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# Stresses Pile Up For Judges After Two Years Of COVID


 By [Cara Bayles](#) | Feb 1, 2022, 5:26 PM EST · Listen to article


A jury had already sat through two days of the trial of Yevgeniy Nikulin, a Russian accused of stealing data from LinkedIn and Dropbox, when Nikulin sought to pause the proceedings.

It was March 2020, and a few days earlier the World Health Organization had declared the coronavirus a pandemic. The National Basketball Association had halted its season. The chief judge of California's Northern District, where Nikulin had been charged, ordered the postponement of any new jury trials. Still, U.S. District Judge William Alsup was reluctant to stop Nikulin's trial midway through.

In a recent interview with Law360, Judge Alsup said he knew he "had to make a choice" — declare a mistrial or postpone. Weighing heavily on his mind was the fact that "this guy was in custody, and had been for years, and wanted his day in court." And so Judge Alsup decided he "would try to save the jury" and proceed with the trial as soon as he could.

By the time the trial reconvened in July, four months had passed since the first days of testimony. Jurors were scattered throughout the courtroom to maintain social distancing, and everyone wore masks. Plexiglass barriers had been erected around the witness box.

"It is a much different scene than it was when we broke in March," the judge said at the time.

But some jurors found these precautions little comfort. One said he was about to turn 70 and had high blood pressure and emphysema. And he questioned the point of continuing with the trial after a long hiatus.

"You expect people to know four months ago ... what went down?" he asked the judge. "I resent a lot of this."

That juror was excused along with three others, but the trial continued, and Nikulin was found guilty a few days later. Managing the case was stressful, Judge Alsup told Law360, but he also considered it a necessary "part of the job."

Now, as the nation approaches the grim second anniversary of the coronavirus pandemic, the judiciary continues to grapple with the havoc it wreaked on the court system.

Judges already shoulder plenty of responsibilities, keeping up with ever-changing laws and precedents while making daily judgment calls that can decide the

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**JEREMY FOGEL**  
Berkeley Judicial Institute

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course of individual lives and Fortune 500 companies. But for nearly two years now they've also served as amateur epidemiologists, public health policymakers and, occasionally, mask enforcers.

All this has taken a toll, according to Jeremy Fogel, executive director of the Berkeley Judicial Institute at Berkeley Law School, himself a former federal judge.

For years, Fogel has been offering wellness workshops for judges, but usually interest was limited to jurists in particularly stressful assignments, like family court.

"The general judicial population wasn't seeing it as necessary," he said.

That changed in the second half of 2020, when Fogel started getting emails and phone calls from state and federal court officials asking about instituting wellness programs. He went from leading one or two workshops a year before the pandemic to conducting 10 to 12 each year.

"Not being able to do their jobs the way that they had done them throughout their professional lives was really affecting" judges, he said. "The longer that disruption continued, the harder it got on people. It brought about feelings of isolation and loneliness."

Judges told him they missed their staff and colleagues, interacting in person with witnesses and jurors, and the decorum of the courtroom.

"Doing proceedings from your living room or even your home office on the laptop is not the same," he said. "It's about the dignity of the proceeding. Not having that was really kind of grim."

### New Roles

Pennsylvania Judge David Ashworth had sat on the Lancaster County Court of Common Pleas for two decades when he was selected for the role of president judge in December 2019.

"I had no idea what I was in for," he told Law360.

As the administrative overseer of his court, Judge Ashworth must read daily communiqués from the U.S. Centers for Disease Control and Prevention, the Pennsylvania Department of Public Health and the Administrative Office of Pennsylvania Courts. He's had to institute policies he would never have dreamed of, and although he doesn't like wearing masks, he sees them as necessary to "keep the lights on and the doors open."

But his court's mask mandate has met resistance. In September, one potential juror refused to wear one during voir dire, leading the presiding judge in that trial, Judge Jeffery Wright, to threaten to find the man in contempt of court. Things cooled down — once the reason for masking was explained to the man, he agreed to wear one. Still, Judge Ashworth doesn't relish his role.

"I don't like being the mask police. I don't want to be the mask police," he said. "Unfortunately, it's been politicized, and that just makes it even worse. And as judges, we're trained not to be in any way shape or form political."

That enforcement role is familiar to Hillsborough Chief Judge Ronald Ficarrota. There have been times when he's walked through his courthouse in Tampa, Florida, and felt "like a hall monitor," making sure people are wearing their masks and social distancing.

It can be even worse in virtual hearings, he said.

"When you're dealing with people, and they're laying in bed or they're there with half their

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I can't tell you  
how monumental

clothes off, I have to remind people: 'You may be at home, but actually you're in a courtroom. You need to conduct yourself accordingly,'" said Judge Ficarrota, of Florida's 13th Judicial District.

Taking on new duties during the pandemic has been common across the judiciary. U.S. District Judge Phyllis Hamilton, who was chief judge of the Northern District of California when the pandemic hit, also took on a task she would have never imagined: setting up a virtual courthouse.

"I can't tell you how monumental it was to go from business as usual to having about 400 people work at home," she said. "That was a tremendous burden on our IT people. They did an amazing job with just the equipment that we had."

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**JUDGE PHYLLIS  
HAMILTON**  
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U.S. District Judge Rebecca Pallmeyer, chief judge for the Northern District of Illinois, became something of a public health officer, enforcing social distancing, instituting a vaccine mandate for court staffers and working with the University of Illinois' covidSHIELD program to set up rapid saliva-based testing stations in courthouse lobbies.

Judge Pallmeyer said that for a while, tests were required twice a week for all courthouse employees and jurors, and for any lawyers or witnesses participating in trials for more than two days. For financial reasons, they ended the twice-a-week testing for staff in September, though regular testing was still required for jurors and other trial participants. But earlier this month, amid the omicron wave, the courthouse started offering testing again in its lobby with help from the Chicago Department of Public Health. The courthouse also hosted a vaccine clinic.

"The taxpayers pay for that building. Taxpayers are victimized by this virus, and it's our responsibility to do what we can to help the people in our district to move through this," Judge Pallmeyer said.

### Health Concerns

There are some proceedings that U.S. District Judge Reggie Walton refuses to conduct from his home office.

Even when the attorneys and parties opt to attend virtually, Judge Walton always conducts plea hearings, sentencing and revocation of probation proceedings from his D.C. courtroom, reasoning that "the sanctity of the process" demands it, even if he's the only one there.

"I'm videoconferencing, so they can see that I'm actually in the courtroom," he said.

Still, he spends several days a week working from home, and he's grateful to be able to do so.

"I miss going into court, but you have to be realistic," he said. "I mean, I'm over 70. I don't have any underlying health problems personally, but my age does make me more susceptible to contracting the virus, and the consequences — even though I'm fully vaccinated — could maybe be more significant than someone who's younger."

People over 65 are at least five times as likely as people under 29 to be hospitalized from a COVID-19 infection, and are at least 65 times as likely to die from the disease, according to the CDC.

As of 2020, the average federal judge was 67.8 years old, according to the Federal Judicial Center.



a number that included nearly 500 judges on senior status, which allows judges over 65 to remain on the bench with a reduced caseload.

That means judges tend to be more at risk for getting seriously ill. But many judges expressed more concern about the safety and emotional well-being of others, inside and outside the courtroom.

Judge Walton said he worries about passing the disease on to his 2-year-old grandson, who is still too young to be vaccinated. Judge Ashworth fears infecting his wife. She's caring for her mother, who is in her 90s and lives in a nursing home.

When Judge Alsup looks across his Northern California courtroom and sees people seated in the gallery, he said, "there is an extra layer of worry in my mind that someone will get sick."

Walton feels for criminal defendants who have waived their speedy-trial rights again and again — especially innocent people "living under the cloud of a charge."

Judge Hamilton, who chairs the Ninth Circuit's wellness committee, thinks about the emotional toll of the judiciary taking on a public health role, but she is far more concerned about the effect on courtroom staffers than on the judges.

"Judges are used to being in charge, making decisions about other people, including their own individual chambers, staff and the litigants who come before them. Judges are accustomed to having that kind of pressure," she said. "But this is something that was really new for staff."

### Taking a Toll

In the early days of the pandemic, Judge Ashworth would sit by himself in the courtroom while attorneys and their clients attended hearings virtually.

"There were times in the courthouse where it was pretty lonely," he said. "There is no substitute for the in-person interaction that takes place in a trial or a guilty plea. If I'm going to be sentencing somebody, I'd much prefer to have them in the courtroom in front of me, so we can actually have a dialogue. It's harder to do that virtually. It removes the people aspect of it, the humanity of it."

The omicron surge was a blow for judges' mental health, Fogel said, because it came after a lull in infection rates and served as a reminder of how delicate normalcy is, how easily the virus can come surging back.

"On an emotional level, that was particularly hard because people had kind of gone through a rough patch and then you're starting to feel hopeful and you're starting to feel invigorated," he said. "And then all of a sudden, you can't do things again."

That roller coaster has been challenging for Texas Judge Maricela Moore, the presiding judge of the 162nd District Court in Dallas County and the local administrative district judge. After the delta variant tapered off in the fall, she reopened the courtroom doors and started presiding over jury trials again. Then omicron hit. She made the difficult decision to halt jury trials, and bore the brunt of attorneys' frustration.

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JUDGE REGGIE WALTON  
U.S. District Court

*I miss trying cases. I miss seeing jurors. I miss seeing the system work the way it was intended to*

"That unpredictability makes it very difficult to make decisions because people quite frequently say, 'Everyone's frustrated, they don't know what to expect,' and I say, 'Welcome to the pandemic. If you thought this should be predictable, then yes, you will be disappointed,'" she said. "It's just people venting their frustration. I don't take it personally."

intended to.



**JUDGE MARICELA  
MOORE**

162nd District Court of Dallas  
County, Texas

In fact, she can relate. She was herself disappointed to pause proceedings in January. "I miss trying cases. I miss seeing jurors. I miss seeing the system work the way it was intended to," she said.

Judges also worry about the backlog that's piled up over the past two years. Even as trials have resumed in some jurisdictions, jurors might have to gather in an extra courtroom instead of a jury deliberation room for social distancing reasons. That's meant fewer trials can proceed at the same time.

Judge Walton said he thinks that even once the pandemic fades and court operations turn to normal, the stress for judges will continue. The worst may be yet to come.

"Because of the backlog, we're going to move from one trial to the next trial to the next, with very little downtime during the day, which means that the only way you're going to be able to stay abreast of your written opinions is writing them at night and on weekends," he said. "It's going to really make things even more challenging for us."

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Cara Bayles

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