



PROSECUTORS
AND THE
PANDEMIC

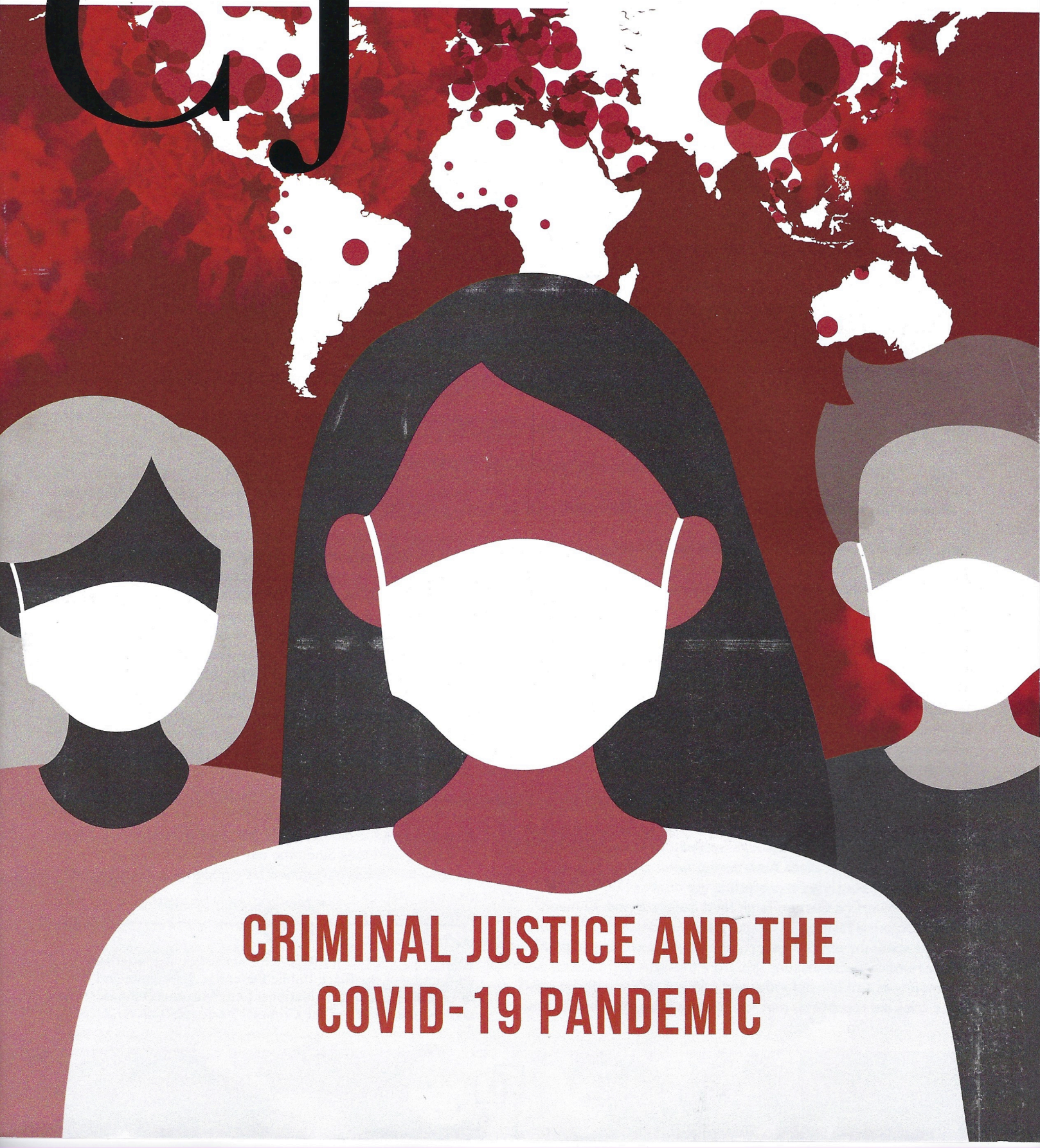
COVID-19 SLOWDOWN
OF THE SPEEDY TRIAL
CLOCK

JURY SELECTION
IN A COVID-19
WORLD

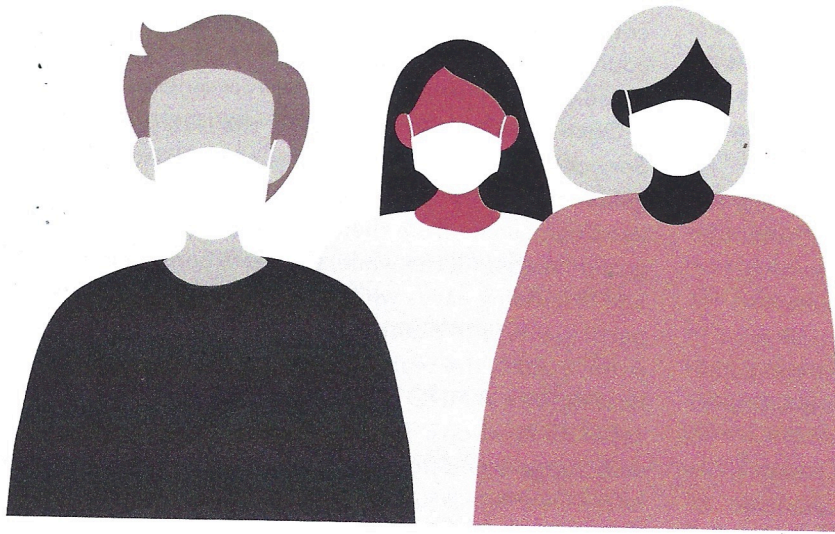
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CRIMINAL JUSTICE AND THE COVID-19 PANDEMIC



Prosecutors and the Pandemic

Necessity Is the Mother of Invention

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The impact of the pandemic has hit every aspect of the criminal justice system. It forced all members of the system to adjust on the fly and adopt methods that would have seemed inconceivable just a few months ago. Adversity spurs innovation, and inevitably a new normal will emerge that includes the lessons learned from the pandemic.

This article outlines a few of the many innovations adopted by prosecutors that have helped them to continue their work and serve their communities during these difficult times. Many of these initiatives have been done in collaboration with other criminal justice stakeholders. The topics, from offices of all sizes and different parts of the country, include virtual court proceedings, outreach to the community, services for victims and witnesses, reduction of the jail population, going paperless, and reopening of a prosecutor's office.

Remote Preliminary Hearings

San Diego County District Attorney's Office, California (324 Prosecutors)
In response to the coronavirus, the District Attorney, Public Defender, and Sheriff's Department collaborated to find ways to reduce the jail population for inmates who were low risk, nonviolent, or medically fragile. The stakeholders, along with the court, then formed a Technology Committee to develop remote courtroom proceedings. The Technology Committee decided on Microsoft Teams for the remote proceedings as it allows the court to "host" the meetings using almost any device such as cell phone, computer, or tablet. "Invitation links" were set up for all operating "virtual courtrooms" countywide.

Remote courtroom hearings for criminal cases began on April 6, 2020, starting with matters that did not involve witnesses or the taking of testimony. The judge, along with a court clerk and court reporter, is located in a courtroom, socially distanced and with personal protective equipment. The defense attorney and prosecutor are located in their respective offices. The accused is located in a room at the detention facility equipped with protective equipment, a computer, as well as a confidential phone line where the defense attorney and his/her client can privately talk while not being heard by anyone else present during the remote Microsoft Teams meeting. A sheriff's deputy equipped with

personal protective equipment coordinates the use of the technology inside the room where the accused sits. If the case requires an interpreter, the interpreter is also "invited" to the meeting, and then translates what he or she hears via a separate phone connection to the accused.

Remote preliminary hearings required significant additional coordination for witnesses. Because California allows hearsay testimony at preliminary hearings, the virtual hearings have initially called only law enforcement as opposed to civilian or other witnesses. To conduct the hearings,

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each law enforcement agency set up a “tech room” equipped with a computer outfitted with Microsoft Teams and any additional required audio equipment, such as headsets. During the hearing, when it is time for the prosecutor to call the officer-witness, the prosecutor “invites” the testifying officer to the Teams meeting where the judge, defense attorney, prosecutor, and interpreter are already present. Evidence such as photographs, videos, or other documents may be presented through a screen-sharing function in Microsoft Teams. The parties coordinate with the court clerk regarding how to get the exhibits lodged with the court, which typically occurs through email.

Legal authority for remote hearings came from the combination of statewide emergency executive orders and judicial council orders authorizing the use of technology for this purpose, along with current precedent authorizing remote or video proceedings as long as they are the functional equivalent of an in-person or traditional hearing. At the heart of each executive/court order and San Diego County’s remote hearing policy, are the health and safety of every member of the criminal justice system.

(For the Office’s videoconferencing guide and YouTube training video, as well as a short video with Chief Deputy District Attorney Tracy Prior, visit <https://bit.ly/3iVWDqT>.)

Virtual Mental Health Court and Addiction Intervention Court

Yolo County District Attorney’s Office, California (42 Prosecutors)

The Yolo County District Attorney’s Office made it a priority to continue their Mental Health Court (MHC) and Addiction Intervention Court (AIC) from the early stages of the coronavirus pandemic. MHC and AIC are a minimum 18-month, court-based treatment and monitoring system for adult offenders with a serious mental illness (MHC) or substance use disorders (AIC). These programs are designed to increase the treatment and engagement of the participants while reducing arrests, hospitalizations, and jail time both during and after the program. The programs are a collaborative effort between the Yolo County Superior Court, Probation, Health and Human Services Agency, the Public Defender, and the District Attorney.

Though Yolo County Superior Court had been handling only essential matters that did not include MHC/AIC, the DA’s Office and its MHC/AIC partners quickly developed a process for video proceedings with a judge via Zoom. The virtual MHC and AIC are informal as no bailiff, clerk, or court reporter is present. If formal action is needed, for example, if there is a violation of

conditions, then the case is calendared in traditional court where the participant is required to appear in person.

Once all agreed to go forward, the Health and Human Services Agency (HHS) clinicians immediately provided guidance for MHC and AIC participants on how to use Zoom, some from their own homes and some from group homes. All the while, the team continued meeting and discussing cases while HHS clinicians provided participants with other virtual services. By Thursday, April 9, 2020, the team held its first live, informal court hearing with 11 MHC participants, who all joined from separate locations. The following week, AIC followed suit. Judge David Rosenberg opened up “court” from his home wearing his judicial robe, greeted participants, and provided words of encouragement. Participants then shared how they were managing during the coronavirus.

An important part of MHC and AIC is the graduation that occurs when a participant successfully completes his or her program. The AIC team held a virtual graduation via Zoom. Because they typically serve pizza at the in-person graduation, they instead sent a pizza to the graduate’s residence. They also invited participants via Zoom who normally attend in person, including the Woodland Police Department Deputy Chief, AIC team members, and the graduate’s family members. In one case, the graduate’s sister and daughter made uplifting and tearful remarks, and the Deputy Chief and AIC team members praised the graduate for his efforts.

(For additional materials and a short video with Deputy Chief Jonathan Raven about the virtual court, see <https://bit.ly/2CCSAQC>.)

Paperless File System

Wayne County Prosecutor’s Office (Detroit), Michigan (210 Prosecutors)

Within the Wayne County Prosecutor’s Office (WCPO), the Special Prosecutions Division (SPD) is comprised of approximately 53 attorneys, clerical specialists, and victim advocates. In response to the coronavirus pandemic, the SPD successfully implemented a paperless file system that did not previously exist and leveraged multiple technologies to accomplish remotely police file intake, file review, redaction by prosecutor office staff, and discovery. Besides a continued need for warrant typists in the intake section, cases can now be processed completely remotely when necessary.

Development of the paperless file system and technical competencies began several years prior to the pandemic in anticipation of a significant increase in video evidence. The WCPO began using Evidence.com—a case management tool that can house videos, photos, documents, and other evidence in a single

location—for digital file transfer via the cloud. They also obtained licenses to Camtasia in order for staff to perform reliable video capture and redaction on laptops. Attorneys were provided with technical training that included classes on virtual trials from Michigan's Visual Trial school as well as other IT-related competencies.

Within days of the coronavirus stay-at-home order, the SPD (with the help of the WCPO's IT department) successfully rolled out the paperless file system technologies and processes in their entirety. An initial challenge faced in the rollout was that most staff did not have remote access to office servers. As such, they could not obtain the digital materials that had not yet been transferred to Evidence.com or other materials needed to perform their jobs. Fortunately, all staff had existing, remote access to email via Office 365, and some staff had additional access to OneDrive and SharePoint, used for storing and editing files. The few staff members who could successfully access office servers were able to obtain and share all relevant materials for the SPD using OneDrive, thus creating broader access to office files.

OneDrive is now used to create various documents and spreadsheets and provide work assignments. Managers and staff members, based on permissions related to their job function, can access and edit relevant documents as needed. This has successfully allowed prosecutors to work from home and for their supervisors to monitor their work.

(For additional resources and a video interview with APA Patrick Muscat, visit <https://bit.ly/3iV9tWq>.)

Reopening the Grand Jury and Updating the Community by Video

Shelby County District Attorney General's Office (Memphis), Tennessee (Number of Prosecutors: 112)

Grand Jury: In late May 2020, for the first time in its history, the Shelby County District Attorney General's Office held a partially virtual grand jury. Grand juries are typically held multiple days per week, but due to the coronavirus, 25 sessions had been missed, creating a large backlog. Working together, the District Attorney's Office, the judges, and the grand jury commissioner developed a protocol for the grand jurors to convene socially distanced in a large room at the courthouse, with all witnesses appearing remotely on a screen in the grand jury room. In Tennessee, prosecutors are not allowed in the grand jury room and the witnesses are typically a police officer. The hope was to create three grand juries, but at first there were only enough volunteers for one grand jury. The cases prioritized for presentation to the grand jury represented the most serious offenses, primarily homicides, and

involved offenders who had been in custody the longest. After a few weeks, three grand juries were seated, and witnesses continue to appear virtually.

Community Outreach: The Office has also focused on keeping citizens informed during the coronavirus. In March 2020, soon after the stay-at-home orders were imposed, District Attorney General Amy Weirich reached out to her community through a six-minute YouTube video in which she discussed victim/witness court procedures in light of the new order, the importance of continuing to report crime, how to address price gouging, an explanation of dismissed cases, and the Office's commitment to lowering the jail population. (Visit <https://bit.ly/2FBO9Xu>.)

Release of Those in Custody, Outreach to Victims/Witnesses, and the New Normal White Paper

East Baton Rouge District Attorney's Office, Louisiana (Number of Prosecutors: 54)

Reducing Jail Population: In response to the pandemic, the East Baton Rouge District Attorney's Office worked quickly to address a key issue—the high jail population. (Note: In Baton Rouge the local jail is referred to as the “prison.”) On a daily basis, the District Attorney's Office met with the public defender to address this issue. Keeping public safety in mind, they made the necessary reductions for inmate safety that reduced the jail population to the lowest levels the jurisdiction has seen in 50 years.

Victims and Witnesses: Keeping victims and witnesses safe also required a new and rapid response. Preparing for the stay-at-home orders, victim assistance counselors reached out to victims individually and via social media to provide a variety of hotlines they could call in cases of domestic violence or other crimes. The Office continues to post updates on social media, has created short videos with information for victims, and stays in remote contact with victims regarding the status of their case.

White Paper on the New Normal: Recognizing the importance of capturing lessons learned during the many changes that continue to arise as a result of the coronavirus, District Attorney Hillar Moore sought input from all staff members to draft a paper to explore the “new normal” for prosecuting cases in Baton Rouge parish. The paper collects practical suggestions and legal authorities to assist the prosecutor's office as it works with criminal justice stakeholders both during the pandemic and into the future. The document will evolve over time as innovations emerge and evolve. (To view a video of DA Hillar Moore discussing these initiatives and *The New Normal: EBR District Attorney Adaptation to Pandemic* (May 2020), visit [add link to website](#).)

Outreach to Community Members and Victims of Crime

*Nassau County District Attorney's Office, New York
(Number of Prosecutors: 225)*

Community Meetings: The Nassau County District Attorney's Office has a robust community outreach division. Among its many initiatives, it has formed Advisory Councils for business, faith leaders, students, African Americans, Hispanic Americans, South Asian Americans, and Asian Americans. See <https://bit.ly/3h8Hjqj>. Prior to the pandemic, the meetings with each council were held in person on a monthly basis. Meetings have since been moved to a virtual format, and for some groups, they now occur weekly instead of monthly with even greater communication than before the virus. These meetings give each council a centralized and consistent way to discuss the issues they are facing. Meeting topics vary and now include issues such as virus testing, healthcare accessibility, and food insecurity, along with topics involving criminal justice reform. Council partners regularly seek information from the DA's Office on food banks and other critical items needed in their respective communities. Following the death of George Floyd, the importance of these long-standing relationships is even more urgent.

Victim/Witness and Reentry Outreach: In addition to the council meetings, the Office has improved its connection with victims and witnesses as well as the general community. Crime victim advocates conduct proactive outreach calls on all open cases to check in on the safety and welfare of victims and witnesses. The District Attorney's Community Partnership Program staff members—some of whom are individuals with previous justice system involvement—continue to connect with newly released individuals reentering society. The Office also conducts outreach calls to elders in the community who may feel isolated. On an ongoing basis, the Office reviews new case files and connects relevant individuals with providers and services they may need.

(To view a video of Executive ADA Joyce Smith discussing these issues, visit the PCE website.)

Reopening a Prosecutor's Office—Floor Captains

Jacksonville State Attorney's Office, Florida (Number of Prosecutors: 109)

As their building space gradually reopened starting at 25 percent capacity, the Jacksonville State Attorney's Office implemented "Floor Captains" for each of the office's five floors, consisting of a supervisor and a staff member. The Floor Captains are responsible for working with each unit on their assigned floor to create the staggered work schedules consistent with occupancy

regulations and helping to assess the safety precautions employed. They are also the liaisons between management and the staff, so that communication is effectively shared by all.

The Floor Captains assist the administration to manage the necessary isolation and contact tracing required for employee health and safety upon return to the office. Isolation involves the staggering of employee schedules so that only certain groups of individuals are in the building during a given week. This enables better contact tracing should an employee fall ill, and it will make it easier to quickly identify and inform others who may have been exposed. The reduced staff also allows for easier social distancing.

(To view a video of First Assistant Steve Siegle discussing these issues and additional materials regarding the reopening of a prosecutor's office, visit <https://bit.ly/2Q11oCY>.)

Necessity is the mother of invention. All involved in the criminal justice system are adapting rapidly and learning valuable lessons from living with the coronavirus. Particularly in the area of technology, great strides have been made towards developing new forms of court proceedings, remote work, outreach to the community, victim assistance, treatment, and alternative sentencing. Hopefully one positive outcome of the dreadful pandemic is the blossoming of new ideas that will improve the criminal justice system far into the future. ■