

1 of their acumen, experience, and intelligence, get turned
2 out on the street simply because of their party
3 affiliation. And then second, I'm interested to know what
4 the territorial jurisdiction of these business courts are
5 going to be, whether they will be set up by counties or
6 whether we're going to have super districts which
7 consolidate all of the litigation in certain cities.

8 CHAIRMAN BABCOCK: James will answer those
9 questions for you, Roger, but not right now.

10 MR. JAMES SULLIVAN: It is so ordered.
11 Thank you. Yeah, I'll get with you, Roger.

12 CHAIRMAN BABCOCK: Because we're on a
13 schedule, like I said, we have a bunch of puzzle pieces to
14 fit together here, but it's a legitimate question, Roger,
15 and it was certainly asked the last session, as were
16 Justice Kelly's and Levi's concerns, so we'll leave it
17 there, but thank you very much for joining us. And now
18 we'll get back -- and stay as long as you want or leave
19 when you need to, James, but thank you again.

20 MR. JAMES SULLIVAN: Sorry, I can't get here
21 late and leave early.

22 CHAIRMAN BABCOCK: Well, that's -- there you
23 go. So we were in the middle of a very insightful war
24 story when you walked in.

25 MR. JAMES SULLIVAN: And then I had a less

1 interesting one, I'm sorry.

2 CHAIRMAN BABCOCK: I know, it was a
3 juxtaposition of the two was terrible, but Phil McGraw
4 used to be a trial consultant. His -- the person who
5 trained under him you will hear from later, Jason Bloom,
6 is in the house and over to my right, but this was before
7 Jason's time, and it was the *Turner vs. Dolcefino* libel
8 case in Harris County, and Phil was there to help us pick
9 a jury, and there were two things that he did that stick
10 out in my mind even now. One is that he calls this jury
11 science, and after this experience I figured it must be
12 voodoo, but we got a lengthy jury questionnaire, and we
13 got it -- we got it completed by all of the jurors,
14 prospective jurors, the day before, so he and his people
15 had time to look at it.

16 The next day they had ranked every
17 prospective juror as either an A, as somebody we really,
18 really wanted, or a D. That was somebody we really,
19 really didn't want, or a C, somebody in the middle that
20 would take more voir dire to figure out where they were
21 coming from. And at the end of the day there was one
22 woman who was an A, and I could see no reason whatsoever
23 for her to be an A, or a D, for that matter. I mean, she
24 was just one of those jurors that doesn't stand out, and
25 because she was one of our A's, I didn't ask her a lot of

1 questions because I didn't want the other side thinking
2 that we really liked that person and so -- so not a lot of
3 questions asked by me or the other person, so when it came
4 down to making our strikes, back in the room with Phil,
5 and I said -- and I won't say her name on the record, but
6 I remember it, and I said, "Why have you ranked this
7 person an A?" And he just smiled his enigmatic smile,
8 which you'll maybe see later. See, he's doing it right
9 now, and he said, "Just trust me on this." I said,
10 "Okay." So we didn't -- we didn't cut her, and she turns
11 out to be our absolute leader in the jury room, and the
12 jury was out eight days, and she never waivered. We lost
13 the case 10 to 2, but she was an A juror for us, and
14 afterwards I said, okay, how did you spot this woman, and
15 the more enigmatic smile, and, you know, it's jury
16 science. Well, Phil --

17 DR. PHIL McGRAW: It was my Aunt Carol.

18 CHAIRMAN BABCOCK: So now it comes out
19 finally. And the other thing was more substantive. The
20 other side made a Batson challenge against us, and we made
21 a Batson challenge against them, and we're up at the bench
22 and arguing back and forth, and Phil pulls out a juror
23 questionnaire of a black juror, prospective juror, and
24 they had been arguing that the reason they're cutting all
25 of the white jurors is because they could never see their

1 way to award punitive damages. And here's a black juror
2 who said, "I could never award punitive damages," and the
3 judge threw up her hands and said, "Okay, I'm denying both
4 motions," which was the proper -- proper ruling at the
5 time, but, you know, I never would have thought to pick
6 that up, and eagle eye here got it, and this came out of
7 this company, this amazing company that he developed
8 called Courtroom Sciences, CSI, before there was a popular
9 CSI, and they had an amazing facility in Las Colinas with
10 two courtrooms, one a replica federal courtroom, big huge
11 high ceilings and the federal seal, and another smaller
12 state court. And they just ran so many mock trials and
13 jury prep, and it was a science that this man to my right
14 largely created, so he is not coming to us as somebody who
15 has been introduced to Oprah Winfrey by me and made a lot
16 of money on television.

17 And, Phil, I don't know if you know this,
18 but your accountants have yet to send me my royalty checks
19 for that introduction.

20 But he is one of the smartest people I've
21 ever met on general topics, but particularly on what we do
22 when we relate with our citizens and ask them to resolve
23 our disputes. So I created the title in consultation with
24 Phil, but "How the pandemic, the internet, and social
25 media have affected the legal system, including the civil

1 and criminal jury," it covers a lot of ground, but he's
2 got a lot to say, and my partner, Joel Glover, in the back
3 and Phil and I talked this through last night for several
4 hours, and I know you're going to be interested in his
5 comments, so with that introduction, there you go.

6 DR. PHIL McGRAW: Well, if Texas had
7 business courts you could get those royalties heard.

8 MR. JAMES SULLIVAN: Thank you, Dr. Phil. I
9 rest.

10 DR. PHIL McGRAW: He says I'm the smartest
11 person he's ever met --

12 CHAIRMAN BABCOCK: I said one of the
13 smartest. The Chief.

14 DR. PHIL McGRAW: One of the smartest, okay.
15 I think he says that because I've been married 46 years,
16 and you've got to be smart to be married 46 years. I
17 figured out when my wife says "What?" it's not that she
18 didn't hear me. She's giving me a chance to change what I
19 said. So I'm 46 and counting. Maybe that's my claim to
20 fame.

21 But, Chief, thank you for allowing me to be
22 here. Chip, thank you for asking me to talk about this.
23 I have a great passion for this, and I am a Texas
24 resident, even though I shoot in California, and one of
25 the things that I've really been paying a lot of attention

1 to is the impact of all of this advent of the internet and
2 social media and all on our society in particular and the
3 justice system specifically, because I've been on the air
4 for 21 years with the Dr. Phil show, five with Oprah
5 before that, and then 21 now, so 26 years, and I was
6 thinking this morning, when I launched the first season of
7 Dr. Phil, the first text message had never been sent.
8 There was no Facebook, there was no Twitter, there
9 certainly was no TikTok. None of those things existed,
10 and so all of these problems have changed since I got on
11 the air and have had to deal with these issues based on
12 what we get tens of thousands of e-mails a week coming in
13 from people.

14 And I have an advisory board that I'm able
15 to lean on in helping prepare for these. We have the top
16 minds in psychiatry, psychology, medicine, nursing, even
17 theology and some of the other disciplines, from the top
18 learning centers in the country. They're from Harvard,
19 Columbia, Stanford, University of Texas, and I can send
20 them the cases that we're dealing with, and a lot of them
21 are editors of peer review journals with an 18-month lag,
22 so we get beyond cutting edge information to share with
23 people, and we've had to deal with cyber bullying, and all
24 sorts of things that didn't even exist.

25 Something happened to this country in about

1 2008, and it was like big airplanes flew over the country
2 and dropped smart phones on the country. That's when it
3 happened. It was like '08. And think about this, the day
4 before that happened, people were walking around like
5 this. (Indicating)

6 The day after it happened, everybody was
7 walking around like this. (Indicating) And now you walk
8 in anywhere, any mall, any store, any street, and people
9 are like this. And it has been as big a change, I think,
10 as we've seen in society since the Industrial Revolution.
11 There is as much power in this iPad, more power than we
12 had when we put a man on the moon.

13 There were big buildings, you've got that
14 much power right here, and it has changed the way people
15 live, and I bring this up because it impacts how people
16 are getting information and how they're searching out
17 information. When I say to kids the word "library," they
18 look at me like what? I tell them it's a big building
19 with books, because they just go to a search engine and
20 get what they need. It changed so much so fast, and when
21 the pandemic hit, we started working from home, right? We
22 closed the schools and we went to remote learning. And
23 now there is a question of whether or not remote trials
24 are a reasonable alternative, right? Does that -- does
25 that work? And is that something that we should talk

1 about here?

2 And so it really boils down to where, based
3 on this advent of technology, is there a material
4 difference between in-person trials or remote trials,
5 particularly when you're talking about a jury. And I did
6 spend most of my professional career in the litigation
7 arena and assisting in trial strategy and jury deselection
8 and mirror juries in the courtroom and debriefing jurors
9 and venue studies and all sorts of things, and so the
10 question is, you know, is there a material difference?
11 And so I guess the first question becomes are jurors
12 required to learn in order to make a competent decision on
13 a fact pattern in a case? And, of course, the answer is
14 yes.

15 Everybody would agree with that, right, they
16 have to learn from both sides in order to weigh at
17 whatever standard it is, whether it's preponderance or
18 whatever the particular standard is for the cause of
19 action. And so you have to say, well, you know, how does
20 remote learning work? And there is a huge body of
21 literature that has addressed that, whether remote
22 learning works, and that huge body of literature by a
23 broad range of researchers indicates that it is a very
24 inefficient way of gaining information. The research
25 suggests that first, second, and third graders, for

1 example, the learning at the end of an academic year
2 averaged zero. Zero. And it was particularly difficult
3 in communities of color and low socioeconomic standard,
4 because in those communities, the Wi-Fi connections, the
5 instrumentation they had, the computers, the iPads or
6 whatever, were either not there or poor quality, and these
7 were parents that had to work outside the home, they
8 couldn't do their job from home, and so, I mean, it was
9 zero.

10 And for those that were higher up in the
11 grades, it was some better, but not much. The estimates
12 are that we lost somewhere between nine months and 15
13 months of learning in reading and math and science for
14 these students. Now, we're not talking about school here,
15 but I am talking about the efficiency with which -- with
16 which they learned; and this is a big deal, because the
17 judicial system is a pillar of this society; and if
18 something happens to undermine our country's confidence in
19 the judicial system, that will be a terrible, terrible
20 thing. Because we have a lot of problems right now with
21 people and confidence, in their confidence in this country
22 and its institutions right now, but not in the judicial
23 system. That ranks really high right now comparatively.

24 And this -- this -- when I said it was like
25 they came over and dumped all of these smart phones on

1 everybody, it had a profound effect on our society. That
2 generation where those phones were dropped and they
3 started becoming dependent on those devices, there was a
4 quantum shift in how they live. They get their driver's
5 licenses later, they start dating later, they -- socially
6 their evolution is slower in everything they do
7 interactively. They have fewer friends. Their
8 participation in the world, basically what they're doing
9 is they're watching people live their lives instead of
10 living their own, and the ones they're watching are
11 fiction, these influencers, these -- some of these people
12 take an average of 1,100 pictures before they post one,
13 and so, look, it's a complex question. I get that. This
14 is chess, not checkers.

15 I understand about having to move docketts
16 along and getting people what they need, but it's like
17 working from home. That was the shiny new toy, right?
18 That's what everybody wanted to do, and along with
19 Dr. John White, the chief medical officer at WebMD, who is
20 very obviously tech dependent, because they're a huge
21 website, and they love technology, we published an op-ed
22 recently about work-from-home, that that was the shiny new
23 toy and everybody loved that originally because look at
24 all of the positives, right? They save the commute. That
25 means they save the gas, fewer deaths on the highway, more

1 time to actually work instead of drive, and all of those
2 good things, and so all of the sudden you see these empty
3 office buildings, people working from home. But a year on
4 we start seeing people experience depression, isolation,
5 loneliness, being siloed and not having the team
6 interaction that sparks creativity within companies. You
7 start seeing problems with all of that.

8 And I'm a tech fan. My son and I launched
9 Doctor On Demand, the number one telemedicine company in
10 the country where people can see a doctor within 90
11 seconds rather than 21-day average to get a doctor's
12 appointment to go sit in a room full of sick people to
13 wait to see a doctor. Shameless plug. So it's a great
14 thing. We have a fintech company called Chime, which is a
15 huge fintech company. We love technology, but it has its
16 downside, and there are side effects that come back. So I
17 think you have to think about that, and if you make the
18 presumption that jurors have to learn to do their job, you
19 have to look at remote learning and recognize it is not
20 good. It's just simply not good. And an associate and
21 friend of mine, Dr. Dimitri Christakis, who is a pediatric
22 epidemiologist, has created a model, and he published it
23 in *Journal of the American Medical Association*, and they
24 estimate that remote learning will result in the loss of
25 13.8 million years of life lost because of the lower

1 educational attainment of these kids.

2 Now, how is that? Well, you -- first off,
3 if you're not reading on grade level at the end of third
4 grade, the dropout rate is four to six times higher than
5 if you are, because in years one through three you're
6 learning to read, and from grade four on, you're reading
7 to learn. So if you didn't learn to read, now you can't
8 read to learn and you just fall further and further
9 behind, and so your educational attainment is less. With
10 less educational attainment, you get less of a job, and
11 there are more blue collar jobs, which means you might be
12 working around machinery or construction where you get
13 injured. You're going to have less insurance coverage,
14 slower diagnosis of disease, less coverage for treatment.
15 So diseases advance further before they detect -- they're
16 detected, et cetera, and you -- it just takes those years
17 of life.

18 We've got 50 million kids in the educational
19 system. You spread that over the -- over them, it doesn't
20 take that many months or years shaved off of someone's
21 life because of those things not being there to add up to
22 those years of life being lost. And had the schools
23 remained open during the first wave, they estimate there
24 would have been 4.4 million years of life lost versus
25 13.8.

1 So now you think, well, we're not talking
2 about kids, we're talking about adults. Ingrid Haynes
3 Taylor, the director of the National Literacy Institute,
4 has -- they've done a lot of study about this, and their
5 findings are that 130 million adults in America are unable
6 to read a simple story to their children at the end of the
7 night, that 130 million Americans can't read the label on
8 a prescription that gives you the instruction "take this
9 with food," and so they're calling back saying, "I took my
10 medicine and I'm really sick." Well, did you read the
11 label? Well, no. They're just not able to read. Their
12 estimate is that 45 million are just functionally
13 illiterate and that 21 percent of adults in America in
14 2022 are fully illiterate.

15 So these are people that we're going to have
16 dealing with the technology that they have to deal with in
17 order to participate, and I think right now we're at a
18 point in this country where our jury pool needs more
19 management and more supervision, not less. Since 2010
20 we've had a 62 percent increase in depression for older
21 teens, 189 percent increase for preteens; a 70 percent
22 increase in suicide for older teens, 151 percent for
23 preteens. 151 percent increase. So -- and if -- and
24 we're seeing this play out.

25 This is kind of a maybe an off-the-wall

1 fact, but we all see on the news these events on airplanes
2 where people become unruly. There were more events in
3 2021 than in the history of aviation. More in one year.
4 From 2011 to 2020, the average was 157 a year, and '21
5 there were 1,866. People are pissed. They're anxious,
6 they're stressed, they're frustrated. That's the
7 populous, and by the way, 2020 is on track. And we've got
8 169 million people age 70 to 41 -- age 7 to 41, and we've
9 got 124 million, 46 to 76, so that's your striation for
10 the jury pools. You've got lack of jury attentiveness,
11 technological limitations where you have audio fallout.
12 You really don't know what they're doing. You know, they
13 can be sitting there, and you see their -- their picture.
14 They could have an ear bud in one ear away from the camera
15 watching Dr. Phil on a second screen.

16 CHAIRMAN BABCOCK: Is that a good thing?

17 DR. PHIL McGRAW: It's all timing, and when
18 it comes to deliberations, what's the dynamic in
19 deliberations? If you see what people say when they're
20 typing up -- I call them keyboard bullies. I testified
21 before a bipartisan committee in DC about this. People
22 will say things on the internet. They'll type things to
23 you, I get them all the time, that they wouldn't say to
24 you in an elevator. You know, they'll call you names,
25 they'll get violent, they'll -- violent, aggressive

1 language. It's the same thing in road rage. People are
2 in their car, you cut them off, "You no good rat bastard,
3 I'll get you." If you stepped in front of them on the
4 escalator, you think they would say that to you? I don't
5 think so. Maybe. Maybe we're getting to that point. But
6 it's a different dynamic when you're on a keyboard instead
7 of in person. So -- and you give up a lot of data.

8 The American Psychological Association has
9 said teletherapy is as effective as in-person therapy.
10 They say there are trade-offs. You lose data. As a
11 therapist you lose data. I can't read your body language.
12 I don't get that information. The positives are people
13 cancel less because they don't have to get dressed and go,
14 and they're more forthcoming because they feel less
15 conspicuous in front of someone, so they say the tradeoffs
16 are it's about the same. But it is a different -- it is a
17 different dynamic, and I think it -- I think it really
18 changes, and I think depriving someone of life changing
19 money in a civil suit, depriving someone of their liberty
20 in America is a very high standard, and it should be.
21 Depriving someone of their life, capital cases, very high
22 standard, and it should be. And I can tell you from a
23 psychological standpoint and a technology standpoint
24 interacting with the psycho-social aspects, I think there
25 is very likely going to be a real backlash across time

1 that we're starting to see with the shiny new toy
2 substituting for what we've been doing in different ways.

3 Now, you know, if it's a hearing of some
4 sort or whatever, a lot of these you could do on the
5 phone, doesn't make any difference, but when it comes down
6 to outcome determinative proceedings, I think it's fraught
7 with danger, and I think there's huge backlash associated
8 with it, and having spent year after year after year in
9 trial with juries, watching juries, reading juries,
10 debriefing juries after trials and stuff, I think it's bad
11 for lawyers in that they can't read if their case has
12 landed or they need to put up another expert. I think
13 jurors give up data in reading whether a witness is
14 truthful or not truthful, making up their mind about that.
15 I just think there are -- there are problems with that,
16 and I've thrown out some statistics for you here, and I
17 haven't burdened you with a lot of citations and studies,
18 but I will make all of those available to you in writing
19 so you can look at them for yourself about the remote
20 learning and the gaps and that sort of thing and send it
21 to you, Chip, and you can distribute it as you want to,
22 because I've got researchers that put all of this together
23 for us.

24 So I'm a -- I'm not in favor of -- I'm less
25 and less in favor of remote trials as you -- as the stakes

1 get higher. If it's a hearing that -- some of those you
2 can do on the phone, but as the stakes get higher and
3 become outcome determinative with life-changing impact, I
4 become less and less in favor of that. So I'll answer
5 questions, if somebody wants to talk about it some.

6 CHAIRMAN BABCOCK: Okay. Judge Yelenosky.

7 HONORABLE STEPHEN YELENOSKY: Thanks for
8 coming, appreciate what you said, learned a lot. I know
9 your topic is to address virtual versus in-person. What I
10 took from the problems you identified is that whether it's
11 in-person or virtual is more -- the harm there comes more
12 from predicates to the actual trial. People can't read,
13 people are depressed, people are unable to communicate,
14 and people are just changed a lot from 2008 that has
15 nothing to do with whether something is virtual or not.

16 In other words, it sounds to me like if you
17 took somebody from 2008 and you put them coming forward
18 and they were in a virtual trial now, that person -- take
19 somebody who didn't experience the whole thing that
20 happened in 2008, what would be more important is that
21 experience than whether they happened to be in a virtual
22 trial or not, and I know you want to address solutions to
23 that, but the solutions seem to be the predicate problems,
24 people aren't educated. And one of the things you
25 mentioned was social media, which people don't -- not only

1 don't get information they should get, but they get
2 misinformation that then carries forward into their
3 participation in the judicial system. And that was a
4 topic that has also been addressed elsewhere, but I wanted
5 your thoughts on what I just said.

6 DR. PHIL MCGRAW: Well, thank you, and
7 that's a great question, and it lets me finish out a
8 thought. There's a difference between education and
9 intelligence, and I certainly don't mean to imply that if
10 someone doesn't have educational attainment that they're
11 not intelligent, because they certainly can be, and I
12 think that what I'm saying here is if -- you mentioned
13 predicate, if a predicate to our equation here is that
14 jurors need to learn information about a case in order to
15 render an informed decision, remote presentation is not
16 the most efficacious way to impart that information to
17 them, no matter who they are, whether they're an MBA in
18 the Eastern District of Virginia or English is their
19 second language in South Texas. It doesn't matter.
20 Remote is not an efficient way to impart that information
21 to them, and that's before you get into problems with poor
22 Wi-Fi, audio dropouts, distractions in the home where they
23 are, lawyers' and witnesses' ability to connect with the
24 trier of fact, all of those things.

25 So I think that educational attainment

1 aside, assume that we have a bell curve of intelligence in
2 our jury pools, so you've got intelligent people there no
3 matter how device dependent they may have become or not,
4 remote presentation is a poor substitute for in-person
5 engagement where somebody is sitting there and they're
6 looking somebody in the eye and reading everything that
7 they're reading. So even if someone didn't fall victim to
8 device dependency, and by the way, all of the statistics
9 that I shared with you about the increase in depression
10 and anxiety and suicidal ideation and attempts, et cetera,
11 that all began before the pandemic, by the way. It was
12 just the pandemic just exacerbated it, but that really
13 started spiking in 2010, 2011, so it's not pandemic
14 driven, but it certainly was exacerbated by the isolation
15 that people went through in the pandemic. Yes, sir.

16 HONORABLE LEVI BENTON: Dr. Phil, you've
17 heard the expression if you have to skate to where the
18 puck is headed or something like that, right?

19 CHAIRMAN BABCOCK: Levi, could you speak up
20 a little?

21 HONORABLE LEVI BENTON: Yeah. You've heard
22 the expression you have to skate to where puck is headed,
23 right?

24 DR. PHIL MCGRAW: Right.

25 HONORABLE LEVI BENTON: You've heard that

1 expression, so while I agree and appreciate and respect
2 everything you've said, I don't -- I think, respectfully,
3 it might be of no consequence, might be irrelevant to your
4 great grandkids when they go to law school. I think we're
5 headed to an increasing number of remote proceedings.
6 Before this meeting started, Judge Evans was commenting,
7 and this is true all over Texas, you know, people don't
8 want to -- don't want to vote for bonds to build any more
9 courthouses to house juries. So who's the Dr. Phil
10 that's -- or maybe it's your son, that is teaching the
11 future law student how to make it efficient to impart the
12 information to teach the jurors what they need to make
13 these decisions? Because that's where the puck is headed.

14 DR. PHIL MCGRAW: You may be right, and I
15 don't think you're disagreeing with me at all.

16 HONORABLE LEVI BENTON: No, no, I'm not. I
17 agree with everything you said.

18 DR. PHIL MCGRAW: Because what I'm talking
19 about is where we are today. And I do think that
20 technology is going to increase, and you're going to
21 have -- I mean, you know, hell, 10 years from now, we may
22 be doing trials with holograms where you actually do see
23 all of the nonverbal communications of a witness or
24 whatever. That may be the case, and we may not need to
25 have all of these concerns, but I am concerned that --

1 about accessibility with low socioeconomic and in
2 communities of color that don't have the infrastructure,
3 and I think if you cut out those jurors, you're cutting
4 out quality -- I mean, really solid qualified jurors that
5 could render really valid, solid opinions because they
6 don't have accessibility to the technology necessary to
7 participate and/or are intimidated by that technology; and
8 research suggests you can look at studies from Verizon and
9 AT&T and the different carriers about what the coverage is
10 in like rural areas and some of the urban areas and, you
11 know, what's streaming into some of the buildings and
12 stuff, it's -- and I think that's what really hurt the
13 remote learning, is some of them it would freeze up, they
14 can't get it going again, and, you know, so they wander
15 off and go do something else.

16 Now, we're talking about adult jurors, and
17 they're less likely to do that than a child, but hopefully
18 it's not going to be too long before we've got fiberoptics
19 flowing everywhere and available to everyone with the
20 speed necessary if you're playing video during a trial or
21 you're having to zoom in on a document or whatever.

22 CHAIRMAN BABCOCK: Judge Wallace.

23 HONORABLE R. H. WALLACE: I guess in just
24 about every court the first thing the judge does when a
25 jury panel comes in is tells them to turn off their phone,

1 and I read an article sometime back that said jurors --
2 they were hypothesizing at least, that some jurors, that
3 creates such anxiety that they can't have access to their
4 phone that it's really counterproductive. Do you have any
5 thoughts -- in other words, that they ought to be able to
6 look at their phone every now and then.

7 DR. PHIL MCGRAW: I mean, you're quite
8 right. Some find it really anxiety inducing, and there
9 have been studies where they keep people away from their
10 phones for a period of time and they stretch it out from
11 hours to eight hours, then twelve, and they start showing
12 visible signs of panic attacks, and, you know, what are
13 they going to miss, like, you know, what are you doing,
14 where are you going, what did you eat for lunch? I mean,
15 when you go look -- they then went and looked at the
16 messages and they weren't earth-shattering, but they've
17 become dependent on it because those are their -- that's
18 their life, those are their connections; and they've
19 confused clicks with connections, likes with real sorts of
20 interpersonal interactions. And that's really very sad,
21 but that's the generation that we have at this point, so I
22 am -- I'm just kind of describing where we are and -- and
23 that generation that I'm talking about, those that have
24 gone to college and all, these are smart kids. They use
25 this to learn, and, man, they're smart, but they're not

1 worldly, and that's a problem.

2 CHAIRMAN BABCOCK: Judge Miskel, then John,
3 and then Velva. And then Scott.

4 HONORABLE EMILY MISKEL: This is not a
5 comment, this is actually a question, and I really do want
6 some help with this. You mentioned confidence in our
7 judicial system, and so I have a question about our
8 in-person participants. You mentioned the unruly people
9 on the airplanes, and I'm observing that dynamic in the
10 people that come into the courthouse. The litigants and
11 their family members are more angry, they're more
12 suspicious, they're amped up already when they come in the
13 door, and the data is starting to show that trust and
14 confidence in our judicial branch is decreasing. And I
15 don't know if there's much I can do as the judge sitting
16 on the bench, but my theory is that they -- that the
17 social media has been so toxic during the pandemic they
18 come in with all of these ideas about what's about to
19 happen to them, and they're just so anxious and keyed up.

20 What, if anything, can I do about this
21 dynamic? Are you seeing the same thing with social media
22 getting people amped up and like distrust in our
23 government institutions, and is there a solution or
24 anything that can be done to help?

25 DR. PHIL MCGRAW: Yes, yes, and yes. I am

1 seeing it, and we see it in the rhetoric that we get in
2 the mail that we get, for example, which is I'm saying
3 thousands and thousands. The language is more aggressive,
4 and that doesn't necessarily translate into action, but it
5 is more aggressive, and the solution I can tell you that
6 has proven to be the best is transparency. Right now
7 people are really afraid of the unknown because they've
8 got all of this conspiracy stuff flying around the
9 internet and all, but with transparency it's real hard
10 for -- it's harder for people to maintain that paranoia,
11 that suspiciousness.

12 So when they come into the jury room and
13 they say, well, just go have a seat and we'll get to you
14 in the next 48 days, they don't know and they're wondering
15 what's going on. They're having private meetings, they're
16 not -- everything that can be done for transparency really
17 diffuses that with people. Here's what's going on now
18 while you're in here, here's what's going to happen with
19 you. Transparency really diffuses that suspiciousness in
20 the minds of those people. You know, they can -- those
21 that are really out there can, you know, question even
22 that, but it really does help if everything is a picture
23 window.

24 CHAIRMAN BABCOCK: John.

25 MR. WARREN: Thank you. Dr. Phil, and I

1 guess this is for everyone. I'm not really big on social
2 media to a degree. I think social media should come with
3 kind of like the warning like used to be on a pack of
4 cigarettes, too much of this is harmful to your mental
5 health, but as it relates to -- we are talking about deep
6 thoughts as it relates to courts and the judicial system,
7 and we hear -- and I've heard a number of times this
8 morning where people talk where they've mentioned that we
9 have the greatest country in the world, and that is
10 absolutely true. We have the greatest country in the
11 world, because of the judicial system that we have.

12 People make decisions, whether it's business
13 decisions, based on liability. People -- as it relates to
14 a lot of things, they take that into consideration, and so
15 as it relates to jury trials or virtual proceedings, I
16 think that is absolutely a no-no, if we're going to be
17 including John and Jane Q. Public, understanding that a
18 purchase retention rate has to make sure that you're
19 paying attention is a very short span. So if you have
20 someone on social media and then, of course, you have --
21 they're supposed to be looking this way, but if they're
22 looking down, you know that you really don't have their
23 attention, and so now they're standing up their devices so
24 that it will appear that they're paying attention when
25 they're really not.

1 But also, as it relates to those
2 individuals, you know, I always tell my staff, and so I'll
3 use this as an example, I have one division that has 10
4 employees, and so I'll ask the manager, I'll say, "How
5 many employees do you have in your division?"

6 "I have 10." I said, "No, you have 20."

7 "No, no, no, Mr. Warren, we have 10." I
8 said, "No, you have to understand that a person's
9 personality is defined by the time they're five years old.
10 A person's character is defined over the course of things
11 that they experience in their life, and both of those two
12 ingredients live in an individual, and you don't know when
13 you're going to be dealing with them." And so when you're
14 dealing with a trial and you're having someone who's
15 basically using a social media as their form of education
16 and then you have a lot of cyberbullies, and we have more
17 now than ever, and everybody has courage behind a computer
18 screen, but when you're in person, moving away from social
19 gatherings, it isolates us. But then just like I tell my
20 son who sits in a room and texts with his friend who's
21 sitting five feet away, I said you kids are going to be
22 born without vocal cords.

23 And so at some point we have to get back to
24 what's best to keep America the greatest country in the
25 world, and it's making sure that the tectonic plates that

1 the judicial system sits on does not change but actually
2 expands so that we can continue to keep America the
3 greatest country in the world by having a judicial system
4 that actually brings sanity to chaos.

5 MR. JAMES SULLIVAN: Here, here.

6 DR. PHIL McGRAW: I'm reluctant to tamper
7 with what's worked by going to the technology, and look,
8 as I said, as the stakes go up, what you just said becomes
9 amplified, right. If you have certain kinds of hearings,
10 you do them all the time, that you can actually do on the
11 phone, right? And that's expeditious, it saves everybody
12 time and money; but as the stakes go up, now you're
13 talking about something that's outcome determinative, this
14 is going to determine the rest of your life in some cases,
15 I can tell you, taking a position where if both parties
16 agree you can do this virtually, are both parties informed
17 enough? Have they done a deep dive into this literature?
18 Do they really know the magnitude of the decisions they're
19 making? And I think they need to be really informed about
20 this before they make that decision. I'm not sure that
21 both parties agreeing is a standard that we should give
22 them that power.

23 MR. WARREN: I don't want to interrupt you,
24 but and us, one of the things I said, I would not rely on
25 John and Jane Q. Public. If you have attorneys, you're

1 advocating on behalf of your client, and you have that
2 level of maturity, and I think it's okay, that platform,
3 that technology platform is okay in that environment, but
4 when you have someone that relies on social media as their
5 form of education, then that's out -- I don't find very
6 much trust in that.

7 DR. PHIL MCGRAW: Yeah. I'm -- I always
8 tell people you look something up on the internet and
9 there are facts there, and usually the name of the website
10 is exactly opposite from what they're -- I mean, if you
11 look up "should you stay together for the kids," you need
12 to know if that website is published by the Mormon church
13 or if it is published by a university that's giving you
14 just the data on how those kids turned out, because one
15 has an agenda and the other doesn't, and it's no
16 commentary on the Mormon church. You can say Baptist
17 church, Catholic church, but if they have an agenda, and I
18 don't think that people necessarily drill down on that,
19 and I worry -- I hear people tell me all the time, "Well,
20 I saw it on the internet," well, hell, who am I to
21 question that?

22 CHAIRMAN BABCOCK: Velma Price, who is the
23 district clerk of Tarrant County.

24 MS. PRICE: Travis County.

25 CHAIRMAN BABCOCK: Travis County.

1 MS. PRICE: Yeah, where we are. So I'm just
2 going to present a different point of view. In Travis
3 County we have done over 30 virtual trials, and our
4 reports have indicated that -- and what we have done to
5 deal with the technology issue is the judges have
6 purchased over a hundred iPads, and the iPads do not have
7 any access to the internet, and they have Mi-Fi, so that
8 deals with the connection issue, and I also think it works
9 on access to justice. We have the jurors -- the iPads are
10 either delivered to them or they pick it up, and we pay
11 for that as if they're doing -- like they're doing jury
12 duty. And we haven't done a study of it yet, and we're
13 working on it with Southwest Texas, the attendance is
14 phenomenal. Sometimes we have a hundred percent
15 attendance on virtual trials, and the diversity is more
16 than in-person. That's just basically what we've heard
17 from the judges who have done the virtual trials. I just
18 want to put that out there as some information.

19 DR. PHIL MCGRAW: Well, I can tell you based
20 on what we do, those are giant steps in the right
21 direction if you're going to do what you're going to do.
22 You've got to get them the devices, you've got to give
23 them the access, and you've got to show them how to use
24 them. And that helps fight a lot of those problems. If
25 I'm going to have a guest -- I had to do a full season

1 virtually because Paramount shut down. They said you
2 don't have to do the season or you can do this virtually,
3 and we had to ship computers and lights and stuff to
4 people and all of that, and we tried it with their
5 equipment, and it was like, you know, you're seeing
6 laundry in the background and the dog -- the dog is there
7 and they're half off of the screen and there's -- but when
8 we send them everything and gave them the information and
9 walked them through it ahead of time, completely different
10 world, so to the extent you can help with that makes a
11 huge difference. However, you're still giving up a lot of
12 data by not being in the room, not seeing everything like
13 we are here. I could have popped up here virtually today
14 instead of being here, I said, no, I don't want to do
15 that. I'd much rather be here so you can see my shiny
16 face.

17 CHAIRMAN BABCOCK: Scott, then Eduardo.

18 MR. STOLLEY: What is the role of
19 confirmation bias in jury decision making, and is that
20 becoming a bigger thing now with the technology and the
21 other things we have going on in our society?

22 DR. PHIL MCGRAW: Oh, God, how much time
23 have we got? I think it's one of our biggest challenges
24 in America right now, and I've been in this profession for
25 over 45 years, and I've never seen it more entrenched than

1 I am seeing it in the last four or five years, and the
2 thing about confirmation bias is in -- you know, everybody
3 knows that when you suffer from confirmation bias, you
4 close your data window. You know, it's like I got my
5 answers, don't need anything else, but if you can get them
6 to open that window and you bring them empirical evidence
7 to the contrary of that belief, the net result is they
8 deepen their belief. They don't -- I can say, look, I
9 know what you think, but here's some information you may
10 not have, solid, irrefutable science, they dig their heels
11 in more and entrench their confirmation bias even deeper
12 than it was before. So it's a real challenge, and -- and
13 yet you see that with juries always, and I really fear
14 what's going to happen with that now.

15 When people are undecided, that's painful.
16 You know, I don't like to be here. Like I've said this
17 before, it's like, you know, we're all in Texas here, and
18 if you're like me when you were growing up, you run around
19 barefooted and you make the mistake sometimes of starting
20 across an asphalt road in August and you get about half
21 way across and you go, oh, my God, and you're just about
22 to burst into flame, and what are you going to do? You're
23 either going to run back or run across to the other side
24 really fast instead of stand there and watch your feet
25 melt, and once you get to one side or the other, getting

1 that person to come back out onto that hot highway to come
2 back across to the other side is really difficult, and --
3 and that's -- that's what I really fear if you can't read
4 those people and know do I need to call another expert, do
5 I need to do this, do I need to know that, because they
6 resolve that painful dissonance, get to one side, and sit
7 in that confirmation bias, and that's really tough.

8 CHAIRMAN BABCOCK: Eduardo.

9 MR. RODRIGUEZ: So this question doesn't
10 have anything to do with the topic, but --

11 CHAIRMAN BABCOCK: You looking down at your
12 phone?

13 MR. RODRIGUEZ: You mentioned about the use
14 of technology by kids. How is -- how is our education
15 system adapting to kids having instant access to questions
16 and answers, and are we doing a good job in that regard?
17 Do we need to improve in that regard? I'm concerned about
18 how it's going to affect my grandkids. Is there -- I've
19 got grandkids from fifth grade through a sophomore in
20 college, and I'm just wondering how it's going to affect
21 kids in the education system going forward.

22 DR. PHIL MCGRAW: Well, I can tell you that
23 we've worked with a lot of teachers unions and teachers
24 alike, and in terms of them having their phones in class,
25 they're pretty vigilant about them not having their phones

1 in class, but you know, these kids are pretty smart and
2 these phones are pretty small, so they -- they are doing
3 what they can, but one of the shifts we're seeing
4 personality-wise is -- and I think it's part of what
5 you're asking about is instant gratification, that they
6 can -- I mean, you want to know the answer to the
7 question, you just ask Siri and she gives it to you
8 instantaneously, and there's not a lot of fact checking,
9 there's not a lot of going back and forth that we would
10 ordinarily do because there is an algorithm that's going
11 to give you information, and nobody understands this
12 algorithm and that really worries me, because the
13 algorithm learns you based on what you've clicked on
14 before, may be irrelevant to the topic that you're now
15 searching, and it shades what it feeds you in some
16 mystical unknown way.

17 I just did a three-part series on Jeffrey
18 Dahmer because I had interviewed his parents previous to
19 this Netflix series that came out, and the families that
20 were impacted and two men that had survived him were
21 really upset about the way he was depicted in this Netflix
22 series, and they wanted to come on and tell the real
23 story, and some of those clips were posted on YouTube by
24 us, and the algorithm took them down because it was like
25 serial killer, sexual exploitation, some of these

1 buzzwords hit, and so it took them down, thinking that
2 this was some kind of bad site information. And so we
3 called them and said, hey, this is -- this isn't some
4 porno thing or sadomasochistic thing, this is a research
5 show from Dr. Phil. The guy said, "Oh, my God, sorry,"
6 he'll go in -- they put them back up. They were back down
7 in an hour.

8 The humans kept putting them back up and the
9 algorithm kept taking them down, and this went on for like
10 seven days until they found some way to defeat the
11 algorithm on those things. That algorithm does things --
12 not even YouTube understands the artificial intelligence
13 that triggers what it triggers. I mean, maybe at some
14 level they do, but the people we were talking to didn't,
15 and so that does worry me, yeah, about how they're getting
16 the information and what's being fed to them.

17 CHAIRMAN BABCOCK: I'm going to take the
18 opportunity to, as the chair, to ask the final question,
19 and that is this, the Court is in the next few weeks going
20 to have to make a decision, which I think is important,
21 maybe fundamental in a way, about how our courts are going
22 to treat remote proceedings where evidence, oral
23 testimony, is taken; and the draft rule that is out for
24 comment right now, as I understand it, and, Justice Bland,
25 if I've misunderstood, you jump on me, but as I understand

1 it, the judge cannot allow a remote proceeding, electronic
2 proceeding, if oral testimony is going to be taken,
3 except -- and there are two exceptions. One, if the
4 parties have agreed, and you've already spoken a little
5 bit about that; and two, if there's good cause, and there
6 are nine good cause factors, some of which could be argued
7 either way. Some of the good cause factors could be, say,
8 yeah, we ought to have remote because it's a big case, we
9 have loads of people from Switzerland and from LA and from
10 New York, so we've got to do this remotely, and you could
11 argue the other side, of course.

12 So if our Court decides that that is the
13 standard, in other words, if we make the statement that,
14 yes, you do it live if oral testimony is being taken, but
15 there are two -- not loopholes, but there are two ways to
16 get around that, absent these two things, either good
17 cause or agreement of the parties. Is that what our Court
18 should do?

19 HONORABLE EMILY MISKEL: And specifically
20 for nonjury.

21 HONORABLE JANE BLAND: Right. The one thing
22 I would add, Chip, is that not jury trials.

23 CHAIRMAN BABCOCK: Not jury trials.

24 MS. WOOTEN: That's agreements only.

25 CHAIRMAN BABCOCK: Right. So nonjury.

1 HONORABLE JANE BLAND: Jury trials are off
2 the table.

3 CHAIRMAN BABCOCK: So nonjury.

4 DR. PHIL MCGRAW: Yeah. I think it's a big
5 difference if it's nonjury. Because I think you've got --
6 you're talking about bench trials?

7 CHAIRMAN BABCOCK: Yeah.

8 DR. PHIL MCGRAW: And even if it's the
9 actual trial and not some lead-up to it.

10 CHAIRMAN BABCOCK: Or an injunction.

11 DR. PHIL MCGRAW: Yeah. I think you've got
12 sophisticated triers of fact there that have seen enough,
13 heard enough, know enough to filter that out, and they're
14 not going to be watching Dr. Phil on a second screen while
15 the parties are doing it, and I feel completely different
16 about that, but when it comes -- when you involve the
17 jury, I think that we need to do the most efficient way of
18 imparting information to the jury.

19 And, you know, I want to conclude by saying
20 two things and underlining these. You know, I talked
21 about the fact that -- about remote learning, and it
22 really doesn't matter how somebody feels about this. I
23 don't care how somebody feels about this. I barely care
24 how I feel about it. What I care is what the research
25 tells us. There is a large body of literature about this

1 that's scientific, it's really well done by quality
2 researchers, and so I would just encourage people to
3 follow the science, not the political science, the
4 science. And pay attention to that in making your
5 decision, because remote trials are remote learning, and
6 that's why I've talked about that a lot. You just have to
7 pay attention to that.

8 And the second thing is, I don't want
9 anybody to take anything I've said to imply that Americans
10 are dumb. That's not the point. It doesn't matter how
11 smart you are or not or how educated you are or not. This
12 is -- the breakdown here is in the conveyance of the
13 information, the accessibility, the breakdown problems,
14 the distractions, the engagement of the learner.

15 You know, even there are criticisms of --
16 I've been a pilot since I was a teenager, so I've been
17 involved in aviation a lot. There are criticisms of these
18 glass cockpits, because they don't engage the pilot
19 enough. You know, everything is done, you don't have
20 to -- they don't engage the pilot enough. That's one of
21 the criticisms of those things. And I think we want to
22 engage people as much as we can, and you do that by having
23 them there, where they take it seriously, they come in and
24 they see these courtrooms, and it gets people's attention.
25 And I've been in so many courtrooms, and I don't care how

1 many times I've been in it, if it was the hundredth or
2 200th time I've walked in that door, there's a certain
3 reverence when you walk in that courtroom, you take it
4 seriously.

5 And so I don't want anybody to think that I
6 think this doesn't work because a lot of Americans can't
7 read or have had problems in that way. That doesn't mean
8 they don't have wisdom and intuition. In fact, I'm saying
9 quite the contrary. They do, and that's why they need all
10 of this data. That's why they need to be there to read
11 you, to read that witness, to read that lawyer, to see all
12 of that, to use their instincts and their wisdom, and you
13 give up too much data with a remote trial, so the higher
14 the stakes, the less fan I am of remote trials

15 CHAIRMAN BABCOCK: Well, join me in thanking
16 Dr. Phil for taking time out of his busy schedule to be
17 here.

18 (Applause)

19 CHAIRMAN BABCOCK: The only thing -- that
20 was terrific, thanks, and the only thing that mitigates it
21 is he's got his own plane. So we're going to take our
22 morning break. Five minutes, though, because Ms. Price is
23 next up, and she's got a conflict pretty soon.

24 MS. PRICE: Yes, we're having a ribbon
25 cutting at our new courthouse, our new court facility.