



FEDERAL TRIALS DURING THE COVID-19 PANDEMIC

HON. FRANK P. GERACI, JR.

CHIEF JUDGE, WESTERN DISTRICT OF NEW YORK

NOVEMBER 18, 2020

Background & Perspective



- ▶ Beginning on March 13, 2020, the Court issued general orders:
 - ▶ All civil jury trials continued for 60 days;
 - ▶ All grand jury continued for 60 days (Grand Jury still permitted to meet);
 - ▶ All other proceedings (criminal and civil) proceed at judge's discretion;
 - ▶ No naturalization ceremonies for 60 days; granting the US Citizenship & Immigration Services authority to administer oath;
 - ▶ If possible, the Court will conduct attorney admissions via video conference;
 - ▶ Speedy trial exclusion;
 - ▶ Mediations may be continued
- ▶ Parts of this order have been extended through December 24, 2020



WDNY Court Operations in March:

- ▶ Judges were encouraged to reduce personal appearances as much as practicable; reduced staffing by 50%
- ▶ All judges and chambers staff working from home
- ▶ Clerk's Office open regular hours – 9AM – 5:00 PM
- ▶ Masks became mandatory for entry to both courthouses
- ▶ Public can contact Chambers for login instructions for remote proceedings
- ▶ Drop boxes for filings
- ▶ IT Team began working to establish a telework connection for everyone in the District
 - ▶ Required teaching new IT skills to judges and all staff in order to ensure successful connectivity

How are we doing in WDNY?



Date range	Total Docket Entries	Civil Cases FILED	Civil Cases CLOSED	Criminal Cases FILED
4/1/19 - 10/1/19	75,240	1,429	1,345	225 cases 276 defendants
4/1/20 - 10/1/20	71,854	1,625	1,273	168 cases 218 defendants
Delta	-4.5%	+13.7%	-5.3%	-25.33% cases -21.0% defendants



How are we doing in WDNY?

Date Range	CJA Vouchers Paid	CJA Disbursements
4/1/19 – 10/1/19	246	\$1,491,972.37
4/1/20 – 10/1/20	367	\$1,994,000.40

Other significant demand on WDNY



- ▶ WDNY remains the #1 District in the nation for social security cases ahead of CA, C.
- ▶ CD, C has 28 active judgeships compared to WDNY's 4 active judgeships

Cases Closed – Jan-Oct 2020	Cases Pending (both assigned and unassigned)
1102	1600

Trials



- ▶ WDNY has conducted 2 jury criminal trials and several civil trials
- ▶ Consulted with URMIC Epidemiologist
- ▶ Cleaning of courthouses and courtrooms during and after proceedings
- ▶ Plexiglass in front of jurors
- ▶ Social distancing in courtrooms, including spacing of jurors
- ▶ Use of additional courtrooms for jury rooms
- ▶ Masks required
- ▶ Temperature scans
- ▶ Use of Zoom for some pre-trial proceedings







Lessons as WDNY Continues to Move Forward:

- ▶ Encourage attorneys to be prepared with their technology, test in advance, and if you have questions, contact Chambers for assistance from the Court's IT Team
- ▶ Everything takes longer – jury selections, voir dire, motions, jury trials, so practice patience
- ▶ The Court is dedicated to keeping everyone healthy and safe, and this includes cleaning courtrooms between witnesses and matters



▶ Lessons Learned

- ▶ Be prepared

- ▶ Be flexible

- ▶ Be patient



- ▶ Be prepared:
 - ▶ All evidence presented by counsel from counsel tables - Have all documents in digital format
 - ▶ Be prepared for witness issues
 - ▶ Read transcripts, videotape depositions or remote presence.
 - ▶ Test technology well in advance of trial.



- ▶ Be flexible:
 - ▶ Each day of testimony presents additional time for COVID 19 issues to arise.
 - ▶ Be prepared for full days and a rapid pace
 - ▶ Work with opposing counsel on stipulations
 - ▶ Test technology well in advance of trial.



- ▶ Be patient:
 - ▶ COVID 19 precautions take additional time.
 - ▶ Cleaning between each witness
 - ▶ Masks make it difficult on court reporters.
 - ▶ Test technology well in advance of trial.

Thank you & I welcome questions

GUIDELINES FOR JURY TRIALS DURING THE RETURN TO ONSITE OPERATIONS

U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK

Developed by the Jury Trial Task Force

Adopted: July 10, 2020

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INTRODUCTION

The Jury Trial Plan will be used in conjunction with the district's Plan for a Phased Return to Onsite Operations (PPROO). This Jury Trial Plan has been developed in an attempt to adhere to the CDC health and safety guidelines as they would apply to jury trials in the U.S. District Court for the Western District of New York. The plan's goal is to preserve the health and safety of the judges, staff, court security, attorneys, litigants, jurors and the public.

Chief Judge Geraci assembled a task force committee to study the significant jury trial issues during this pandemic. The committee was charged with exploring the means of conducting jury trials while practicing social distancing and keeping everyone safe. Members of this committee include the Honorable Elizabeth Wolford, Clerk Mary Loewenguth, Chief Deputy Patrick Healy, Jury Administrator Molly Schaus, Courtroom Deputy Colleen Demma, Court Reporter Christi Macri, Director of Information Technology William Powers, Federal Public Defender Marianne Mariano, First Assistant U.S. Attorney Joseph Guerra, National CJA Panel Representative Rodney O. Personius Esq., US Chief Deputy Marshal Becky Smith and GSA Building Manager Joe Geiger.

In an effort to meet that goal, the court hired Dr. Brenda Tesini, an infectious disease physician from the University of Rochester. Dr. Tesini toured both courthouses in Buffalo and Rochester and made recommendations regarding the processing of jurors for selection and how to handle trial logistics. Dr. Tesini's contributions to the recommendations in this report were invaluable. At the conclusion of Dr. Tesini's visit to the Keating Courthouse, she was asked what our top 3 priorities should be regarding juror safety. Her response:

- Masks should be worn at all times.
- Maintain distance and reduce the time of exposure to others.
- Wash your hands.

LIVING DOCUMENT

The Jury Trial Task Force recognizes that the Court is in uncharted territory, balancing the administration of its constitutional and statutory duties while addressing the issues of a pandemic. The very nature of jury trials is built around members of the community coming together to decide issues of fact based upon the presentation of evidence and witnesses. None of those trial features anticipated the requirements for social distancing of all participants. Thankfully the pandemic has occurred during a period of advanced technology. The court has many tools at its disposal to assist in maintaining social distancing and ensuring participant safety.

However, given the uncharted nature of this situation, it is difficult to provide a definitive plan that will address all possibilities. The Task Force recognizes that many of the recommendations found herein will be refined through trial and error. As such, this document should be considered a living document – a “work in progress” as it will be updated with what we learn as we proceed with jury trials during this challenging time period.

Indeed, because of the challenges as outlined herein, it is the Task Force's recommendation that the court review the viability of proceeding with trial scheduling in consultation with the Federal Public Defender, the U.S. Attorney's Office and the CJA attorney liaison prior to the expiration of the June 15, 2020 General Order.

Additionally, some the recommendations identified in this report will require procurement of items that may have long lead times, scheduling of contractors that are high-demand and formulation of contracts with GSA. These efforts will have an effect on the timeliness of the resumption of a trial schedule. The earlier the court can begin acting on the recommendations the more likely it will be to meet these deadlines.

EXECUTIVE SUMMARY

Social distancing in the age of COVID-19 is the overriding guide to this plan as stressed by our consultant, Dr. Brenda Tesini, an infectious disease specialist. As noted in the details of this plan, the recommendations are structured to support social distancing first and logistical operations second. In summary, the Task Force recommends the following procedures:

COURTROOM USE

Social distancing requirements indicate that we should explore spaces that allow attendees to spread out as much as possible. District judge courtrooms have the largest space. In the Keating Courthouse the courtroom with the most square footage is Courtroom 1; in the Jackson Courthouse it is the Erie (9W) Courtroom. These courtrooms are physically larger than all other courtrooms in the district, provide extra juror seating (in the case of Jackson) and have additional gallery seating. In situations where a concurrent trial is held, Courtroom 3 in Rochester and the Niagara (8W) Courtroom in Buffalo shall be used.

Moving jurors through the courthouses increases their exposure to the public, increases the delays as we meter access to the elevators and increases the likelihood of coming in contact with contaminated spaces. Additionally, the Keating space for traditional jury assembly is too small.

As such, the Task Force recommends that Courtroom 1 be identified as the Jury Trial Courtroom and Courtroom 2 be used as a Jury Assembly Courtroom in Rochester. In Buffalo it is recommended that the Erie (9W) Courtroom be used as the Jury Trial Courtroom and the Buffalo (9E) Courtroom be used as the Jury Assembly Courtroom. In the case that a concurrent trial is necessary, Courtroom 5 in Rochester shall be designated as the Jury Assembly Courtroom and the Chautauqua (8W) Courtroom in Buffalo shall be so designated.

It should be noted concurrent trials does not mean concurrent jury selections. At this time the court is only able to logistically support one jury selection at a time. Special scheduling considerations will need to be made in order to support concurrent trials. The Jury Administrators should be consulted as part of the scheduling process.

Using the adjacent courtrooms in each city as the holding area for jurors also provides additional logistical advantages. It is likely that the jury will need to be excused more frequently given the lack of availability of lengthy bench conferences. Also, Dr. Tesini recommended taking a break every two hours, to allow the air in the courtroom to circulate and those present to remove their masks while maintaining social distancing. Thus, easy access to the Jury Assembly Courtroom nearby will optimize the movement of the jurors. Additionally, the jury deliberation rooms in each courthouse are insufficient in size to allow for 12-14 people to use them for deliberations, breaks or gathering points.

It is anticipated that the Jury Assembly Courtroom would be used for juror deliberations, breaks and recesses. As such, the Task Force recommends that the Jury Assembly Courtroom be reserved for this use for the entire duration of the trial. This will mean, though, that two courtrooms will be unavailable for other use during any trial, which obviously will impact other court proceedings.

JURY TRIAL SCHEDULING

Limitations on courtroom availability and the additional staff required to process jury selections will limit the Clerk's Office's ability to effectively and efficiently process jurors. With the invested resources in jury selection, it will be extremely difficult if not impossible to conduct more than one jury selection in a courthouse at a time. At this time, the Task Force recommends that only one jury selection and one trial be held at a time. As the process and the COVID-19 crisis evolves, this recommendation could be updated to allow for additional trials.

Given the requirements of social distancing, multi-defendant trials cannot be held in either courthouse. The amount of space required in each courtroom would exceed the recommended minimums for personal space. Ultimately the presiding judge will need to weigh the risks regarding these trials. At this time the Task Force recommends that multi-defendant trials be postponed until current social distancing requirements are lifted or defendants be severed into individual trials. Off-site locations are not recommended due to security concerns, issues related to juror tampering and IT logistics.

Due to the space requirements needed to hold trials, coordinated scheduling for trials is necessary. The Task Force recommends that all scheduling be coordinated with the jury administrators in each city prior to calendaring the trial.

PHYSICAL DISTANCE REQUIREMENTS AND SEATING IN THE JURY TRIAL COURTROOM

While reviewing the courtroom spaces with Dr. Tesini, she noted a number of issues that will require some adjustment to seating. She does not recommend using the jury box seating as designed. In consultation with Dr. Tesini, the Task Force recommends that jurors be seated in the jury box 6 feet apart, and that they be alternately seated so that no one is directly in front or behind each other. Additional seating will be required around the jury box to accommodate all jurors. It should be noted that jurors outside the jury box will not be adequately covered by the *white noise* system used to provide privacy during sidebars. In addition, the huddling of attorneys and the judge during a sidebar presents risks. As such, the Task Force recommends that the jurors be excused to the Jury Assembly Courtroom during such private conversations.

These recommendations extend both through the jury selection and trial. During jury selection, it is recommended that the entire courtroom be used for juror seating, including the gallery. The Task Force recommends relocating the press and public to spaces outside of the courtroom. After jury selection concludes, if space allows in the courtroom, members of the public or press could be allowed into the gallery space if the presiding judge determines that it's prudent, so long as adequate social distancing of 6 feet is maintained (members of the same household could arguably sit closer together). Depending on the attendees at any trial, this may require use of another room at the courthouse to maintain public access to the trial, meaning that a total of three courtrooms would be taken out of commission for other court proceedings during any trial.

As noted above, Dr. Tesini has recommended adhering to a strict use of face masks by everyone in the courtroom except for the witness while testifying. A uniform masking policy has been described as one of the most important steps that can be undertaken to stop the spread of this respiratory virus. There are significant safety concerns if participants during a trial in a closed courtroom are not uniformly wearing masks. Dr. Tesini also recommends that the court provide masks to jurors to mitigate issues relating to safety and cleanliness.

At the recommendation of the Administrative Office and Dr. Tesini, the Court has purchased plexiglass barriers to erect in front of the judge and around the witness box. Additional plexiglass is being ordered to provide barriers between the rows of jurors and the lower bench staff. The Task Force recommends that the witness be required to testify without a mask behind a plexiglass barrier.

JURY SELECTION CONSIDERATIONS

Typical criminal jury trials would require between 70 – 100 prospective jurors to be summoned to ensure that a 14 to 16-person jury can be assembled. Social distancing requirements prevent the Court from assembling that many prospective jurors in one area at one time. The Task Force recommends increasing the total number of prospective jurors and to bring those jurors in groups of 25 at staggered times throughout jury selection.

Due to the public's perception of the pandemic crisis, we may experience an increase in the number of unavailable jurors. This could result in a greater incidence of non-appearing jurors. The Task Force

recommends consulting with the Jury Administrators to determine how many total jurors should be summoned based on their experience with the jury pools.

The process of selecting the jurors will require additional changes to our current processes. The Task Force details those recommendations in the Jury Selection section of this plan.

COURTROOM CLEANING

Cleaning and disinfecting the courtrooms will require additional time and planning. Dr. Tesini has described important steps not only for safety concerns, but also for addressing individuals' emotional concerns. In addition, to maintaining a clean environment, it is also important for members of the public to see the cleaning taking place. The Clerk of Court is currently working with GSA to establish dedicated GSA staff who would be available for ad hoc cleaning of the courtroom spaces. This dedicated GSA cleaning staff would be available to disinfect the witness stand between witnesses, counsel tables and podiums between proceedings (in non-trial situations), and on an ad hoc basis as required. The Task Force recommends that additional time be built into the trial calendar to allow for this cleaning.

Each courtroom will be equipped with disinfectant spray and towels (or disinfectant wipes when they become available), hand sanitizer and spare face masks. The Task Force recommends that an announcement be made at the start of each proceeding identifying these resources and asking all attendees to make use of them.

Additional details are discussed in the sections below. They are separated into three categories: Jury Selection, Jury Trial and Miscellaneous Items.

JURY SELECTION

COMMUNICATING SAFETY TO JURORS

Issue: In the current pandemic environment jurors may be reluctant to serve on juries. Additionally, some jurors will be unable to serve as they may consider themselves part of the vulnerable population.

Recommendations:

A supplemental letter will be sent to prospective jurors with the Notices to Appear addressing the court's procedures on social distancing and health and safety in the courthouse (see Attachment A). The letter will also have five (5) supplemental questions that address COVID-19 exposure. If a prospective juror answers yes to any one of these questions, that individual will be instructed to call the jury office to reschedule their service.

The public website will provide information on steps the Court is taking to create a safe environment.

The Administrative Office of the U.S. Courts (AO) has recommended each district create a video by the Chief Judge that will explain how the Court is addressing safety throughout each step of the jury process. This has been discussed with Chief Judge Geraci and plans are underway to create such a video.

The Court will work with GSA to increase the visible signage throughout the courthouse for jurors to maintain social distancing and that PPE masks must always be worn. Floor markings will be placed in the foyer of each courthouse in accordance with CDC guidelines.

JURY SUMMONING

As noted in the Executive Summary, the process of selecting jurors will need to be adapted to the current social distancing restrictions. The Court will need to limit the number of people coming to the courthouse at any given time and provide social distancing cues to maintain safety, all while allowing for the fair selection of jurors to protect the rights of the public and accused.

Issue: The number of responding prospective jurors may be reduced by the public perception and fear of the virus. Other factors include being a member of a vulnerable health category, needing to care for family members and children, or being an essential worker. All of these factors may reduce the number of available prospective jurors.

Recommendations:

When determining the total number of prospective jurors to summon for a case, factors such as trial duration, complexity, and notoriety are traditionally evaluated. As the Jury Administrators have been tracking juror reactions to the summons during the pandemic emergency, they have become a valuable asset in helping to determine the number to summon. The Task Force recommends consulting with the Jury Administrator to determine the total number of jurors to summon.

ENTERING THE COURTHOUSE

As the courthouses are open to the public, in conjunction with the USMS, the Court has developed and implemented a series of screening questions that must be administered before access to the courthouse is granted. Access is predicated on passing those COVID-19 screening questions¹.

Issue: Prospective jurors need to be handled differently than the general public or other visitors to the courthouse. Their attendance is required and additional interaction with court staff is necessary to facilitate their participation in jury selection.

Recommendations:

Prospective jurors will be screened by court staff as indicated below. Should a prospective juror be unable to pass the initial screening, that individual will be provided with a contact card and with instructions to call the jury administrator to set a new jury service date. They will then be dismissed from the courthouse.

Due to the physical differences between Jackson and Keating courthouses, jurors will follow slightly different screening procedures. Those procedures are outlined below.

KEATING COURTHOUSE (ROCHESTER)

As jurors approach the courthouse, they will be screened by the court staff prior to entering the building. Upon successful completion of the COVID-19 screening process, the prospective juror will be provided with a court-provided mask.

Upon successful completion of the initial screening, they will then proceed to the designated area that leads to the elevator lobby. The gathering area will be roped off with stanchions and floor markings that will help maintain social distancing. Staff will escort prospective jurors to the 2nd floor for jury check in. Court staff will then escort jurors in groups of no more than 4 to the Jury Assembly Courtroom.

JACKSON COURTHOUSE (BUFFALO)

As jurors enter the courthouse, they will be greeted by court staff and provided with a court provided mask. Court staff will ask the COVID-19 screening questions.

Upon successful completion of the initial screening, the prospective juror will be asked to enter the atrium foyer that will be roped off with stanchions and floor markings that will help maintain social distancing. Should a prospective juror fail the initial screening, that individual's name will be noted, and a card will be provided that will request the jury administrator be contacted.

After passing through the CSO's screening, jurors will move to the public elevator for escort to the 9th floor for jury check in.

¹ The questions were developed as part of the March 12, 2020 General Order regarding visitor restrictions. Attachment B contains a copy of the document and the screening questions the Court Security Officers use to restrict entry to the courthouses.

JUROR MOVEMENT IN THE COURTHOUSES AND STAFFING CONSIDERATIONS

Issue: Elevator capacity is limited, and we are unable to move large groups of jurors throughout the building.

Recommendations:

After reviewing elevator use with Dr. Tesini, she observed that exposure during the short elevator rides would be minimal. In the Jackson Courthouse, she concurred that allowing up to 5 individuals on an elevator at a time would be safe. Public elevators in the Keating Courthouse are somewhat smaller, so it is recommended that 4 persons should be the maximum capacity. Extra time will need to be allotted for moving groups of jurors throughout the building.

Issue: Due to social distancing issues, access to courthouse restrooms will be limited.

Recommendations:

Contrary to the currently posted signs, juror access to public restrooms should be limited to one person at a time. Additional courthouse staff will be needed to facilitate efficient access to the restrooms. Where appropriate, jurors will be provided access to juror-only restrooms located in the jury deliberation rooms. Staff will need to review access to those spaces so that jurors do not congregate in those smaller spaces. Additional consideration should be given to trial schedules to account for increased break times due to this limitation.

COURTROOM USE DURING JURY SELECTION AND TRIAL

Issue: Reconfiguring the jury box to support the necessary juror spacing required by social distancing guidelines presents a challenge.

Recommendations:

By utilizing the largest courtrooms, the amount of useable space for juror seating is maximized. Our infectious disease expert, Dr. Tesini, has recommended that jurors be seated 6 feet apart and that no one sits in front of or behind another juror. This staggered seating requirement best works in the Erie (9W) Courtroom in Buffalo and Courtroom 1 in Rochester. The use of available gallery seating in each of those courtrooms ensures that social distancing requirements can be met.

Issue: Delays inherent in transporting small groups of jurors through the courthouse will impact the efficiency of jury selection, and,

Issue: The Keating Courthouse Jury Assembly area (currently located in the basement and a conference room) is too small to effectively provide social distance space.

Recommendations:

To facilitate the efficient movement of jurors to the Jury Trial Courtroom, we recommend designating the adjacent courtroom as the Jury Assembly Courtroom. In the Keating Courthouse that designation would be assigned to Courtroom 2, and in the Jackson Courthouse the Buffalo (9E) Courtroom would be designated as such.

The Jury Task Force recommends that the Jury Assembly Courtroom would be used for the entire duration of the trial to accommodate juror deliberations, breaks and recesses.

VOIR DIRE

Due to the recommendations related to the staggered summoning of jurors and limitations as to the number of jurors that can be safely in a courtroom at a time, the Task Force has developed recommendations for conducting Voir Dire.

Issue: Dr. Tesini warns that passing a microphone to each juror as part of the voir dire process is inherently unsafe.

Recommendations:

At the beginning of each jury selection the courtroom deputy or judge should announce to the prospective jurors that they will need to speak loudly and enunciate. This will obviously present audibility issues, especially since Dr. Tesini has recommended that all individuals be masked, even when speaking. In addition, some individuals do not like to speak in public, let alone speak loudly in public. In addition to the social distancing requirements, this is another reason why group voir dire will present challenges and should be conducted using smaller groups of prospective jurors. As the court gains experience with jury selections and trials, we may need to explore additional microphones to supplement the courtroom's audio system.

Issue: At times during jury selection, a prospective juror may need to speak privately with the judge in a sidebar discussion. Dr. Tesini has recommended that traditional sidebar-style conferences with jurors be avoided.

Recommendations:

Sidebar conversations with the judge should be avoided during voir dire. We recommend creating a list of prospective jurors who need to discuss a matter in private. After the entire set of prospective jurors is dismissed to the Jury Assembly Courtroom, each of the prospective jurors on the list should then be called individually back to the Jury Trial Courtroom to address the judge from a podium.

Issue: The spacing of jurors in the courtrooms is sub-optimal. Due to the courtroom design, we are unable to guarantee a full six feet of distance between each prospective juror.

Recommendations:

We have designed seating arrangements that optimize social distancing. The Court will additionally require that all jurors wear masks at all times when in the Jury Trial courtroom as recommended by Dr. Tesini. While Dr. Tesini has recommended that all individuals be seated 6 feet apart, that does not appear possible.

THE PREEMPTORY CHALLENGE STAGE

In order to proceed to the preemptory challenge stage, the judge must assemble a panel of 32 prospective jurors for the exercise of preemptory challenges. The following recommendations are for illustrative purposes only. Each individual judge should proceed with a process that works best for him or her. Regardless of the process used, it is clear that jury selection will move at a much slower pace. Wherein the past we may have been able

to select a jury in a single day, it is likely that jury selections will now take measurably longer. The Task Force recommends accounting for this when estimating trial schedules.

1. After reviewing the Call to Serve video in the Jury Assembly Courtroom, the Jury Administrator will bring the first group of 25 prospective jurors to the Jury Trial Courtroom . The Jury Administrator and Courtroom Deputy will then seat the jurors in the jury box area, using the alternating seating plan and in the gallery.
2. Jurors will then be provided with an adhesive label with an assigned juror number, if this protocol is used by the assigned judge. They will affix that label to their shirt or top such that it is visible to the judge and parties.
3. The judge will then begin the traditional voir dire procedure.
4. As jurors are excused, they will exit the courtroom and return to the Jury Administrator to receive their attendance paperwork. Alternatively, all jurors could be kept until the judge has completed their voir dire. The judge would then identify those jurors to be excused.
5. This process will continue until all 25 prospective jurors have been processed. The jurors remaining will be considered part of the needed 32 required for the preemptory challenge stage. They will remain in their assigned seats. If the judge wants to keep the “preemptory challenge qualified jurors” while processing the next group, those jurors will be relocated to an alternate location (ex. Jury Assembly Room or other courtroom.) If not, those jurors can be asked to call the jury line that evening to find out when they need to return for further selection.
6. By this time, the next group of 25 jurors should have arrived and been checked in. They will have seen the Call to Serve video.
7. When the judge is ready to begin, the prospective jurors will be brought to the Jury Trial Courtroom.
8. As before, the judge will introduce the case and make the appropriate introductory comments. Voir dire then continues. Jurors excused will leave the courtroom and return to the Jury Assembly Courtroom to receive their attendance letters. This process continues until all 25 jurors have been processed.
9. This entire process continues until there are 25 prospective jurors ready for preemptory challenge. At this point, the group still needs an additional 7 prospective jurors in order to have the needed 32. The 25 prospective jurors that are ready for preemptory challenge will then be relocated elsewhere in the courthouse or dismissed with instructions to call-in to see when to reappear
10. When the judge is ready to begin again, 25 more jurors from the Jury Assembly Courtroom will be brought into the Jury Trial Courtroom and seated as described above.
11. The voir dire process as described above would continue until an additional 7 jurors are selected as being eligible for the preemptory challenge stage. The remaining jurors would then be excused.
12. The 25 previous jurors would be returned to the Jury Trial Courtroom to join the new 7 jurors.
13. When the judge is ready to resume, the preemptory challenge phase of voir dire can proceed with the assembled 32 prospective jurors.

VOIR DIRE CONCERNS

Issue: If the initial voir dire process is delayed, we could get “backed up” with too many jurors arriving at the courthouse.

Recommendations:

If the Jury Assembly Courtroom becomes full, we will use the traditional Jury Assembly Rooms as a holding area for the newly arrived jurors. As space becomes available in the Jury Assembly Courtroom, those jurors could be brought to that courtroom in groups.

Issue: Thirty-two prospective jurors have not been assembled after day 1 of the jury selection.

Recommendations:

At the end of a selection day, jurors identified to move to the preemptory challenge stage can be dismissed and instructed to call back to find out when to next report. They could report the following day, or if the presiding judge determines that another day or time is appropriate, the jury’s AJIS system can be configured with an appropriate message.

JURY TRIAL

Most jury trial procedures shall remain the same. Certain allowances will need to be made to allow for social distancing and cleaning. While reviewing the different issues that have surfaced in preparing this plan, the Task Force noted it is likely that nearly all trial processes will take additional time. There are some general recommendations that the presiding judge may wish to address with the trial participants and staff:

Sound: Participants will be wearing masks which will muffle their voices. The addition of plexiglass barriers will also affect the sound profile of the courtroom. The Task Force recommends that participants be asked to speak slowly and directly into the microphones.

Ventilation: GSA is working to improve the *turn-over* of air in the courtrooms. This should increase the frequency of fresh air entering the courtrooms which will help reduce the likelihood of airborne contamination. The trade-off of this feature is that the courthouse air handlers may be unable to cool and/or remove the humidity as effectively during the hottest days. This may also require additional breaks. Dr. Tesini has recommended breaking at least every two hours to allow for airing out of the courtroom and to give all participants an opportunity to remove their masks while maintaining appropriate social distancing.

COURTROOM SEATING LOGISTICS

Issue: The courtroom design in each courthouse requires juror seating that does not support adequate social distancing.

Recommendations:

As discussed with Dr. Tesini, jurors should be seated at least every other seat per row. Jurors should also be seated with no one directly in front of, or behind them. Additional seating should be placed in front of the jury box to allow the remaining jurors a place to sit (again, so that no one is directly in front of a person in the row behind).

Plexiglass will be placed in front of each juror such that there is a physical barrier between the rows of jurors. Additional plexiglass will be placed around the witness, in front of the judge and in front of the occupants of the lower bench.

Issue: Seating of jurors outside the jury box puts them outside the coverage of the white noise system used for sidebar conversations between the judge and counsel.

Recommendations:

When the need for a sidebar conversation occurs, the Task Force recommends dismissing the jury to the Jury Assembly Courtroom. The sidebar conversation can then be held without concern for the jurors overhearing anything.

Issue: There is insufficient distance between counsel and the defendant at the attorney tables in the courtroom.

Recommendations:

In order to obtain safe distances, attorneys should be asked to move their seats to the end of each table, or to split up the use of additional attorney tables, if available.

Issue: Social distancing has placed the defendant far enough away from his counsel that private conversations are impractical.

Recommendations:

The use of electronic devices may become critical to allow for communications while maintaining appropriate social distancing. There may be security concerns raised about allowing in-custody defendants access to electronic devices and the Internet.

EXHIBITS

Issue: Exhibits and other items are often handed from person to person. This may pose an increased risk of exposure.

Recommendations:

Dr. Tesini reviewed the process by which documents are used as exhibits. The Task Force recommends that all paper documents be scanned and displayed digitally through the courtroom's audio/visual system. In the case of unscannable documents or objects that do not lend themselves to scanning, the courtroom's document camera (ELMO) should be utilized. The overriding guidance is that we should avoid touching items that are frequently touched by others or have been held for a lengthy time. Ultimately, the presiding judge has the discretion to determine how particular pieces of evidence should be handled.

Should evidence need to be passed to anyone, the Task Force recommends reminders about the available hand sanitizer.

PPE IN THE COURTROOM

As noted earlier in this document, the guidance we have received from the CDC, the AO and Dr. Tesini recommends that all courtroom participants wear a mask for the duration of the proceedings. The lone exception to this recommendation is a testifying witness. In that instance, a plexiglass barrier will be installed at the witness box.

The Court will provide masks to all courtroom participants as needed. Jurors specifically will be provided with masks each day. This protocol eliminates any issues with inappropriate or insufficient PPE.

Issue: Someone in the courtroom coughs or sneezes, rendering that individual's mask no longer fit for use.

Recommendations:

A supply of masks will be provided to each courtroom for use by anyone in need of a replacement mask.

Issue: The masks are uncomfortable to wear for extended periods of time.

Recommendations:

At the discretion of the presiding judge, there may be a need to increase the frequency of breaks. The Jury Assembly Courtroom is large enough to allow the jurors to spread out and remove their masks.

WITNESSES

The Jury Trial courtrooms will have plexiglass protection installed between the judge and the witness, the witness and the lower bench, and if necessary, the witness and the jury box. Dr. Tesini has reviewed this setup and concurs that a witness can safely be required to testify without a mask.

Issue: Counsel have completed their interaction with a witness and it's time to call another witness. How do we prepare the witness box for occupancy by the next witness?

Recommendations:

The Court has arranged with GSA to provide ad hoc cleaning services between witnesses. When a witness has finished testifying, the courtroom deputy should contact the cleaning supervisor and ask for the cleaner to come to the courtroom.

Issue: Sanitizing the witness box after each witness testifies will consume time.

Recommendations:

While GSA has provided a dedicated cleaner for courtroom cleaning, there is only one person per courthouse assigned to this task. This cleaner will also be responsible for other courtrooms. Careful planning and communication with GSA will be necessary to minimize delays between witnesses.

Issue: Counsel has completed direct examination of the witness and opposing counsel is ready to start cross-examination. How is the podium cleaned?

Recommendations:

The Task Force recommends that examination of the witness be conducted at the counsel table. When this is not feasible or desirable, the court will provide disinfectant wipes (or disinfectant spray and paper towels) that will be stationed near the podium. The attorney who has completed use of the podium should be directed to discard the disposable microphone cover and wipe down the podium. The next attorney to use the podium should install a fresh disposable microphone cover. A supply of microphone covers will be kept with the cleaning supplies for the podium.

JUROR NEEDS

At the beginning of each trial day (after jury selection), each juror will be provided with a Juror Kit. The kit will contain the following:

- Disinfectant Wipes
- 2 oz bottle of hand sanitizer
- Masks
- Pen
- Steno pad

The juror will be asked to leave the bag and its contents in the Jury Assembly Courtroom at the conclusion of each trial day.

Issue: The traditional jury deliberation rooms are too small for juror use during breaks.

Recommendations:

Jurors should be sent to the Jury Assembly Courtroom for all breaks. Access to the courtroom's associated jury deliberation room will be provided for easy access to the restrooms. Jurors should be reminded that congregating in the deliberation room is not permitted. Only a juror about to enter the restroom should be present in the deliberation room.

Issue: Much like breaks, the jury deliberation room is too small for jurors to use during lunch.

Recommendations:

Absent the existence of a special consideration, jurors can be allowed to leave the courthouse for lunch. If jurors have brought their lunch, they may eat their lunch in the Jury Assembly Courtroom. In Rochester, the cafeteria in the basement may also be an option.

Issue: Dr. Tesini has recommended against allowing jurors to keep their lunches in the Jury Assembly refrigerators as there is a concern about cross-contamination amongst the items and the likely congestion that would occur as jurors retrieve their lunches.

Recommendations:

Jurors should be reminded that refrigeration is not available for lunch storage. They should be prepared to go out for lunch, bring lunches that do not require refrigeration, or use a cooler.

Issue: In the past, we have provided water, coffee and snacks to our jurors while on break. Can we continue this practice?

Recommendations:

Dr. Tesini has recommended against providing snacks and coffee to jurors. The distribution of both leads to social distancing concerns, as well as potential cross-contamination of the cups, snack packages and related items. At this time, the Court has suspended the practice of providing these items. However, bottled water will be provided to the jurors daily.

Issue: Constant wearing of the mask can increase the wearer's need for water.

Recommendations:

The jurors will be provided with bottled water throughout the trial days. The Task Force recommends that jurors be allowed to bring the water with them into the courtroom. Dr. Tesini further commented that allowing the jurors to briefly lift their masks to sip water is safe.

JURY DELIBERATIONS

As noted earlier in the plan, the Court's jury deliberation rooms are too small to allow jurors to deliberate while practicing social distancing. The Task Force recommends the Jury Assembly Courtroom be utilized for jury deliberations.

Issue: The Jury Assembly Courtroom is not as secure as the traditional deliberation rooms.

Recommendations:

The Jury Assembly Courtrooms will have the windows in the courtroom doors blocked out. Additional CSO support or court staff support may be necessary to monitor the additional doors.

Issue: The Court typically provides lunch for a deliberating jury. The process often includes passing around menus and occasionally ordering group-shared foods (ex. pizza). In the age of social distancing, how should we proceed?

Recommendations:

The Task Force recommends individual box lunches be provided to the jurors. When possible, the Courtroom Deputy should present individual menus to each juror to select a lunch. The Courtroom Deputy would then provide those orders to the Jury Administrator with sufficient advance notice so that the lunches can be ordered. The Jury Administrator will coordinate with the Courtroom Deputy to distribute the lunches when they arrive.

INTERPRETERS

Issue: Interpreters pose a complication to the proceeding from a social distancing perspective. In the past, interpreters have been allowed to stand next to the defendant or witness and provide direct interpretation. Given the guidance we've received from the CDC, AO and Dr. Tesini, this process needs to change.

Recommendations:

Each courtroom is equipped with interpreter equipment that is connected to the courtroom's wireless sound system. The Task Force recommends that interpreters be required to utilize this equipment. The Court will provide disposable earphone coverings that will need to be changed at the conclusion of each day of proceedings.

MISCELLANEOUS ITEMS

GRAND JURY SESSIONS

Issue: Due to social distancing, the grand jury rooms in both cities are not large enough for a grand jury panel to convene.

Recommendations:

The grand jury will convene in a magistrate courtroom, with scheduling coordinated through Chief Deputy Patrick Healy. The courtroom will provide for social distancing, and proper cleaning will be conducted after each use.

The Court will work closely with the US Attorney's Office to schedule grand jury sessions when they have at least 6 hours of work for the session. A grand jury panel should not be coming to the courthouse unless their time will be used effectively.

RESTROOM USE

Issue: The recommendation from Dr Tesini is to allow only 1 juror at a time in the public restrooms.

Recommendations:

Additional time will need to be allotted for jurors to use a bathroom. The Task Force recommends opening the jury deliberation room in the Jury Assembly Courtroom, as well as the Jury Trial Courtroom for use during trial days.

GENERAL COURTROOM CLEANING

As mentioned throughout this plan, a crucial feature of moving forward with jury trials will be to provide an appropriate amount of cleaning. This cleaning will involve targeted, specific cleaning of certain spaces during the trial day, as well as a general overall cleaning of the courtrooms every day.

The Task Force recommends that the following cleaning guidance be followed:

- Cleaning supplies will be made available in the courtrooms for attorneys and staff to use for cleaning their individually occupied spaces as necessary.
- Attorneys should be encouraged to work within the spaced identified by the blotters on each counsel table.
- The GSA designated contact person should be contacted for all ad hoc cleaning (ex. between witnesses, proceedings, etc.). The Courtroom Deputy should also contact this person at to the conclusion of the trial day so that general cleaning can be coordinated. (GSA may elect to do the overall cleaning very early in the morning prior to commencement of the trial day.)
- Courtroom Deputies should notify the Procurement Staff when additional cleaning supplies or masks are needed.
- Courtroom participants should be encouraged to use the hand sanitizers located throughout the courtroom.

ILLNESS REPORTED BY A JUROR, LITIGANT, ATTORNEY OR STAFF

Issue: If someone involved directly in the trial becomes ill or reports COVID-19 symptoms it may impact the ability for the trial to proceed. There is an immediate risk of exposure to all parties in the courtroom, as well as the courthouse staff.

Recommendations:

Dr. Tesini recommended immediate testing of the afflicted individual for COVID-19. The Task Force recommends suspending further trial activities until the testing can be completed. Courtroom participants should self-quarantine at home until the testing results have been received. The presiding judge will determine the appropriate course of action regarding continuation of the trial.

CONCLUSION

The traditional jury trial process can be complicated. With the introduction of precautions needed to address COVID-19, that process becomes much more complicated. As noted earlier, the court has no prior experience to rely on for implementing jury trials in this environment. Many of the recommendations will need to be fine-tuned as we gain experience. The court has learned much from Chief Judge Geraci's civil trial. From that experience the Task Force further recommends holding a mock criminal jury selection and trial. Patience, good communication and flexibility compose the underlying themes of this plan and the months ahead.

May __, 2020

Re: Jury Summons

Dear Summoned Juror:

We all are living through difficult and trying times with the recent COVID-19 pandemic. The United States District Court for the Western District of New York has remained in operation due to a constitutional mandate and the Judiciary continues to perform its function. This mandate cannot be advanced without the continuation of jury selections.

To ensure that you may answer this call as a summoned juror without any unnecessary risk, the court has implemented the following health and safety precautions.

- Upon entrance to the courthouse, screening will be conducted by the United States Marshals Service and Court Security Officers. This screening is designed to prohibit any increased risk of spreading the COVID-19 virus from entering the Courthouse. These procedures have been in place since March 12, 2020.
- Following CDC guidelines, the court will ensure the recommended 6' social distancing and will provide PPE masks for all jurors. The court will summon small groups of jurors to adhere to safe social distancing throughout the jury selection process.
- Cleaning of the courthouse is repeated throughout the day and ample supplies of hand sanitizer and disinfectant wipes will be readily available to all jurors.

The Court will do our part to be sure this is a healthy and safe environment for you to fulfill your civic duty as a citizen of the United States. We thank you, in advance, for your unselfish service to our community. Without you fulfilling your critical role in the Judiciary, our system does not work. For this reason, we are very grateful for your commitment to the justice system. Please review the back of this letter regarding 5 basic COVID-19 questions.

Respectfully,

Mary C. Loewenguth
Clerk of Court

U.S. District Court COVID-19 Jury Questions

Your participation is important to help us take precautionary measures to protect you and everyone in our courthouse. Please review the following questions.

1. Have you been diagnosed with, or had close contact with, anyone who has been diagnosed with COVID-19 within the last 14 days?
2. Have you experienced any cold or flu-like symptoms in the last 14 days (including fever, cough, sore throat, respiratory illness, or difficulty breathing)?
3. Are you age 65 or older, or a person of any age with an underlying medical condition that puts you at a higher risk of developing serious health complications from COVID-19?
4. Do you live with or provide direct care for a vulnerable person?
5. Do you have children at home who require your direct supervision due to school and /or daycare closings? Note: This applies if there is NO ONE else in the household who can provide care during jury service.

If you have answered “yes” to any of the above questions, please contact our office.

Buffalo: 716-551-1721
Rochester 585-613-4017

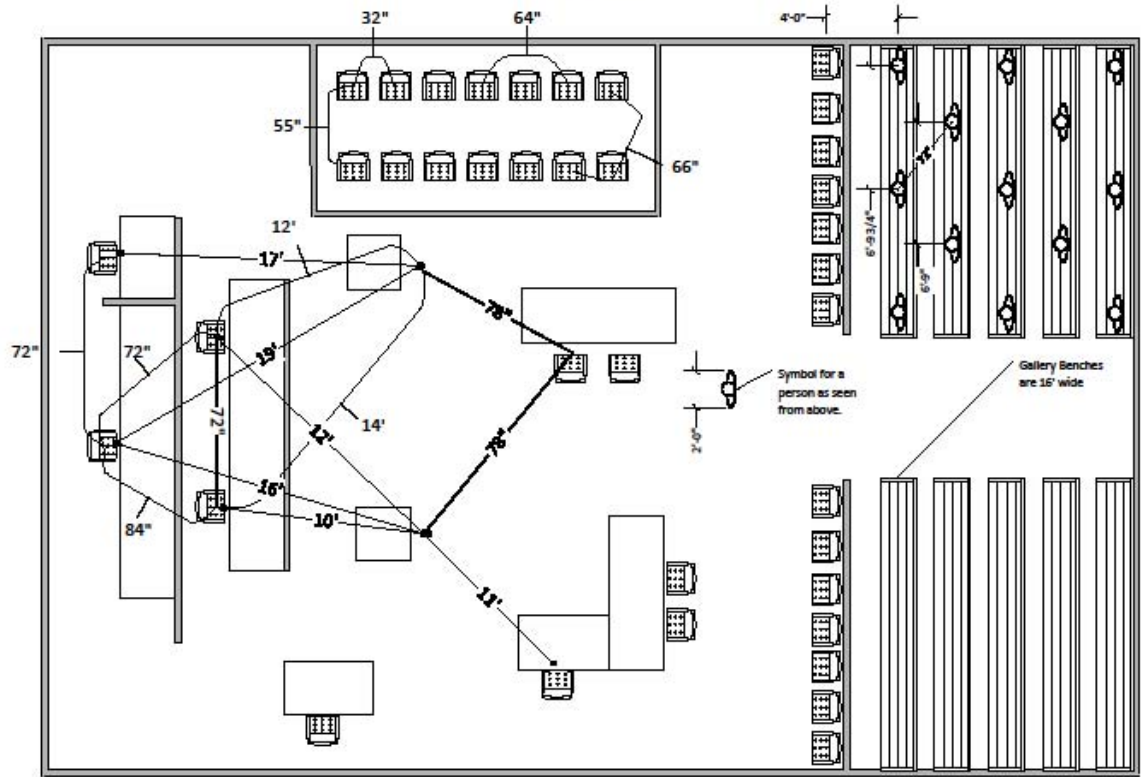
ATTACHMENT B – COURTHOUSE ENTRY SCREEING QUESTIONS

Upon entry to either the Keating or Jackson Courthouse, the Court Security Officers ask each entrant the following questions. Should any visitor answer “yes” to any of these questions, they are denied entry.

1. Have you have traveled outside of the United States within the last 14 days?
2. Do you reside with or have had close contact with someone who has traveled outside the United States within the last 14 days?
3. Have you been asked to self-quarantine by any doctor, hospital or health agency?
4. Have you been diagnosed with or have had contact with anyone who has been diagnosed with COVID-19 within the last 14 days?
5. Do you have a fever, cough or shortness of breath?

Courtroom 1 – Rochester

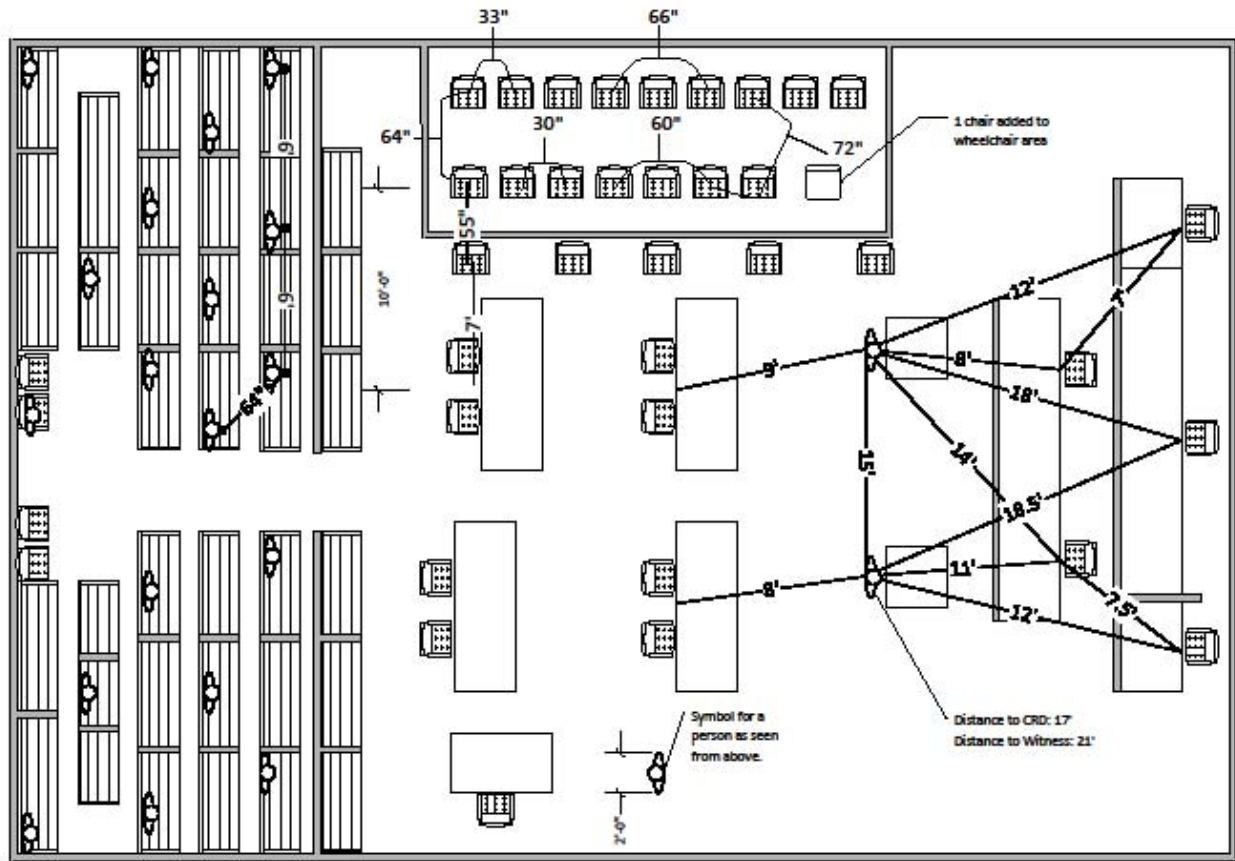
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05/27/2020

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Plan for a Phased Return to On-Site Operations

United States District Court for the Western District of New York

May 5, 2020

This plan has been developed in order to prepare for the return to on-site operations. Although the recommendations of several entities will be considered, the ultimate decisions regarding when and how we reach any phase of this plan will be made by the Judges of the Court. The intent of this plan is to allow us to return to normal operations in order to carry out our constitutional responsibilities while maintaining a safe environment for all the judges, staff and public. The intent of this plan is to be deliberate but flexible in reaching this goal.

Issues to consider:

Other Courts:

1. What is the New York State Courts plan for re-opening?

The New York State courts are largely operating virtually. They are only handling criminal matters such as arraignments and bail applications. Few new civil filings are being processed. They are holding settlement conferences for pending civil cases and recently settled 2600 cases in one week. The Appellate Divisions and Court of Appeals are doing only audio conferences and arguments. The Fourth Department is utilizing Zoom. They have cancelled the May calendar. It is expected that attorney admissions will be conducted in June. Some Departments of the Appellate Division are using Skype. Unfortunately, three judges in the New York City area have died from the Coronavirus. No firm date for reopening of the New York State Courts has been set.

2. What is the plan in the Second Circuit and other District Courts within the Second Circuit?

The Second Circuit continues to work remotely. They are hearing oral arguments by phone.

The SDNY and EDNY are open for new filings. Staff and judges continue to work remotely. They are focusing on criminal matters. They are seeing a large increase in applications for compassionate release. They have stayed the selection of jury trials for both civil and criminal cases. The EDNY is considering using two courtrooms for jury trials. One courtroom would be used for the judge, jury and participants while the second would hold the press and public. The proceedings would be streamed into the second courtroom. This procedure would allow for social distancing.

The District of Vermont intends to follow the state's lead and take baby steps toward re-opening. They are conducting most proceedings by phone. They are handling necessary criminal proceedings and are experiencing an increase in motions for release. They are looking at mid-May for beginning to re-open expecting that jury trials will be the last to begin. No Grand Jury proceedings have been conducted since the shut down in March.

The NDNY is conducting phone conferences for civil cases. Additionally, the NDNY is sending out surveys to potential jurors to determine if they have a basis (based upon age or vulnerability) to be excused from jury service. Based upon those responses they intend to grant deferments to appropriate jurors. They expect to rotate staff back into service.

The District of Connecticut has been hit hard with the coronavirus. Five staff members have been found to be positive with the virus. They will issue an order extending the stay for jury trials until June 15, 2020 although they believe there is a possibility that they will not be able to conduct any jury trials this year. The Grand Jury has not been able to operate because they could not secure a quorum. They will attempt a session with the Grand Jury by using a courtroom in order to maintain social distancing. They will stagger the arrival times of jurors. The courtroom used will be disinfected before and after the grand jury sessions. They are using Zoom for criminal proceedings and conference calls for civil matters. The clerk's office is working remotely.

In the Western District of New York, the Clerk's Office has been operating by telework with a few staff rotating into the office. Drop boxes have been installed in both courthouses in order to minimize traffic. 10,000 masks have been ordered with the initial shipment due in early May. The Jury Administrator will be drafting a letter to be sent with juror summons to illustrate the fact that their safety is a primary concern for us. It is recommended that we minimize the number of jury trials in the beginning of our return in order to allow for social distancing. Depending on when the court decides to resume normal operations, summer interns are still scheduled to begin at some point and their needs will be accommodated.

The Bankruptcy Court is conducting hearings telephonically. It is expected that telephonic conferences will continue into the indefinite future. The Bankruptcy Clerk's Office is operating with a skeleton crew in each office. The remaining staff is teleworking. Drop boxes are being utilized. Reopening will be done in coordination with the U.S. District Court Clerk's Office. The Bankruptcy Court is anticipating a flood of new cases due to the economic fallout from the coronavirus.

3. What is the plan of other District Courts which are like the WDNY?

The Western District of Pennsylvania has extended their stay for both criminal and civil jury trials until June 13, 2020.

The Middle District of Pennsylvania is working with a skeleton crew including conducting some video sentencings. All employees are required to wear masks unless in private workspace.

The Northern District of Ohio has extended their stay order until June 12, 2020. They are conducting business by video and telephone. They are assuming that they will not be able to assemble jurors until mid-June. They are awaiting word from Gov. DeWine as to how and when to proceed.

Status of States of Emergency:

What is the status of the declaration of emergency in New York State?

The declaration of the State of Emergency for the State of New York is in effect until September 7, 2020. The Pause New York Order has been extended until May 15, 2020. New York State has determined that there will be regional decisions regarding opening certain businesses. Lt. Gov. Kathy Hochul will coordinate the efforts in the Buffalo (Western New York) area and former Lt. Gov. Bob Duffy will coordinate the effort in the Rochester (Finger Lakes) area. Elective surgical procedures are being allowed in the Rochester area. Such procedures are not yet allowed in the Buffalo area because the rate of hospitalizations continues to increase.

On April 28, 2020 New York State revealed a 12-point plan for re-opening the state.

1. The region must experience a 14-day decline in the hospitalization rate.
2. Businesses will be opened in phases based upon priority and risk level.
3. Businesses must have a plan to protect employees and consumers.
4. Each region must have at least 30% of hospital beds and ICU beds available in the event of a spike in coronavirus cases. Reaching these goals allows the hospitals in the region to engage in elective surgeries.
5. Each region must implement a testing regimen.
6. There must be at least 30 contact tracers for every 100,000 people in the region.
7. Regions must provide rooms for those who test positive for the virus and cannot self-isolate.
8. Regions must coordinate the reopening of schools, transportation systems, testing and tracing.
9. Regions must establish plans for tele-medicine.
10. Regions must establish plans for tele-education.
11. Each region must monitor the businesses after a phased reopening.
12. Each region must ensure protection for essential workers.

What is the status of the declaration of emergency by the United States?

The State of Emergency was declared by the President on March 13, 2020. There is no expiration date. The CARES Act provision which allows for video or telephonic conferences for various criminal proceedings expires the earlier of: 30 days after the termination of the declaration of emergency or the date the Judicial Conference finds that the emergency conditions no longer materially affect the functioning of the federal courts in general or the district court in question.

The White House Task Force has distributed a document outlining the factors to consider in re-opening parts of the public. In Phase One communities need to show a downward trajectory of illness for 14 days; hospitals in the community need to have the capacity to treat all patients and there needs to be a robust testing program in place. The testing shall include anti-body testing. Communities must continue to practice social distancing, good hygiene including washing hands; avoid touching one's face; sneezing or coughing into a tissue; using a face covering while

in public spaces and staying home if sick. Groupings of more than 10 persons should be avoided. Tele-work should be encouraged; staff should be returned in phases; some common areas should be closed; and special accommodations should be provided to members of a vulnerable population. Vulnerable Individuals are those over age 65 or individuals with severe underlying health conditions. As conditions improve some of these restrictions will be relaxed in Phases Two and Three.

What guidance do we receive from the Administrative Office of the Courts?

On April 24, 2020 the Administrative Office of the Courts issued COVID-19 Recovery Guidelines.

The document mirrors the White House Task Force criteria for reopening.

There are certain gating criteria which must be met before proceeding to Phase One and subsequent phases.

Phase One requires that there be no confirmed cases of the virus in the facility; there be a downward trend of coronavirus cases in the community for 14 days and the termination of any stay at home orders in the community. If these factors are met during Phase One vulnerable individuals should telework; there should be reasonable accommodations for some (ex. those with childcare or health care issues); the temperatures of all staff should be taken before they are allowed re-entry (this could be done by the employee); social distancing must be maintained; the facility should be deep cleaned if previously exposed to the virus; individuals should not gather in groups greater than 10; (this includes courtrooms and jury rooms); if a Childcare center is closed it should remain closed; if a gym is closed it shall remain closed.

A vulnerable individual is defined as a person 65 or older or people of all ages with underlying medical conditions, particularly if not well controlled, including those who suffer from chronic lung disease, moderate to severe asthma, serious heart conditions, immune disorders, obesity, diabetes, or chronic kidney or liver disease.

Phase Two requires the same gating criteria. There should be no confirmed cases of the virus in the facility and there should be an additional 14 days of a downward trend of the virus in the community. Upon reaching this phase vulnerable individuals should continue to telework; reasonable accommodations should be made for those needing such; employees should continue to conduct a self- health assessment; social distancing should be practiced; telework should be supported if determined to be necessary; gatherings should be limited; large venues can be used if social distancing can be practiced; childcare centers and gyms previously closed can open. It is recommended that courts continue to utilize remote tools such as video or telephonic conferences. Petit jury trials and grand jury proceedings can be conducted during Phase Two.

Phase Three requires that there be no confirmed cases in the facility and there be an additional 14 days of a downward trend of the virus in the community. Vulnerable individuals and those needing reasonable accommodations shall continue to telework. Social distancing shall be practiced.

Phase Four is reached once the COVID-19 virus is deemed to be suspended in the United States. Vulnerable individuals can resume work and all work can proceed without limitations.

What guidance do we receive from the World Health Organization (WHO)?

The WHO is warning against the prompt return to normalcy without clear indication that the virus is in control in the community. Additionally, they warn that a second wave of the virus may be seen next winter. They recommend wide-spread testing. Restrictions in the community should be dependent upon the spread of the illness in that community, the higher the spread, the greater the restrictions. Isolation and quarantine should be utilized where appropriate. The community should be schooled in practicing safe habits such as washing hands, social distancing and keeping areas clean. The WHO reports that the continent of Africa is just beginning to experience a spread of the virus. South Africa appears to have a viable plan and resources to deal with the illness however, other parts of Africa expect devastating results. There has been a 43% increase in the virus over a few days.

What guidance do we receive from the CDC?

The CDC is recommending the use of face coverings and the practicing of social distancing along with personal hygiene measures. The CDC, like the WHO, is warning that a second wave of the virus in combination with the regular flu season could cause major problems next Fall and Winter. They recommend that any reopening take place in stages and that large gatherings be limited.

What guidance do we receive from the local Departments of Health?

The Monroe County Department of Health states that it is expected that we will be dealing with this virus for the long term. They expect that trials for a vaccine will begin in the Fall of 2020 and a vaccine could be available mid-2021.

Data: See Exhibit attachment

The statistics attached indicate the number of confirmed cases in our communities, the number of deaths, the number of hospitalizations and the availability of ICU beds. The trending of these figures is the important factor in determining a community's ability to reopen. As you will see the number of hospitalizations, including the use ICU beds, has decreased in the Rochester area however the hospitalization rate has not stabilized in the Buffalo area. The number of cases in Buffalo and Rochester continues to rise however they appear to be leveling off. The same applies for the number of deaths in our communities. Consequently, hospital capacity remains a concern.

Testing:

What testing is available in the Buffalo and Rochester region? (Diagnostic and Antibody)

COVID-19 testing is becoming more readily available for individuals in Buffalo and Rochester. Typically, the tests are being conducted for those persons showing symptoms. This allows the person to

return to work if the test shows that they are negative. Of course, if positive they would need to be isolated until symptom free for 7 days or they no longer suffer from a fever for 72 hours. Currently it appears that there are not enough tests for asymptomatic individuals. Testing priority is being given to healthcare providers, law enforcement and first responders. In Buffalo WellNow Urgent Care is providing COVID-19 testing at 12 locations with no appointment or prescription. For COVID-19 tests one must be exhibiting symptoms. Antibody testing is also being conducted. Results should be available within 48 hours. As of May 1, 2020, several members of the probation staff have been tested for the antibody and expect results within a week.

The antibody tests were previously conducted in the Buffalo and Rochester area on a random basis in order to develop a baseline of persons who may have already had the virus. If individuals are found to have the antibodies, it is believed that they can safely return to work. The initial statewide results indicated that 13.9% of the individuals tested were positive for having the antibodies. The result in Monroe County and Erie County was 3.6%. The rate was 20% in the New York City area. More recent anti-body testing indicated a positive rate of 17% in Erie County area (Western New York) and 10% in the Monroe County area (Finger Lakes). The positive results in New York City are now 30%.

What is the possibility of getting our staff tested?

There is a possibility that at some point in the future we will be able to get our staff tested because we are considered essential workers however this will depend upon the availability of tests. Currently there do not appear to be enough tests.

Perceptions:

What is the public perception of the coronavirus situation in the Buffalo and Rochester region?

General opinion polls have shown that the public is very concerned about the existence of the coronavirus.

Attached is a log of calls received by our jury staff demonstrating that potential jurors are expressing reluctance to serve or have valid reasons that would allow them to be excused during the crisis.

What is the staff perception of the coronavirus situation in the Buffalo and Rochester region?

Staff in all office and chambers have expressed concern with returning to the courthouses. Some have expressed a genuine fear and anxiety about returning to work.

What is the position of the Federal Public Defender, United States Attorney, Probation Office and US Marshal on re-opening?

The Federal Public Defender is meeting with her COOP team to develop plans for re-opening. No plan has yet been devised. FPD Marianne Mariano expressed a concern about her attorneys' ability to consult with their clients while we engage in remote proceedings. She acknowledged that conducting jury trials are going to be a challenge. The FPD needs masks and hand sanitizer. She will contact Clerk of Court Mary Loewenguth to see if we can help in the interim. She indicated that the proceedings operating remotely have worked well.

United States Attorney J.P. Kennedy indicates that his office is anxious to return. He took the opportunity to thank the court for allowing the Grand Jury to function during this crisis. Apparently the WDNY is the only district in the Second Circuit which allowed such proceedings to continue. He expressed appreciation for the court allowing the Grand Jury to use a courtroom so that they could practice social distancing while convened. Understanding that jurors would have a reluctance to serve J.P. Kennedy sent a letter to all grand jurors acknowledging the importance of their work and emphasizing that his office would do everything possible to keep them safe. He found that this letter was very effective. His office has a rotating staff reporting to the offices in Buffalo and Rochester. Most others are teleworking. Intake of criminal cases is down as law enforcement agencies have reduced arrests and investigations are focusing on the most serious matters. He expects to rotate and phase in his staff. He will likely be starting with supervisors. The office will plan on practicing social distancing. They will scan employees and visitors including possibly taking their temperatures. He also plans to liberally use telework. More formal plans are being devised with assistance from the Department of Justice.

The United States Probation Office has continued their law enforcement functions throughout the crisis. Administrative staff have been teleworking. Probation staff have been able to fully support the court during the pause period. The office is ready to return and likely will rotate in staff and continue some level of telework.

The United States Marshals have also performed their law enforcement functions including transporting prisoners for the court and protecting the court. They report that the remote appearances have worked well and help protect staff, inmates and the court. They would like to see these procedures continue where appropriate until the risk of spreading the virus abates. The prison population presents a unique threat that can be alleviated by utilizing alternative means for criminal appearances. The US Marshal's Office has worked closely with the correctional facilities holding our prisoners to be sure they are available for the court.

Issues to consider:

Do we set a target date?

Do we extend existing orders staying proceedings?

How do we deal with staff with childcare issues due to the closing of schools?

How do we deal with staff who have documented healthcare issues that make them more vulnerable?

How do we continue to practice social distancing?

How do we assure that workspaces stay sanitized?

How do we monitor the effectiveness of the air filtration systems in the courthouses?

Do we continue to utilize remote tools to conduct court proceedings where authorized?

How are we going to deal with jurors reluctant to serve?

How are we going to deal with multi-defendant hearings and trials and maintain social distancing?

Recommendations of the Task Force:

Based upon the above information the Task Force recommends the following action be taken:

A determination of when and how the Court progresses from one phase to the next will be determined by the Judges of the Court.

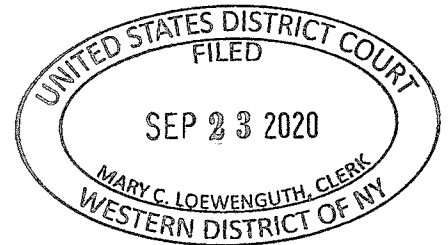
1. **Phase One**-During Phase One we bring back staff to the courthouse on a rotating basis. Initial staff will be kept to a minimum. Video and telephonic conferencing should continue to be used for court proceedings to the greatest extent possible and authorized. Phase One will be triggered upon the expiration of the Stay at Home order currently existing in New York. It is scheduled to expire on May 15,2020; however, the Governor has indicated that the time may be extended. To begin Phase One there must be no confirmed cases in the courthouse, a downward trend of the hospitalization rate in the community for 14 days and robust testing in place in the community. Although Rochester and Buffalo are considered separate regions by New York State the Judges of the Court have decided to treat Rochester and Buffalo as One District and implement the phases of this plan at the same time in both cities. During Phase One meetings of more than 10 persons would be prohibited. During Phase One vulnerable individuals will continue to telework and accommodations will be made for those needing such. (Ex. Childcare needs or concerns regarding vulnerable individuals who may reside with a staff member). Eligibility to be deemed vulnerable or needing accommodations will be determined by that staff member's Judge or Court Unit Executive in consultation with the Administrative Officer of Human Resources.
2. **Phase Two**- Additional staff returns upon achieving Phase Two. We reach Phase Two once there are an additional 14 days (total of 28 days) of a downward trend of the hospitalization rate in the community and there is robust testing in the community. More staff will be present at this stage. Under the Administrative Office plan in Phase Two petit jury trials and grand jury proceedings can be conducted provided social distancing can be observed. Our Court, however, has decided not to consider scheduling jury trials until we have reached Phase Three. Vulnerable individuals will continue to telework during Phase Two and accommodations will continue to be made for those needing such.
3. **Phase Three**-The Court will consider scheduling criminal and later possibly civil jury trials upon achieving Phase Three. We would reach Phase Three after an additional 14-28 days (total of 42- 56 days) of a downward trend of the hospitalization rate in the community and testing is available. The Court recognizes that it will be very difficult to schedule jury trials even at this point because of the concern potential jurors have expressed about serving on a

jury while the virus exists in the community. It is the decision of the Court that we must focus on criminal jury trials, particularly those involving defendants in custody. It is unlikely that we will be able to resume civil jury trials in the near future.

4. **Phase Four-** This stage is reached once the virus is deemed to be suspended in the United States. Vulnerable individuals may return, and all work can proceed without limitations.
5. The Judges and Court Unit Executives will determine which staff should be deemed vulnerable individuals and which staff should be afforded reasonable accommodations due to childcare or other personal issues. This will be done in consultation with the Administrative Officer of Human Resources.
6. The Administrative Officer of Human Resources will provide guidance to employees regarding the limitations in the use of excused leave, sick leave or annual leave during the crisis.
7. Staff must wear face coverings while in any public space of the courthouse. While in private office space the judge or supervisor shall determine when the wearing of face coverings is appropriate. Finally, the presiding judge will decide whether face coverings would be worn during court proceedings.
8. Commonly used areas such the cafeteria in Keating shall be closed except for a small area to be utilized by the CSOs for any breaks. Because the Childcare Center and Gyms in both Courthouses were never closed, they shall remain open. Social distancing must continue to be practiced. Those who utilize the gym are responsible for carefully cleaning each piece of equipment after use.
9. Employees must continue to utilize safe practices such as handwashing and keeping their workspaces sanitized. The court should provide enough supplies to allow employees to perform this duty.
10. A committee will be assembled to study the significant jury trial issues. This committee will develop suggestions for jury selection and procedures to be employed based upon the limitations that will need to be imposed in order to practice social distancing. Members of the committee should include the Jury Administrator who shall chair the committee, a Judge, a Courtroom Deputy, a Court Reporter, a member of the Federal Public Defender's Office, a member of the United States Attorney's Office, a member of the Clerk's Office (including a member of the IT Department), a member of the CJA panel, GSA and a representative of the US Marshal Service. The Committee will be charged with exploring the means of conducting jury trials while practicing social distancing and keeping everyone safe. The Committee will research how other district courts may be handling this situation and be creative in developing a realistic plan for conducting jury trials. One jury trial may be conducted early on to serve as a test of any new procedures which may be recommended

by the Committee and adopted by the Court. It will be within the discretion of the individual judge as to whether implement any of these recommendations.

11. When appropriate the scheduling of any jury trials will involve the use of the Master calendar in order to minimize the use of space in the courthouse and allow GSA to keep all areas clean.
12. The courthouses shall be sanitized prior to staff returning. This effort will be coordinated with GSA. This shall include the cleaning of common areas, work areas and courtrooms. GSA will also establish a reasonable traffic flow throughout the courthouses.
13. The Court will engage the entire court staff in a district-wide meeting to explain the recovery plan and reassure staff that their safety is a priority.
14. The Court will engage the local bar associations in a dialogue to describe the recovery plan of the court, seek their input and assure them that the court has their safety as a priority as well.
15. The Court will Issue an order extending the stay of proceedings including civil and criminal jury trials naturalizations ceremonies and Grand Jury Selections until June 15, 2020.



COURT OPERATIONS AND ACCESS DURING
COVID-19 PANDEMIC AND

VIDEO AND TELECONFERENCING FOR
CRIMINAL PROCEEDINGS UNDER THE
CARES ACT

GENERAL ORDER

The COVID-19 Pandemic

WHEREAS, the Centers for Disease Control (“CDC”) has advised people to take precautions in light of the Coronavirus Disease 2019 (“COVID-19”) Pandemic Event and noted that the best way to prevent illness is to avoid being exposed to this virus;

WHEREAS, as of the date of this Order, over 6.8 million people in the United States have contracted COVID-19 and over 200,000 people in the United States have died;

WHEREAS, as the of the date of this Order, over 450,000 people in New York have contracted COVID-19, and over 32,000 people in New York have died;

WHEREAS, in response to the COVID-19 Pandemic Event, the President of the United States, the Governor of the State of New York, the County Executives for the Counties of Monroe and Erie and the surrounding counties, and the Mayors of the Cities of Rochester and Buffalo have declared states of emergency;

WHEREAS, some businesses in the State of New York are being allowed to open based upon a phased reopening plan but individuals are requested to wear masks or face coverings when not social distancing in public and there are limits to the number of persons who may congregate in one place at a given time;

WHEREAS, the Bureau of Prisons and New York State’s Department of Corrections and Community Supervision have restricted visits—including attorney visits—to their facilities, and the Federal Public Defender’s Office for the Western District of New York has sought to limit in-

person meetings with their clients, all of which is impacting the ability of attorneys to properly prepare for criminal proceedings;

WHEREAS, the circumstances surrounding the COVID-19 Pandemic Event remain a serious concern in the Western District of New York, New York State, and the United States;

The Court's Response

WHEREAS, the Court has implemented measures to reduce the number of people and level of interaction at proceedings conducted in the courthouses of the United States District Court for the Western District of New York (the "District"), including limiting the number of courtrooms being utilized in each courthouse to help with social distancing and permitting and requiring attorneys and other personnel to participate by video or telephone, when appropriate;

WHEREAS, on March 12, 2020, the Court issued a General Order restricting entry to the courthouses of the United States District Court for the Western District of New York in certain circumstances due to the COVID-19 Pandemic Event;

WHEREAS, on March 13, 2020, the Court issued a General Order detailing court operations during the COVID-19 Pandemic Event and continuing civil jury trials, grand jury selections, and naturalization ceremonies for a period of sixty (60) days;

WHEREAS, the Court's March 13, 2020 General Order encouraged judges to reduce personal appearances in both civil and criminal proceedings as much as practicable;

WHEREAS, on March 16, 2020, the Court issued a General Order permitting mediators to adjourn mediation sessions and extending mediation deadlines in all cases for a period of sixty (60) days;

WHEREAS, on March 18, 2020, the Court issued a General Order continuing criminal jury trials for a period of sixty (60) days;

WHEREAS, on March 19, 2020, the Court issued a General Order permitting judges to reschedule or hold attorney admissions ceremonies virtually;

WHEREAS, on March 20, 2020, the Court issued a General Order regarding financial deposits;

WHEREAS, on March 27, 2020, the Court issued a General Order permitting attorneys on the CJA Panel to submit interim vouchers in certain circumstances;

WHEREAS, on March 30, 2020, the Court issued a General Order permitting judges, with the consent of the defendant, to conduct certain criminal proceedings by videoconference, or, where videoconference is not reasonably available, by teleconference;

WHEREAS, on April 17, 2020, the Court issued a General Order explaining how members of the public and the press can attend court proceedings by teleconference or videoconference;

WHEREAS, on April 23, 2020, the Court issued a General Order requiring entrants to the courthouses to, among other things, wear a mask or other face covering when entering and moving about the courthouses;

WHEREAS, on May 13, 2020, the Court issued a General Order extending many of the above General Orders to June 15, 2020;

WHEREAS, on June 15, 2020, the Court issued a General Order extending many of the above General Orders to July 15, 2020;

WHEREAS, on June 26, 2020, the Court issued a General Order extending the teleconferencing and videoconferencing authority under the CARES Act to September 25, 2020;

WHEREAS, on July 15, 2020, the Court issued a General Order extending many of the above General Orders regarding operations to September 25, 2020;

Findings Regarding Video and Teleconferencing Required by CARES Act

WHEREAS, on March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), which authorized the Judicial Conference of the United States to provide authority to Chief District Judges to permit the use of video or audio conference to conduct certain criminal proceedings;

WHEREAS, on March 27, 2020, the President signed the CARES Act into law;

WHEREAS, on March 29, 2020, the Judicial Conference of the United States made the appropriate findings as required under the CARES Act, finding specifically that emergency conditions continue to exist due to the national emergency declared by the President under the National Emergencies Act (50 U.S.C. § 1601, *et seq.*) with respect to COVID-19 and those emergency conditions have materially affected and will materially affect the functioning of the federal courts generally;

WHEREAS, on March 30, 2020, the Court issued a General Order permitting the judges in this District to use video or telephonic video conferencing in certain criminal proceedings, as set forth in the CARES Act, for a period of ninety (90) days;

WHEREAS, on June 26, 2020, the Court issued a General Order extending the March 30, 2020 authorization to conduct certain criminal proceedings by videoconference, or, where videoconference is not reasonably available, by telephone;

WHEREAS, the June 26, 2020 General Order requires the Court to review the situation after ninety (90) days to determine whether to extend the video and telephonic conferencing authority;

WHEREAS, acting pursuant to Section 15002(b) of the CARES Act and the authority granted by the Judicial Conference of the United States, as Chief Judge, I find that emergency conditions continue to exist due to the COVID-19 Pandemic Event and that those conditions continue to materially affect the functioning of the courts within this District;

WHEREAS, pursuant to Section 15002(b)(2) of the CARES Act, as Chief Judge, I further specifically find that felony pleas under Rule 11 of the Federal Rules of Criminal Procedure and felony sentencings under Rule 32 of the Federal Rules of Criminal Procedure cannot be conducted on a regular basis in person without seriously jeopardizing public health and safety;

Video and Telephone Conferencing

IT IS HEREBY ORDERED that, pursuant to the authority granted under Section 15002(b)(1) of the CARES Act, judges in this District, with the consent of the defendant or the juvenile after consultation with counsel, are authorized to use video conferencing, or telephonic conferencing if video conferencing is not reasonably available for use, for the following events:

- (A) Detention hearings under Section 3142 of Title 18, United States Code;
- (B) Initial appearances under Rule 5 of the Federal Rules of Criminal Procedure;
- (C) Preliminary hearings under Rule 5.1 of the Federal Rules of Criminal Procedure;
- (D) Waivers of indictment under Rule 7(b) of the Federal Rules of Criminal Procedure;
- (E) Arraignments under Rule 10 of the Federal Rules of Criminal Procedure;
- (F) Probation and supervised release revocation proceedings under Rule 32.1 of the Federal Rules of Criminal Procedure;
- (G) Pretrial release revocation proceedings under Section 3148 of Title 18, United States Code;
- (H) Appearances under Rule 40 of the Federal Rules of Criminal Procedure;
- (I) Misdemeanor pleas and sentencings as described in Rule 43(b)(2) of the Federal Rules of Criminal Procedure; and
- (J) Proceedings under Chapter 403 of Title 18, United States Code (commonly known as the “Federal Juvenile Delinquency Act”), except for contested transfer hearings and juvenile delinquency adjudication or trial proceedings;

IT IS FURTHER ORDERED that if a judge in an individual case finds, for specific reasons, that felony pleas or sentencings in those cases cannot be further delayed without serious harm to the interests of justice, the judge may, with the consent of the defendant or the juvenile after consultation with counsel, conduct those proceedings by video conference, or by telephonic conference if video conferencing is not reasonably available. Under Section 15002(b)(2)(B) of the CARES Act, this authority extends to equivalent plea, sentencing, or disposition proceedings under 18 U.S.C. § 403 (commonly referred to as the “Federal Juvenile Delinquency Act”);

IT IS FURTHER ORDERED that, pursuant to Section 15002(b)(3) of the CARES Act, and based upon the fact that the COVID-19 Pandemic Event continues and has not been abated, this authorization is effective for an additional ninety (90) days, commencing with the expiration of the Court’s June 26, 2020 General Order on September 25, 2020, and expiring on December 24, 2020, unless earlier terminated. If the emergency persists longer than ninety (90) days, I will review the situation for a possible extension of authority pursuant to the provisions of the CARES Act;

IT IS FURTHER ORDERED that, notwithstanding the foregoing, pursuant to Section 15002(b)(3) of the CARES Act, this authority shall terminate on the last day of the covered emergency period or the date on which the Judicial Conference of the United States finds that emergency conditions due to the national emergency declared by the President under the National Emergencies Act with respect to the COVID-19 Pandemic Event no longer materially affect the functioning of either the Federal courts generally or the courts within this District;

Visitor Restrictions

IT IS HEREBY ORDERED that the following persons shall not enter any United States courthouse in the Western District of New York:

1. Persons not wearing a mask or face covering;

2. Persons who have been asked to self-quarantine by any doctor, hospital, or health agency;
3. Persons who have been diagnosed with COVID-19 who are not fully recovered;
4. Persons who have had contact with anyone who has been diagnosed with COVID-19 in the preceding fourteen (14) days; or
5. Persons with a fever, a cough, or shortness of breath;

IT IS FURTHER ORDERED that court security staff shall inquire of all persons seeking entry to any courthouse whether they meet any of the above criteria for restricting visitors, and if so, deny their entry;

IT IS FURTHER ORDERED that the United States Marshals Service may also deny entry to the courthouse to any person considered a risk of carrying COVID-19;

IT IS FURTHER ORDERED that all persons shall wear a mask or face covering while in public spaces of the courthouse unless otherwise directed by the Court and any person failing to do so may be removed from the courthouse by court security staff or the United States Marshals Service;

Criminal Matters

IT IS FURTHER ORDERED that Grand Jury returns may take place by video teleconference pursuant to Federal Rule of Criminal Procedure 6;

IT IS FURTHER ORDERED that this Order does not affect the Court's consideration of criminal motions that can be resolved without oral argument or personal appearances;

Civil Matters

IT IS FURTHER ORDERED that this Order does not affect the Court's consideration of civil motions that can be resolved without oral argument or personal appearances;

Naturalization Proceedings

IT IS FURTHER ORDERED that the Court hereby grants the office of the United States Citizenship and Immigration Services the authority to perform administrative naturalization ceremonies under 8 U.S.C. § 1421 until further action of the Court;

Public and Media Access to Proceedings

IT IS FURTHER ORDERED that civil and criminal hearings may be conducted on a videoconference line or, where one is not reasonably available, a toll-free teleconference line. That line will be available to members of the public and the media, to the extent practicable. A note will appear on each case's individual docket on PACER and dial-in instructions can be obtained by calling the judge's Chambers directly. Further instructions can be found on the court's website or by calling the Clerk's Office. Members of the public and media may listen to the proceedings but may not participate in them. Members of the public and media are strictly prohibited from recording or broadcasting any hearing, in whole or in part, in any fashion. *See* Local R. Civ. P. 83.5; Local R. Crim. P. 53. Failure to comply with the above restriction on recording or broadcasting may result in a contempt finding. Further restrictions are set forth on the court's website and may change from time to time;

IT IS FURTHER ORDERED that courtrooms will only be able to accommodate a limited number of people in order to maintain social distancing. The judge has the final, discretionary authority to grant or deny any specific request to appear in person, and to limit the number of persons entering the courtroom;

Attorney Admissions

IT IS HEREBY ORDERED that, at the discretion of the judge performing the attorney admission, the judge may:

1. Waive the personal appearance by the applicant and sponsor when provided the necessary documents including a Certificate of Good Standing;

2. Perform the admission ceremonies through any available communication technology, such as but not limited to: video conferencing, teleconferencing, Skype or Facetime;
3. Reschedule the applicant's date of admission. This may include rescheduling of case deadlines to accommodate the new date of admission;

Mediation

IT IS FURTHER ORDERED that electronic Alternative Dispute Resolution ("ADR") filings including stipulations selecting a mediator and mediation certifications may still be made through the CM/ECF system and ADR Program;

CJA Interim Voucher Payments

IT IS FURTHER ORDERED that, through December 24, 2020, CJA Panel Attorneys may submit interim vouchers for compensation, without prior Court approval, so long as the voucher exceeds \$500 and is not submitted within two months of a prior interim voucher in the same criminal matter;

Financial Deposits

IT IS FURTHER ORDERED that treasury deposits will be reduced to once per week each Thursday in order to further limit staffing;

Courthouses Remain Open

IT IS FURTHER ORDERED that the Western District of New York courthouses remain open, subject to the limitations contained above;

IT IS FURTHER ORDERED that filings will continue to be processed in civil and criminal cases via the CM/ECF electronic system and by mail. Paper documents may be received in the drop box located just inside the courthouses;

Superseding of Previous General Orders

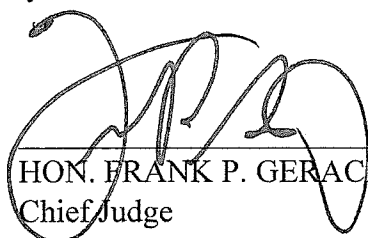
IT IS FURTHER ORDERED that this General Order supersedes this Court's General Orders issued on March 12, 2020; March 13, 2020; March 16, 2020; March 18, 2020; March 19, 2020; March 20, 2020; March 27, 2020; April 17, 2020; April 23, 2020; May 13, 2020; June 15, 2020; June 26, 2020; and July 15, 2020.

Termination of General Order

IT IS FURTHER ORDERED that this General Order shall remain in effect through December 24, 2020, unless otherwise ordered by the Court. The Court reserves the right to amend, modify, terminate, or extend this General Order at any time.

IT IS SO ORDERED.

Dated: September 23, 2020
Rochester, New York



HON. FRANK P. GERACI, JR.
Chief Judge
United States District Court

Western District of New York

Reaction to COVID-19

March-April 2020

Established a Coronavirus Task Force – Chief Judge - Clerk of Court – US Marshal and Chief Probation Officer- intentionally kept small- quick decisions needed to be made.

Activated the COOP plan for the WDNY

Imposed Visitor Restrictions- Screening by CSOs at entrances.

Sought greater protection for CSOs conducting the screening process.

Designated two courtrooms in Rochester and two courtrooms in Buffalo to conduct in person proceedings. All other areas were closed off in order to reduce the areas that needed to be cleaned by GSA.

Designated space in each courthouse for the Grand Jury to operate since the grand jury rooms did not allow for social distancing.

Cordoned off most gallery seating in the courtrooms in order to comply with 10-person limit imposed by New York State.

Reduced Clerk's Office staff to skeleton crew- did not reduce hours.

Set up a central mail pick up to eliminate the need for staff to visit chambers.

Most Judges and chambers staff began teleworking

IT set up all judges and staff with computers in order to telework- required training as well.

Set up Zoom Government platform for remote proceedings.

Set up drop boxes for clerk's offices

Issued order staying all jury selections including grand jury selection

Provided US Attorney with courtroom to socially distance grand jurors and allow them to conduct proceedings.

Expanded the time for the Government to response to Habeas Corpus petitions.

Cancelled all naturalization ceremonies by our judges and in our courthouses. Granted Immigration authority to conduct naturalization proceedings administratively.

Attorney admissions could be conducted remotely.

Allowed for Interim vouchers to be filed by CJA attorneys part of the General Order

Granted waiver of speedy trial for criminal cases.

Hired an infectious disease expert as a consultant.

Established a protocol with GSA for cleaning the courthouses and areas if suspected of COVID exposure.

Worked with GSA to assure that proper filtering systems were in place in both courthouses.

Established a contract tracing protocol.

Imposed 14-day quarantine of staff if they had even second or third hand exposure to the virus.

Kept in constant communication with the Judges, court staff, Marshal, Probation, US Attorney and Federal Public Defender- issues e-mails weekly and sometimes daily.

Established a protocol for advising building occupants of any suspected exposure to the virus in the building.

Worked to reduce rumors and false information from being disseminated. Being transparent helped alleviate fear and panic that was setting in early in the crisis.

Made a mental health webinar available to all staff in order to help reduce the level of stress.

Participated in community conferences such as the Monroe County and Erie county Bar Associations in order to keep them abreast of actions taken by the Court during this crisis.

Kept gyms in both courthouses open at request of users with caution that if equipment was not kept clean, they would be closed.

Mandated the wearing of masks or face coverings in all common areas.

Planned with correctional facilities to accommodate remote proceedings.

Drafted Standing Orders articulating many of the issues above.

Consulted with other Chief Judges in the Second Circuit as well as other Chief Judges in the nation.

Although the Administrative Office of the Courts had significant information on the web site it was difficult to find and sometimes had too much information. The AO was quite frankly not helpful during the initial phases of this crisis. Most staff at the AO were sent home to telework.

Set up a process with the local jails and the US Marshal to have all prisoners screened by questionnaire and temperatures prior to their entry into the courthouse.

Created a script for judges to read before each remote proceeding to establish on the record that the defendant was consenting to the remote proceeding. Additionally, the parties were all advised that they could not record, re-broadcast or reproduce any part of the proceedings and to do so could result in a contempt of court.

Established a telephone line so that the press and public could listen in on remote proceedings. This line was listed on the court's website.

Placed social distancing notices and marks in hallways, elevators and all common areas.

Required that doorways to common areas be left open in order to avoid unnecessary contact with surfaces.

WDNY donated 500 N95 masks to essential health workers.

Established a procedure for handling a flood a compassionate release application.

May 2020

Developed a 4 Phased Plan for the return to on site operations of the Court utilizing the WHO, CDC and New York State guidelines.

Formed a Jury Committee with Court staff, the US Attorney, Federal Public Defender, CJA counsel, US Marshal and GSA to develop the logistics for conducting jury trials.

Determined that the Plan would not be implemented until both the Rochester and Buffalo areas met the criteria set by New York State.

Established a protocol for staff members needing accommodations.

Determined that each chamber could decide if they were comfortable employing summer law clerks.

Developed a Notice to all Visitors to the courthouses that the wearing of face coverings was mandated.

Developed a notice to potential jurors to reassure them that the Court was taking numerous steps to protect them during any upcoming jury service.

Developed a COVID questionnaire for jurors.

Extended initial General Order for 60 days.

June 2020

Employed Dr. Brenda Tesini to tour both courthouses in order to provide advice on conducting jury trials in a safe manner.

Ordered plexiglass for four courtrooms. Cost approximately \$30,000.

Purchased approximately \$50,000 for personal protection equipment and cleaning supplies.

Coordinated civil and criminal jury trial schedules with the judges of the court.

June 15, 2020 Stay of Civil and Criminal jury trials as well as grand jury selections is lifted. Other parts of the General Order were extended.

Designated two courtrooms for every trial to be conducted. One for the trial and the second for jury breaks and deliberations. A third courtrooms also designated for the press and spectators if necessary.

Designed Guidelines for the conducting of jury trials during return to on site operations.

Determined that only one jury selection could occur on a given day.

Process established for jury selection- Clerk's Office greets jurors and escorts them. Jurors arrive in two separate groups- package provided to jurors including a mask, a bottle of water, hand sanitizer and wipes.

Conducted a Pro Se civil rights civil jury trial.

Debriefed the jury and counsel after the trial.

Issues regarding sound rectified with IT staff.

Participated in Town Hall meeting with New York State Bar Association.

Second Circuit determines that qualification requirements for staffing of Senior Judges is waived for this year due to COVID-19. The Senior Judges will not be subject to any reduction in staff.

July 2020

Participated in American Bar Association Webinar related to Court operations during COVID-19.

Thermal scanners installed in both courthouses.

August 2020

New York State Department of Health determines that all subpoenaed witnesses traveling from out of State to New York are deemed to be essential and therefore not subject to quarantine if they are present for a very short stay.

September 2020

United State attorney WDNY establishes a protocol for witnesses traveling from out of state who plan to be in New York for greater than 24 hours be tested prior to entering the courthouse. The Department of Health in Erie and Monroe Counties have agreed to assist in this process.

General Order related to COVID-19 extended for 90 days.

GSA established protocol for notifying building occupants of the existence of the COVID-19 virus in the building.

A notice is created for all visitors to our buildings that if you become sick within 14 days of their visits, they should notify the court or agency visited.

