

## The Disruption We Needed

### *COVID-19, Court Technology, and Access to Justice*

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I think I bring good news. After decades of earnest efforts to address our growing access-to-justice crisis, we are weathering a storm that just might usher in the disruptive change we need. The COVID-19 pandemic has forced courts and lawyers to work differently, and we have learned that we *can* work differently. Innovation leapt into our courtrooms and our practices. Lawyers, judges, and court administrators were given the chance to rethink what they do and rebuild how they do it, and they seized the moment.

The pandemic has shown what many of us already knew, or at least suspected: There are many legal issues that can be effectively resolved without gathering in a physical space. In 2020 and 2021, “going to court” took on a whole new meaning. And as we look to 2022 and beyond, an opportunity remains for lasting, transformational change to our nation’s civil justice system.

“Access to justice” can be abstract, but in busy state courts it isn’t. For many Americans, and especially for those of limited financial means, our nation’s courts have not been able to deliver. A 2017 report from the Legal Services Corporations found that seven out of ten low-income households experienced at least one civil legal problem each year, and most families received inadequate or no legal help to address them.<sup>1</sup> These numbers are now so familiar that we have grown used to them.

Many individuals simply never try to navigate our justice system; they leave home when they get an eviction notice, they accept a default judgment, or they go without disability accommodations or public benefits. Some try on their own. All too often, their experiences in the legal system leave them discouraged and frustrated.

Those impressions are often earned. By and large, today’s courts are not structured to address the volume of modern legal problems. When COVID hit in February 2020, most courts looked a lot like they did during the 1918 flu pandemic. Legal

<sup>1</sup> LEGAL SERVS. CORP., JUSTICE GAP REPORT 6 (2017), <https://www.lsc.gov/media-center/publications/2017-justice-gap-report>.

proceedings played out in buildings constructed generations ago, governed by rules written by and for lawyers, at a time when dockets were small and most litigants were represented by lawyers.

Our profession has been focused on this problem for some time. Two decades ago, the Conference of Chief Justices resolved to support the promotion of equal justice by pledging to remove impediments to access, support public funding for civil legal aid, and expand the types of assistance available to self-represented litigants.<sup>2</sup> But the growth of self-represented and underserved individuals hasn't slowed. At the same time, legal technologists have urged us to rethink our courts as service-oriented institutions and to adopt tools that will expand access. Though state bars, court administrators, academics, public interest groups and other stakeholders have supported these calls to action, change has occurred only around the edges.

The COVID-19 pandemic can change all of that. It has required state courts to radically rethink almost everything we do. In the past year we have seen rapid adoption of videoconferencing technology.<sup>3</sup> State court leaders have been collaborating in new ways.<sup>4</sup> And while the pandemic has shown that courts have the ability to *replicate* many in-person systems and processes on web-based platforms, *reforming* those systems and processes is a further step yet.

I think the pandemic has proven the technologists right: For state courts, expanding access to justice will require courts to implement technology solutions that bring courts “to” the people they serve. Aside from the technical details, this presents a variety of administrative challenges for state courts: questions about what platforms to use, who will implement and maintain them, and how to measure outcomes to ensure that the constitutional promises of equal protection and due process aren't sacrificed in the name of efficiency. In this chapter, I will describe some of the remaining access-to-justice barriers as I see them, using my home state of Michigan, where I currently and proudly serve as Chief Justice, as an example.

But the challenges we face in Michigan are not unique. Rural communities without access to high-speed internet; large numbers of self-represented litigants; individuals who cannot afford or obtain adequate representation; disunified govern-

<sup>2</sup> Resolution 23, Conf. of Chief Justices (Jan. 25, 2001), [https://ccj.ncsc.org/\\_data/assets/pdf\\_file/0023/23477/01252001-leadership-to-promote-equal-justice.pdf](https://ccj.ncsc.org/_data/assets/pdf_file/0023/23477/01252001-leadership-to-promote-equal-justice.pdf).

<sup>3</sup> See Chapters 4 and 10 in this volume.

<sup>4</sup> The National Center for State Courts has served as the primary convener for these collaborations, and it was well positioned to do so. In 2016, the Center published *Preparing for Pandemic*, a guidebook for state and local courts on developing a pandemic benchbook. NAT'L CTR. FOR STATE CTS., PREPARING FOR A PANDEMIC: AN EMERGENCY RESPONSE BENCHBOOK AND OPERATIONAL GUIDEBOOK FOR STATE COURT JUDGES AND ADMINISTRATORS (2016), <https://cdm16501.contentdm.oclc.org/digital/collection/facilities/id/194>. And as the COVID-19 pandemic unfolded, the Center convened emergency workgroups and served as a digital warehouse for the hundreds of emergency orders issued by state courts.

ance and funding; outdated and often decentralized court management systems with a patchwork of technology vendors and conflicting data standards – these are all obstacles that most state court systems face in one form or another.<sup>5</sup> A growing literature has begun to lay bare these challenges as a central barrier to meaningfully expanding access to justice. This chapter will make these challenges concrete by describing the past, present, and future of A2J in Michigan.

I will begin by describing Michigan’s state court structure, dockets, processes, and culture as of February 2020. I will include here the excellent work under way before the COVID-19 pandemic to address the civil justice gap and to accommodate the large number of people who had to access courts without lawyers. I hope to provide enough detail to illustrate clearly the significant barriers to disruptive change. I will then describe the transition that courts made beginning in March 2020, including the specific solutions courts in Michigan have adopted to keep justice accessible while also keeping people safe. Here I will also describe the lessons we (judges, lawyers, and administrators) are learning from this rapid forced transition. Finally, I will address the potential I see for change despite the challenges that remain.

### 13.1 MICHIGAN’S JUDICIARY – AND THE CHALLENGE OF DECENTRALIZED GOVERNANCE

Judicial administration in the United States is famously decentralized. A 2011 report from the Office of Justice Programs of the US Department of Justice indicated that, in many jurisdictions, the state court’s central administrative office had only *partial* responsibility for providing information technology and technical assistance to trial courts.<sup>6</sup> The OJP report also indicated that many trial courts receive a sizable percentage of their funding from sources other than state government. These disjointed arrangements between state and local governance inevitably raise issues of administrative control and the discretion that goes with it, complicating change management.

This challenge features prominently in Michigan, which for many years has struggled to achieve a more unified court system. Our existing court architecture is a product of our most recent state constitution, which dates to 1963 and divides the state’s courts into the Michigan Supreme Court, the Michigan Court of Appeals (an

<sup>5</sup> See, e.g., NAT’L CENTER FOR STATE CTS., JUSTICE FOR ALL: A ROADMAP TO 100% CIVIL ACCESS TO JUSTICE 4–6, [https://www.ncsc.org/\\_data/assets/pdf\\_file/0031/64975/5-year-report.pdf](https://www.ncsc.org/_data/assets/pdf_file/0031/64975/5-year-report.pdf); MARY E. McCLYMONT, NONLAWYER NAVIGATORS IN STATE COURTS: AN EMERGING CONSENSUS 8–11 (2019) <https://www.srln.org/system/files/attachments/Final%20Navigator%20report%20in%20word-6.11.hyperlinks.pdf>.

<sup>6</sup> RON MALEGA & THOMAS H. COHEN, BUREAU OF J. STAT., NO. NCJ 242850, STATE COURT ORGANIZATION, 2011 (2013), <https://www.bjs.gov/content/pub/pdf/sc011.pdf>.

intermediate appellate court that hears both civil and criminal appeals), and over 200 trial courts, most of which are circuit, district, or probate courts.<sup>7</sup>

The Michigan constitution vests the Michigan Supreme Court with administrative oversight authority over all the courts of the state, which it exercises through the State Court Administrative Office (SCAO).<sup>8</sup> Among other administrative functions, the SCAO develops statewide standards and guidelines, collects data, and provides technology solutions, assistance, and training for judges and court staff. The day-to-day operation of our trial courts, however, is managed by local administrators acting under the supervision of a local chief judge. Trial judges are selected in local, nonpartisan elections, and the chief judges are appointed by the Michigan Supreme Court. By law, the local county clerk (also an elected position) is designated as clerk of the circuit court but does not work for the court system. That means the clerk performs functions for the judicial branch and is subject to the circuit court's direction in such matters, but the office is not directly subject to the court's supervisory authority. (Seriously.)

The operations of our Supreme Court and Court of Appeals are funded by the state government. The funding of trial court operations is much more complex. Almost half of that funding comes directly from local governmental units. Court-generated revenue (including costs assessed on litigants and collected by the courts) represents about a quarter of all trial court revenue, as does funding from the state government. Federal funding represents less than 10 percent.<sup>9</sup>

This disunified trial court funding system creates problems that are well understood by the judges and court administrators. The problems are also familiar to lawmakers. In 2017, the Michigan Legislature tasked a commission to review trial-court funding. The commission found that, of the total operating budget for trial courts statewide, approximately 26 percent of that funding was generated by local courts in the form of assessments on criminal defendants. This excessive dependence on local funding led the commission to recommend a new approach: the creation of a statewide trial court fund that would receive all revenue generated by trial court assessments (as well as state funding), and then redistribute that money to trial courts based on specific operational requirements.<sup>10</sup>

<sup>7</sup> Circuit courts have original jurisdiction over most civil suits and are the only trial court with the power to issue equitable remedies. MICH. COMP. LAWS § 600.601 (2022). District courts are courts of limited jurisdiction that hear misdemeanors, most traffic violations, and civil suits where the amount in controversy is less than \$25,000. MICH. COMP. LAWS § 600.8301 (2022). Probate courts have exclusive jurisdiction over proceedings about estates, guardianships, and conservatorships, and adult protective proceedings. MICH. COMP. LAWS § 600.801 (2022). A comprehensive overview of Michigan court operations is available at STATE CT. ADMIN. OFF., MICHIGAN TRIAL COURT ADMINISTRATION: REFERENCE GUIDE (2021), <https://www.courts.michigan.gov/490062/siteassets/publications/manuals/carg/carg.pdf>.

<sup>8</sup> MICH. CONST. art. VI, § 3.

<sup>9</sup> STATE OF MICH., TRIAL COURT FUNDING COMMISSION (2019), [https://www.michigan.gov/documents/treasury/TCFC\\_Final\\_Report\\_9-6-2019\\_665923\\_7.pdf](https://www.michigan.gov/documents/treasury/TCFC_Final_Report_9-6-2019_665923_7.pdf).

<sup>10</sup> *Id.*

One motivating concern was the conflict of interest that results when the assessing court keeps fees and costs to fund their own operations. But the commission also found that Michigan's reliance on local funding was a significant barrier to a unified information-technology system. In fact, the commission found that Michigan's trial courts used up to twenty different case management systems and an even greater number of computer systems. While historically localized funding may have allowed for "laboratories of innovation," this technological diversity has led to significant duplicated efforts and inefficiency. The commission recommended that the state provide for the technology needs of the courts (hardware, software, infrastructure, training, and ongoing technology support), which would then be operationalized by local administrators and court staff. Legislators were taking the first steps toward this system in early 2020, before COVID-19 upended the state legislative agenda (and Michigan's economy).

What does this mean for expanding access to justice? A unified approach, the commission thought, could save resources and improve the user experience. This view isn't exactly groundbreaking: standardization of local court rules and procedures was one of the driving concerns of the court unification movement of the 1970s and 1980s.<sup>11</sup> A similar challenge exists as state courts integrate technological advances into their courtrooms.

Another benefit of unified courts and technology systems is a centralized data architecture that allows for real-time review of both management and outcome-related case data. In 2012, President Obama issued a directive entitled "Building a 21st Century Digital Government,"<sup>12</sup> which called for federal agencies to establish specific, measurable goals for delivering better digital services, including the goal of transforming unstructured content into structured data. Our state courts face a similar challenge. Many state court systems struggle to collect data in a usable, digital format, which in turn limits their ability to leverage technology. Where data exists, it often exists in an unstructured format (like paper or PDFs). And without usable data, technological solutions have a limited ability to help automate court processes, assist self-represented litigants, or measure judicial outcomes across categories to track equity. Despite decades of efforts to unify courts and track their work, many states struggle to collect and publish statistics beyond filing numbers, case types, and clearance rates.

<sup>11</sup> See LARRY BERKSON & SUSAN CARBON, NAT'L INST. OF L. ENF'T & CRIM. J., COURT UNIFICATION: HISTORY, POLITICS AND IMPLEMENTATION (1978), <https://www.ojp.gov/pdffiles/Digitization/47168NCJRS.pdf>.

<sup>12</sup> *Digital Government: Building a 21st Century Platform to Better Serve the American People*, THE WHITE HOUSE: PRESIDENT BARACK OBAMA, <https://obamawhitehouse.archives.gov/sites/default/files/omb/egov/digital-government/digital-government.html>.

To address our current piecemeal system, the SCAO created the Judicial Data Warehouse (JDW) in 2006 to provide a single repository for court data.<sup>13</sup> Given the complexity of the court system, creating the JDW involved monumental effort, highlighted by scores of data-sharing agreements that coaxed local trial courts to share data while not giving up local control. Moreover, each time a new initiative requires additional data, courts need to retool their data collection systems and the JDW needs reprogramming to receive the new information. It's clunky and inefficient.<sup>14</sup>

While JDW offers a workaround for nonunified systems, it is an example of how our decentralized funding structure requires the Supreme Court to exercise its constitutional administrative oversight duties by a mix of sticks and carrots. The sticks come in the form of rules and orders. The carrots come in the form of technology support and solutions, training, expertise, and some funding. Statewide access-to-justice improvements are thus extremely complicated; states with unified court systems have an enormous advantage in change management.

### 13.2 ACCESS-TO-JUSTICE EFFORTS IN MICHIGAN IN THE BEFORE TIMES

Each year, about 1.5 million people enter Michigan courts seeking resolution of some civil legal issue, and many do so without representation. In 2019, our trial courts handled about 105,000 domestic-relation cases, 35,000 adult personal-protective orders, 53,000 small-claims cases (up to \$6,500), 209,000 landlord-tenant summary proceedings (including evictions), 6,000 housing and real estate matters (including foreclosures), 18,000 adult conservatorships and guardianships, and over a million civil infractions.<sup>15</sup> When we add in criminal cases, the number of cases trial courts are adjudicating annually is between 3 and 4 million.

While our trial courts do not measure the number of self-represented litigants, surveys and studies both in Michigan and nationwide show that self-representation is very common in all of these case types. For example, a survey of the 42,000 divorce cases filed in Michigan in 2013 found that 48 percent of complaints were filed by self-represented people, 68 percent of cases had one or more self-represented parties,

<sup>13</sup> *Michigan Judicial Data Warehouse Project*, COURTLAND CONSULTING (Aug. 6, 2012), <https://court2018.devcourtland.com/project-management-and-training-delivered-for-michigan-supreme-court-for-jdw-project/>.

<sup>14</sup> An early presentation by the team building the JDW that captures some of this complexity can be seen at Jewel Garrett, *Michigan's Judicial Data Warehouse (JDW)*, SLIDEPLAYER, <https://slideplayer.com/slide/12237647/>.

<sup>15</sup> Caseload report available at 2019 STATISTICAL SUPPLEMENTS, MICH. CTS., <https://www.courts.michigan.gov/publications/statistics-and-reports/caseload-reports/statistical-supplements/2019-statistical-supplement/>.

and 42 percent of cases had no attorneys involved at all, on either side.<sup>16</sup> In other case types, self-representation is asymmetrical. A recent analysis of eviction cases in Michigan from 2014 to 2018 found that only 4.8 percent of tenants were represented by an attorney. Landlords, on the other hand, were represented in 83.2 percent of cases.<sup>17</sup>

Before the pandemic there were significant ongoing efforts to address this civil justice gap, by the Bar, the Court, and traditional legal aid funders. The State Bar of Michigan helps connect attorneys with pro bono opportunities for persons with limited financial means,<sup>18</sup> and the Bar has several standing committees that focus on access-to-justice issues specifically.<sup>19</sup> A separate institution, the Michigan State Bar Foundation (MSBF), provides grants to legal aid programs around the state.<sup>20</sup> These include five regional legal programs that take on various cases, as well as several statewide programs that focus on serving specific populations such as migrant farmworkers, Native Americans, and older adults. And Michigan's five law schools have over forty-six clinical programs, many of which focus on serving clients who cannot afford an attorney.<sup>21</sup> Along with direct representation, these organizations and institutions have a robust record of promoting access to justice through policy advocacy, amicus briefs, and service as advisers to the courts and policy makers.

There have also been less-traditional efforts to better address the civil justice gap, and some of these efforts leverage technology.

### 13.2.1 Michigan Legal Help

In 2012 the Court partnered with the State Bar to launch "Michigan Legal Help," a website designed to provide practical, easy-to-follow information for people with civil legal problems who lack the resources to obtain an attorney (or who simply prefer to self-represent).<sup>22</sup> The foundational idea for Michigan Legal Help is that promoting access to justice means helping those with legal problems get the information they need to successfully navigate their problem, even if they don't need or cannot obtain an attorney. So many legal processes require a litigant to have a specific document, filed at the right time and in the proper place. Making sure

<sup>16</sup> KERRY SHELDON, BRIDGEPORT CONSULTING, LLC, MICHIGAN LEGAL HELP EVALUATION REPORT 15–21 (2015), <https://mplp.org/sites/default/files/2020-02/michigan-legal-help-evaluation-report-1-15.pdf>.

<sup>17</sup> ROBERT GOODSPEED ET AL., POVERTY SOLUTIONS UNIVERSITY OF MICHIGAN, MICHIGAN EVICTIONS: TRENDS, DATA SOURCES, AND NEIGHBORHOOD DETERMINANTS (2020), <https://poverty.umich.edu/files/2020/06/Michigan-Eviction-Project-working-paper-1.pdf>.

<sup>18</sup> *Legal Resource and Referral Center*, STATE BAR OF MICH., <https://rs.michbar.org/>.

<sup>19</sup> *Committees*, STATE BAR OF MICH., <https://www.michbar.org/generalinfo/committees>.

<sup>20</sup> MICH. STATE BAR FOUND., [www.msbf.org/](http://www.msbf.org/).

<sup>21</sup> STATE BAR OF MICH., LAW SCHOOL CLINICS IN MICHIGAN (2020), <https://www.michbar.org/file/programs/atj/pdfs/lawschoolclinics.pdf>.

<sup>22</sup> *Welcome*, MICH. LEGAL HELP, <https://michiganlegalthelp.org/>.

people know what they need to do and giving them the tools to do it can go a long way.

By design, Michigan Legal Help does not provide legal “advice.” Instead, it provides topical information, forms, and dozens of “do-it-yourself” tool kits for *specific* legal problems. For example, there are tool kits for obtaining a divorce if you have minor children, another tool kit if there are no children, and a tool kit on how to respond to a complaint for divorce. The materials are constantly updated to reflect changes in the law, court rules, and real-world trends. There is an article on “Zoom hearings” that includes information on what to expect and tips on how to connect. A legal triage system – the “Guide to Legal Help” – is built into the website and directs users to specific resources based on their responses to a series of short, easy-to-understand questions. On weekdays, a “live help” chat feature staffed by volunteer law students provides personal assistance to help people find what they need; on weekends and after hours, users can leave messages that an agent will respond to. Michigan Legal Help staff members train the student volunteers and review the chat conversations to ensure quality control for the hundred-plus live chat sessions and a similar number of overnight emails that the system sees each day. Michigan Legal Help is also affiliated with (physical) legal self-help centers located around the state, where users can get assistance navigating the site and completing and filing documents.<sup>23</sup>

Michigan Legal Help has enormous, unique benefits as one tool in a civil justice response system. In addition to the obvious, Michigan Legal Help (and similar web-based programs) generate data that provides a window into current trends and needs, which can then be used to inform other access-to-justice efforts. It is agile and iterative; the tool kits, forms, and processes are updated and improved based on user experience. And, of course, it is infinitely scalable. Indeed, Michigan Legal Help is maintained by a staff of only eight people, including four attorneys. In 2020, it had nearly 3.5 million sessions, 2.7 million users, and 6.6 million page views. Nearly 153,000 people used its resources to complete legal forms. Even accounting for the “pandemic spike” of users in spring of 2020, most of whom accessed information on unemployment benefits, the website has seen year-to-year increases since its rollout in 2012.

### 13.2.2 ADR/ODR

Michigan has promoted court-supported alternative dispute resolution as another solution for some legal problems and leveraged technology to support it. Beginning in 2014, a first-in-the-nation pilot program introduced online ticket resolution in two district courts. Using a system pioneered by University of Michigan Professor

<sup>23</sup> An early evaluation of Michigan Legal Help’s resources is available at SHELDON, MICHIGAN LEGAL HELP EVALUATION REPORT.



(and fellow volume contributor) J.J. Prescott, the program empowers residents to contest traffic tickets online. It is now offered in more than thirty district courts around the state.<sup>24</sup> Traditionally, ticketed drivers wanting to seek a dismissal or negotiate a reduction in penalties had to show up to court in-person; the only “remote” option was to accept responsibility and pay the ticket as issued. Through the online system, users can request a review of their citation, submit a statement, and upload photos or other information. According to a study of outcomes in six Michigan courts, this online ticket-review system reduces court staff time by 80 percent, and cases are resolved in an average of two weeks instead of seven. Most importantly, 39 percent of users reported that they would not have been able to come to the court in person.<sup>25</sup> Courts nationwide are now using this platform, and the service has been a critical tool in helping courts respond to the pandemic.<sup>26</sup>

In 2019, the Michigan Supreme Court used this same platform to launch “MI-Resolve” in seventeen Michigan counties.<sup>27</sup> MI-Resolve is a fully online, asynchronous, dispute resolution program designed to resolve minor disputes, such as small claims, debt collection, non eviction landlord-tenant matters (like the return of a security deposit), and neighborhood disputes. Unlike traditional court-referred or party-selected mediation, which is usually done in-person and involves a mediator whose services are paid for by the parties, MI-Resolve is free for the participants and can be done with or without a mediator. The program is confidential and can be used regardless of whether there is active litigation. If the participants agree to a particular resolution, the system will produce a binding agreement and also generate any necessary forms for filing in court.

Michigan has led the way in online dispute resolution (ODR) programs like MI-Resolve, but experiences in other jurisdictions also show that ODR can provide an efficient and affordable way of resolving cases that do not involve complicated legal questions and where the amount at issue is modest. In 2020, the Joint Technology Committee of the Conference of State Court Administrators (COSCA), the National Association for Court Management (NACM), and the National Center for State Courts (NCSC) published case studies from ODR

<sup>24</sup> In Michigan, Washtenaw County’s 14A District Court and Bay County’s 74th District Court were the first in the nation to launch online ticket resolution in 2014.

<sup>25</sup> *Ticket and Minor Infraction Resolution Results: Multiple Courts*, MATTERHORN, <https://getmatterhorn.com/get-results/traffic-court/ticket-minor-infraction-resolution-results/>; J.J. Prescott, *Improving Access to Justice in State Courts with Platform Technology*, 70 VAND. L. REV. 30, 1993 (2017).

<sup>26</sup> That was the case in New York’s Manhattan Civil Court, where all small claims cases less than \$10,000 are referred to the program instead of to jam-packed courtrooms. Jane Wester, *Pilot Program Will Bring Online Resolution Option to Manhattan Small Claims Litigants*, NY COURT LEADERS SAY, N.Y. L.J. (Jan. 27, 2021), <https://www.law.com/newyorklawjournal/2021/01/27/pilot-program-will-bring-online-resolution-option-to-manhattan-small-claims-litigants-ny-court-leaders-say/>.

<sup>27</sup> *Resolve a Dispute Online with MI-Resolve*, MICH. CTS., <https://www.courts.michigan.gov/administration/offices/office-of-dispute-resolution/mi-resolve/>.

programs across the nation.<sup>28</sup> In Franklin County, Ohio, use of ODR for city income tax cases led to fewer default judgments and a more even distribution of positive case dispositions regardless of socioeconomic factors and race.<sup>29</sup> Utah used ODR as part of a total restructuring of its court system's process for resolving small claims. The program has led to fewer hearings and faster dispositions in cases that do end up "in court."<sup>30</sup> In Connecticut, ODR has been used to create an online ticket review program for traffic court. Most ticket recipients chose to "opt into" the program, which has shortened the number of days from citation to adjudication.<sup>31</sup>

### 13.2.3 SCAO's IT Solutions for Local Courts and Filers Depend on Agile Culture

There have also been significant efforts in Michigan to transform the user experience of "traditional" court with technology solutions. Even without the benefit of a unified court system, the SCAO's technology division has partnered with private sector firms to speed up development and implementation of IT solutions that connect Michigan's courts with each other and with users, while improving the experience for both. If we could successfully provide excellent IT products and service to trial courts, we could make progress toward voluntary technological unification – carrots. But it means a fundamental transformation of our approach to IT. We are all familiar with government IT projects that promise to revolutionize process but fall short of expectations. Instead, we consulted private sector firms to bring agile culture to our public sector operation.

SCAO adopted Menlo Innovations' "high-tech anthropology."<sup>32</sup> Just as smart-phone apps undergo continuous incremental updates that don't involve any inconvenience or loss of service, so too our court technology solutions improve as users provide feedback. We visit local courts and watch clerks, judges, and court users to see how they used our products and solicit their ideas to improve efficiency and service to the public. Agility is unusual in government IT and contrasts with the previous approach of taking down systems over a holiday weekend and launching a new platform on Monday morning. It limits risk, engages users, and steadily provides value-add, allowing for constant updates and changes with each iteration.

The agile process has been critical as we expand our case management product (MiCourt) to judges and court administrators who can be resistant to change.

<sup>28</sup> JOINT TECH. COMM., JTC RESOURCE BULLETIN: CASE STUDIES IN ODR FOR COURTS (2020), [https://www.ncsc.org/\\_data/assets/pdf\\_file/0033/39579/JTC-Resource-Bulletin-Case-Studies.pdf](https://www.ncsc.org/_data/assets/pdf_file/0033/39579/JTC-Resource-Bulletin-Case-Studies.pdf).

<sup>29</sup> Prescott & Sanchez, *Platform Procedure*, at 30.

<sup>30</sup> Deno Himonas, *Utah's Online Dispute Resolution Program*, 122 DICK. L. REV. 875 (2018).

<sup>31</sup> *Online Dispute Resolution*, STATE OF CONN. JUDICIAL BRANCH, <https://www.jud.ct.gov/odr/>.

<sup>32</sup> *High-Tech Anthropology: Balancing User and Business Goals to Design Solutions*, MENLO INNOVATIONS, <https://menloinnovations.com/services/high-tech-anthropology>.

By engaging users for their input throughout the process, our developers benefit from on-the-ground knowledge and experience, and buy-in eases change. As a result, we have provided new features users asked for, including automatic calendaring, electronic docket boards, public dockets, case search, and text-message reminders of upcoming court dates and payments due. We are also using the agile approach to launch a new public website this spring that emphasizes mobile device use, which provides better and equal access to information for all users, as well as security, speed, and improved information architecture.<sup>33</sup>

The success of MiCOURT can be measured both by the satisfaction of court users, but also by the expansion of the case management system to courts throughout the state as they learn about the unique, value-added features not provided by their current systems. And, as the list of MiCOURT courts grows, system-wide change becomes easier and more efficient.<sup>34</sup> A single case management system – our ultimate goal – creates enormous potential for statewide improvement. It will allow for real-time access to comprehensive court data, statewide process updates, and a simpler system for court users. *That's* the holy grail.

To be sure, the picture is not all rosy. Michigan does not yet have statewide e-filing, and it will be another few years before that project is finished. Locally funded courts and locally selected IT systems mean that a statewide, online, case-filing system that aims to provide a consistent user experience for all filers in the state, regardless of jurisdiction and case type, is a heavy lift. Several counties had home-grown e-filing systems and electronic document management systems, while others continue to be limited to paper files. In other words, we are getting there, but it's a slog.

### 13.2.4 Justice for All Taskforce

The State Bar of Michigan (MSBF), the Bar's access-to-justice arm, and other access-to-justice oriented entities (like legal aid and law school clinics) traditionally collaborated through informal networks, not a formal structure. As a result, there had been no comprehensive assessment of the civil justice gaps and needs across the state, nor a measure of how the various programs and innovations were meeting the need.

<sup>33</sup> Following agile precepts, the new One Court of Justice website will reflect interviews with both content users and content creators and is deliberately flexible and iterative to allow for constant improvement and additional features over time. MICH. CTS.: ONE CT. OF JUSTICE, <https://www.courts.michigan.gov/>.

<sup>34</sup> While Michigan has 242 trial courts, there are 319 trial court locations, since some courts have more than one building. This fact adds further complexity to IT systems and the challenge of integrating them. Of the 319 locations, 65 of them (~20 percent) are not on the SCAO/JIS/MiCOURT system.

In May 2019, the Michigan Supreme Court formed a task force to change that by conducting a full assessment of the current state of our civil justice system. Partnering with the MSBF and Michigan Legal Help, and with funding from the National Center for State Courts (NCSC), the task force set out to do a comprehensive statewide inventory of resources for civil legal problems, as well as identify the gaps in those resources. The task force was charged with developing a strategic plan to address the legal needs of every Michigander.

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Heading into 2020, the task force felt that access to justice was a priority in Michigan and that the community of lawyers, judges, administrators, and technologists working on it were looking for innovative solutions to civil justice problems. Despite structural barriers, progress was being made. We would not have declared the problem solved, but we were optimistic about what we might accomplish. We were working diligently on pockets of innovation, as well as an overall strategy. And yet, transformational change was not really on our radar.<sup>35</sup>

### 13.3 COVID-19: A ONCE-IN-A-LIFETIME DISRUPTION

Then came March 2020. All of a sudden, courts had to pivot on a dime to do things differently. And (maybe to our surprise) we did.

In Michigan we were fortunate to have a running start. In 2010 the SCAO began implementing a videoconferencing project to equip at least one circuit, probate, and district courtroom in every jurisdiction. A year before the pandemic, we had distributed Zoom licenses to every trial court judge. This was not because we were clairvoyant, but because we had identified the potential for increased accessibility and efficiency.

As a result, in March 2020 every Michigan trial judge was equipped to quickly move their proceedings to the Zoom platform. We followed up by acquiring licenses for magistrates and quasi-judicial officers. We partnered with clerks and county commissions to develop training material and best practices for judges and court staff.<sup>36</sup> We suspended rules and processes that were barriers to remote proceedings.

To maintain public access, virtual hearings were made available on YouTube, either live-streamed or uploaded right after. In May 2020 the Court built and

<sup>35</sup> I have thoughts about why that was in addition to the structural barriers I have already described, but it might be for a different essay. Here's the short version: resistance to change in law is unlike in other industries for cultural, normative, and even legal reasons. See Chapters 1 and 2 in this volume.

<sup>36</sup> Memorandum from Thomas P. Boyd, State Court Administrator, on Virtual Courtroom Task Force Documents (Aug. 7, 2020), <https://www.courts.michigan.gov/4b000e/siteassets/covid/covid-19/08-07-20updatedresources.pdf>.

launched an online Virtual Courtroom Directory.<sup>37</sup> Using the agile approach, a project that typically would have taken at least six months went from concept to launch in three weeks. At first, the functionality was a map with green dots showing where courts were livestreaming. The directory grew into a fully functional application that allows users to click on a county, search for a court or judge, and find out if live proceedings are ongoing. Using the directory, users can search by judge or by location (county). Search results include a link to the court's YouTube stream and show whether the court is "in session." If the "live" button is lit up, users can click and watch. Anyone with an internet connection can easily find and watch the proceedings in any trial court.

Very quickly, judges, court administrators, and litigants discovered what worked online and what didn't. The SCAO also organized more than fifty stakeholders in a work group to participate in a remote mock jury trial that generated detailed advice and guidance for courts.<sup>38</sup> Zoom proceedings work extremely well for some types of proceedings (motion hearings, status conferences, scheduling, civil trials, and so on) and less well for others (criminal jury trials). This aligned with our experience during the pandemic. For example, participants in guardianship and conservatorship hearings reported increased satisfaction with access and the ability to participate. There is preliminary evidence that online jury proceedings can increase jury participation and representation because those who do not have transportation or have to care for children or parents have more flexibility in serving.<sup>39</sup>

The results of this technology-driven push to keep courts open were dramatic. By the end of 2021, our trial courts had conducted nearly 5 million hours of online hearings. Michigan residents have used the Virtual Courtroom Directory to find a hearing on YouTube more than 450,000 times. Collectively, trial court YouTube channels have nearly 185,000 subscribers.

We also significantly sped up our efforts to move MI-Resolve to the remaining sixty-six counties in the state. By July it was available in every county, making Michigan the first to have a statewide ODR. To date, over 1,000 cases have been filed in the system, and nearly 100 are pending. Increasing numbers of judges are now including in their orders that mediation can be conducted on MI-Resolve.<sup>40</sup> Local mediation centers are promoting the service on kiosks, billboards, and by

<sup>37</sup> MICH. VIRTUAL COURTROOM DIRECTORY, <https://micourt.courts.michigan.gov/virtualcourtroomdirectory/>.

<sup>38</sup> STATE CT. ADMIN. OFF., MICHIGAN TRIAL COURTS REMOTE JURY TRIAL STANDARDS AND RECOMMENDATIONS (2020), <https://www.courts.michigan.gov/4a1f3/siteassets/court-administration/standardsguidelines/operations/rjtrialstandardsrecommendations.pdf>.

<sup>39</sup> See RICHARD GABRIEL, ONLINE COURTROOM PROJECT: THE ONLINE COURTROOM AND THE FUTURE OF JURY TRIALS, <https://www.courts.wa.gov/newsinfo/content/Reference%20Materials/Online%20Courtroom%20Project%20White%20Paper.pdf>; see also Chapters 4 and 10 in this volume.

<sup>40</sup> *Online Dispute Resolution, 27TH DIST. CT.*, [http://www.wyandotte.net/departments/online\\_dispute\\_resolution.php](http://www.wyandotte.net/departments/online_dispute_resolution.php).

highlighting the MI-Resolve web address on community partners' websites.<sup>41</sup> Promotional materials have also been distributed to local housing authorities, emergency service providers, and police agencies, so that they can provide the information to parties needing help resolving disputes.

Not only were we able to keep our courts operating; we could showcase the benefits that technology can provide to court users. Virtual hearings reduced or eliminated transportation and parking problems, as well as childcare and work conflicts. Recording the proceedings was seamless, and the number of people who could witness any hearing was endless; more than 7,300 people watched live a court hearing on a challenge to the governor's emergency powers.<sup>42</sup> And, frankly, the experience promoted digital literacy among judges and court staff.

Pandemic innovations were not only technology-based. For one example, we worked swiftly with the other government branches to establish a statewide eviction diversion program, funded by the American Rescue Plan Act and Michigan's COVID Emergency Rental Assistance program, which is anticipated to help over 50,000 families remain in their homes.<sup>43</sup> We even exported the model to other states: Texas and Indiana followed our model.

#### 13.4 PROMISE OF SIGNIFICANT REFORM

The Justice for All Taskforce continued its work through the pandemic, adjusting to remote platforms. The task force held in-person and virtual meetings and focus groups with judges, court staff, attorneys, and community organization staff members. It participated in town hall-style gatherings in Michigan's two largest cities. It surveyed, interviewed, and focus-grouped members of the public about their experiences within the civil justice system.

<sup>41</sup> See, e.g., *MI Resolve: A New Way to Resolve Disputes Online: Sponsored by the Michigan Supreme Court Administrative Office, CMTY. MEDIATION SERVS.*, <https://www.mimmediation.com/mi-resolve>; Jack Springgate, *New MI Resolve Kiosks Making Small Claims Disputes Easier for Berrien County Residents*, 16 NEWS NOW WNDU (Apr. 7, 2021), <https://www.wndu.com/2021/04/07/new-mi-resolve-kiosks-making-small-claims-disputes-easier-for-berrien-county-residents/>.

<sup>42</sup> The video has been viewed nearly 50,000 times. Michigan Court of Claims, *May 15, 2020, Court of Claims Hearing: Michigan Legislature vs. Governor #20-000079-MZ*, YOUTUBE (May 15, 2020), <https://www.youtube.com/watch?v=ooIVrwU8kio>.

<sup>43</sup> Priority Treatment and New Procedure for Landlord/Tenant Cases, Administrative Order No. 2020-17 (June 9, 2020); Amendment of Administrative Order 2020-17 (June 24, 2020); Amendment of Administrative Order 2020-17 (Oct. 22, 2020); Amendment of Administrative Order 2020-17 (Dec. 29, 2020); Amendment of Administrative Order 2020-17 (Jan. 30, 2021); Amendment of Administrative Order 2020-17 (Mar. 22, 2021); Amendment of Administrative Order 2020-17 (Apr. 9, 2021); Amendment of Administrative Order 2020-17 (July 2, 2021); Rescission of Administrative Orders Nos. 2020-1, 2020-6, 2020-9, 2020-13, 2020-14, 2020-19, and 2020-21 and Amendments of Rules 2.002, 2.107, 2.305, 2.407, 2.506, 2.621, 3.904, 6.006, 6.106, 6.425, 8.110, 9.112, 9.115, and 9.221 of the Michigan Court Rules and Administrative Order No. 2020-17 (July 26, 2021).

The Taskforce delivered its report in December 2020.<sup>44</sup> Following guidance materials developed by the NCSC,<sup>45</sup> the Taskforce prepared a comprehensive assessment of fifteen interrelated civil justice system components, such as the integration of Michigan courts within the broader community of services, provision of legal assistance without involving an attorney, education of private attorneys about fee-reducing business models like limited-scope representation, and training of judges and court staff on how to engage with self-represented litigants effectively. The assessment found that while Michigan had made substantial progress on some components (especially highlighting the extensive efforts of Michigan Legal Help across a wide range of topics), not one of the fifteen was more than partially accomplished. Several key areas showed minimal progress, including little progress on emerging practices and innovations and a lack of navigator services.

For each component, the Taskforce identified gaps and barriers in our existing system and made specific recommendations for improvement. These steps range from the easy, obvious, and nontechnical, such as simplifying the language in hundreds of court forms or transforming courthouses as service-oriented institutions by having multilingual signage and a “courthouse concierge” role distinct from the clerk’s office. Many more of the recommendations, also highly achievable, rely on technology in one form or another: integrating self-help programs (physical and virtual) with a statewide e-filing program that is available to self-represented litigants and not just attorneys, revising court rules and procedures to maintain virtual hearings even after the pandemic, and providing publicly usable computers and printers in every courtroom (like the public library). Still others, both nontech and tech, are more difficult and potentially politically treacherous, like regulatory reform – that is, a relaxation of some of the rules that govern law practice – to give non-attorney “legal navigators” the ability to help clients handle simple legal problems.<sup>46</sup> Regulatory reform could extend to software-based service delivery models, too.

The Taskforce set an ambitious target of achieving 100 percent access to the civil justice system. Our goal isn’t to provide a lawyer for each and every person; rather, we aim to ensure that, wherever possible, the civil justice system provides information, tools, and resources for those who self-represent.

Finally, the Taskforce identified that a key stumbling block to comprehensive change is the lack of a permanent infrastructure between and among access-to-justice stakeholders. A month later, in January 2021, the Michigan Supreme Court created the Michigan Justice for All Commission, a thirty-member commission of

<sup>44</sup> MICH. JUSTICE FOR ALL TASK FORCE, STRATEGIC PLAN AND INVENTORY REPORT (2020), <https://www.courts.michigan.gov/4af54d/siteassets/committees,-boards-special-initiatives/justiceforall/final-jfa-report-121420.pdf>.

<sup>45</sup> JUSTICE FOR ALL, NCSC JUSTICE FOR ALL INITIATIVE GUIDANCE MATERIALS (Nov. 2019), [https://www.ncsc.org/\\_data/assets/pdf\\_file/0021/25464/pdf-jfa-guidance-materials.pdf](https://www.ncsc.org/_data/assets/pdf_file/0021/25464/pdf-jfa-guidance-materials.pdf).

<sup>46</sup> See Chapter 1 in this volume.

judges, court administrators, legislators, state executive officials, legal aid attorneys, and community and business leaders.

\* \* \*

The changes that have taken place in courtrooms and across the state judiciary and access-to-justice community during the pandemic are more significant than any that had taken place over many decades. We learned that sometimes different is better. And all this has taken place while our hair was on fire. It has us convinced that a lot more is possible.

#### 13.4 CHALLENGES THAT REMAIN

And yet significant barriers remain to growing access and making these changes permanent.

Some of these are cultural, maybe for judges most of all. While our judges and court staff responded admirably to the immediate challenge of the pandemic, I hear regularly from judges who “can’t wait to get back to how we used to do it.” I understand that sentiment: After all, judicial reasoning often depends on respecting decisions that have been made in the past, and many of our rituals are rooted in history and tradition. Being slow to change is a feature, not a bug.

Take one recent specific example. In 2019, the Michigan Supreme Court published for comment a proposed court rule that would allow non-attorneys to possess portable electronic devices (laptops, tablets, smartphones) inside a courtroom and use them to take notes, access the Internet, and make electronic copies of public records.<sup>47</sup> Previously, rules governing use of these devices varied widely based on locality. For self-represented litigants, restricting them to pen and paper was a barrier to access – one that was not imposed on attorneys (and therefore not on litigants who could afford attorneys). The push for change came from the public and the access-to-justice community. The resistance came from the bench. Some judges feared that allowing these devices into our buildings would lead to disrupted proceedings and diminish the “sanctity of the courtroom.” Others argued that such decision-making should occur at the local level – that a one-size-fits-all approach was inappropriate. Despite this pushback, we adopted the rule change in January 2020 – a happy ending. It all seems unremarkable in hindsight. And it shows that state high courts can compel change in their administrative oversight role.

But the episode also suggests that more comprehensive reform will require trial court leaders – local judges and administrators – who see as their roles to drive change from the ground up. And not all judges view engaging with the community, gauging its needs and concerns, and proactively responding to them as part of the

<sup>47</sup> MICH. COMP. LAWS § 8.115 (2022).



court's primary mission. While specialized dockets that emphasize problem-solving (like drug courts) have enjoyed support from local communities, many judges still take a hands-off approach to community engagement. In my experience, this judicial reluctance is driven, at least in part, by the idea that a disengaged court is also impartial, or at the very least appears so. There is also a concern that judicial leadership on issues of local concern will run into charges of "judicial activism." But courts aren't insulated from the realities of life, and judges who engage their communities are better able to understand the ways in which a justice system can respond to community needs.<sup>48</sup>

There are other barriers, too. Funding remains a significant hurdle to reform, especially as state and local governments continue to struggle with the financial consequences of the pandemic.<sup>49</sup> Persuading legislatures who control state judicial budgets means convincing skeptical policy makers that expanding access to justice can return economic benefits, as well as social ones. Sometimes the pitch is an easy one: New technologies such as virtual hearings promise efficiencies, for both courts and litigants alike. Other changes and programs require more nuance, and the economic benefits can be harder to quantify. Court leaders should consider engaging nontraditional stakeholders. For example, employers understand the benefits of an employee able to join a court hearing from the workplace, instead of needing a day off; the business community is a logical ally for court modernization.

New access issues unique to remote hearings and online processes will also need attention. Rural communities are already underserved when it comes to legal aid.<sup>50</sup> These same communities often have limited or unreliable internet access. The pandemic has made this plain. Implementing change will require unique efforts for the technologically challenged.

Finally, until state justice systems collect good data, comprehensive reform will be elusive. Measuring rates of self-represented litigants is challenging, as is defining and tracking the type of data outputs that are necessary for evaluating the performance of programs attempting to expand access to justice.<sup>51</sup> What is "fair" or "effective" can be highly contextual and is often (partially) subjective, and there is seldom adequate historical data to compare against. For states with disunified court systems, the challenge of developing data collection standards and mechanisms is even greater. Data collected through programs like Michigan Legal Help can help fill that void,

<sup>48</sup> Bridget Mary McCormack, *Staying Off the Sidelines: Judges as Agents for Justice System Reform*, 131 YALE L.J.F., 175 (2021).

<sup>49</sup> LEGAL AID INTERAGENCY ROUNDTABLE, ACCESS TO JUSTICE IN THE AGE OF COVID-19: A ROUNDTABLE REPORT 13 (2021), <https://www.justice.gov/ag/page/file/1445356/download>.

<sup>50</sup> Michele Statz et al., "They Had Access, but They Didn't Get Justice": Why Prevailing Access to Justice Initiatives Fail Rural Americans, 18 GEO. J. POVERTY L. & POL'Y 321 (2021); Michele Statz & Paula Termuhlen, *Rural Legal Deserts Are a Critical Health Determinant*, 110 AM. J. PUB. HEALTH 1519 (2020); Robin Runge, *Addressing the Access to Justice Crisis in Rural America*, A.B.A. HUM. RTS. MAG., August 2014, at 15.

<sup>51</sup> See Chapter 16 in this volume.

but that data is only as good as the number of people who know about the service. Similarly, data and resource-sharing between and among access-to-justice stakeholders can be limited. Each may not have the time, resources, or expertise to collect and analyze data, even when they recognize the many ways that better data can improve their services. Courts and state Bar leaders can play a role by creating or facilitating an infrastructure through which separate players can collaborate with one another.<sup>52</sup> Better data is critical to effective change.

### 13.5 SO NOW WHAT?

Despite the significant barriers that remain, there is reason to hope that we are at an inflection point for access to justice and that lasting, disruptive change is possible.

First, feedback to pandemic-driven changes has been overwhelmingly positive. Litigants and attorneys like remote proceedings not because they are technophiles, but because of the advantages that remote proceedings can provide. This new normal has beaten back inertia. Usually the cat doesn't get back in the bag; there will be no backtracking to the old way of doing business now that courts, lawyers, and the public have seen the advantages technology has brought to access and transparency. Many courts and legislatures are speaking openly about making permanent changes that were implemented as temporary, emergency measures.

Second, and perhaps more importantly, the pandemic forced us – judges, administrators, and lawyers – to think about our work differently. The pandemic has brought innovation to how we work. That skill, too, won't be unlearned. As COVID-19 subsides, the ability to use remote platforms will allow courts to prioritize in-person time to things that don't work remotely. This will help courts tackle backlogs: retired judges can preside in Zoom courtrooms from their homes, while local judges conduct jury trials in real courtrooms. The evidence that an entrepreneurial approach has taken root in the business of justice can be seen in many examples around the state. Consider these two.

In Washtenaw County, Michigan, a “mobile arraignment” program allowed a local magistrate to bring her courtroom to local community members who are homeless.<sup>53</sup> Partnering with a police officer with a smartphone, people in a local homeless shelter and even a local park were invited to clear up warrants with the officer's iPad tuning into the magistrate's courtroom. Legal documents were provided using a mobile printer. The roaming, tech-aided court operates weekly,

<sup>52</sup> See David Freeman Engstrom & R. J. Vogt, *The New Judicial Governance: Courts, Data, and the Future of Civil Justice*, 71 DEPAUL L. REV. (forthcoming 2022).

<sup>53</sup> Meredith Bruckner, *Ann Arbor Police Offer Mobile Arraignment Program during COVID-19 Pandemic*, ALL ABOUT ANN ARBOR (NOV. 10, 2020), <https://www.clickondetroit.com/all-about-ann-arbor/2020/11/10/ann-arbor-police-offer-new-mobile-arraignment-program-during-covid-19-pandemic/>.

serving members of the community most likely to have trouble navigating their justice system.

In East Lansing, Michigan, a local district court administrator who noticed how members of the public appreciated remote proceedings set up a virtual helpdesk. On the court's website, users can choose the virtual helpdesk and then enter into a Zoom room where a clerk is waiting to answer questions, look up documents, and give instructions. People can get information previously available only by visiting the courthouse during work hours.<sup>54</sup> The response has been overwhelmingly positive.

Third, there is recent agreement about the importance of data to reform, and resistance to sharing data has receded tremendously. In 2020, the Conference of State Court Administrators and the National Center for State Courts published the National Open Court Data Standards to support the creation, sharing, and integration of court data.<sup>55</sup> And, the National Center has convened a group of state court leaders and academics to share information and data to see what lessons we can learn from all of the change. It is hard to overstate how different this approach is. There is both better and more data, a groundswell of interest, and agreement about how important data is to better our systems.

Fourth, as much as infrastructure barriers remain, there is potential for significant funding for overhaul, as a result of policy makers' responses to the pandemic. Just as state and federal lawmakers quickly devoted funding to address the pandemic-caused eviction crisis, concerns about backlogs and realization that change is possible can spur funding to move state court systems beyond the clunky, data-poor, and ad hoc systems that have prevented large-scale reform.

Fifth, many states are exploring regulatory reforms that will allow testing of some of the bigger-picture solutions to our access-to-justice problem. Two major changes occurred just last year. Acting on recommendations from a task force on the delivery of legal services, the Arizona Supreme Court approved the creation of a new type of non-lawyer licensee that can provide (limited) legal services.<sup>56</sup> In neighboring Utah, the state supreme court established a new regulatory body (under the authority and oversight of the court) to license and oversee new types of legal providers and services through a so-called regulatory sandbox structure.<sup>57</sup> As noted previously, Michigan's Justice for All Taskforce report recommended the creation of nonlawyer "legal navigators," and the Commission has a working regulatory reform group. These experiments are perfectly timed, as we look for new ways of structuring the

<sup>54</sup> *54B District Court*, CITY OF E. LANSING, <https://www.cityofeastlansing.com/676/54B-District-Court>.

<sup>55</sup> NAT'L CTR. FOR STATE CTS., NATIONAL OPEN COURT DATA STANDARDS: USER GUIDE (2020), [https://www.ncsc.org/\\_data/assets/pdf\\_file/0014/34025/NODS-User-Guide.pdf](https://www.ncsc.org/_data/assets/pdf_file/0014/34025/NODS-User-Guide.pdf).

<sup>56</sup> *Legal Paraprofessional Program*, ARIZ. JUD. BRANCH, <https://www.azcourts.gov/Licensing-Regulation/Legal-Paraprofessional-Program>.

<sup>57</sup> *What We Do*, THE OFF. OF LEGAL SERVS. INNOVATION, <https://utahinnovationoffice.org/about/what-we-do/>.

service of justice by welcoming new providers into the system, whether non-lawyer humans of the “legal navigator” sort, software-based systems that have begun to show promise as a way to serve self-represented litigants, or new models yet to come.

Finally, there is a national conversation afoot about all of this that includes academics and practitioners, technologists, and designers, activists, and advocates. That much is plain from the collection of voices in this volume. We have been shaken loose in a way to think creatively, and we like it. We are working collaboratively. And while many voices out in the states calling for change can be powerful, a “champion” in Washington, DC, to advocate for continued transformation that builds trust in our nation’s busiest courts is another important part of a national solution. The Department of Justice’s renewed Access to Justice Office could well serve that role.<sup>58</sup>

As the pandemic (hopefully) recedes into something manageably endemic, the takeaway for our courts cannot be “the old way, but with Zoom.” Technology is an important tool in building a civil justice system with access for all. But we have to think about what kind of civil justice system we would build if we could start over. The moment to do that is right now.

### 13.6 POSTSCRIPT

The COVID-19 vaccine rollout was still nascent when I drafted this essay in early 2021. Since then we have witnessed the vaccination of hundreds of millions of Americans, along with new coronavirus variants that have caused continued case surges and updated guidance from public health officials. Courthouses have begun the careful process of reopening their (physical) doors, even if sometimes temporarily closing them again. The roller-coaster continues, but there is unquestionably good news after an exhausting year.

During that time, I invited fellow state high court justices and their court administrators to participate in an informal survey. My goal was to capture their thoughts about technology changes spurred by the pandemic. The responses – from twenty-six of my colleagues from courts around the nation – have been illuminating.<sup>59</sup>

When I asked what they perceived as the main barriers to adoption of court technology prior to the pandemic, almost all respondents cited funding (no surprise there), with reluctance among judges and court administrators a close second (about 75 percent). Those rates dropped in half when I asked the same question, but this time since the pandemic began. As one court administrator put it, “oddly enough,

<sup>58</sup> *Office for Access to Justice*, U.S. DEP’T OF JUSTICE, <https://www.justice.gov/archives/atj>.

<sup>59</sup> The questions and responses can be viewed at the following link. *Court Structure and Technology Survey*, GOOGLE FORMS, <https://docs.google.com/forms/d/e/1FAIpQLSe3oiaXNkikpMGcQzy5nYlh3UxGqXVK5iFjHq-taLgyyrvg/viewanalytics>.

our barriers weren't really barriers when we were forced with the need to do it." Hopefully, an instance where perception *is* reality.

I asked questions about the adoption of specific technological solutions. Self-help resources and ODR were widely used before the pandemic, with a slightly higher percentage (increases of ~10 percent) answering that their court systems put these technologies to use since the pandemic began. The biggest increase was in the use of automated text-message systems that remind litigants about their court dates. About half of respondents indicated that such services were used before the pandemic, while 70 percent of all respondents said that these services were used as of spring 2021. About two-thirds of respondents whose states had implemented this technology credited it as improving appearance rates among self-represented litigants. For jurisdictions that have yet to adopt text reminders, the off-the-shelf commercial availability makes it low-hanging fruit.

Unsurprisingly, many respondents indicated that little-to-no court business was conducted online prior to the pandemic (excluding purely voice communications, such as VoIP), and where videoconferencing was used, it was highly limited (for incarcerated litigants, involuntary civil commitment, etc.). Survey-takers reported higher participation with the change to remote access necessitated by the pandemic.

Very few respondents (about 10 percent) collected data from litigants about the litigants' personal satisfaction with court access and the perceived fairness of the proceedings. I note this in particular because the pandemic required many courts to either create or build out already-existing virtual platforms. I don't mean to suggest that "customer satisfaction" is the only measure by which courts should be graded, especially in an adversarial legal system. But for self-represented litigants especially, satisfaction with the process can be just as important as the outcome.<sup>60</sup> Questionnaires can help identify potential areas for improvement without compromising ex parte communication, and digital platforms adopted during the pandemic offer a seamless means of delivering them to litigants.

The survey was done on a short timeline, but I see reason for cautious optimism in the answers I received. As in-person proceedings resume, I'll end on this note for judges, court administrators, and lawyers: We can't allow the lessons learned and the skills developed over the pandemic to go to waste.

<sup>60</sup> See Kevin S. Burke and Steve Leben, *Procedural Fairness in a Pandemic: It's Still Critical to Public Trust*, 68 *DRAKE L. REV.* 685 (2020) (discussing research on procedural fairness and its relation to litigant satisfaction and urging courts to adhere to procedural fairness principles during and after the COVID-19 pandemic).