

The Judicial Council of California is the constitutionally created policymaking body of the California courts. The council meets at least six times a year for business meetings that are open to the public and videocast live via the California Courts website. What follows is a formatted and unedited transcript of the last meeting. The official record of each meeting, the meeting minutes, are usually approved by the council at the next business meeting. Much more information about this meeting, the work of the Judicial Council, and the role of the state court system is available on the California Courts website at www.courts.ca.gov.

>> Meeting of the Judicial Council of California for Friday, May 17, 2024. Meeting is now in session. During our pre-meeting technical checks for this live webcast we've confirmed the attendance of a quorum of Judicial Council members for this meeting. Based on our agenda we plan to adjourn at approximately 11:50 a.m. Earlier this week we shared a budget memo with the branch containing additional information about Governor Newsom's May budget revision for fiscal year 2024–25, which Shelley will go over in more detail during her Administrative Director's report. We understand that the current fiscal climate requires Governor Newsom to accelerate budget cost reduction strategies across all of state government and we are concerned about the impact that these cuts will have on protecting critical court programs and services. The entire state court system remains steadfast in our commitment to preserving equal access to justice for all Californians. I remain committed to working with the governor's administration on the legislature as we all work towards a final state budget. I want to recognize some special guests attending our meeting today. We are joined by seven faculty members who teach our New Judge Orientation program as well as 27 new judicial officers who participated in the program this week. Welcome. I also want to acknowledge visiting court staff from the Superior Court of Orange County, who are attending today as part of their Level Up Leadership Development program. Welcome, as well. Thank you for your work and we appreciate you being here today. I'm also pleased to announce that nominations are now open for the council's annual Distinguished Service Awards. With these awards we honor people and organizations for extraordinary leadership and contributions to the administration of justice in California. I welcome members of our branch and justice partners to submit nominations through June 21. You can find the nomination form on our homepage. And now for public comment I will turn it over to Justice Hill.

>> Thank you very much, Chief. We will now begin the public comment session of the meeting, during which members of the public are provided with an opportunity to speak on general matters of judicial administration or specific agenda items. Today's meeting including public comments is livestreamed and the recording will be available to the public online. Please be advised the Judicial Council is not an adjudicatory body. The council is not authorized to intervene on behalf of a party in a case. Rather, concerns as to substantive rulings in a case may be addressed through the appropriate procedural mechanisms. We request that you refrain from speaking about specific cases and the individuals involved, including court personnel and parties. When I call your name please come forward to the podium. You will have up to three minutes to present your comments. Please begin by stating your name and if appropriate, your title and affiliation. On the podium there are lights that will inform you of the time you have

remaining. The yellow light will come on when you have one minute remaining. The red light will come on when your time has expired. We have one speaker with us today. Would like to welcome to the front Mr. Suresh Eswaran. Will you step forward, please? Nice to have you with us.

>> Dear Chief Justice Guerrero and the Judicial Council of the California Supreme Court, my name is Suresh Eswaran. First and foremost it is with great honor and gratitude and humility that I stand before you at this critical juncture in our country and our species evolution with the threat of global nuclear war looming and rapid decline of mental health and trust nationally. I am the son of Indian immigrants, product of modern Western culture and a student of time. I operate a systems task force with Dave Luchetti and the former Placer County deputy district attorney Jeffrey Wood. Dr. Martin Luther King once observed leadership, a genuine leader is not a searcher of consensus but a molder of consensus. I will now address general judicial administration matters concerning duty to ensure integrity and impartiality of the judicial system, the role of the judiciary in the community and a duty to ensure unbiased decisions. Our sense of justice emerges from our sense of time. What is justice, then, in a world characterized by deep mistrust, insecurity, greed, increasing threat of global nuclear war and most potently the feeling of acceleration in and through time? In the judiciary this acceleration is felt in the increasing quantity of cases to be handled, placing stress on existing judges enforcing lowering of standards to admit judges just to be operational through cases flowing to and through the courts. In the prison system is the increasing rates of recidivism and prison guard suicide. We know from first-hand knowledge that our directors have no control over their system, have no models for even understanding their system, and are completely overwhelmed by their own system. These systems are deeply interconnected and interdependent. Failure of one means the failure of the other. How can public confidence of the integrity of the justice system be promoted without lying? Perhaps a more useful question that faces us forward in time is what peaceful action can the judiciary take that will bring the greatest positive gain in judicial administration and its relationship with the public. Said another way, what nonlinear pressure point can the judiciary leverage to create systemic benefits across all the systems and industries it influences without interfering in local affairs. By leveraging time and opening new shared contacts which humans can interact meaningfully and cultivate trust. Mathematically, this can be seen as increasing the probability of positive human interaction. What is the role of the judiciary in the community? This question only has meaning in creative solutions when one accepts the judiciary is interconnected with the community and part of a much bigger role of the recognizing its nonlinear place of power within that community.

>> Mr. Eswaran, we appreciate your comments. We ask if you wouldn't mind, I'll put an additional minute on the clock and if you could wrap up that would be great.

>> I'm almost done. How can a judge uphold their duty for unbiased decisions? By periodically questioning assumptions, beliefs, values, purposes and doing so for a variety of contextual frames. I stand before you offering the judiciary a path through time towards mutual trust of the public, to empower yourselves, your colleagues above and below and all human decision-

makers and all systems at all scales to make decisions within a context that integrates the full capacity of the human spirit, soul, mind and consciousness. All of these crucial aspects of judicial administration and more can be effectively, peacefully, and with real-time local and global validity be addressed with the signing and affirmation of the declaration of time. That is my time. I have the copies here. I was not allowed to distribute them and I have a citable version here.

>> Thank you, you can certainly leave those comments with us. We take written comments, as well. We appreciate your comments and we appreciate you taking the time to be with us. Thank you very much. Chief, that concludes the public comment section.

>> Thank you. Thank you, sir for your comments. Thank you, Justice Hill. Next on our agenda is my regular report as Chief Justice, summarizing some of my engagements and ongoing outreach activities on behalf of the judicial branch, since our March 15, 2024, business meeting. In March in Sacramento I addressed a joint gathering of the state legislature for my second annual state of the judiciary address. Governor Newsom was present with assembly speaker Rivas, President pro tem McGuire, justices and staff from the Supreme Court and of course many of you here in this room along with our bench bar coalition members and other justice system partners. In my remarks I highlighted the importance of three branch solutions to some of our branch's priority issues, including the use of remote technology, climate change, the importance of safeguarding the independence of the judiciary, and evolving issues such as generative artificial intelligence, which we'll hear more about later today. At the end of April I joined speaker Rivas for a tour of the Monterey Superior Court. It was a great opportunity to discuss court operations and for the speaker to see some of our judicial branch initiatives in action, including observing remote court proceedings. I was impressed by how well those proceedings went. Seeing the proceedings in action affirm the importance of providing this option to court users and always with the consent of the defendants in criminal proceedings. Again, I'm grateful to Governor Newsom for including the extension of the sunset dates for both civil and criminal proceedings in his proposed budget. On our visit, speaker Rivas presented an assembly resolution to our now former council colleague Judge Marla Anderson. I'm used to seeing her here so we miss her, for her almost 30 years of public service with the judicial branch and a decade as member of the Judicial Council. In addition to welcoming this morning's new judicial officers, since our last business meeting, I welcomed four new subjects and commissioners participating in NJO. There are a total of 33 judges, 21 commissioners representing 23 trial courts. In my role as chair of the commission on judicial appointments, I had the pleasure of confirming the appointments of three new appellate justices: Justice Gonzalo Martinez as presiding justice of the Second District Court of Appeal, Division Seven in Los Angeles, Justice Natalie Stone as associate justice of the Second District Court of Appeal, Division Seven in Los Angeles, and Justice Tara Desautels as associate justice of the First District Court of Appeal in San Francisco. Along with Administrative Presiding Justice Laurie Earl from the Third District Court of Appeal and Shelley, I had the honor of attending two more banner events for the branch. The dedication ceremonies for a new courthouse in Redding and a courthouse remodel in the town of Willows. Both court houses were ranked as

immediate needs in our facilities plan and will help to greatly expand access to justice for the residence and Shasta and Glenn Counties. I heard so much positive feedback from the local judicial officers, their staff and representatives of the communities during these courthouse visits. In Redding I was joined by Presiding Judge Adam Ryan and retired judge and former Judicial Council administrative director Steve Jahr to dedicate the new courthouse, which consolidates court services for residents from three separate outdated buildings into one modern, 14 courtroom facility. In Willows I was joined by Presiding Judge Donald Byrd and Assistant Presiding Judge Alicia Ekland to dedicate the transformation and upgrade of the 130-year-old historic building with just one courtroom into a modern three courtroom facility. While in Willows I also took the opportunity to step into Mr. Aaron Vought's seventh grade social studies classroom at their intermediate school and I was joined by Judge Ekland. I spoke about the importance of the judicial branch before answering excellent questions from the students about our branch and what it is like to be a judge, and they ended up inviting themselves to go to the dedication. The eighth grade band took the initiative. It was great to see that. In another commemoration of local civics efforts, I attended, along with Presiding Judge Hernandez and her local trial court leadership role, a ceremony hosted by the constitutional rights foundation in Orange County to honor 300 mock trial award-winning students, judicial officers and staff involved in these worthy programs. I participated in Q and A sessions for free educational events at the appellate level. For our Appellate Judicial Attorney Institute at the beginning of April, for the California Lawyers Association Litigation and Appellate Summit at the end of April and the William A. Ingram American Inn of Court in Santa Clara earlier this week. And I had the pleasure of participating in several events celebrating our dedicated public servants who served in the judicial branch in Sacramento and in San Francisco. I helped honor 92 Judicial Council employees who have achieved service milestones from five to remarkably 35 years of service in the judicial branch. This group represents both the individual and collective talent and dedication of the more than 20,000 public servants involved in managing the largest, and in my view the best, court system in the nation. I also spoke at a San Francisco Bar Association event honoring outstanding volunteers and public service, celebrating the top 15% of attorneys who volunteer their time to help low income litigants in need of representation. And I had the privilege of giving remarks at the unveiling of the new plaza dedicated to the late Chief Justice Rose Elizabeth Bird, our first female Chief Justice of California. This plaza in the state capital's World Peace Rose Garden recognizes Chief Justice Bird's service to our state as a trailblazing woman and significant figure in our state's judicial history. I was joined by former Chief Justice Tani Cantil-Sakauye along with Senator Steve Glazer and his legislative colleagues who helped to make this commemoration possible. And this week we celebrated another group essential to the functioning of our judicial system, the millions of Californians who answer the call each year to serve on juries. I didn't tell my husband but he was among that group. During juror appreciation week, May 13 through the 17th, the Judicial Council and superior courts around the state team up to recognize those who served in their communities and put into practice the fundamental American ideal of justice. I also joined Governor Newsom, Lieutenant Governor Kounalakis, Attorney General Bonta and Senator Umberg to give remarks at the annual California Peace Officers Memorial. This event is held at the memorial monument on state capitol grounds. It recognizes peace officers who died in the line of duty the previous year. Our

courthouses could not function without the work of our bailiffs, sheriffs, CHP, marshals and other peace officers to provide the security that allows our residence to access our justice system and it allows judicial officers and court employees to do their jobs without fearing for our safety. It was a somber and moving tribute to peace officers who paid the ultimate sacrifice to protect the public and an important recognition to honor the families and loved ones that they sadly left behind. That concludes my report to the Council. Now we will hear from our Administrative Director, Shelley Curran, with her report to the Council.

>> Good morning, Chief and members. Thank you very much. I'm going to start out this morning by talking about the release of the governor's revised budget proposal. Governor Newsom released the budget last week. We received additional information from the Department of Finance on Tuesday and upon receiving that information we sent out our regular memo that we send to the branch detailing some of the provisions included in the main revised period. Before getting into what's included in the proposal itself, I want to take a moment and set some context, talk a bit about where we were in January. The initial proposal that Governor Newsom provided with his January budget, anticipated a \$37.9 billion deficit. In April the legislature and Governor Newsom acted and passed legislation that included \$17.3 billion in solution, which reduced the deficit at that time to approximately \$20 billion. This included about \$80 million in solutions at the judicial branch identified savings from our trial court trust fund and \$5 million from the trial court emergency fund. While this happened, revenues continued to decline and as a result, that proposal that Governor Newsom provided last week actually identified 7 billion additional dollars in projected gap and so now the state revenue shortfall is about \$27.6 billion going into the next fiscal year. To address this deficit, state spending is being reduced across nearly all state entities by 7.95%. The May revise identifies a \$97 billion cut to trial courts and a commensurate reduction to the state-level entities included in the Supreme Court, courts of appeal, courts resource center and the Judicial Council. The \$97 million is the amount that's actually been cut from the trial court, was calculated using the dollar amount that is included for general fund purposes. It doesn't include local finding fees and it also does not include county maintenance efforts. Now this is certainly not what we want as the Chief expressed in her statement, the real concerns about the potential impact of these cuts on access to justice. I do want to put it into context a little bit and just say that during the pandemic year the branch faced \$117 million cut when our operating budget was \$3.1 billion during the last recession, the last year of that in fiscal year 13 to 14 the proposal was a \$201 million cut and the operating budget was about \$2.4 billion and that was after five consecutive years of cuts. So at this point we have a large base, nearly \$4 billion. Tuesday's proposal also outlined some additional details when it comes to savings from this current year. 25 million more dollars from the court trust fund, \$16 million from leftover funds for the court reporter testified dollars, \$20.4 million from a court interpreter pilot program, \$17.5 million from CARE court, \$5 million from the Judicial Council budget and nearly \$20 million from a firearms relinquishment program that was actually included in the \$20 million that we had identified for early budget action but was not adopted by the legislature. Ongoing, the governor also proposes some additional cuts. One is changing the court reporter allocation, the annual allocation from \$30 million-\$20 million and also reducing the care allocation to the court by nearly half so

\$26.5 million for the next fiscal year and \$33.1 million ongoing. That is meant to reflect the number of petitions that courts are receiving. While these cuts are very difficult and we have serious concerns about them, we need to keep in mind the out years and we still are looking at out year deficits for the state budget but with Governor Newsom's proposal, the out year program has shrunk considerably. So for example, in the next fiscal year, we are looking at a budget of about \$3 billion that assumes the level spending and the revenues come in as we are hoping the revenues would come in, with increased deficits going up to \$14 billion in fiscal year 27-28 if the governor's proposal or similar cuts are not included in this budget, we are looking at much higher deficits in the out years, \$30 billion in 27-28, so it's significant. The rest of the proposals that we had advocated for are included in continuing to stay in the May revise. I want to highlight two of them. One is extension of the sunset on remote proceedings. The Chief mentioned it. We were able to see remote proceedings in action. I was also able to see them in Mariposa recently and I just really underscored the importance of the efficiencies and access to justice and better serving the public that remote proceedings provide, and then also the other provision that I want to mention now is the increase in the cap for the trial courts for savings. Right now that's at 3%. The budget proposal upset to 5% and I think these fiscal times are exactly the reason that we need more flex ability at the trial court level, so when we are facing cuts, courts have an easier glide path to address those cuts. So we will be working very closely with the legislature and the Department of finance administration over the next coming weeks and months. We imagine there would be many conversations, hearings and whatnot, discussions, negotiations before the legislature meets its June 16 constitutional deadlines and we will be hearing more about this in the coming weeks and months and also we will bring the allocations forward to the Judicial Council for their consideration at the July meeting as we are going in all these conversations we're going to be getting the Chief's statement on the budget at the center and that is the importance of access to justice, concerns about the cuts, recognizing that we need to be partners in meeting the trying budget times for the state. I would like to call your attention to the regular written administrative directors report. It provides a roundup of some of the actions that Council staff had been working on since our last business meeting in March, beyond the matters that are actually going to be discussed today at the Council meeting. Actions were taken by 20 different advisory committees. We had more than 36 educational programs that were provided to judges, court executive officers and other court staff and I'll just mention a couple other items from that report. Council staff More and more since the pandemic have had the opportunity to go out and be in the courts which I think is excellent so since our March meeting, our pretrial team was able to be in Fresno, Mariposa, Merced, Stanislaus, Toulumne to work with the local partners on the pretrial efforts. Our CARE court team was in San Francisco last week. Our juvenile justice resources and technical assistance team were on site with Alameda, Imperial, Inyo and L.A. courts to review their juvenile case filings and also assist with any legal questions or training needs they might have. Our statewide expansion of the ability to pay program wide citations is now at 50 courts, so seven additional courts came online in the course of the last seven months. That includes Alpine, Contra Costa, Del Norte, Indio, Kern, Riverside and Sonoma. I also had a welcome opportunity to visit some courts since our last meeting. As the Chief mentioned, I was able to be with her in Shasta and in Willows and Monterey visit as well, on both the Willows and the Shasta courthouses it was beautiful

buildings and very exciting to be there with all of the local partners who are in the community, who were so excited to see these buildings and something that I was also really happy about is that the courts are going through the LEED process right now to get certification, LEED, which stands for leadership in energy and environmental design which is the most widely accepted framework for analyzing the environmental impact of buildings. Those two courts are going through that process right now. We're going to receive certification in the next couple of months on that. Right now we have 19 courts that are LEED certified. Seven are at the gold level and 12 are at the silver level, which are something to be very proud of, I think coming in the branch, to be doing our part on that. I also got to go to Mariposa County, where I spent the afternoon with presiding judge Fagalde, Judge Anita Bryant and the CEO, Desiree Leard. If you haven't been there, you've got to go. It's an absolutely fantastic, beautiful old courthouse. I think it's the oldest operating courthouse in California. Absolutely wonderful. Just last week, before the juror appreciation week that the Chief's husband was able to serve on jury duty, so was I. So yes, I spent a couple of days last week at the criminal courthouse here in San Francisco while I was waiting to be called into the courtroom, I saw two council videos. One was orientation to jury service and the next was jury service and fairness, understanding the challenge of implicit bias. That's a partnership that the Council had with CJA to develop that video. While I was sitting through voir dire the judge pulled out the criminal jury instructions book and read that and there was Judicial Council working action. So they didn't choose me but nonetheless, it was very exciting to sit through jury service and also very insightful. So having had the opportunity to be out and about in the courts, I'm also pleased to report on some of the efforts that we are taking to support diversity in the workforce and recruiting. The judicial branch was represented in 2024 Association of California state employees with disability training symposiums and we participated in virtual fares on Native American and Indigenous workforce, pathways to California state employment, inclusive hiring event and diversity and inclusion in government and nonprofit jobs. Quickly I turn your attention to the consent agenda. We have 14 items on the consent agenda for your consideration today, from 10 different advisory committees and Judicial Council staff. One includes the reappointment of Judge Janet Gaard, who is retired from the Superior Court to the board of state and community corrections, it's a really important board that looks at juvenile and justice issues at the local level. Judge Gaard is one of 13 members and she's a representative of the Judicial Council. I've had the pleasure of working with Judge Gaard for my entire career in public service and she's absolutely outstanding. We also have the approval of revised civil jury instructions and then rules and forms proposals related to criminal proceedings at the Racial Justice Act, the CARE Act, small claims, judicial education schedules. Also the pretrial second-year report and four budget items so we really appreciate the work of all of the advisory committees and advisory committee staff in bringing these matters before the Council for your consideration. So finally to the Chief's comments on the recognition of our Council staff, who reached their milestones, I just want to add my own thanks and appreciation to those staff, my colleagues and all of our Council staff for the work that you'll do to support the work of the Council and the courts. I'm really grateful and fortunate to have you all as colleagues, so that concludes my report, Chief has been a thank you so much for your very detailed and very helpful report. I appreciate it. Next we have our consent agenda. As Shelley indicated, there are 14 items on the consent agenda. The council's Executive and

Planning Committee sets items on the consent and discussion agendas to try to optimize the best use of the council's time. The council's Rules Committee provides guidance to the Executive and Planning Committee on agenda setting relating to rules proposals. As you all know, the fact that an item is on the consent agenda is not a reflection on its significance. Any Council member can ask for an item to be moved from the consent to the discussion agenda if they believe it would benefit from further discussion and deliberation. As always, as Shelley indicated, we very much appreciate the many hours of work that are put in by advisory committee members and their staff in order to enable these recommendations and reports to come before us for consideration. We've all had an opportunity. They are available online for the public as well to review. Councilmembers having had an opportunity now to review these items, I will entertain a motion and a second to move approval of the consent agenda.

>> Thank you.

>> Judge Brodie will second.

>> All those in favor, please say aye.

>> Aye.

>> Any nos or abstentions? The consent agenda is approved. Thank you. We now have three discussion agenda items for today's meeting. Our first item is a presentation on the civil remote proceedings and the topic is when a judicial officer may preside remotely. This is agenda item 24 dash 094. And we welcome our presenters with us today. We have Presiding Judge Hernandez. She is a chair, as you know, of the Judicial Council trial court providing judges committee. We also welcome presiding Judge Lisa Rogan of the Superior Court of San Bernardino County. We welcome Ms. Grace DiLaura of the Judicial Council legal services and Ms. Saskia Kim with the Judicial Council policy and research. Welcome all. Thank you.

>> Good morning, thank you Chief and good morning to councilmembers. We'd first like to say thank you for the opportunity to allow us to share the information about this role. What we like to do, myself and Judge Rogan will expand on the work that created what is before you. What I'd like to invite your attention to is in 24-0 nine 4 is the itemized report as well as the invitation to comment. This type of comments are also in the matrix for your review. The report to the council is there. Judge Rogan and I will give you an overview. I'd also like to thank and join the Chief and Shelley's comments about staff who are with us here at the table, but also Michael Giden, who has been invaluable. All three of them allowing us to put before you what you see today. Where we started off with this, and Chief, again, thank you for your vision and your leadership because this really creates the rule that we are asking you to adopt, because of our partnership with the legislative branch, with the administration and certainly making sure that as a branch we are providing access to justice, and as you have said so many times, utilizing technology to provide that access to justice, and sometimes these remote proceedings are imperative in the work that we do. So I invite your attention to a Code of Civil Procedure 367

10 is where we started as the trial court presiding judge is advisory body. We created a working group. I was the chair. I was accompanied by very grateful members, that I'm grateful to, rather, and next slide. Our working group was Samantha Jessner, presiding judge of Los Angeles County, the Honorable Kimberly Merrifield from Butte County, who was the presiding judge at that time, our presiding judge and my colleague here at the table with me, Lisa Rogan from San Bernardino County. We also had Mr. Jake Chatters, the court executive officer from Placer County and Mr. David Yamasaki, our court executive officer from Orange County. What we did in order to create this rule which is mandated through the statute that we create a rule and standards when a judicial officer, in limited situations and in the interest of justice, may preside over remote court proceedings from a location other than the courtroom. It's very specific that we are balancing the administration of justice as well as our flexibility, also while being accountable and transparent to those that we serve. What we've created in our working group was a draft proposal that as many of you know here at the council is then vetted and put before our trial court presiding judge advisory committee. It's been sent out for an invitation to comment, as I have invited you. The hyperlinks are there for all of those comments in that section. We then came back, of course, to TCP Jack, ask for a recommendation and able to move it forward to our internal rules committee here at this body and of course this body then is going to be asked to adopt rule 10.635. What I would like to say before I turn it over to Judge Rogan's this deals with general civil matters. There are exclusions, specific case exclusions from this. We know statutorily the welfare and institution code under our juvenile justice cases as well as civil commitments, some of our hospital commitments have their own statutory provisions. This is looking at those other civil matters where we want to make sure we have, again, the flex ability, however prioritizing, a judge should be in the courtroom whenever possible but there are going to be those situations where remote technology must be and needs to be utilized in order to effectuate access to justice. This does not impact other participants in the courtroom. This is to the judicial officer only. And it's very important to remember, again, we want to be transparent and we want to make sure the information has been provided to all of those who access our justice, but also recognizing that there is a need for us to remain with our flexibility and how we apportioned and how we compartmentalized the rule to satisfy those, and with that I'll turn it over to Judge Rogan.

>> Thank you, Chief Justice and the council, for inviting us to present on this issue. I want to go to the structure of the rule. We understood there was an overarching need and desire to have a very firm structure to provide transparency and accountability to the public in utilizing this rule. There are different conditions from two different categories of locations, one being court facilities other than a courtroom, and the other being third locations. Either would provide that it must be in the interest of justice and it allows the presiding judge to have the flexibility in achieving that interest of justice but still remaining transparent and accountable to the public. Moving on to the limited situations and really the situation is what drives the location. So in providing the situations it would be where a proceeding is fully remote or there are no courtrooms available, and being fully remote, in such situations like hearings or situations where the judges just preside or conversing with the attorneys and allowing that judge to provide preside from locations such as their chambers when all other parties are remote, or

where there are no courtrooms available. And in situations such as that where we have the ability to preside remotely and allow the judicial officer to conduct proceedings where that courtroom is not available or the courtroom can be used for other situations when a courtroom is necessary or when the judge's presence is required by that other situation or other proceeding. The location, in utilizing the location other than a court facility, if you would indulge me a bit, San Bernardino would utilize this and does currently utilize this often because of the vast area that we do cover in our county, hazards that prevent a judicial officer from reaching the courtroom. There are times when judicial officers, if you're familiar with the San Bernardino County, we have the Cajon Pass, which is often blocked by natural disasters, fire, snow, or just traffic accidents that can block a judicial officer that lives below the Cajon Pass to reach our courtrooms above the Cajon Pass. Due to the situation in San Bernardino where we are short judicial officers, the most under judged court in the state, it's creates quite a hazard or problem when I can't get a judicial officer through that Cajon Pass and the need is met by a remote proceeding where the judge can either sit in another facility, a government facility below the Cajon Pass or even at home. Or it is necessary to prevent significant delays. We have had situations in our post-pandemic world where we have judicial officers that, if they are in the midst of a COVID situation and they are required to stay home, those officers have, at times, been able to appear remotely by agreement of the parties and continue to handle their calendars in the courtroom. Again, these are situations when only the judicial officer is remote and no other parties may be remote or all other parties may be remote, but this rule would only require oversight of the presiding judge when the judicial officer appears remotely and provides for further and transparent and controlled by the presiding judge so that the rule is not utilized in a way that may offend public appearance. And with that, I'll turn it back over to Judge Hernandez.

>> I would also comments that questions have been asked, does this address criminal? It does not. You heard both from Shelley and the Chief when we are talking about remote seatings, the consent of the defendant, there is language in our current audit act that will address sunseting of that. We will address the criminal at a later time when it becomes necessary. This remains focused on civil. It also does not address the internal Superior Court appellate panels. There is also language going through those advisory bodies to address that specifically. So again, this goes back to the civil arena with the exclusions that I spoke of at the onset of my presentation with juvenile justice and some of the other civil commitments that have statutory provisions. With that, we would submit it to you, respectfully asking for your approval of this rule and to adopt it as statutorily required under 367-10, and we are happy to answer any questions.

>> Thank you very much for that. Excellent presentation on an important topic. Are there other comments, questions for our presenters? Yes.

>> Thank you for the report. I just wanted to make a comment that the report makes loud and clear that the proposed rule is not a rule that was formed just for the convenience of judges. It's for the interest of justice and to make sure that there are judicial officers available remotely in order to carry out the business of the courts, so it's not just a convenience matter.

>> Absolutely. Thank you for that comment, Justice Fujisaki.

>> Any other comments? See Senator Umberg appeared but I don't know if you have a comment. This is a topic of interest to you.

>> It is a topic of interest to me but no further comment. Thank you, there.

>> Thank you, I just wanted to echo, thank you Justice Fujisaki for mentioning that. It's I think a very important point. This was something that we were required to develop and you have very clearly articulated the scope of the issues, and I just wanted to underscore the focus here is on balancing and serving the public and ensuring access to justice, not for the benefit of the courts and for limited circumstances. I appreciate an example of San Bernardino. I think that really helps us to see the benefits here and the purpose for the rule so thank you very much, there is another common.

>> I was just going to say thank you also, San Bernardino not only lacks judicial officers but lacks space and we have constituents in areas that also get blocked by snow, et cetera, and this type of thing will allow us to serve those litigants and attorneys remotely and not just for the convenience of the judge but to make sure that we have access to judges for everyone in our county, so thank you.

>> Thank you, Judge Dulcich. Are there other comments? If not, I will entertain a motion to move approval of the site amend the recommendation.

>> Judge Yamasaki moves approval.

>> I heard Justice Fujisaki. I'll keep it for the next go around. Any further discussion? All those in favor say aye.

>> Aye.

>> Any nos or any abstentions? The item is approved. Thank you again.

>> Thank you very much.

>> Thank you.

>> For our second item we have a report and recommendations. The topic is trial court, natural policies and procedures manual. We welcome our presenters, Mr. Robert Downs with Judicial Council branch accounting and procurement. And Mr. Jason Lopez. Also with Judicial Council's branch accounting and procurement.

>> Okay. Good morning, Chief Justice and Judicial Council. My name is Jason Lopez and I am the council's director of branch accounting and procurement. I'm joined this morning by Robert Downs, who is our Deputy Director. Quick personal side note. I was on the hook for jury duty this week and learned at 5:00 last night that I had been dismissed, so I can only assume that Chief, you were so excited about this presentation that you weighed in and got that so thank you very much.

>> Don't assume that. We are happy to have you here.

>> Okay. Robert and I are here to talk to you about the Judicial Council's ongoing oversight and management of the trial court financial policies and procedures manual. On page one, which is filed 24-086 in your meeting materials, are the details related to the proposed revisions for the 13th edition of this document. However, our focus for purposes of this presentation will be on ongoing administration of the document as it relates to the Judicial Council and more specifically in collaboration with the trial courts, the branch accounting and procurement team. Okay. With the adoption of the Lockyer Eisenberg trial court funding act of 1997, California's local county governments were relieved of responsibility for budgetary control and financial management of their operations. Instead, shifting this role to the state. This act brought about increased response abilities for the courts related to management of their funding and encouraged local accountability for the appropriate use of these public resources. In January of 2001, the Judicial Council adopted the California Rules of Court number 10.804, then 6.707, which required that the Council staff develop and adopt a formal financial policies and procedures manual to guide trial court operations. This resulted in the adoption of the inaugural trial court financial policies and procedures manual later in 2001. With its adoption the manual established a system of critical internal controls designed to allow the trial courts as well as other interested stakeholders to monitor and detail the court's use of public funds. The manual intentionally avoids prescribing overly rigid procedures in an effort to maintain a reasonable amount of what's ability on the part of local court leadership and staff. Instead, the manual merely established the boundaries within which the court should conduct their operations. In the spirit of flexibility, the manual also establishes a mechanism for local courts, presiding judges, or their designee to request procedures not entirely consistent with the more global guidance provided by the document. This often allows courts to account for local peculiarities related to things such as size, operational complex it is, and other court specific issues. These requests for alternative procedures are reviewed by branch accounting procurement subject that are experts and if approved, ultimately incorporated into the requesting court's local guidelines. Next you're going to hear from Robert, who will cover the manuals revision process and will touch briefly on the nature of the proposed amendments for the 13th edition. Robert?

>> Thank you Jason and good morning. It's a pleasure to be here presenting to this body. I wanted to explain a little bit about the process we go through, although you can imagine there are numerous steps and meetings that go into this type of manual revision process. I wanted to just give you a brief overview of the main components, so this obviously starts with identifying

suggested edits and the suggested edits are identified by both council staff, subject matter experts as well as trial court staff and these can be derived from various things as changing accounting principles, new governmental accounting board standards, governmental accounting standards Board pronouncements, audit findings, lessons learned, and even in just general collaborative discussions that occur throughout each year. All of these suggested edits are formally recorded and captured into a document so as to not be lost and that each and every one of them could be considered. Once a group of council subject matter experts review these suggested edits, recommendations are made to the trial court financial policies work group, sometimes referred to as tick fan so tick fan is comprised of nine court fiscal officers and for your purview, the current courts participating are listed on the slide. The targeted demographics for the TIC FIN were group is to have small, medium and large-sized court, set of courts from the southern region of the state, similar demographic from the central region of the state and of course likewise in the northern region of the state so all court sizes and geographical areas are represented. These court fiscal officers work with council staff to review the suggested edits, resolve and refine and ultimately make recommendations to the trial court financial policies subcommittee, which is part of the court executive advisory committee. Sorry, my slides are out of tune there, so the court executive advisory committee has a trial court financial policy subcommittee that's comprised of six court executive officers. Again, for your purview, the courts that are represented by CEOs are listed on the slide with emphasis provided to Mr. Mike Roddy from the Superior Court of California, San Diego County, who is currently the chair of that subcommittee. Again, once the trial court financial policy subcommittee resolves and refines any of the suggested edits, we then follow rule 10 804 of the California Rules of Court and make available the proposed revisions to all superior courts, also to the California Department of finance and to the state controller's office for a 30 day comment period. Again, once comments are received, resolved, potentially refined, that leads us to presenting to this body our recommendations for the newest editions of the manual, which is what we are here to also do today. We are here to recommend an addition to this overview we provide you, that you adopt a 13th edition of the manual. Again on your materials in file number 24-0 86, you'll find a little more detailed explanation of I believe approximately 16 edits to the manual. I'll just categorize them briefly here for you so we don't have to go through each one we've incorporated on substantive edits, updating certain hyperlinks that we create for ease of access to information and forms, clarified financial terminology throughout the manual and also revised several of the sample financial forms that courts may choose to use in their daily activities. Swept through the manual and refined contents and language to reflect current laws and authority and government codes, as well as a continued effort over the last couple of editions to provide clarity to courts on the process. And this concludes our brief presentation to you this morning and we would be happy to entertain any questions or comments. Thank you.

>> Thank you very much. I wanted to amend my comment. Yes I was looking forward to the presentation. No I did not weigh in.

>> Understood.

>> Are there other comments?

>> David Yamasaki, I just wanted to make a remark. I understand exactly where you're coming from as it relates to some of the complex responsibilities that we all have and I think the branch is in very good hands with the thoroughness and the work that has been done by the group that has been assembled in making some of the amendments, so I commend them and thank them for their great work.

>> Thank you.

>> Thank you.

>> Thank you for the presentation and I will weigh in as the chair of the judicial branch budget committee, and Chief, I think it's worth remarking in public session that remind Mentz to this manual not only improve and provide clarity where it's needed but also improves our audit process, also improves our data collection abilities which improves our transparency, which improves our relationship to not only other branches of government that the public at large, so I consider this to be sort of the foundational rock to improving all of those things and making sure our audit process is vigorous and complete, and frankly, I did go through all the proposed amendments myself and I congratulate you and I just think we need to recognize the importance of it for all of the reasons that I stated. So thank you so much. And if there is a motion I will second.

>> Bieker, just through an audit, thank you very much, of the policy.

>> Thank you. Is there a second? Your second? Any further discussion? All in favor say aye.

>> Aye.

>> Any nos, any abstentions? The item is approved. Thank you again.

>> Thank you.

>> For our third item on the agenda we have a presentation on generative artificial intelligence in California's judicial branch. At our January meeting I announced that administrative presiding Justice Mary Greenwood of the sixth district Court of Appeal and Alameda County Superior Court Judge Arturo Castro had both agreed to spearhead research efforts for our branch related to AI. Specifically I asked them to work to identify the foundational questions that must be asked as we consider the opportunities as well as the challenges that are associated with AI, the use of AI in the branch. Today we're going to hear from them about the status of this effort and I will turn it over to them. They require no introduction but I will do that anyway. We have administrative presiding Justice Mary Greenwood, Court of Appeal for the sixth Appellate District. We have judge Arturo Castro, Superior Court of Alameda County. We

welcome them and we welcome Ms. Jenny Grantz with the Judicial Council legal services and Ms. Saskia Kim, judicial policy and research.

>> Good morning.

>> Good morning.

>> Good morning Chief Justice Guerrero and members of the Judicial Council. This is actually the first time I've been in this room and I feel reassured by the fact that there are so many friends here, and it's nice to see old friends and new faces, as well. We are here to talk about generative artificial intelligence and its impact on the California branch. And I want to start by thanking the Chief Justice. It's been an honor to participate in this little working group with Judge Castro and the Judicial Council staff, including of course the wonderful Michael Giden, Saskia Kim, Jessica Devencenzi, Jennifer Radha and Michelle Brooke and of course we were guided by our administrative director, Shelley Curran, and it was a good thing that Rob Oyoung was there, I'm going to say, because he really understands technology, thank goodness. So we were so pleased to be able to work with this group and I will just say that the Judicial Council is so fortunate to have this staff and the word poaching did come up, and there is a certain Court of Appeal down in San Jose that would love to have some of these people come to work there that offer was declined, so we'll just move on from that at this point. We are here to do a presentation for about 25 minutes for you but really it's a conversation that we are not going to speak for 45 minutes. It's an opportunity for you to raise questions and make points in what is clearly a fascinating area that has great potential and great challenges and I think that part of the reason that it is a fascinating to us is that it's one of these generational circumstances in which you have a major societal change that intersects with the mission and the values of the judicial branch in ways that could have powerful ramifications, or not. We don't know yet, of course. But that's what I think is so intriguing to all of us and so we are very excited to talk to you about it. So at her state of the judiciary address to the California legislature in March, which I'm going to say was a moment of great pride for all of us who were in attendance in Sacramento, that our Chief Justice stated the following: society, government, and therefore our court system must address the many issues and questions presented by the developing field of artificial intelligence. We must do this in a careful and deliberate fashion and she explained that she had designated Judge Castro and me to help lead the branch's efforts to identify the foundational questions that must be asked as we consider the opportunities and challenges that are associated with artificial intelligence. And she explained that the purpose of the work was to help the branch consider appropriate uses of AI. With the guiding principle of safeguarding the integrity of the judicial process. And that work is what we are here to discuss with you today. It was, I think, a very powerful statement. I will also say that having your name mentioned in the state of the judiciary address when you weren't warned ahead of time did cause me at least to feel like my hair was on fire, but that's okay.

>> Very, very cool.

>> It was very cool but very alarming, also. And then also, by the way, can I say we immediately became, you know, the branch experts on artificial intelligence, and we are not. So we'll take that disclaimer right now. So she really called the question which is we were asked to do some initial groundwork which is to consider with these wonderful people the foundational questions that need to be asked that can then be taken and used as a way to have the conversation in the branch about what our appropriate uses of artificial intelligence and what are not, and the ramifications. So as directed by the Chief, we've spent the last few months identifying the foundational questions really due to generative AI and the judicial branch and the five questions that you see listed on the slide are what we came up with. And we'll go over each of these questions a little bit later in the presentation. The five questions are should generative AI be used in California's judicial branch. In other words, should we even be doing this? In what ways can or should generative AI be used in California's judicial branch? How can public trust and confidence in the courts be preserved or enhanced by the use of artificial intelligence? If generative AI is used by the branch, how will confidentiality and privacy be maintained, both for court users and also for the court itself, our work product. And finally how do generative AI and judicial ethics intersect. Sticky wicket there, too. These questions are not for the faint of heart but these were the five we came up with and we do propose this morning to provide at least an idea of an answer to the first question: should generative AI be used in California's judicial branch because the other questions can't be answered until we determined that. That threshold question. But before we get to the questions, we first need to have a little talk about generative AI and Judge Castro was kind enough to volunteer to describe the indescribable.

>> We know that you are aware of how AI works and the mechanics of it, so we are not going to talk a whole lot about those specifics, but we did want to focus on generative AI and talk a little bit about what type of AI this is. This is the type of AI that uses massive amounts of data and most importantly it's the type of AI that creates totally new content, so you can see here on the slides that it takes many formats. It's not just text all the time. It could include audio and pictures and video and even code itself, and it can address almost any subject matter. We know that it's already available in numerous consumer products. We've all heard about chat GPT. In a lot of ways the arrival of Chat GPT is what kick started a lot of discussions about AI and so we know that it's out there and it's already being incorporated into existing products including Google and things that we are familiar with, like Westlaw and Lexis. Meanwhile, traditional AI has quietly been around for a long time now. Traditional AI is the type of AI that we encounter when we look into our phone or when we talk to our phone and ask a question, or when Netflix tells us what movie we are going to like NEXT and Amazon tells us what product we are going to want to buy next. It's been around for a while. We are all familiar with it but we feel it's important to point out the main differences between traditional and generative AI. And those differences are how they are programmed and the kind of output that they create. So traditional AI, I like to think of it like a step by step process and that step-by-step process could involve thousands if not millions of different steps but it's a traceable process. We can look at a product and look back at the steps that created that product for us. And the difference here with generative AI is that it creates entirely new content in a very open-ended way so one example is

you can create a program to identify stop signs, for example, and then you show this program a wide number of photographs and it will identify the photographs and have the stop sign in them. You could not ask that program to identify motorcycles because it's not programmed to do that. It's only programmed to identify stop signs. Generative AI is completely different in the sense that you can ask it to create an image of just about anything you want and it doesn't require additional programming. So you can say I'd like to see a picture and we've seen I think a hockey player in law school and it creates an image of someone in a hockey uniform and a helmet looking through a codebook in a law library. So it creates that on its own without any additional programming. So in that sense, generative AI replicates human thinking. When you think about legal research for example, we are not talking about punching in excitation anymore and having the text of the published opinion appear, that we can review, we are really talking about an open-ended question. Does due process apply to restraining order hearings, for example? The generative AI somehow will retrieve relevant information including laws and then it will organize it in a way, presented to you, that seems to make sense. The big question with generative AI is we don't know exactly how it comes up with the content that it comes up with and that's an important point to emphasize. So because nothing is easy, we also wanted to point out that there is overlap, both in function between the types of AI as well as the risks that are involved and sometimes we the user might not be able to identify or to decipher what type of AI we are actually using at any given point, and that's an important point to bring up.

>> One way to understand how generative AI works, I probably should also mention here that Michael Giden was a little bit of a police officer here and there was a little bit of a discussion about whether we should do a demonstration of generative AI here in the middle of the Judicial Council, and Michael said it would be a distraction so I'm sorry, no demonstrations, but you can see plenty online and YouTube and so forth and maybe in the future we'll see. But here is an example of how generative AI has worked and had a little impact in the court on a day of infamy in the New York federal court and then unfortunate member of the bar back there submitted a brief that contained citations that don't exist. I can only imagine what would've happened if you had been appearing in front of Justice Corrigan under those circumstances, but I'll move on from there and simply say it was not a good day for him. And I do have to say that poor Mr. Schwartz, whose name really should be deleted for privacy reasons, had practiced in law for 30 years and I think that was probably part of the problem, because somebody who has been doing this for many more years than that, I can say, he simply didn't understand the ramifications of what he was doing. He has kids who were in college using Chat GPT, so he put in some prompts and one of the things that Judge Castro is mentioning that I think is interesting here and so different from the legal research we do now where you have to put in either case citation or you have to do a search and a whole training thing. This is like Google. You just put your question in, so these were the prompts he put in. Provide case law showing the statute of limitations is tolled by bankruptcy of the defendant under the Montreal convention, and show me specific holdings in federal cases where this statute of limitations was told due to bankruptcy in the airline. So Chat GPT gave him citations and authority, actual case description of the citations and quotations and he put them in the brief, and of course the thing was, he didn't check. Big no-no. And he thought that it was a super search engine. He thought it was

better than LEXIS-NEXIS. It found things that LEXIS-NEXIS couldn't find. Yes indeed it did. Because later after the court asked him to explain where the cases came from, he asked it to give him the full text of the cases and the screenshots here show portions of what Chat GPT showed him, and I have to say it walks like a duck and it talks like a duck. I mean, for those of us who have been doing this for a long time, it looks authoritative. It looks like somebody at the fifth District Court of Appeal wrote it. It looks amazing. But it doesn't quite quack like a duck. An experienced attorney probably would've noticed problems and that was the problem with not checking, of course. More or less these quotes make sense and they use language similar to what you'd see in a real opinion. But there are problems with them that he should've been able to identify. But you can see how somebody could be very much misled by this and I think one of the things that we came to learn that is maybe a little alarming about the generative AI function in terms of the research side of it is that it's seldom in doubt but not always correct and it sounds so confident of itself. So it's very, very convincing. So you know, given this, why focus on generative AI?

>> Right, so new technologies, they come around all the time, right? At some point computers were new. At some point the Internet was also new and raised a lot of questions that we are considering now. But I can't say, generative AI, it does feel a little bit different. It feels like it has the potential really to change our day to day lives. It's actually quite thrilling when you think about the technology, just on a pure technology level. All the different possibilities that we've been learning over time about what this can do, it's fascinating and I think we don't know that necessarily, it is the stuff of movies, so to speak, and so we want to recognize all the benefits that will come from AI but also considering all of the challenges that it presents. There is this combination, there is this balance of both promise and peril, potential and risk, and it's important to understand that balance. We also feel it's important to identify some of the challenges and so we want to point out that again, with generative AI, we don't always know how it delivers its content and as we've seen, it delivers it in a way that has an awful lot of confidence. It is very unpredictable. We don't know. It's not that step-by-step process. It creates new content and we don't know exactly how it produced it so how is it that we are going to learn how to trust generative AI? But we also know that resources are pouring into this technology. Just driving into San Francisco today, I saw all those billboards related to AI. I don't understand any of them but there is a lot of resources being poured into it. And it's already pretty amazing to see, and then it's even more amazing when you think about how it's in its nascent state right now. This is just starting out and we are learning that this tech knowledge he is going to grow exponentially. It's just starting out and it's going to get faster, and it's going to get better at all the different things that it's able to do and it will be more and more available in different aspects of our lives, so the future is here and the future is now and so it's against that backdrop that we started forming the questions that we are going to pose here today.

>> So again, those foundational questions are listed up on the board and I won't repeat them because I read them once but we are going to start with the first question which is should generative AI be used in California's judicial branch? And we concluded, yes, there need to be limitations and safeguards, the use of artificial intelligence in the branch needs to be consistent

with our mission, our mandates, and the principles that guide us but quite frankly, it's inevitable. For one thing, the practitioners who appear in front of us are going to be using it. They're already starting to teach it in law schools. LEXIS-NEXIS and Westlaw now have products which use generative AI. They've been adopted in some federal circuits, not for drafting purposes but for research purposes. And so we don't want to be behind the curve on this if it's going to be inevitable. What we want to do is be able to control its direction in a deliberate way, in terms of its use within the branch, and also, frankly, we learned this recently by just holding that attorneys in my own court, sometimes people are using it and they don't know it, and so we need to get ahead of that as well. They are not thinking they are violating any rule. They don't realize the product they are using is a generative AI product and now the Apple has announced that Siri is going to be incorporating generative AI into you know, iPhones are going to be incorporating it so it is really going to be ubiquitous, really, probably within our lives, and so therefore the branch is going to need to confront it. But we need to do that with limitations and safeguards and that means we are looking for the beneficial uses. We need to assess the risks. We need to ensure that safeguards are in place. I would say the number one thing that we discussed is that for all the excitement about it, for all the money that's been poured into it, billions of dollars, generative AI is a tool. It is not an end and it's not a substitute for judicial discretion, and it's not a substitute for due process. One of the things we know from studies that had been done by the national Center for State courts and others is that the acceptance of the decisions that courts make, that judges make, that we make in the courts of appeal and the Supreme Court, is very dependent on the court user's sense that they've been heard, that someone is listening to them and actually addressing whatever the concern is that's ringing them into court, whether it's the need for a restraining order, whether it's custody, visitation orders, whether it's the victim of a crime, whether it's the corporate dissolution. It doesn't really matter what the subject is but their acceptance of what we do is very much dependent on whether they feel that the court has listened to them and generative AI is a machine and it cannot do that. We do that. So it's a tool potentially to be used and also it's one of the things about generative AI that, look, I was a math major for two years and I got out after linear algebra because of that space but I did do some work in vector mathematics at the time and I'll just say that my understanding, which is very minimal, of generative AI and AI generally is that it's based on math medical predictions, it's a predictive process. So predictions look backwards and they are based on the data you have but they generally look backwards. It's very difficult to concede that generative AI would've looked at society when the Supreme Court decided *Brown versus Board of Education* and would've thought this is a good idea to do this. It can't do that and so that I think is so foundational to what we do moving forward. And so that leads us to the fact that if we assume that the use will occur then we can get ahead of this and we can respond by limiting ourselves to identifying purposes and uses that are going to be good for the branch for what we do, assessing the risks and making sure that we put safeguards in place to address those risks.

>> So the next question that we identify is actually related, I think Justice Greenwood touched on a lot of points under this question. It's worth noting that we are not giving hard answers to any of the remaining questions. These are the questions that we feel are foundational and that

need to be addressed and require further discussion. This question is in what ways can or should generative AI be used in the judicial branch? So by judicial branch we mean not just judges but also court personnel and the people that come before the courts including court users, and so questions related here are what are the benefits of AI and what benefits outweigh the risks? Justice Greenwood has mentioned the safeguards that need to be in place. That has to be explored. I like to consider this question, the harness question. I keep going back to that word. I think it's an applicable word because it talks about how we learn something and how we control it and how we use it for the good, and I think that's the general approach that we should take. And we need to explore the possibilities. Could AI improve court administration and management somehow? Can it make jobs easier? Can AI enhance research and analysis? Can it enhance access to justice? I think about self represented litigants and the potential for AI to promote access to justice by helping someone walk through a process, procedure that they're going to encounter in the courthouse or even just filling out forms, harnessing technology for the good. And so that's what that question is about.

>> So the next question that we addressed or that we decided needed to be posed, the next foundational question, we didn't address it, we are all going to address it but we felt it should be posed, is how can public trust and confidence in courts be preserved given the challenges posed by generative AI? And this really goes back to the state of the judiciary speech that the Chief gave in which she stated that public trust and confidence in the courts is our top priority now along obviously with operations, especially in a time when we see more and more questioning of courts, and so, in order to do this, we are going to have to address the risks of generative AI to preserve public trust and confidence and these risks include because of the fact that generative AI, there are these large language models and they have all of this data and information, but that data and information is not pristine. It carries biases in it. It's only as strong as the data that's in it and we've already seen in the news, reports about some of the things that had been generated by AI, sometimes the grand opening of a project, unfortunately for some companies, caused a big downturn in market share that day. But anyway, demonstrate bias that can be gender-based. It can be ethnicity. It can be political. It can be values based but there are problems with that and so, if the data used to train the AI model is not diverse enough, it can result in algorithmic disproportion and that can distort the information and it could even, in fact, produce completely wrong information. And so, that is part of the problem that we are going to need to address. And there are also risks around transparency and accountability. So Judge Castro mentioned this a little bit. One of the things about generative AI is in the engineers who created it, these brilliant people, will say that they're not quite certain how it works. They can't tell you what's happening inside that machine, necessarily, which is, I know more than mildly creepy, actually. Okay, let's just say this but as people involved in the judicial branch, for those of us who serve in the judicial branch, we are risk-averse and we like a lot of control. Okay, there are other portions of the world that like a lot of risk and are not so control oriented. Said to them, maybe that's exciting but to us, not so much. So that's part of what's troubling to us is we don't even know how can you guarantee to us how this thing is working? That's one of the other problems and that's in part because we have to be accountable and we have to be transparent. There can also be risks involved if the courts are not transparent about

the fact that they're using generative AI and so the lack of public disclosure could create transparency concerns. And so, we are concerned about that as well. It also raises a number of privacy confidentiality and safety concerns, so everything from concerns about data breaches. But also we have a lot of private information in our case management system that belong to other people. Sometimes people aren't very good about redacting their personal information. For those of us who served in Family Court, I saw way too many Social Security members and I bet you do, too. Birthdays, all kinds of things. If that information pours out into those large language models, that information no longer belongs to us or to the user. It is out in the model and that is it. In my worst moments I thought of this a little bit, as one of sort of one of the Demmentors in the Harry Potter series, coming and sucking the soul out of whoever it is and that's my dark moments but it is just a fact that it's very important that the branch be very concerned about privacy and for those of us also who are doing work product when in the branch, part of the confidence that users having the branch is in the decisions that we make and showing everything that happens to get through that decision is not necessarily desirable, so for instance remember, this didn't have to do with AI but there was a leak from the United States Supreme Court in advance of a major decision and that caused a lot of public consternation and consternation in the court. Well, if you enter Mary Greenwood, Justice of the sixth District Court of Appeal, and you're able to access all of her drafts before she writes that majority opinion, that would be pretty disconcerting, especially if I happen to be writing on a bad day, decide no, this isn't working. We all write uphill sometimes so you know that doesn't always go the way we want. So those are very much concerns and then there are the issues related to the validity and the reliability of the information that's being used. I'm just going to make one other comment before I move on from this slide, which is I talked earlier about how AI is a tool and how it cannot substitute for the judicial officer. But I will say that I at least have read reports that in China they are using generative AI courts. Now the decision is made by those AI courts are reviewed by a judicial officer and can be overturned, I guess sort of like a Court of Appeal. But I wonder what that experience must be like for the people who are going there. I don't know what the topics were. It struck me as very much the opposite of the foundations of our system. Let's put it that way.

>> So as to the next question, Justice Greenwood actually touched on this in her remarks just now. How can the branch maintain confidentiality and privacy? I feel this concern for us as a branch I think a second major. We are very sensitive to privacy considerations and it just bears repeating that users of generative AI will have to consent to their information being put into the model. They may not even be aware that they're doing that. Just by using it, their information is included in the programming of that model. And so, if someone else uses that program, they may very well have access to private information that was put in from a different user. And that's a significant concern. It's something that we have to wrap our heads around and understand how that impacts the work of the courts, court work product itself and of course our responsibilities for maintaining a person's private information, confidential whenever necessary. Otherwise, Justice Greenwood I believe touched on the subject.

>> That takes us then to the next question, which is how do generative AI and judicial ethics intersect? And this also is a complicated question but there are I think a number of pieces to it so one of the questions is, how do our current ethics candidates and rules apply and I can almost hear David Ruffin in my ear right now say number one, you're always a judge, no matter where you are, you are always a judge. It's clear that some cannons will always apply and some rules will always apply but are there places where we are going to need to make adjustments or modifications? At the ethics questions around the ability of judicial officers as independent judicial officers deciding to use generative AI. In other words, can that be restricted in some sort of way by the branch or that's not properly put by our ethics obligations in some sort of way. But then the flipside of that which is, could generative AI result in the improper delegation in judicial decision-making and how do we make certain that that does not happen? It's one thing to use a generative AI tool to review 41 boxes of RT in some sort of extremely complicated case. That's a tool. It's another thing to say who wins if I can just get down to the punchline. Those are two very different things but you can see that it can become a very slippery slope. So that's going to have to be considered, and then of course as we discussed privacy and confidentiality.

>> Okay. So now to recommendations. My first recommendation as you can see here in the slide is to create an artificial intelligence task force. This would be a group that would oversee and coordinate all branch efforts in this area and there are a number of possibilities to consider including Rules of Court and technology policies any educational programs and even legislative proposals. Understandably, there would be a lot of moving pieces and all moving at the same time, so the task force could be, in a sense, some sort of control center or to oversee and coordinate all the efforts to ensure that there is no duplication and to make sure everyone is working collaboratively. The task force would be in a position to act quickly as we mentioned the technology is evolving very, very quickly, so we need to be able to study, to make recommendations and to act on those recommendations as soon as possible. The task force could give this body the agility to do that and to address these issues. In terms of membership, the task force they include shares of the internal committees of the Judicial Council including executive and planning, the legislative committee rules and forums and the technology committee, and the task force would be able to be in a position to delegate work as necessary, to existing advisory committees including for example the information technology advisory committee, which I imagine stands ready to be a great resource in this area and can delegate to any other Judicial Council staff that is available including even perhaps our administrative direct her someday.

>> The second recommendation is that the Supreme Court work with the ethics committees to start some work on some of the ethical challenges raised by the use of generative AI in the branch and we know that judicial officers are going to need some guidance navigating the ethical issues surrounding generative AI. But I've been informed I actually was recently educated on this, I guess, that the Judicial Council doesn't set policy on judicial ethics but the Supreme Court has responsibility for that. I've learned a lot about that in the course of this project as well. It's been a great education, anyway, so the Supreme Court has responsibility for

acting in this area and there are two committees that set policy on judicial ethics. One is the Supreme Court advisory committee on code of judicial ethics and the other is the Supreme Court committee on judicial ethics opinions of these committees could decide, having been posed questions and circumstances of the use of generative AI, whether to recommend amendments to the code of judicial ethics or to issue advisory opinions on specific problems that come up, maybe a combination of the two. And again, you know, with the underlying principle that we want to maintain the integrity of the judicial process, but they are obviously a tremendous resource and a logical resource, we felt, so our recommendation is that the Chief Justice work with these committees to decide on next steps to put more on their plate. There you have it.

>> It's only fair.

>> It's only fair, that's right. And we also just mentioned that generative AI also raises questions regarding attorney ethics but the state bar has started working on that and so it's not as though there isn't a lot for the branch to work on so we felt, let's just wrap with that but we wanted to acknowledge the fact that it's not just judges who are going to be dealing with ethical issues in connection with these tools.

>> When I look back at the past several months and the crash course that I've had on AI, I think it's been invaluable to me as a bench officer to learn how all of this works and to tease out implications, the way that we have, and I think that our next recommendation addresses that in the way that I think education is key. I think all judges should go through the boot camp that I've gone through here in terms of AI and learn it and understand it and start to wrap our heads around how this is going to impact what we do in courts every day. So we are recommending that we prepare educational materials and programs not just for judges but for court personnel and staff including the Judicial Council and its staff as well. There are many, many uncertainties out there on the trial court level. I think judges have many questions, a wide range of questions about the implications of AI and how it will impact what we do on a day to day basis and I think it's important to understand that the first place to start is with education, to understand what AI is and how it's going to impact us.

>> So to summarize, this very large octopus of a problem, but these are the recommendations that we are thinking, that the Chief Justice create an artificial intelligence task force to oversee consideration, coordination and development of branch actions related to generative AI, that she work with the Supreme Court committees on judicial ethics to consider amendments to the code of judicial ethics or if necessary, or otherwise address issues concerning the use of generative AI in the branch by judges and so forth, and third, to direct the center for judicial education and research to promptly begin preparing educational materials and programs on generative AI and I have to say there should be no implication that they are behind the curve on this, by the way. I know Karene Alvarado has worked on it already and there have been presentations about generative AI at a couple of different conferences this year that I know of and I'm sure there is

more but we felt that it needed to be called out. So thank you very much and we are open for the conversation, I guess I'll call it.

>> Thank you so much. Excellent presentation, Justice Greenwood and Judge Castro. I can't thank you enough, really. I know it was such a massive ask and you could tell in the presentation how much time and effort and thought that you've put into answering and identifying these foundational questions. So I just wanted to express my deep gratitude for the excellent work that you have done. As we have just heard, the use of AI in our branch really is inevitable. There are [inaudible] becoming more easily accessible being incorporated into the product. We've learned that they are already being used in Google, Westlaw and Lexis. There is a little AI tool so pay attention to these things. They just kind of sneak up on you. I think that generative AI brings great promise but as I remarked and as Justice Greenwood noted during my state of the judiciary address, our guiding principle for use of AI in the branch needs to be safeguarding the integrity of the judicial process. That means it will be essential for the branch to assess what protections are necessary as we begin to utilize generative AI. I will say that I did speak a year ago. So much has changed to UC Davis graduating class of law students. I told them that their jobs were safe so I hope that I'm not proven wrong. I support Justice Greenwood and Judge Castro's recommendation that our first step should be creating an artificial intelligence task force and I'm announcing the launch of that effort today. The task force will be led by Justice Hill. He doesn't have enough things to do already. As chair of the Judicial Council executive and planning committee, and will include the chairs of the legislation committee, the rules committee, and technology committee. Justice Greenwood and Judge Castro as well as councilmembers David Yamasaki and Gretchen Nelson have all graciously agreed to continue to participate and be part of this new undertaking. The task force will be responsible for overseeing the timely consideration, ordination, and development of actions the judicial branch might take related to the use of generative AI in the judicial branch. I would also work with the Supreme Court's ethics committees to determine the next steps as Justice Greenwood outlined on these issues. Finally, I am pleased to announce that the Council center for judicial education and research==CJER—will promptly begin developing or continue them actually, to develop educational programs and resources on generative AI to add to existing resources that we have. Before I open it up to all of you, I'm sure people have comments and want to thank you, too, but I just wanted to again express my gratitude for all the work and efforts that you have done and excellent work as well by council staff that was spearheaded by Ms. Grant and Ms. Kim. Thank you. Are there any comments?

>> Two online. Senator Umberg?

>> Thank you Madam Chief Justice and thank you for being so forward leaning on this issue that is quickly emerging as sort of the issue of our time. A couple questions, observations, and then at the end, whomever would like to respond, I would be interested. So one of the challenges is what does the legislature do vis-à-vis the other branches of government in terms of bias, transparency, privacy, all the issues that have been raised? Two weeks ago there were 55 pieces of legislation that had been introduced that address some of the issues that you'd

already mentioned. In the next 45 days we'll be deciding most of those issues. In the next 204 days we'll be deciding them absolutely. They're on the governor's desk or they're no longer extant. I am informed that models exist today that can be, if they are not already trained on California statutes and case law and law review articles, and that you can feed in, for example, discovery motion for summary judgment motion and produce a memo as to recommended decisions. I don't know whether or not that's being used. I don't know whether it's authorized. I don't know what the standards are with respect to that use. I know how, notwithstanding how much judges like to dig deep into discovery and summary judgment motions, this seems like an issue that is right before us, right now, and again, who decides what kind of transparency is required? Artificially enhanced evidence. I am also informed that that's also happening right now. Does the legislature jump in and further defined spoliation of evidence, further defined standards or does the judiciary do that? We have some real challenges but I suppose to underline the time imperative to meeting some of those challenges is that I would invite the Council to look at the legislation that's pending right now to see how it impacts the courts, where we should insert, where the legislature should insert itself or whether the courts should basically tell us to back off. So having said that, I'll be interested in comments and responses.

>> I will go first, Senator Umberg, just to thank you and thank your colleagues, part of your fellow colleagues on the legislature, in the legislative branch, I'm sorry. I know that this is important to you. It's important to the branch and so we would like to, as always, maintain our working relationship with our sister branches of government. I, speaking for the branch, would like the opportunity to be able to think through these issues and I think that we are showing that we are being proactive and thoughtful in what we do. I think that we know best what we need moving forward, with no disrespect to the legislative branch. So I guess my request would be to give us the time and space to be able to work through these issues, because I think that they are all very complicated. They're quickly evolving and I think we are setting things in place to be able to move forward, always with access to justice as our key priority and certainly the public, I know that you share that same commitment and goal. But I guess if you wanted to crystallize my response to your question, to stand down and give us space I think would be appreciated by the branch, but recognizing that this is a partnership.

>> Thanks, and I agree with you. It's only that in the next 45 days and certainly next 104 days, those issues are going to be decided. In other words, issues concerning transparency are going to be decided and to the extent that our decisions can be informed by the judiciary, I would certainly welcome that.

>> I think also that we heard a little bit about today the scope of the task force's work. That could be a component of it, as well, figuring out what roles that each of us could be playing going forward. Thank you. Judge Yew?

>> Thank you. Of course I'm here as a representative of the California Judges Association but I'd like to first share that if anyone has seen my Christmas cards you know that AI can make Christmas cards look much better. I wanted to share a couple things on behalf of CJA. We are

happy to partner with anyone on this issue of generative AI. We have our annual meeting coming up in September and one of the programs that we are doing jointly with CLA and CJA is to bring together national thought processes and also the state bar to look at this issue. So Judge Scott Schlegel of the Louisiana Supreme Court is coming. He is on the ABA task force on technology and the use of AI. Shay Cleary, who is a tech consultant and for courts services with the national Center for State courts will be speaking, because of course the national Center for State courts has an AI rapid response team and is putting together or pulling together guidelines from various states and kind of what people are doing nationally in the area of courts and the use of AI. We also have a speaker from CLA and then the State Bar because the California State Bar I understand is the first attorney regulatory body to put forth guidelines for lawyers in the use and disclosure of the use of AI and they put together those guidelines in November of last year so I'm thinking that would be a good place where a lot of these different thought processes and policies and kind of ongoing work to come together and educate the judicial members and the lawyers who come to that conference. As a fun side note we also have Steve Wozniak, who will be at the annual conference, and he has some really interesting ideas about AI that are somewhat combing, because while he thinks that we should be cautious about the issue, I think he's not buying into a lot of the fear and the concerns that seem to be percolating as an undercurrent for some people. And then finally, I have asked Judge Brett Bianco, who is in your audience today because he's teaching NJO this week, to look at this because he is the current vice chair and incoming chair of the CJ ethics committee and we will be looking at this issue as a California Judges Association ethics committee, to pull together national and statewide thoughts so that we can give guidelines to our judges in an advisory opinion. So thank you.

>> Thank you judge Yew for your thoughts on this issue and for being so proactive, as well. We look forward to continuing to be able to work with you, too. Are there other comments? Yes.

>> First off, thank you very much Justice, thank you both, that was very, very impressive. Must've taken a huge amount of work. I kind of stumbled into this. I try to stay in state court I wind up sometimes in federal court and probably taking a note from the poor lawyer in New York, judges in the Central District of California now have in their civil standing orders a requirement that any party who uses generative AI for any part of a brief or a filing are required to file a declaration in conjunction with that brief confirming that they have verified the accuracy of the information. I quite frankly didn't appreciate that Westlaw and Lexis may be using it, so maybe we're all going to have to do it, but I think it's a demonstration of not just this court but federal courts are obviously keeping an eye on it. Thank you very much.

>> Thank you.

>> Thank you. Thank you Madam Chief Justice. So two things occur to me. One, you know, you said it's a tool, right? And then do we disclose that we are using it? But I was thinking about it, I can't think of any other tools that we use that would raise these kinds of concerns, right? We don't have to file disclosures, like I look the case up online or I looked at the code section online. No one would think that's important, right? So I think that speaks to the power

of this tool but there is another fundamental question is, what is it a tool to do? Like I don't know what are we making with this thing and what does that look like? So it seems like if the tool somehow compromises the thing you're making, I don't know, it makes it deeply problematic so I think on a lot of the issues that highlighted speak directly to that, and thank you for your work on that. It's a new frontier. For sure.

>> Yes, thank you.

>> Chief, to Judge Brodie's point, it's funny, we talk about this being new and I put a lot of things in context of cultural significance and movies. We talk about metropolis in the '20s with the robot that had AI through HAL space Odyssey and the third terminators, the third terminator where Skynet became aware. Then minority report where they were picking out who committed a crime before they had done it with AI. Judge Brodie said do we use anything like this? Well for those that were involved in the pretrial risk assessment, a lot of those models, the OR a Z model and whatnot, it's not AI but it's somewhat predictive algorithms which are sort of precursors to AI. We use that but what he comes up is what is the data in, and when you talk about transparency, if you don't even know what the data is or if you leave one certain portion out, even by mistake, it skews all the results and I think that's going to be the most important piece, regardless of how it's used. If you don't have a handle on that, as some of the risk assessment models were presented to us, we saw that just a few critical bits being left out could skew the result and this would really be no different because unless you had some sort of generative AI that basically said okay, we've reviewed everything, which is impossible because everything changes every second, how would you be able to, transparency-wise, to be able to say this is what we used and there isn't a flaw in the result? Therein lies probably the biggest issue, it seems to me, at least.

>> Thank you Judge Bottke.

>> Just one more thing that you mentioned early on and throughout with safeguards in due process and I don't know how we put it into the system but I think what gives the public confidence in what comes out of our branch is the thought that they were heard, and due process, and if somehow we can incorporate that. You talk about the intersection of regenerative AI in judicial ethics. What about the process? Just to make sure people understand they were heard and the decision was made by somebody who was listening.

>> Thank you, Judge Conklin. That's very important. I think it also ties into the public trust and confidence components. And we have Judge Yew, looks like you have a comment.

>> I really appreciated Judge Brodie's questions but it made me think that one of the tools we use our expert witnesses. It's hard to think of a person as a tool but that is a tool that we used to educate ourselves and our jurors. So I can envision that AI, like the use of experts, would require some notice, which is what some judges in central California are asking about and also the State Bar guidelines for lawyers, that there is notice, disclosure, and an opportunity to

question the AI that's been presented or the expert information that's being presented. So I think that some of this is something that we know how to do, that we can do this, and we just have to be thoughtful about it.

>> Thank you Judge Yew.

>> Thank you very much, Chief. One of the things I'm happy to say is that in Orange County we are experimenting with advanced elements of generative AI and we will see some significant opportunities to find a place for it in the courts and it covers a broad spectrum. I know that we are obviously focusing on some of the things that happen inside because rooms but from an administrative standpoint there are enormous opportunities as well, and I kind of equate it to nitroglycerin. I think the earlier uses of nitroglycerin were to take advantage of the explosive properties but today that is used to help individuals with vascular disease so I think along that spectrum I think we can find safe uses of generative AI, some things that may not be quite as obvious or challenging to due process but rather maybe facilitating access in the many things that we do day in and day out. So the points that has been made by the panelists I think bring attention to the need for judicial exploration of opportunities and I'm very pleased to have the opportunity to join in that conversation.

>> Thank you. Thank you again for being proactive and we look forward to seeing where this goes. I think it's still, as was mentioned in the early stages, is exciting and a little [inaudible]. But again, I wanted to express that appreciation for all the work that you've done.

>> Thank you Chief and I know we've been honored to be involved in this and thank you for allowing us to continue to be involved.

>> Thank you. Now to a more mundane topic. No offense, but the final item on the agenda is the chair's internal committees report and they are all in the materials and we are appreciative of all the work that was put into those reports as well, and those are posted for the public. That concludes our Judicial Council business meeting and our next regularly scheduled business meeting will be held July 17 and 18th. The meeting is adjourned. Thank you.