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>> [Meeting of the Judicial Council of California for Friday, May 15, 2020] [indiscernible] to provide fair and accessible justice to all Californians, so effect back to our council members who all volunteer their time. Thank you for being here virtually today. Amber from Judicial Council Services will call roll and outline some of our teleconference protocols to make our meeting as effective as possible for everyone participating and those listening. Amber?

>> Thank you, Chief.

[Audio unavailable]

>> So moved. I believe I heard a second from Commissioner Wightman and Judge Lyons. All in favor of approving the minutes, please say aye.

>> Aye.

>> Any noes? Any abstentions? The minutes pass. Next is my Chief Justice's report. It is my regular report to council summarizing my engagements since our January meeting. Before we experienced the full impact of this crisis, words like Zoom, BlueJeans, and Teams all had different meanings, at least to me. We've come to learn with various levels of ability and success about these platforms because they supported our oral arguments in our meeting, and Microsoft Teams and the Judicial Council advisory meeting. We have had to adapt at a more rapid pace than we might've been comfortable with to a world with fewer paper exchanges and fewer inperson contacts. I have referred to this often as our accelerated remote access to justice component of our Access 3D. I just never thought it would be this accelerated. And in this new normal, we also remain steadfastly committed to our goals and priorities and our ongoing programs that all serve the public. Appropriately enough, January's engagements had a goal that fit with the number one focus of our Judicial Council, that is access, fairness and diversity. Justice Chin and I and all our colleagues on the Supreme Court participated in a course digging into, discovering, and dismantling implicit bias. We attended that with some members of the Judicial Council staff, including John and Mill and Rob and Martin. The court also announced the California Jury Selection Working Group study, with modifications for additional measures needed to guard against impermissible discrimination in jury selection, including implicit bias. We have not yet announced the members of the group, but we intend to shortly, as we've had difficulty reacting and responding to the immediate business because of the coronavirus. I

participated in a conversation with David Carrillo. He's the director of the California Constitution Center at the University of California Berkeley. As part of the Diversity Summit 2020, the question was, Is the legal profession diverse enough yet? It was cosponsored by the California Constitution Center, the Bar Association of San Francisco, and California ChangeLawyers. At the summit, we discussed the long-term statistical study of the legal profession and the gradual progress for the diverse legal profession and bench that requires an ongoing commitment to the diversity pipeline of civic education and engagement. As part of the commemoration of the 100th anniversary of the 19th Amendment giving women the right to vote, I participated in a panel called Celebrating Women moderated by Los Angeles Times reporter Pat Morrison at the Rancho Mirage Writers Festival. Businesswoman Mary Cunningham Agee, politician Barbara Boxer, journalist Anna Quindlen, and I shared our personal stories and discussed what remains to be accomplished for future generations of women to continue to lead in the boardroom, the courtroom, politics, and the media. I was pleased to chair the Commission on Judicial Appointments for now Justice Barry Jackson, former Judicial Council member, and that meeting was along with my commission colleague, Senior Presiding Justice Tony Klein, and our Attorney General Xavier Becerra. I joined the Asian Pacific Bar Association at the election of Judge Russell Hom as the new presiding judge of Sacramento superior court. He hired me as a research assistant in his firm, and years later I was happy to celebrate his position as the new presiding judge of Sacramento County. Attorney General Becerra and I are honorary members of the board of directors of the Institute for Democracy and Justice, and we hosted a California Privacy Summit as you know, in both Sacramento and Los Angeles. It was an exploration of the new Consumer Privacy Act, including how privacy laws affect children. State environmental law was the major theme for the Conference of Chief Justices midyear in Hawaii, held concurrently with the Second Global Symposium on Judiciary and the Environmental Rule of Law--Adjudicating Our Future. I participated in one of the symposium's panels, Judicial Remedies for Climate Vulnerability, which shared experiences and best practices in climate related jurisprudence. The panel included Alfredo Gutiérrez Ortiz Mena, justice of the Supreme Court of Mexico, Judge Jeff Crabtree, the district judge of Hawaii, Judge Jenny Rivera, New York's Court of Appeals judge, and Chief Justice, Supreme Court of Guam, and Lord Robert Cornwall, Supreme Court of the United Kingdom. Earlier, March was the State of the Judiciary month. I spoke about the three branches of government, our effort to help California courts become centers for social justice. I still believe that whatever we do still requires a three branch solution to provide fairness and access to California. I also continued my ongoing outreach with branch and justice partners participating in one of our regular liaison meetings with the California Judges Association, along with Martin and of course the president of CJA, a member of our Judicial Council, Judge Shuman. We discussed issues of mutual comments and concerns. And I attended the Chief Probation Officers of California's Evolution of California's Justice System Through SB 678 conference, as did Governor Newsom. To recognize there is work to rehabilitate clients, probation officers were also key participants joining multi-county teams. It was led by Judge Stacy Boulware Eurie. The program was called Transforming Pipelines to Prison into Stairways to Success in Rural Northern California. I was glad to be able to speak to presiding court judges, tribal leaders, and also Superintendent of Public Instruction Tony Thurmond about the importance and effectiveness of this effort for

children in their jurisdictions. Often, one outreach leads to another, as Californians want to learn more about the judiciary. My participation in the Professional BusinessWomen of California's 2019 Unstoppable conference last year led to an invitation to speak at Genentech this year. I was able to share the story behind my career path and describe the judicial branch in California. As we might've anticipated, my engagements had some new categories based on the COVID-19 pandemic. Meetings that were prudently canceled or converted were planned as video webcasts. Justice Brad Hill led appellate justices through the first process of turning the normally in-person Administrative Presiding Justices Advisory Committee meeting into a Microsoft Teams experience. The Legal Services Corporation and the National Association of Women Judges both chose Zoom for their events, and as part of a larger event, The COVID-19 Health Crisis' Effect on Legal Services Organizations and Their Clients, organized by the Legal Services Corporation, I participated in a panel on the effect on state courts and access to justice. It was moderated by their president, Ronald Flagg, along with Chief Justice Jeffrey Bivins, Tennessee Chief Justice, Texas Chief Justice Nathan Hecht, and Michigan Chief Justice Bridget McCormick. We discussed the impact of the last Great Recession and current impact on low income litigants among other topics. They posted the Zoom webinar. Courts on the Frontline--Providing Access to Justice While Protecting the Public Health During the Pandemic, and I was pleased to be on a panel with District of Columbia Chief Judge Anna Blackburne-Rigsby, Iowa Chief Justice Susan Christensen, and again Michigan Chief Justice Bridget McCormick. We discussed themes including successful collaborations, leading with empathy, effects on constitutional norms and possible operational improvement. Zoom was also the chosen tool for a meeting of a work group that Martin and I are on relating to communications and funding as part of the Conference of Chief Justices and the Conference of State Court Administrators. Their efforts on a national level are similar to our recently announced Judicial Council Pandemic Continuity of Operations Working Group to support California courts statewide. Martin will elaborate more on this national and statewide work. And finally, my engagements this reporting period were bookended by two similar events. One transformed by COVID-19 and technology, the other in person. The first is my annual in-person visit to a middle school for a presentation, questions, and answers, which thankfully could take place in January. The second was two 30-minute Google meets, virtual showcases, for two schools in the Anaheim Unified School District to both recipients of this year's Civic Learning Award of Excellence, which I would normally present in person. South Junior High School and Savanna High School were the award-winning schools, and many of the participants were seniors. Their programs dealt with big issues important to them, important to us, such as the 2020 Census and why it matters, and the students gave me great hope for all of our futures. So this concludes my report to the council, and I turn the show over to Martin Hoshino for the Administrative Director's report.

>> Thank you, Chief, members. My report today and comments are going to be focused on two subjects that will not be of any surprise to any of you. It is the health crisis related to COVID-19, as well the subsequent fiscal crisis, and of course the May revision proposed by the Governor less than 24 hours ago. I do want to take a couple of minutes to refer you to the written report that you have usually come to expect in your materials for every council meeting. The past two meetings were convened in a special emergency session, which are outside the regular business

meetings that the Chief just described by my usual report I would've provided, which would update you on my office, opportunities, advisory bodies, education activities. It was not provided for those meetings, so really the last written report you received even in between regular distancing meetings was the January in-person meeting, which if you are like me, it seems like light-years away or a century away, so in the written report today for the meeting is I will use some strange terms here because I don't know what they mean anymore. It's just a surreal time in our history, but the report is a strange hybrid. It straddles the time period where we are all living and working, and I will use this word, a normal environment, and there was the rapid emergence of a COVID dominated home and work life. That's almost been all-consuming for many of us at the Judicial Council and statewide in the trial court system. It's obviously a situation that everybody is familiar with, as well as operating courts, and those practicing law in our courts and for those of you grappling with it and our sister branches of government. The report does recap the work of the council staff that was engaged at your direction, and in service to the courts and public, it documents in there the timeline, if you are curious, for more than one dozen major actions by the Chief Justice and the council itself to respond to the consequences of the health crisis. It also cites the 160 -- this is actually now out of date, what was then the 160 emergency order requests that were processed to enable the courts to adjust their local operations. I think yesterday's count was 164, and I bet by the end of the day, they will be higher than 164. Nevertheless, there is a chronology and inventory of those things in that particular report. It also points to the continuity of operations tools that have been shared with the courts and the support for the council working group that consists of presiding judges and court executive officers developing what we refer to as a COVID-19 pandemic continuity operations toolkit, and it is for local court use, and if I may, Chief, have the privilege of inviting a member of the council to describe a little bit of that, and I know it's a little unusual to do this, but I don't know what usual means anymore, but if I may?

>> Please do.

- >> The group is being chaired and administered through the presiding judges advisory committee, as well as the CEO committee, and Judge Hinrichs has figured in that prominently as the chair of the presiding judges, and she's also a member of the council, so I thought it might be helpful if Judge Hinrichs were given a moment and opportunity to describe in brief what their work is and what schedule they are on, so Judge Hinrichs?
- >> Thank you, Chief, Judicial Council. On May 11, we kicked off the presiding judges committee and Court Executives Advisory Committee's Pandemic Continuity of Operations Working Group. It's made up of a diverse mix of presiding judges and court executives who will develop a framework and template that the trial courts can use to create their own pandemic continuity and operations playbook. The approach of the Pandemic Continuity of Operations Working Group, we cannot think of a good name yet, so please let us know. It will collect best practices from both inside and outside of the judicial branch across multiple operational areas, including facilities, personnel, case processing, and the backlog. It is agreeable 23 members working on two teams, design and validation. Over the last week, the teams have been data

mining in finalizing the preliminary principles of the group. They will need this afternoon to finalize the first set of deliverables but the primary principles at this point include how can we protect the health and safety of the public, our justice partners, judicial offers, and staff, closely monitor public health directives, and comply with applicable safety laws and regulations and orders, recognizing that it may be we loosen those up some and may have to then go back if situations change. Plans to address local problems should be sustainable going forward. Crisis planning, refining flexibility to rescale, reinvent, reduce, or retires at and court services, calendars, and programs, ensure protection of the constitutional and civil rights of all of our court users. The group will use information to develop a template that courts can customize as the state, counties, and cities begin to lift or modify public health districts and return to prepandemic operations. Recognizing courts will implement these steps in various levels and speeds depending on local health and safety requirements and resource constraints. They will provide flexibility to add local requirements and customize the materials as needed. Robert Oyung is assisting with facilitation of the workgroup over the next few weeks, so the rebels have an ambitious target timeline of early June for publishing the templates to ask mice the usefulness of the court, and I do want to thank all judicial leadership staff. There is so much information we are attempting to collate, that their assistance will be a critical part of our success. I also want to thank Nancy Eberhart. Her study guide through all of this is going to be a critical part of our success as well, so Martin, that does conclude my report.

>> Thank you for sharing, Judge Hinrichs. And I might, at this point, add some commentary that the Chief referenced in terms of the national group that we're participating on, and one of the goals there is to actually continue to again, harvest and extract best practices likewise across the country and the nation. Some of that is already happening, but it is now enough formal structure at the national level, and our goal is to bring back what it is that we both contribute and participate, but are also able to bring with the effort that you all are working on during this time, as well as a second part to it that I might as well describe now is the funding aspects and visible impacts related to it, which probably then is the natural transition for the national workgroups that we are on, and there's a heavy emphasis in both of those two areas, not just the pandemic response strategies and funding for courts with heavy emphasis on how to communicate and how to talk about it and how to deal in proper methods in terms of public facing, in terms of the information that the public ought to know, need to know, has a right to know, related to how courts are operating and proceeding in this particular area. We will continue to bring that back, and thank Judge Hinrichs for sharing the information directly. Back to the balance of the report in front of you, there's also some content in the report highlighting the interim technology services that were providing the court on remote technology system enhancements, things that had to progress in short order again to get to some type of operational level in a way that was safe and complied with many of the health orders that exist at all local and state levels. The report is also the efforts at least of the track and reports to the Department of Finance any COVID-related cost that we are incurring on a monthly basis. And like the court, at the council level, we members have had to adapt quickly. We had to be flexible just like everybody in our approach to whatever particular set of branch challenges we're facing for the branch. I want to assure you our efforts are going to continue to be focusing on assisting the frontline efforts that

the judges and court employees and justice partners will stay safe while at the same time facilitating access to the courts and to justice services for the individual communities throughout California. I want to turn out to helping the courts deal with the fiscal impacts of the pandemic, which is high on our list of priorities, and spend some time describing the Governor's May revision that was proposed just yesterday. For reference, if you look at the narrative of the Governor's budget, the description for the judiciary is on pages 97 through 100, and I will not catalog and go through a full inventory of the content of it, but I will highlight a couple of things. As usual, we put out a memo on the advisory of what we thought the elements were as we saw them to try to pull the information. We're still as we speak pulling information and charts and tables and related to the funding and specific financials related to the proposal, not just the narrative description of it. We were able to brief the trial court leadership yesterday very briefly on what we knew earlier in the afternoon, as well as Court of Appeal leaders later in the afternoon, and now with you all in the public, I think the starting point for all of this is how the budget schedule rapidly changed, and how things are altered between January 10 and May 14. For quick reference, I think California was focused on the housing and homeless crisis, to be upended by a health crisis which now gives way to a fiscal crisis, which now gives way to the summer drought and potential wildfire and power outage season, and certainly the Governor's framework on his budget proposal reflects that. Another short way to look at it is, in January, the state was looking at a \$5.6 billion surplus and now looking at a \$54 billion, two-year deficit with drastic cuts throughout the state. I won't go into great detail and continue to describe it. I think everybody has seen or is aware of the coverage of it, and I don't really need to take the time here this morning to repeat all of that. But we do have a budget proposal. The Governor's budget does have its assumptions related to that. Again, that is all in the coverage, and I will not belabor that and go through that in great detail here. I will stick more closely to the judicial branch and our approach and goal sets and what we would like to see accomplished in the budget and how the budget reflects those key elements that were important to us as we were approaching the administration about what was happening, what the impacts were here, while at the same time acknowledging and understanding what is happening to the state at large, at least in terms of fiscal crisis and what is happening in the trial courts and the needs of the community. So we have been sticking with the goal set that we have been operating under for many years, which is trying to take more of a multiyear approach to looking at budgets. That's what we've been doing for quite a number of years, and we've always been in pursuit of an adequate level of funding and adding a stable and sustainable form of funding because we had some volatility in certain parts of how our budget comes together. It has served us well, and it's actually forward thinking, and this is a two-year budget plan that is being laid out. It fits nicely with what has essentially been our budget area approach for quite some time. We went into it to adjust for the current conditions by wanting a key set of principles or, I would say, component to what would be more workable for us. The first one was we, like all governments who need to be part of the sacrifice or are willing to share in the sacrifice, as long as that it is a fair and equitable balance of sacrifice, and so you see that that is what is reflected in the budget, the total number of reductions. It's about \$255 million over two years. It is spread in increments of 10 percent and 5 percent. This is not unlike what you will see throughout the budget proposal. We acknowledge and recognize that a distinction has been drawn in terms of the California safety net that protects vulnerable and poor

populations. We acknowledge that those folks by the analysis we see, that is a set population being hammered exceptionally hard by both the health crisis and fiscal crisis at the same time, and it's a population that did not benefit as well as many other populations during the 10-year economic recovery window, so acknowledging and recognizing that, we still went about and felt that a fair sharing of the sacrifice going forward with the was appropriate for our branch. The second thing we wanted to see happen was some acknowledgment in both the delays in the backlogs that were a result of our reduced operating capacity through this window in time, and that there would also be a surge in cases as we began to widen and increase our operating levels that are specifically going to be related to the health crisis as well as to the fiscal crisis. Business information that we have from a prior recession of different types of cases and filings that started to occur when those types of events happen. Of course, this one is a double because we expect that there will be folks seeking protection, seeking protective orders, seeking to enforce their rights in terms of employment. There will be workforce claims. There will be a whole manner of things and I will list all of them here, but we expect there to be some surge in a particular area. So in that refrain, you see this a \$50 million proposal to help us on a one-time basis to try to help navigate what will be the fluctuations in the backlogs that will be associated over the period of time. We believe it is a good start. The third thing that we were very interested in is we wanted to see if there is a possibility to continue some of the momentum that has been created in our modernization efforts. Some of that was reflected already in the January proposal. It is now globally put together in a \$25 million proposal to continue to have us move forward with some of those potential projects. We got to make some decisions on those, but also there's been some changes and practices. So those are recognized. And the budget also acknowledges costs that courts cannot control continues to provide protections for rising health care costs and or pension costs, and if we don't have that money backfilled, that's the target we are given. Ten percent is actually not 10 percent because the hole might be created, the backfill could become 12 percent or 15 percent, so the budget reflects those things at the end of the day, but as a reminder to everybody again, it is the Governor's proposal. I will move to the Legislature. They will begin their work in earnest. They have a constitutional deadline of June 15, and who knows after that? We do know we are doing a revise without the benefit of the April 15 tax return because that deadline has been shifted to July 15, and so maybe there's going to be more budgetary actions that are fiscal in nature than we have expected before, but the truth is we don't really know. They will have to do their work, and we will have to go through with them and the administration through the entire process, but at the same time, we have to prepare for what may come our way and be nimble and active, and so we need to begin the allocation by this equation in terms of drills on what might be possible or probable going forward. Chief, if I might ask again for a privilege, and I promise I won't make a habit of this, by asking one of the council members to talk a little bit about those allocation activities, I would like to do so. He asserted the role a number of years and we are grateful he is still in it. Maybe he's not, but anyway, I think it would be beneficial if you address the members of the council about the Trial Court Budget Advisory Committee and what their current thinking approach might be, given what transpired yesterday. Judge Conklin, if you what?

>> I will keep it brief and yes, I am thankful to be still in the with the committee members that served with us. I will remind council members briefly the role of TCBAC. I am looking at a quote here from the Chief Justice back in May 2013 when TCBAC came into existence, and more from the Trial Court Finding Work Group, and the Chief noted that we have judges impart and court administer the two developed valuable experience in the last few years dealing with the budget, and we don't want to lose that expertise. We continue with that expertise. TCBAC is also valuable work done through subcommittees, one of which is the Funding Methodology Subcommittee cochair Rebecca Fleming. They are the sort of boots on the ground expertise about developing these allocation methodologies that Martin just referred to. We're reconvening the Funding Methodology Subcommittee, but we are getting back to meeting as soon as early June at the latest to discuss new allocation rules. Our goal has always been equalizing fairness and equity with the allocation methodologies. We reach out to courts, we collect input, we developed that methodology. The methodology in the past was focused on the gains and allocating those gains to again for equalization and fairness. We also had a methodology for what we call flat budget years, but did not develop a methodology because frankly, we did not know what to confront for what we're looking at now, so that will be the role of FMS, and then we will provide those recommendations to TCBAC as quickly as we can for the methodologies and how to appropriately allocate. I know I'm repeating myself, but I want to remind committee members that the main goal here is equalizing fairness and equity, allocate what is now the significant challenges and losses. I described them as significant challenges, but I do not believe they are insurmountable, we still have lot go with us was with us in the beginning. We have many members here who have also been through this crisis, and while I have come in later, I have every confidence that given what this committee is made up of, the work it's done, and the ultimate goal of recognizing how important it is for the committee to act together for the good of the trial courts as a whole and setting aside individual trial court interests in moving forward to help all the trial courts given their different positions. This gives us a great opportunity to make sure that we can, as painful as these losses are, we can work within them, and at the end of the day, given efficiencies that are going to be created, continue to succeed in our ultimate goal of access to justice. Martin, I did not know if there was anything else you wanted me to address, but I believe that takes care of what their role will be.

>> Thank you, Judge Conklin. I remember that it's a large committee, and is comprised almost 50-50 with PJs and CEOs.

>> It was. We reduced it a little bit for efficiency purposes, 12 PJs and 12 CEOs. As I said many times in the past, the CEOs are kind of the oil in the gears that always keep us on track, so it's a very unique blend of judges and CEOs that bring their individual trial court experience to bear for the good of the whole.

>> Thank you, Judge. We will be very committed and active with you to make sure you guys are getting information quickly in terms of what might be developing along the budgetary lines, and on behalf of the council and Chief, we want to thank you guys, because you're going to be pretty active in the next month and a half or so. As you laid out, to close my report on the budget piece

of it, it's a proposal. It will move into the Legislature. They got a tight timeline too, so it's going to be a very active thing, and I want to thank folks who are part of the court family. They are not necessarily council members, but we draw on them to help us provide some of the explanations in the analysis and advocacy as we move through this process. Even this morning at 8 a.m. with the first phone call together with the Legislative Analyst, we had members of the court family participate in that. It's been working well for us. I say we stick with it, and again we will work with the other branches as we get to it, and the next report will be in July. With that, Chief, that concludes my Administrative Director's report.

- >> Thank you, Martin. Comprehensive is always good. I do want to thank Judge Hinrichs for the information on the work group and Presiding Judges Advisory Committee, as well as judge Conklin, who we heard from regarding TCBAC, and Nancy Eberhart who is a central part of that as well with the chairing of the CEOs. These are symbiotic groups that get our information on the ground, help the council understand the need and best option of solutions, and I know you will be working diligently for months to come, and we are grateful for you volunteering that work for us. Next on our agenda is the Judicial Council internal committee written reports, and let me just say as an aside, I know Justice Hill is joining the call, Some of these reports have been submitted in writing and posted on our website. That brings us to our consent agenda, and I understand before I address that, you wish to be heard?
- >> Yes. On the consent agenda, Chief, item 20-128 deals with a package of jury instructions in civil jury instructions. We have received recently a comment from Senator Jackson regarding a specific instruction, and feel like it is best we did not really have time to chase the issues down so I would request we withdraw the proposed changes to the jury instructions, which is 3906, dealing with loss of earning capacity. That will give us an opportunity to look at the concerns and ultimately, when the time is appropriate, to resubmit this.
- >> Can I be heard on that for a moment?
- >> Absolutely, Justice Hall. Go ahead.
- >> Chief, I just wanted to add that as chair of the Rules Committee, as she said accurately, I also wanted to add that because CACI instructions 309C and 309D, I would request that they also be withdrawn, to be sent by the jury instruction committee for further study of the issue.
- >> Thank you for that clarification, Justice Hall, and thank you for that. So several items, then. Out of consent agenda item 20-128, pursuant to our processes, they are withdrawn from the consent, adding this is part of the beauty and action of the Judicial Council, is we generally have a great deal of intensive work done at the advisory committee that come up on the consent calendar based on the nature of the recommendation, but as a reminder to all Judicial Council members, we have the ability to request items be pulled for further discussion, explication, or amendment as seen done here. I appreciate that. I also want to note that we now have 18 items on the consent agenda. All of them are in my view critical to the work that the judiciary does in the sense that they are mandated by statute and definitely needed for practitioners. To that end, I

want to thank the advising committees that work with the work they are doing now with the environment of having to do these meetings remotely. How much I appreciate the work that continues in a branch, to continue to serve others, even in less than traditional normal environments. So I thank you, and with that introduction, we sort of have 19 or have items, but at this point, as amended, there are motions to pass, approve the consent agenda.

- >> This is Kelly. I still move.
- >> Mr. Kelly moves, Judge Taylor seconds. All and in favor of the consent agenda as amended, please say aye.
- >> Aye.
- >> Any noes? Any abstentions? The consent agenda carries. So this brings us then to adjourning our business meeting, but I want to point out before we adjourn that we have a lot of material on our website, a lot of material that has been submitted in writing, important, dense material that requires people to utilize and apply and very helpful to practitioners and judges continuing in our work, so I know that we moved through a lot of material in a short period of time, but I thank you all for your attention, for your thoroughness, and at this time, our business meeting is concluded. Thank you for attending, participating, for contributing, and listening. Our next regularly scheduled business meeting is on July 23 and 24. This meeting is now adjourned. Be safe, stay well, thank you for your work.

[Event Concluded]