

HISTORICAL SOCIETY of the NEW YORK COURTS

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

**Interview with Hon. Michael Frishman & Thania Charmani
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Thania Charmani: [0:00] Welcome to *Dispensing Justice from a Distance: Journal of the New York State Courts During the 2020 Pandemic*. This is a project of the Historical Society of the New York Courts that highlights the personal accounts of individual judges who are meeting the needs of their litigants in this time virtual courtrooms.

I'm Thania Charmani. I'm a litigation associate with Skadden Arps and I'm the Co-Chair of the Young Lawyers Committee. Today I will be interviewing Judge Frishman.

Judge Frishman currently resides in the Bronx with his wife Courtney and his daughter Aleya. Judge Frishman was elected as a Civil Court Judge for the City of New York in 2019, right before the start of this very weird time we're living in. He is currently sitting in New York County Criminal Court. Prior to his service on the bench, Judge Frishman was employed as the Court Attorney to New York Supreme Court Justices Wilma Guzman and Barry Salman.

Prior to that he worked in private practice, specializing in medical malpractice and general negligence litigation. Judge Frishman also teaches mock trial at PS MS 71 and has led his team to four championships in the Thurgood Marshall Mock Trial Competition. He also had to help to restart the mock trial program at Cardinal Spellman High School and served as their inaugural coach.

Judge Frishman currently serves on the Gender Fairness Committee for the 12th Judicial District and is the Vice President of the Jewish Lawyers Guild. He has served on the Board of Directors of the Puerto Rican Bar Association and on Community Board Aid in the Bronx.

Well, thank you so much for agreeing to sit with us and share your experience, Judge Frishman, welcome.

Michael Frishman: It's absolutely my pleasure, and thank you for having me.

TC: We already talked briefly about this weird time we're living in and how court proceeding has all gone virtual, [2:00] but how has this affected you as a Criminal Court Judge? Can you share with us how it has affected your work and any changes that you implemented?

MF: Well first, I'd like to start by saying that I apologize off the bat for my hair. I haven't had a haircut in a really long time so you know it's hard -- it's hard to find somebody who can at home who can cut curly hair, so I apologize in advance.

As far as my job as a Criminal Court Judge, I mean it's interesting to note, I got elected to the bench in last year so this is my first year sitting on the bench and you know as you've heard my history, there's not a lot of Criminal Court work in my history so not only did I start on the bench this past year, but I'm just starting with criminal work, and all the laws changed when I first sat down, specifically with bail reform and discovery reform. That's all brand-new stuff so, you know, just getting up to speed with the new laws was hard enough before this pandemic kind of shut everything down briefly.

And when I say briefly, I mean very briefly. The one thing that needs to be I think stressed is that the Criminal Courts never stopped. Maybe for a second there was a shock that closed a lot of the parts down, but certain things, such as arraignments, they never stopped. I happen to have been sitting in a part, night arraignments, the night before the governor shut everything down. I'm sitting on the bench, physically, before, you know, the announcement was made and then I spearheaded, or helped spearhead rather, the first virtual arraignment. So the first time we actually went

virtual on skype, I did the first night arraignments at least in New York County with that. [4:00] So I got to see kind of both perspectives live and in action. It was amazing to watch frankly and you know specifically within the last two to three months, I've seen amazing things, and then people stepping up to do amazing things particularly in the courts -- really just gone above and beyond to make sure the community continues to be served, the needs of the community continue to be served.

As far as how things specifically changed, we deal with a lot of paper inventories. Ultimately, the criminal court is still a very much a paper court, and so there had to have been a transition. A lot of it which I did not see specifically within the Clerk's offices by really kind of creating these virtual parts. When I got to sit and kind of captain one of these virtual parts, to watch everybody kind of come together and really do this -- something new and really exciting together is just was one of the most amazing experiences my life. I'll never forget it and we're still kind of in it, but it's -- they've kind of streamlined it a little bit now at this point. It's drastically changed the long and the short of it. Hopefully that answers your question.

TC: How did it work practically when you moved to virtual arrangements?

MF: So the practical application was very interesting, so just on a very basic level first. You have to know how to get yourself logged into the Skype system which was for a lot of people -- that's very difficult and you know it's not just you and a lawyer on the screen together, there has to be -- the defendant has to be involved, the [6:00] clerks have to be involved, the D.A. has to be involved, the defense attorney has to be involved, the court reporter has to be involved. So you're running a screen and -- let me take a step back.

Every defendant has you know for the most part a different lawyer, so you have to keep getting the lawyers into the Skype Meetings because

everything is being done on Skype, Skype for Business more specifically. So you're kind of running a courtroom now, instead of live and in-person you're looking at screen, very futuristic onset of a Stanley Kubrick movie. You're running a screen, and you're addressing different people at the same time electronically. It could be from you know the comfort of your own home, your own office, or you know you could be sitting in an office as I'm sitting in right now.

When I was running virtual arraignments, when it first started I was doing it better on a night table because you know I live in a one-bedroom apartment, and I didn't want to wake up my kid, who was sleeping in the next room so it was amazing.

TC: It's true we all have to in one way or another adjust the way we conduct our everyday lives and interactions, I can imagine having to coordinate with people coming in and out of virtual rooms especially defendants and different practitioners and the DA...Have there been aspects of this that you think you would like to maintain post COVID-19?

MF: Well I certainly think – well, let me – let me preface this by saying that I am a big proponent of being in a courtroom. There's an organic life that happens when you're inside a courtroom that, at least I've grown accustomed to. When the next generation of lawyers are not raised in that type of forum and everything is virtual you know it might be very different, but for somebody who's come up inside of a live, [8:00] in-person courtroom I have to say that I like it. So I would prefer to see live in action courtrooms and court spaces, and live spaces.

I think that there's a way of dealing with people when they're right in front of you physically that really can't really be replaced, particularly when you're dealing with attorneys and you have questions. You want to turn to somebody, you know ask for help, and when, as a new judge, you're sitting in a strange area of law, when you're sitting in front of a computer

screen and you're just really on your own, it's an experience. You want to do the right thing so you have to take your time, and you don't want to do anything too quickly, and you know that there's a calendar and you still have to move it, and you know there's a delicate balance, but at the same time you want to do the right thing in the best of your ability, I think that when you're live and in person it's a little bit easier to get from point A to point B. So I think that that's something I would like to have back now. There is something to be said for alternative parts that do exist that are virtual, specifically people who are ill, and then maybe for other circumstances that haven't quite come to light yet where it would be very helpful to have these virtual parts. I think that you know it's kind of a baptism right now, and so we're getting our heads around it either way. And hopefully you know someday in the future we'll be able to kind of combine them and see something new and beautiful.

TC: You mentioned in the beginning that the Criminal Court is still very much a paper court, so during these days, [10:00] were either the clerks -- or is this an issue of every individual judge -- more open to receiving papers via email or via some other form of electronic filing? And would that be an aspect that perhaps will be maintained?

MF: Well as you can see a lot of the Civil Court where I came from, you know the e-filing was mandatory in a lot of cases, you know, federal courts e-filing is -- it's very normal now. I think the Criminal Courts were going that way, now either way. You have to probably talk to the administrators on that, and they probably give you a better answer. From my perspective, I'd like to say one thing quickly about the clerks. They've been amazing, I mean they're really the ones, I have to say, the clerks, and when a lot of the judges went home the clerk stayed, the court officers stayed -- you know so there were still physical bodies in the court. They've been amazing I mean, at least here in New York County -- I can't

speak to other counties -- people were volunteering to come in because they knew that this was the time that they had to be there. People who have been in the system for 15, 20 years were learning something completely new, and they wanted to learn. They knew that they had to learn even if they didn't want to learn. And people really stepped up to the plate. I mean I saw a clerk holding a cell phone to a criminal defendant who was needed to be arraigned in the back of a car, so he was being videotaped by a clerk in the back of a police van because he wasn't physically able to make his way anywhere else into the holding cells to where we had our cameras all set up. I mean the prospects of that are amazing, and the clerks are the ones who really of dived right into it. So I have [12:00] really nothing but admiration, and the judges just recently returned to the building, the clerks have been here almost the entire time. The court officers have been here the entire time, so they really are the unsung heroes through all of this.

I think the Criminal Court – it would behoove the Criminal Court to keep a lot of these electronic filings. We'll prepare for something like this in the future. It's truly amazing to hear how the legal community has come together during these times because many people don't know that criminal courts remain open. Some courts slowed down especially in the beginning, but criminal courts remained open throughout this pandemic. And it's truly amazing for both the practitioner, the judges, and the court personnel that they were willing to sometimes risk their health in order to see this through.

TC: Has the pandemic and all the virtual proceedings that were put in place affected the way that you manage your case law and your courtroom?

MF: Well, there are certain parts which have not reopened yet, so there are parts that have remained open and certain ones that have not. We are currently in the process of reopening those parts now and going side by

side with New York City's rephasing-in project, so we are opening up a lot of the intake and all-purpose parts now. Grand juries were suspended so we've been doing a lot of preliminary hearings which is, you know, new. There have been jury trials -- I don't know when that's going to start up again. I mean these things have been amazing times that we're looking through right now, so really it's completely [14:00] turned out. But when we do have courtrooms that have been running electronically, they have been running smoothly and I think that's the amazing thing so arraignments, I mean my arraignments, aren't what they used to be as far as -- and probably for the better -- as far as the number of people who are being arraigned and the length of each specific arraignment. I think my -- the amount -- the most arraignments I did it on a given night when I was not virtually was probably about 30. Now I did 30 virtually, so as long as the people who are running the arraignment such as the clerks and the IT people are getting it done, and the people are being produced.

From my perspective, things are still moving, you know, they're moving very good, almost in a very similar fashion. It's part dependent, it's core independent. When they start opening up the new parts, we'll see how those parts get run but if it's any indication of how the parts have been run like virtually and electronically beforehand, I think it's going to be fabulous.

I would like to specifically mention my direct supervisor Kevin McGrath, he's the supervising judge here in the Criminal Court, and I mean this guy is -- I mean he's been on the front line the entire time. I think he went 60 straight days coming in, like he came in every single day and this you talk about leading from the front and inspiration. It's people like Judge McGrath who make this job easy and inspire and make you want to go out and I'll tell you this very quick story.

Even though the criminal courts were closed -- excuse me even though criminal [16:00] courts were open, they were still having issues staffing some of the courts specifically, and I know that they were asking for

volunteers in Bronx County and Staten Island. They were sending out emails, asking if any judges would want to volunteer to go help out in these other counties, and I remember for Staten Island, I responded in less than two or three minutes saying that I wanted to go help out in Staten Island, and I got an email from Judge Amaker's office saying somebody already responded, thank you for your service. It just goes to show how even a three-minute window wasn't even enough. People want to help. I mean the bench at least for coming from when I am here in New York County -- I can't speak for anywhere else because I haven't been there -- has been so roaring and ready to go, so it's just been amazing.

TC: It sounds truly extraordinary the efforts that everyone put in during the last few months, and we see it from our side as practitioners too, how smoothly things run. It's truly amazing.

I wanted to ask you if there are aspects of the pre-pandemic system that you're looking forward to going back to, but from your previous answer, I'm guessing you really miss the courtroom.

MF: I miss the courtroom. I'm old school in that sense. I love being in a courtroom, I've always loved being in the courtroom, and I look forward to the days when we can do that again. But this is a wonderful term.

TC: You mentioned that grand juries have resumed or --

MF: No, they still have not resumed. We expect an order from the Governor's Office shortly.

TC: And is it going to be virtual or -- who knows?

MF:

We'll see. If it is virtual, we'll be ready for it, and I have – I [18:00] trust Janet DiFiore -- I want to say another very quick story -- and Judge Silver to put something together here for everybody.

I remember, and I was telling you briefly about, when I did – I helped out with the first arraignments that were virtual in the State. It was – I did the evening arraignments, and Judge Gaffy did the day arraignments. I remember I came into the building because it was interesting, I was interested rather to see how the clerks were doing it and how you know it looked on the screen with the arraignments and how the court operated. So I wanted to see it before I had sat on the bench, and found the bench and sat in my chair later that evening. I remember I just – it was very serendipitous because Judge DiFiore actually came into the court that day to check it out herself as well. It was, to me, it was almost a general coming to a war zone, and putting the flag down and saying this is where we're going to make our stand, and she gave a speech to everybody at that moment. I was so glad – I mean there's pictures out there, I know, that there's some out there of Judge DiFiore when she came down and observed the courts for their virtual arraignments for the first time. There's evidence of this, and I remember she came down and gave a speech, and that was very much the turning of the tide almost as far as the electronic courts, and it worked. I remember it worked, and it was amazing – everything was amazing.

TC:

This is exactly the type of story that we want to make sure is preserved and people hear about it, because it truly shows how the legal community of the New York State courts operates and comes together during [20:00] times like these.

I want to thank you so much for your time and for your insight in the current situation. Hopefully this will end soon, and you'll enjoy being back in the courtroom and we'll enjoy being there with you. We won't have to relive this anytime soon.

MF: Well the pleasure is all mine, and I'm so grateful for not only the opportunity to be a part of – I mean it's a terrible pandemic, but the opportunity to be a responder to it has been the honor of my life and I think the fact that you're encapsulating it is marvelous.

TC: Thank you so much. For more interviews from our archive, please visit the Historical Society of the New York Courts' website and history.nycourts.gov. Thank you very much.