken her eye off of this ball and has been working very hard along with our Permanent Commission on Access to Justice to figure out ways in which we make a seamless approach for low-income folks who have difficulty accessing the courts.

We've done a few interesting things. Our AJs around the State have created this kiosk model inside of courthouses where folks can come to the courthouse and have available to them what they need to access the judge in the courtroom virtually. We have done a marvelous job up in the 9th Judicial District. The Administrative Judge up there, Kathie Davidson, partnered with the faith community and has been successful in setting up remote access centers for folks to come into church buildings and properties and use the technology that is set up there in order to access the courts remotely. I believe that the Center for Court Innovation, and Larry will know more about the details for this, is attempting to begin a program using some of our community justice centers to serve as remote access locations. Larry, is that up and running yet?

**LM:**

It will be very shortly within a matter of days.



**JL:** Let me piggyback on that with, this obviously so important an issue as to access. But central to all of that is also the role of the organized bar and the practicing bar, whether it's about pro bono or whether it's about helping to make the court system work in challenging times. How has that been, to deal with both the organized bar and the everyday practicing bar to make all these things you've been talking about happen with the cooperation of such an important part of our constituents in our community, the practicing lawyers and the bar associations who represent them? Has that been a smoother ride?

**JD:** It has been a smoother ride. And the response has been overwhelmingly clear. Our lawyers are truly public citizens. When the pandemic first hit, the State Bar President at the time, it was Hank Greenberg and Scott Karson has followed in this model and others -- Mike Miller, Mr. Greenberg's predecessor, immediately reached out to us, very strong response. We set up the COVID Recovery Task Force, which you, Judge Lippman, chaired and that they have done just terrific work. We in the courts convened a commission, it's called the Commission -- now, let me get this straight -- to Re-imagine the Future of the Courts. And Hank Greenberg is also chairing that Commission, but the mission of that Commission, getting back to your point before, Judge, about the future virtual courts. There are short-term goals and there are long-term goals that have been set out by that Commission. The short-term recommendations were to help us restart in-person operations. The long-term goal is to formulate a blueprint to help us integrate virtual appearances into the permanent future of the court. And they are doing an outstanding job.

**JL:** Let me take you to, if it's possible, each of these issues is so monumental on their own, but let's talk about racial justice and Chief Judge, in particular, Memorial Day weekend, we have the George Floyd tragedy and so many issues around the country in that same milieu. It's a national

reckoning on racial justice in the United States. How are you tackling the issue of bias and racial injustice in the courts at the same time as dealing with the pandemic? How did that come to you and how did you deal with it?

**JD:**

Judge Lippman, you bring up a very important chapter for us and a reckoning with racial justice in America. Over the summer, when George Floyd was killed over the Memorial Day weekend and we had all of this national conversation come to the fore, I was struggling, like everyone else, to process what was going on. Again, it was no revelation to me that there are injustices in the criminal justice system given my professional background, but there were so many thoughts and crosscurrents swirling around. For me, what was important was what meaningful response would the Chief Judge of the State of New York on behalf of the New York State courts and justice system put in place. Initially, I had prepared a statement which is express the sentiments, you would think it would express responsibly. I put it on my desk, and it sat there for two or three days. I just did not feel comfortable that it was important enough, meaningful enough, and weighty enough, and that something more needed to be done but I wasn't sure what it was. Then at about the same time, we had a terrible incident internally here. One of our court officers, a woman who was not only a court officer but was in a position of supervisory responsibility, posted a horrific post on Facebook. It all clicked with me. I knew that what I was feeling was dictating now a strong imperative to do something that was concrete and would be lasting because as you know, a statement is important, but words are words. What you do has a lot more impact than what you say in life. I discussed this with Judge Marks, and we agreed that an important step for the courts would be for us to start in our own house and make sure our own house was in order as a start. I picked up the phone and I called Jeh Johnson cold. I told him what we were thinking and what we were thinking was to find the most credible,

independent person we could think of in the country to conduct an independent assessment and review of all of the policies and the practices and the protocols that we have in place internally as it relates to racial bias and discrimination. He listened very carefully. He asked some very thoughtful questions. I think what, maybe it surprised him, but I think may have been a piece of what convinced him was, I told him that he would have unfettered and uninterrupted access to everything we had internally and that once we hung up on that phone call and after having had him accept the job, the task, the privilege to do that, that he wouldn't hear from me again, unless he reached out to me.

I told him that I had selected, in my mind, I hadn't yet asked them, two high-level judges, two very experienced judges, not to guide his work but to guide him to the places where he could get answers to the questions that he had. He took up the challenge. He put together a phenomenal team of young associates at his firm, Paul Weiss, and they worked doggedly over the summer to get a report to us on October 1st. They met their self-imposed deadline and they made an extraordinary report to us with very important, practical, meaningful recommendations.

We have accepted every single one of the recommendations that they made, including the number one recommendation, which is a clear and unequivocal statement from the Chief Judge on behalf of everyone in the system and we have a zero tolerance policy for racial bias or discrimination. We accept that, not grudgingly at all. We accept that openly and with a great sense of responsibility to carry out the recommendations. Judge Marks has put together on behalf of the court system and implementation team led by Edwina Mendelson to implement all of the recommendations that were made in the Johnson report. We have engaged an independent monitor to follow our progress and make certain we're making good on our promise to everyone in the court system.

**JL:** Thank you, Chief. I think that's so important, so much foresight on your part to recognize that action was required and to take that action and so pivotal to the times we're living in. There are two other areas I want to cover before we wrap up. And one has to do with an area that I'm pretty familiar with, that we all are, that's the judiciary budget. What do you do when, by necessity or the difficult time that we're having, there's a dramatic cut in the judiciary budget, in this case, a \$300 million in the time of the pandemic? Look at State government in general, the courts do not exist in a vacuum.

The first thing that comes to people's minds are layoffs. And yet you made your decisions and done it in your own way, including issues relating to the certification of judges and so many other things that had to be thought about. You recognized, I think, before it even actually happened that there was going to be a dramatic cut, I would say, in the judiciary budget. How did that all come about and what was your decision-making process during that time?

**JD:** The budget, as you point out, for the current year and for the coming year, very bleak, very worrisome, very troubling. And we are putting together our plan to submit to the Governor. Judge Marks is really tasked with the responsibility to shepherd the proposed plan. He recently was up at the Court of Appeals to present our coming fiscal year budget to the Court. And I'll let Larry speak a little bit to the very unusual situation that we experienced this year and what's on the horizon for the coming fiscal year. Larry, do you want to start with the \$300 million in savings we had to find in this year's budget?

**LM:** Well, the court system budget is somewhat unusual in that, we don't own our buildings. We don't have capital expenditures. Our budget is people, salaries and fringe benefits. It's over 90% of our sizable budget. When we were required to sustain a reduction in the magnitude of \$300 million, we have to look at our personnel costs. As a result of that, from very early on,

I think even before the reduction was announced and we began to implement it, we put in place a very strict hiring freeze. We looked at all non-personnel expenses that weren't essential and we eliminated them. We've done things like pushing costs that would otherwise have to be incurred this year. We've pushed them off to next year with the assumption that may not turn out to be a valid one, but we're assuming that next year will be better than this year.

Although, that could turn out not to be the case. We eliminated our Judicial Hearing Officer program -- JHO program -- for this year. The goal in all of this is to be able to absorb a gigantic reduction in our budget without having to lay off non-judicial court employees. And so far, we've been able to do that but to be able to do that, it was necessary that we take some very painful steps. You alluded to the decision not to certificate most of the judges who applied for certification or re-certification this year, very painful step to take but a necessary one if we were going to be able to avoid layoffs this year and perhaps next year.

**JL:** Obviously, those cuts are traumatic for the court system and we've been through them before, but this has come at such a strange moment with the pandemic around us and necessitating these cuts. We all know what a difficult exercise that is. Let me take one more issue --

**JD:** Before you leave that point, Judge, I'd like to go back to layoffs and our focus to make certain that we are preserving our workforce. We are in the middle of historic unemployment. Were we to lay off our folks, I shudder to think of what the prospects are for these people to find additional employment. Not only do we need them to move the work of the court but the humanity of laying people off in the midst of a historic pandemic with historic unemployment rates is just something that is almost too painful to think about.

**JL:** Yes, absolutely. As if we didn't know, there was still one other hot button issue before I ask you a global wrap up. Chief Judge, I particularly ask this of you, the bar exam, this was an issue that we have a history in this State, around the country of a bar exam, in-person that is the stuff of novels and the history and everything else. And here you get this pandemic where for practical purposes can't have an in-person bar exam. How did it come to a point where you converted it to an online exam? Let me directly ask you, Chief Judge, how did you resist watching the push, to say the least, to cancel the bar exam and do a diploma privilege? Well, how did all of that play out? What was that about, Chief Judge?

**JD:** Obviously, this issue has had a major impact on law schools and law students. Let me start from the beginning, early on the Court of Appeals took a number of important steps. In the beginning, we granted waivers for distance learning beyond what was in place. We worked to put in place a temporary practice order so that graduates of law school could be admitted on a temporary basis to practice law under the supervision of an employer. But then we went on to work with the Board of Law Examiners because we did postpone the July in-person administration of the bar, which as you can imagine, set off all sorts of alarms, rightfully, and concerns. But we test over 10,000 people, close to 15,000 people, I believe every year in July for that administration. It just wasn't to be that we'd have an in-person administration of the July bar.

We went to a September in-person bar, silly us thinking that we could accomplish that in September. And then of course, as you know, we wound up moving to an online administration under a lot of concern and difficulty and call for a diploma privilege, which I will tell you amongst the decision-makers really did not have any lift to it at all. And we felt that we could accomplish an appropriate assessment of people's qualifications for admission to the bar. We did the remote online bar. It was a very successful administration. Those candidates who sat for that online bar are

awaiting their results, we wish them good luck and Godspeed with that. We are planning now for another online administration to take place in February.

I want to send kudos and thanks to my colleague, Mike Garcia, at the Court who took the day-to-day dealing of this matter off of my plate. He organized that effort really magnificently. He worked very hard on behalf of the Court of Appeals and me to do that while I was busy with other pandemic-related things. We also put in place a working group to study the future of the bar because I think everything in our profession, everything in licensing exams has to be re-looked at. That's what they are busy doing. That's where we are.

**JL:** You did it seamlessly as with so many other issues, Chief Judge. Let me ask you both a global question. What would you hope that people will say in the future, in the days, the weeks, the months, the years, the decades to come about your leadership during the COVID-19 crisis of 2020 and might I say regrettably into 2021? Looking at this, what would they say about what happened and the leadership that we had in the New York State court system from the Chief Judge and the Chief Administrative Judge?

**JD:** Well, I would hope that when people look back and assess the job that we did, I would hope that they would find that the leadership was strong, responsive, effective, and most important, compassionate of the needs of everyone, and that they would recognize that the judges and the professional staff were present and accounted for and that they responsibly served the litigants and the lawyers and stood firm for the rule of law.

**JL:** Thank you. Judge Marks, I don't know how you're going to answer that but please do.

**LM:** I would hope that they would look back and see that under incredibly challenging circumstances and rapidly evolving circumstances that the leadership of the court system struck the right balance for ensuring that the public's legal problems were addressed but at the same time, taking all necessary steps to protect health and safety of judges, staff, and court users.

**JL:** Well, thank you both. I think that really ends on such a wonderful note by both of you. I think that this session, for all of us, the end of this special segment on the New York State courts during the 2020 pandemic has been so instructive and might I say, so inspiring. We thank both of you for your reflections, for your time, for your experience. This is to be sure history in the making and I mean that when I say, what a thing to have to go through? Somehow unanticipated but that's what makes great leadership. On behalf of the Historical Society and legal community, I want to thank you both for, again, your inspiring leadership, for a court system that has responded to an unprecedented challenge and stayed up and running to deliver justice, to uphold the rule of law. This has been an unprecedented time in New York and the nation and certainly for the judicial branch of government. We are so great that in New York, we have had your extraordinary leadership, Chief Judge DiFiore and Chief Administrative Judge Marks. Thank you both so much on behalf of the Historical Society and the legal community.

**JD:** Thank you for the opportunity, Judge.

**LM:** Thank you, Judge Lippman.