

## **Dispensing Justice at a Distance: Marilyn Marcus**

John Caher:

The COVID-19 pandemic has had an enormous impact on the New York Courts, just as it has impacted every institution and every enterprise. But the courts can't simply close down or hit the pause button. A pandemic doesn't stop crime, it doesn't prevent domestic violence, and the courts must continue to provide vital services to society.

Although the range of those services was certainly limited and matters that could wait were put on hold, the New York State Court System never shut down—not for a day, not for an hour, not for a minute.

Welcome to *Amici*, News and Insight from the New York Courts. I'm John Caher.

The Historical Society of the New York Courts is producing a day-by-day, and in some cases minute-by-minute, account of how the court system responded to the coronavirus challenge, examining the logistics of how the courts functioned, who made it possible for the courts to function, and the technologies that enable the Unified Court System to “Dispense Justice at a Distance.” The Historical Society is partnering with the courts to memorialize through video recorded interviews with court staff and judges just how the court system responded to this pandemic.

Today I'm pleased to have as our guest Marilyn Marcus, Executive Director of the Historical Society of the New York Courts.

Marilyn, thank you for your time. What is the overarching goal of the Dispensing Justice at a Distance Project?

Marilyn Marcus:

Good to be here with you today, John. The Historical Society of the New York Courts has entered into a partnership with the New York Courts to record the experience of judges and court staff as we move through this historic time.

I do feel that the Historical Society is uniquely qualified to carry this out. We were, as you know, founded by former Chief Judge Judith Kaye with the mission of protecting and promoting the legal history of the state. We're living through unprecedented times, and I can imagine no more important mission for us than to make a record of the court's experiences as we navigate what I can only call these uncharted waters.

We can only imagine what went into the planning from Chief Judge Janet DiFiore and Chief Administrative Judge Larry Marks on down the chain of

participants through towns, villages, counties in the state level. Courthouses across the state went from open to shut with virtually no notice, and yet never really shut down, did they?

John Caher: Never!

Marilyn Marcus: How did it happen? It's an important story in our democracy I think that will resonate down the years to come.

Just to dive into the concept a little bit, as you said, it's going to be called "Dispensing Justice from a Distance." It aims to reach courthouses across the state. I got to work with the two Deputy Chief Administrative Judges, Judge Silver from downstate and Judge Caruso upstate, and with their help, made selections of judges that represented a good cross-section.

Our goal is to reach a wide range of benches with really boots-on-the-ground experiences where they intersected directly with the public. The list is still being developed and at present includes judges sitting in various levels of criminal and civil courts, as well as more specialized courts—family, housing, surrogate—and then the problem-solving courts that are directly in the communities.

As this has developed, it's become clear to me that we need to move beyond the judges in the interview process and talk to court clerks, court officers who dealt directly with the public and continue to go with all of the issues involved with safety and social distancing that comes from that. Really, they are our frontline workers here.

Also tech staff, and I'd like to talk a little later with you about their role, which has been totally amazing, and then everybody who makes up a court proceeding—court reporters and interpreters.

We expect to interview administrative judges at all levels, from supervising a single court to administering the entire court system. We will do interviews with the two Deputy Chief Administrative Judges I mentioned, but then I'm really proud to say that our current President, Jonathan Lippman, who as you now well is the former Chief Judge of the State. He plans to interview both the Chief Judge and the Chief Administrative Judge at the top of the chain so that we'll really have umbrella coverage from top down.

I think it takes all of these participants to paint a picture of how this transition from in-person to remote was carried out.

John Caher: That sounds fascinating. Now Judge Lippman will interview Judge DiFiore and Judge Marks. Is he going to do all of the interviews?

Marilyn Marcus: No. That's his one and only interview in this process. We are reaching out pretty broadly for interviewers, but my focus with the interviewers was to reach the younger set, younger lawyers, younger historians, because they're the ones that are going to be around 30 years from now who will have this historical perspective. I think taking part in it now will make it very alive to them and will keep this alive for the generations to come.

John Caher: There's obviously a New York Historical angle here, but I wonder if it goes beyond that? As we know, New York was hit early and hit hard by this pandemic, and for the past several weeks things have been going in the right direction. Several other states are on the opposite trajectory, and maybe they got off a little easier in March and April than we did and are now seeing dramatic spikes.

Do you think there's an immediate benefit for other states to see how a large court system like ours, one of the largest in the country certainly, handled this?

Marilyn Marcus: Absolutely. Absolutely. Just as Governor Cuomo proved to be a model for other states as we went so hard and so fast as really one of the very first states to be hit and went through the phases with him, I think that our court system can be a model for other court systems because of the early start.

We were at it instantly in March, and one of the things that we'll do—I can talk a little more about this later—is publicize this, get it out there as far and wide as we can. So yes, I hope that it's going to prove to be that sort of a project here.

John Caher: As far as getting the word out, does that mean coordinating with the American Bar Association or the National Center for State Courts and organizations of that nature? Is that what you mean?

Marilyn Marcus: Yes. That's exactly the types of organizations. I would even think the National Archives may be interested in this as sort of a full process. So why don't I tell you a little bit about the project itself?

John Caher: Please do. Please do.

Marilyn Marcus: Thanks. Because I think the historic value comes out when you can look at this as a whole as opposed to individually.

I talked about the fact that we're going to be interviewing judges. I don't know how many that's going to reach et, but it's going to be a significant cross-sampling, as I said, at the sitting level, at the administrative level, and then the staff that surrounds and supports them.

These interviews are going to be recorded and videoed. As I said, we'll have the young lawyers doing these interviews. I call them the "young lawyers." They're not all that young, but they're younger than I am! That's one piece of it.

We're also in the process of creating a timeline, and this is a really neat feature one of my staff people, Allison Morey, very cleverly has been developing. It's a timeline of every single significant event that occurred from March going forward. It's certainly not done. We're still moving thorough that timeline.

It will have all of the Chief Judges' videos appropriately placed on it, all the different court orders and notices that went out at the time, and clips from the interviews by the judges and court staff will appear in appropriate places from their interviews on the timeline. So, it's going to be an interactive, quick overview of what happened. Once we get deeper into this process, we'll decide how it can best be arranged categorically so that it's most accessible to the public. That's our idea.

John Caher: And it's a wonderful idea. Do you know when it will be available?

Marilyn Marcus: No, I truly can't tell you. We're at the beginning of the process. We've done about five and we've probably scheduled another five or so now, but we're not ready... I mean I don't think the court system and the country is ready to be done with this project. I think it's as important to see how the court system went remote as it is to see how the court came out of this process.

So, I can't say yet. But I can say we're devoting a lot of time and that the court—the judges, everybody in the court system—has been wonderfully supportive of this.

It started as kind of a germ of an idea that I took to one of my trustees, Dennis Glazer, as well as our past president... Do you know Al Rosenblatt?

John Caher: Of course.

Marilyn Marcus: He was co-founder [of the Historical Society] along with Judge Kaye. He's a true renaissance man. He's busy writing a book now about a wonderful moment in the court's history, the Lemmon Slave Case, so he's busy and active as ever.

Through that, I was placed in Judge Silver's hands, who was terrific. He was enthusiastic about the project and its importance. He's been providing me with judges downstate. Then I had the pleasure of speaking to just about all of the 10 district administrative judges, who selected judges that represented a good cross-section off their particular districts.

I talked about the array of courts we're looking at. We also are looking for diversity in the judges, because I think that that impacts the way they were able to deal with this process of going remote. Gender is important, but age is probably even more important. We're looking for diversity in race and culture and ethnicity, just a full range of our judges.

Just a word about our tech staff, the technology staff of the court. It's just interesting to think about what happened and then begin to understand what was involved here. The courts were going about their business in March and, with absolutely no notice, as we all know, there was a lockdown. Around the middle of March Governor Cuomo told us we needed to stay home, social distance and begin to deal with this crisis.

You can't shut down the courts. That's not possible, so what do you do? All of the people who are associated with the courts and work with the courts needed to receive remote access. They needed to receive laptops, so they got out laptops to everybody. Then they had to train them how to use it, so they trained them.

Then they had to train the judges how to hold virtual hearings and immediate arraignments. They did it. They were trained to do it, and in the process the court never stopped functioning. That's the thing that's emerging to me as I listen to these recordings, how phenomenal it is that the court never stopped functioning.

I was very surprised to learn how many courthouses remained open through this entire process. They are true heroes. They remained open with a skeletal staff. They created virtual courtrooms within the courthouses for those parties coming to the courts that didn't have WIFI, that weren't otherwise able to reach the court, so it was kept open for them with these skeletal crews.

They were brought into a virtual courtroom with a big screen and they were able to be heard, and this was very poignant. So far we haven't moved into many areas like housing courts and tenant issues, but we have spent some time with Family Court and it was very poignant the way it operated with Family Court, because I think, as many of us know reading the newspapers, that domestic abuse has been rampant. There's more drug use, there's more drinking, there's no way for people to escape, and so children and partners in domestic situations are being abused.

So, what to do? These people came, knocked on the courthouse door, were admitted, had their papers filed, and were taken to these virtual courtrooms and justice was served. So, very meaningful work was being done at all times.

John Caher: You mentioned the efforts to provide technical assistance to the judges. I know there is currently a grant-funded project within the Office of Court Administration to provide additional training to attorneys and litigants on how to participate in a virtual hearing, and that's not something necessarily common knowledge. You also mentioned access to justice.

On a good day, access to justice is a challenge, and these aren't good days. Not everybody has a computer. Not everybody has a smartphone. Not everybody knows how to use Skype for Business. I'm glad to hear that we have provided a mechanism for people to achieve justice even if they don't have the technological wherewithal.

Marilyn Marcus: Me too. From what I understand and I'm learning, it was and continues to be a real safety net. I think that the bar associations have a big job here in educating lawyers about this as well. I'm glad to know that the court is also involved in this process, because I do believe a lot of lawyers have difficulty with the process, hearing and losing connections, all kinds of things.

So, I'm not trying to paint a picture that it was flawless, but the picture that is emerging with all the effort is positive. Even if it had its stops and starts, it was a process that never shut down, and that is tremendously impressive to me.

John Caher: Where are these interviews taking place? Are they being held in your offices in White Plains?

Marilyn Marcus: Ah, the beauty of technology, John! We are using Skype. Skype is the official platform that the court uses. It has a lot of security features to it,

and we're part of the court system, so we're using the technology offered to us.

We were able to enhance it a little bit so that these recordings that we're doing are... Well, they're remote videos, and they will be on a split screen. You can see the young interviewer, or the youngish interviewer, on one side and you'll see the judge on the other.

The questions that will be asked concerning this whole process will be pretty regularized, because the idea was to ask the same questions and get lots of responses, but each one will go off in its own direction.

That is the method we're using, and then we do whatever editing is necessary to these recordings, send them to the parties involved to make sure they're comfortable, send them to the court, make sure the court is comfortable, and then ultimately, and we're not there yet, but ultimately we will start putting them up on the website along with this timeline that I described, and that's really the process.

One of the really nice things is that this is costing the court system, which is certainly in need, as all public institutions are right now, *nothing*. We're using the existing technology, everything is being handled by Historical Society staff, and we're working together with the court so that it's a product that they're happy with, and that's how we're doing this.

John Caher: So, this is not costing the court system any money?

Marilyn Marcus: Not a dime!

John Caher: Wonderful. Let's hope that future generations view this view this from the historical perspective and not because they need to replicate it.

Marilyn Marcus: Yes. Isn't that the truth? One of our jobs is how to market it and how to get it out there to the public.

One of the nice things, and the Historical Society uses this a lot, is that we post our videos on YouTube and Facebook and then promote them through all the various social media platforms, the flavor of the month I suppose, they seem to change so often.

But YouTube and Facebook have been an amazing way for us to get our content out to the public. Instead of having a live program where we may have 200 or, if we're lucky, 300 people, we now have thousands of people viewing these videos.

We did a webinar on the 1918 pandemic that reached maybe 4,000 people. We did a podcast with Judge Rosenblatt and Dennis Glazer on the Lemmon Slave Case that's still drawing people and has over 7,000 views. So, I can only imagine what kind of viewing we'll get when we can work on promoting this project.

John Caher: I suspect you will get a substantial number of views. Marilyn, thank you for doing this project and thank you for your time. I wish you great success with it and I'm eager to see the finished product.

Marilyn Marcus: Oh, John, I consider you a collaborator in many things as you promote the court system. It's a pleasure to be here with you now, to talk to you now, and I'll keep you up to date on how we're doing on this.

John Caher: Please do. Thank you.

Thanks for listening to Amici. You can find all of our recent podcast on the court system's website at [www.nycourts.gov](http://www.nycourts.gov), and you'll also find a transcript of each interview. If you have a suggestion for Amici podcast let me know. I'm John Caher and I can be reached at 518-453-8669 or [jcaher@nycourts.com](mailto:jcaher@nycourts.com). In the meantime, stay tuned.