

## Getting the Courts Back to “Better than Normal”

*Hon. Craig J. Doran and Henry M. Greenberg*

Link for June 7 public hearing at 9:30 a.m. <https://nycourts.gov/ctapps/live.html>

John Caher: Welcome to Amici, news and insight from New York courts. I'm John Caher.

In June of 2020, shortly after the pandemic struck, Chief Judge Janet DiFiore convened the Commission to Reimagine the Future of New York Courts. This Commission is a group of judges, lawyers, academics, and technology experts tasked with researching, analyzing, and recommending innovative proposals for the justice system of the future through the examination of regulatory, technological, structural, and other innovations.

The Commission, chaired by former State Bar President Hank Greenberg of Greenberg Traurig, and its various working groups, have identified and helped implement pioneering reforms to enable the court system to adapt to changing realities and prepare for the future.

The Chief Judge recently announced a formation of a new working group—the Pandemic Practices Working Group—to consider post-pandemic procedures and determine which policies should be kept at the ready if court operations are again interrupted due to an unforeseeable event. The new working group, which includes 30 distinguished members, is led by State Supreme Court Justice Craig J. Doran of the 7th Judicial District. In today's program we are joined by both Justice Doran and Mr. Greenberg.

Gentlemen, it's honor to have you both on Amici. Hank, let's start with you, if we could. What was the initial task of the Commission to Reimagine?

Hank Greenberg: Like the Commission's name suggests, when the idea of forming the commission first arose — which was before COVID struck — the plan was to look at the court system with a view towards making sure it was prepared to meet future challenges, technological and otherwise; to be forward-looking; to and figure out and find out where the cutting edge is and will be in the future.

John Caher: So, this was conceived before the pandemic, but it actually came into being after the pandemic, correct?

Hank Greenberg: Correct.

John Caher: So, you get started and you're trying to get this thing going in the midst of a global pandemic, and the court system has no choice but to react and respond. It has no blueprint, no precedent, an uncertain future. Is it fair to say that in the beginning, it was a matter of triage?

Hank Greenberg: Yes. No one could have, and no one did, anticipate in New York, or elsewhere, that a pandemic would lock down the state and nation. In March, April and May of 2020, New York State was the epicenter of COVID-19. Prior to then, the court system was built almost entirely on an in-person platform and foundation. I had never participated in a Zoom meeting presided over by any judge, in any court. By force of circumstances, however, New York's court system transformed itself into a virtual court system in a matter of months. Indeed, the legal profession experienced more change in two months than it had in the preceding 200 years .

The court system's transformation was nothing short of miraculous. It amounted to a brilliant series of improvisations, building a virtual court system almost entirely from scratch. So, "triage," I think is the right word, John.

John Caher: Thank you. Judge Doran, back to the present and future. What is the aim and mission of your new working group?

Justice Doran: First of all, John, thanks so much for giving us this opportunity, and to my colleague and the chairman of the Commission, Hank Greenberg. We are grateful for this opportunity. The mission of our group, simply stated, is to conduct a very thorough, multi-dimensional, honest, transparent review of what the court system or the broader legal system in New York state did during COVID, and is doing during COVID. It's important to mention that COVID is not completely in our rear-view mirror yet. So that's the briefly stated mission.

More broadly stated, our intention is to take the temperature of all of our partners in the justice system from within and without the court system, and talk about the experience of COVID. What worked? What didn't work? What perhaps should we consider taking with us as we emerge from COVID into the post-COVID era, when we get back to what some folks would refer to as back to "normal." My preference is that we talk

about getting back to better than normal. And our group's mission is, let's help define what that better than normal is. And let's learn from the COVID experience. And let's take those things that we've learned to do well, somewhat by necessity, and integrate them into the permanent protocols and processes of the justice system.

The other objective is to help devise a “playbook,” if you will, of what perhaps we ought to do if the operations of our justice system are interrupted again by circumstances that are beyond our control. It would be shortsighted of us, and I know the Chief Judge and our Chief Administrative Judge agree, that it would be shortsighted of us to assume that this won't happen again. And good government practices would dictate that we ought to learn from the experience and try to take those best practices forward.

John Caher: You mentioned “taking the temperature” of the people who've been impacted by this, which is basically everyone. Now I know you have a public hearing tomorrow, and a link to that live stream is posted on the transcript of this interview. What do you hope to glean from that hearing tomorrow?

Justice Doran: What we hope to glean from the hearing, simply stated, is the truth—an honest assessment from this ambitious variety of witnesses, and we have 30-plus witnesses scheduled to testify at the hearing. What we hope to hear is what their experiences were. What from their view worked? What was best for their constituencies, their clients, or their principals, whomever they may be? And what perhaps could we do a better job of, or should we have done a better job of?

We're doing this really in a more condensed timeframe than long-term planning might justify, but we really wanted to get to it and we wanted to get this done. We think it's important enough that it has to be done now. But, the downside of that was, we were concerned that we wouldn't have time to generate enough interest. Quite the opposite has been the case. We had more than 50 entities indicate that they wish to offer us testimony. We've pared that down to 30-plus witnesses. So, I hope to hear honesty. I hope to hear an unvarnished assessment of the experiences of all of these various interests as we've all navigated through COVID together.

John Caher: Well, we in the courts have not had much choice in the last couple years, but to condense things into a tighter timeframe.

Justice Doran: Yeah, for sure.

John Caher: Now, I know that's the first public hearing. And I know you're also looking for public input otherwise. At the end of this process, what do you anticipate? Do you anticipate a report of some sort?

Justice Doran: Our charge, given to us by the Chairman of the Commission— Hank Greenberg—is that we offer a report to the larger Commission. Our hope is that once that report is offered to the Commission, that in substantial part it will be offered to the Chief Judge and the administration of the court system for their consideration and what we hope will be positive view of our recommendation. So, we hope to have that report finalized and completed toward the end of the current calendar year.

John Caher: Hank, Judge Doran's working group is one piece of a bigger jigsaw puzzle that you're trying to put together. How does his part fit into the whole?

Hank Greenberg: Well, the Commission's work is done largely through its working groups, of which there are now seven, each led by extraordinary individuals like Judge Doran. We have a working group that deals with trials, another with appellate courts, another with technology. Our working groups are proposing reforms on regulatory and structural issues. The Pandemic Practices Working Group is the newest Commission working group. In the two years of its existence, the Commission has produced multiple reports and recommendations, many of which have been adopted by the court system. That said, the high level of public interest and enthusiasm for Judge Doran's Working Group is unlike anything we've seen to date.

Like you, John, I work in Albany. So I've seen a lot of legislative hearings. But I am truly astonished and pleased to see so many and diverse groups and individuals sharing their thoughts and ideas with the Pandemic Practices Working Group. Not just the usual suspects, if you will, but people representing virtually every segment of the legal profession. That's a testament to Judge Doran's leadership. It also speaks volumes about how the public has weathered the storm in COVID and come to embrace many of the technological improvisations and changes made to keep the court system operating that have improved the administration of justice.

I'll just give you an example. This is the perception, at least of practicing lawyers, of which I am one: Before COVID, there were many courts, especially downstate, where you could spend hours waiting to have your case heard during a calendar call. During COVID, such court appearances were routinely conducted through prescheduled conferences on a digital platform, with extraordinary efficiency and ease for lawyers and clients.

So, as we move past the pandemic and return to in-person appearances in courthouses, we don't want to lose those changes driven by technology that not only worked well, but also improved the efficiency of our court system.

John Caher: Judge, my guess is that you didn't have very many courses in law school on how to conduct a virtual hearing?

Justice Doran: Absolutely not. Even if I had had courses in it, I'm not sure it would've been any easier until we had the opportunity to actually do it.

I was saying to Hank yesterday that if we in this court system decided that we wanted to take a look at allowing motions to be argued virtually, or allowing conferences to occur virtually, with all due respect to all of the very, very, very good people that work in the system, it would take us a long, long time to get there. And in that process, which would be very deliberative by necessity in non-crisis times, we would lose a lot of the positive impact of the momentum and the interest of doing it. As horrible as this pandemic has been, and as stressful as it's been on so many people, it has given us a passage or a pathway into doing things that make sense at a pace that far surpasses what would happen in normal time. So, there are silver linings in the cloud, and we hope that this effort allows us to capitalize on those silver linings.

John Caher: We had the fortune, or misfortune, to see how all this works under the worst circumstances.

Justice Doran: We did. And we've all learned from it. We've been compelled to put ourselves in difficult places, and I believe if we do this right and we listen to each other and we communicate and we work with each other and we collaborate, I believe this will lead us to a better place than anyone ever imagined.

John Caher: That is a great place to end. Judge, Hank, thanks so much for your time and good luck with the hearing tomorrow.