

Courts in the 21st Century

THE ACCESS TO JUSTICE TRANSFORMATION

By Richard Zorza

Introduction—Challenges and Transformation

Nowhere are the twenty-first-century challenges to the American legal system greater, or the choices starker, than in the area of access to justice, particularly for the self-represented. The good news is that a wide range of experiments, innovations, and research across the country is pointing the way, not just to short-term solutions, but to a new view of the courts as institutions that define their role and success in terms of whether they provide access to justice for all.¹ This article looks at the developing challenges and at what will happen if the challenges are not responded to with a broad vision and strategy for turning courts into access-to-justice institutions. It goes on to articulate both that vision and how its components are already starting to come into focus. (Some of these ideas, such as those dealing with political coalitions and technology are outlined in only the most general terms. Each would need a whole essay to address it fully.)

Changing courts into access to justice institutions is not a short-term process or a short-term challenge—rather, it potentially represents the kind of change that happens only every several hundred years. It should be thought of as equivalent in importance to the creation of the first real court systems in England of the twelfth century, the establishment of judicial independence in Civil War England, or the establishment of judicial supremacy in the first decades of American independence. It will require work and vision from judges, lawyers, courts, and indeed the community as a whole. We are lucky to live in a time when we can be part of the process.

The Developing Forces Challenging the Current System

While courts have obviously always been a key component in the justice system,

they have long taken a limited, reactive, and sometimes even disengaged view of how they contribute to justice. Judges have believed that their neutrality requires waiting for cases to come to them, have assumed that all are equally ready and able to present their cases, and have studiously avoided any engagement with the overall structure of the justice system or its accessibility. Changes in the courts tended to be made when the kinds of cases coming to court, or needing to come to court, changed.²

However, such lack of engagement is becoming less and less functional as the long-term social trends discussed below buffet the courts.

The Increasing Cost of Counsel Makes Lawyers Unaffordable for More and More People

Unless something fundamental changes, the trend of the last century for both the hourly and total cost of hiring a lawyer is going to continue and probably accelerate. The profession (and this is not the fault of individuals but of deeper forces) now has a cost structure that precludes serving all too many people. This is no longer just a problem for the poor.³

This increase in the total cost of counsel is driven, not only by the hourly rate increase, but by increasing complexity of cases and the additional players and steps that are continually being added by reformers, legislators, and court rules changes. It is exacerbated by the asymmetrical financial structure of the bar and the lack of training, mentoring, and support for young lawyers as they seek to move into positions in which they can meet access-to-justice needs.

The result is obvious: fewer and fewer people will be able to afford lawyers, and more and more people will come to court without lawyers. In the past, a part—but only a small part—of the increase was

driven by litigants' nonfinancial drive to self-represent, and while that individual preference will continue to exert an influence, it is likely to remain a small one.

Perhaps more than any other factor, the courts of the twenty-first century will succeed or fail depending on whether they are able to adjust to this escalating and fundamental shift away from cases with lawyers towards those without. As Chief Justice John Broderick of New Hampshire recently put it in speech to the National Association for Court Management,

[i]ncreasingly, many of those without counsel are middle-class and small businesses. The poor now have company. The self-represented are real people, not statistics or abstractions. They live in our communities. They have real needs and real-world problems. In my state in 70 percent of all divorce cases, one or both sides is without counsel. . . . The state court system was ingeniously designed for parties with counsel who had enough money and enough time to let the process work as it always has.

Increasingly, the users of the courts are without adequate resources and have too little time. It's not their fault they can't afford a lawyer but it becomes our responsibility to deal with it. . . . The fundamental promise of America's justice system, and the reason it has been admired worldwide, is that it guarantees meaningful access to the courts in a time frame and at a cost affordable by our citizens. If that bargain ceases to exist, everyone loses.⁴

Increasing Need for Access to Justice Institutions

At the same time that the cost of obtain-

ing counsel is increasing, the need for institutions that resolve conflict or inequity is increasing. Often court administrators and judges bemoan what they view as the expansion of legislatively or judicially created rights of action, but the fact remains that both the public and the political process demand more, not less, of institutions that provide neutral and legitimate resolution of conflicts. As society becomes more complicated, as individuals engage in more and more interactions, as governmental and corporate institutions become larger and more complicated, and as our view of human rights becomes larger, we should be both happy and proud that it is the courts to which others turn to resolve the resulting conflicts.⁵ So long as we seek to be an ever-improving free society, we will see more, not less, of this.

Higher Expectations from Public as to Accessibility and Scope of these Institutions

As people increasingly seek neutral institutions, their expectations of accessibility to these institutions will increase. The public completely rejects the idea that access to justice depends on ability to pay a lawyer.⁶ Moreover, the public is relying more and more on the courts as centers of community information, on judges as educators and leaders, and on the legal system to engage in prevention as well as cure for legal problems. Similarly, they are seeing more and more groups, such as crime victims, as entitled to access regardless of whether they have lawyers.

Increasing Interests of New Stakeholders and Participants

As courts in the last quarter century have attempted to make use of outside knowledge and to reduce the burdens on themselves by developing diversion systems and relying on court experts, one of the long-term and unanticipated impacts has been newly complicated relationships with a far wider range of stakeholders, many of whom now have interests to protect. To the traditional stakeholder list of the bar, the funding government agency, police, employee

unions, stenographers, and elected clerks, must be added mediators, interpreters, evaluators, domestic violence advocates, legal aid, and the like.

While these can provide important services and can bring useful perspectives, they also bring strong vested interests and deeply held views about the nature of the legal process and sometimes about desired outcomes.

The increased entanglement of these stakeholders can make the system less flexible and harder to change. As the list of such stakeholders expands, these risks will require increased attention.

Increasing Complexity and Cost (to All) of Processes

Intertwined with the participation of these stakeholders, although also driven by other forces such as legislative mandates, is the increasing complexity of the justice system. Many judges from a quarter of a century ago would be amazed at the number of steps that many cases now require, with mandatory diversion, evaluation, prehearing assessment, etc.

While many of these processes were designed to reduce costs, in fact they have increased costs for the courts (which now have to manage more steps) and for litigants, who have to pay for all the additional players in addition to lawyers—if, that is, they can afford the lawyers. If they cannot afford the lawyers, they may still have to pay for the other players, without the legal resource to manage those additional costs.

The dynamics that have increased both the number of stakeholders and the complexity of the system show no signs of abating on their own. The dynamics will only be brought under control by leadership on the courts' part.

The Choice

If these current trends are allowed to control the future of courts in the twenty-first century, we will see a court system that is more and more complicated and expensive for litigants to navigate, less and less able to simplify itself because of the increasing complexity of its stakeholder interests, and increasingly inaccessible because the complexity requires litigants

to have lawyers that a growing number of people simply cannot afford.

Moreover, popular support for courts as public institutions will decline, budgets will reflect this, and the situation will worsen.

But, of course, that cannot and will not happen, and there is plenty of evidence showing how courts are beginning to take charge to prevent it from happening.

Some of the hints of new directions include:

- the broad rethinking, reflected in the ABA Model Code of Judicial Conduct⁷ and in many state judicial education events, of how judges can be both engaged and neutral when that is what is needed to ensure that the self-represented are heard;
- similar guidelines and training for clerks on how to provide neutral information to litigants;
- the many states opening dedicated self-help centers; and,
- the movement to discrete task representation, also reflected in an ABA Code, in this case the one governing attorneys.⁸

While every one of these steps makes a lot of sense, helps to alleviate immediate problems, and is broadly seen as successful, taken together these and related ideas represent the leading edge of the twenty-first-century transformation of the courts into access institutions.

Three Integrated Approaches

Overall, this transformation of the justice system will have three major, deeply interrelated components.

(1) Courts will become simpler and more accessible institutions, regardless of whether the litigant does or does not have a lawyer. This will come about through the extensive but human-oriented use of technology; ongoing critical evaluation of what information and processes are really needed to decide cases; changes in how courtrooms operate and judges engage with cases; and a broader development of both

general and focused services to help people access and navigate the system. The overall effect will be to reduce the number of those who would need to hire a lawyer to access the system and to reduce the cost for those who do so.

(2) Ways will be found to increase the availability and reduce the cost of counsel to access and navigate the system. This can be achieved by allowing lawyers to represent litigants for limited purposes, by training and preparing more lawyers to serve this market segment,⁹ and by creating “incubator” environments that support such lawyering.

(3) For that significant number of cases in which there is no choice but to have counsel, even in a simplified system, ways must be found to reduce the cost to society of providing subsidized counsel. This will require expanding the elements of the legal aid system that already go beyond the staff model, making use of private attorneys, and increasing efficiency. While courts are unlikely to become the direct administrators of this part of the system, they cannot fulfill their role as the guarantors of an accessible system unless they play a major role in its establishment and structuring.

What Will It Be Like to Access or Use Such a Twenty-First-Century Court System?

Obviously the picture discussed below



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is only one person’s idea. The ultimate system is likely to be very different. The key points are to build a system that is fully integrated and that takes comprehensive responsibility for access.

The Problem-Solving Gateway

People with legal problems will access a problem-solving gateway. They will have a wide choice—they will be able to go to court at a gateway center, they will be able to go on the Web to a customer-friendly gateway site, or they will be able to go to one of a number of community outreach centers in hospitals and other places to which people go when they have problems.

The gateway will set the person in the right direction based on a data-driven interactive process. The direction will depend on research-based protocols which use the nature of the case, the relationship of the parties (and particularly their relative power and ease of negotiation), and the underlying facts to determine the best path, as well as the services that are needed to make full use of that path.

People might be directed to anything from an online forms-only informational or dispute resolution process to a face-to-face interview with a subsidized attorney. The choices offered to them will be focused and will promote efficiency while screening for alternative dispute resolution options, as well as discrete task representation assistance. The system will only be efficient if there is both a broad range of choices and services available and an effective and legitimate way of routing people. Current court-based self-help centers of the kind already operating in many states probably represent the closest to the prototypes for these systems, although the range of referral choices that the centers currently have available is strictly limited, and the research to justify referral choices remains totally absent.¹⁰

Truly Alternative Dispute Resolution Mechanisms

Many cases in the courts today are not conflicts at all, but rather situations such as those involving guardianships or adoptions in which courts are used

because the transparency of the system has historically provided legitimacy and finality for outcomes that might occasionally be subject to later challenge. In a vast number of additional cases, the conflict—if any—represents only a small part of the proceeding, and the court is used primarily to validate and finalize a result that has been achieved without significant judicial intervention.

For many such cases, new, much less costly, technology-intensive pathways can be designed. Most of these cases need less service than they get, do not need a court appearance, and can proceed on paper.

Similarly, other cases can have facilitated, often technology-facilitated, resolution without the labor- and paper-intensive processes that are still viewed as diversion (often temporary) from the core dispute process. Rather, new paths need to be designed, and cases should be placed in those very different paths right at the gateway.

A Broad Range of Assistance and Support Mechanisms for Litigants

For those cases with significant stakes, significant conflict, and/or the need for the court’s individualized human and time-intensive decision making and coercive power, there will continue to be processes that look a lot like the traditional courtroom preparation process and encounter, although made more efficient and provided with better technological support.

However, the gateways will be sending litigants to a wide variety of assistance and support mechanisms based on the analysis of the person and the case. The principle will be the lowest-cost appropriate system. With experience, the system will develop additional ways of providing access, often merging technology with human assistance.¹¹

Engaged and Proactive Caseflow Management

Litigants will find that courts play a much more engaged and affirmative role in keeping cases moving, including finding out why they are not mov-

ing and making sure that they get the services that they need to get moving. Already many courts are modifying their case management systems to focus on the special needs of the self-represented, including identifying when cases are not courtroom ready or not moving when they should be and intervening to get them the needed services to unblock them.¹²

Fact-Resolving and Coercion-Guiding Mechanisms

There will still be hearings, or something that is still recognizable as a hearing, because in some, perhaps many, situations, that is the best way to decide the facts, choose the most appropriate remedy, and ensure that the coercive power of the state is appropriately deployed on the side of fairness.

But the hearings will look different. Without lawyers, or a lawyer on only one side, judges must take a more active role in the process, asking questions, probing, explaining, and making clear the decision and the consequences of noncompliance. Once again, with experience we will develop better and better ways to help people prepare for the hearing, enabling the judge to focus on the forms of transparent engagement that are best done in courtroom. For example, more information will be gathered, gaps filled in, and undisputed facts resolved before the case gets to the judge. Support staff in the courtroom will help make sure that all data is gathered and presented appropriately. Judges who are more engaged will find the work more fulfilling.¹³

Court-Led Compliance

Litigants today face often insurmountable barriers to enforcing court rulings. The twenty-first-century court will take more action to ensure compliance, including the creation of self-executing judgments, the provision of support services for enforcement, and gathering and providing litigants with the information they need for compliance. Technology will make this much easier.

What Will Make Such an Accessible System Work?

Simplicity, Simplicity, Simplicity

For a system to be accessible, it must be simple to the user. Courts have to eliminate steps, remove paperwork, and cut down the number of players needed to resolve a case. In some cases this may require the simplification of underlying legal rules that, at least for those without lawyers, have created procedural and substantive nightmares that make the system impossible to navigate.

In part a simpler process means having judges do more judging and less diverting. Much of the court complexity of the last two decades has been driven by the idea that judges need help in judging and that cases should go to players who have skills that judges lack.

The gateway systems of the future will be very different, moving cases that do not need judicial skills onto different paths and focusing judicial skills on those that do need judges.

The process of simplification is going to be politically complicated. It may be aided by the economic and fiscal crises.

Informed Intake and Triage

The gateway system will be crucial to the twenty-first-century system. Research on outcomes (a real source of anxiety to courts, which often fear the political implications of such research) will be needed to support protocols for directing litigants to the appropriate pathways. The ability to do research on court processes, and agreement on who needs what, will facilitate both the efficiency and the legitimacy of gateways and the systems behind them. These gateways will make heavy use of technology in assisting with diagnosis, referral, and follow-up. The data that intake, court operations, and research provide will make the courts centers of access to information about justice in our society—not just access to the justice system—and provide tools that let

other policy makers make more informed choices.

Wise Use of Technology

Forms, online diagnosis, technology-mediated dispute resolution, electronic filing, e-mail, Web- and chat-based information will all be critical to providing cost-effective comprehensive access. All are already being deployed but have only begun to reshape the overall functioning of the system as a whole. The public, used as it is to fully integrated on-demand services, will expect far faster deployment.

Like most technology innovations, these permit delivery of services over a distance and customization to the needs of each individual. Moreover, the big advantage of technology is that while the initial investments may be large, the cost per additional unit of service is minimal. These investments will impose much greater standardization and much closer collaboration between players. For example, it will become prohibitively expensive for every county in a state to have its own forms.

Similarly, national collaborative investment in these new technology platforms will increasingly become the norm. (This has already occurred in the legal aid world with both websites and automated forms; there is potential for much closer cooperation with courts in these areas.)

As always, it must be remembered that the ATM analogy is limited because most people do not go to court with anything like the frequency with which they use the ATM. So systems must provide alternatives, and must include human support in navigation and use of the system.

Judicial Leadership and Integrated Management

None of this will happen without the strongest judicial leadership and integrated management of the whole system. In the end, this is judge-led because this is about justice and access to justice, and it is judges who carry that message to legislatures, the public, the bar, and

Self-Represented Cases

15 TECHNIQUES FOR SAVING TIME IN TOUGH TIMES

By Judge Mark A. Juhas, Judge Maureen McKnight, Associate Justice Laurie D. Zelon, and Richard Zorza

These are tough times in America's courtrooms. Even more than before, judges are faced with increasing caseloads, more self-represented litigants, and budget pressure to reduce courtroom staff.

Every judge will develop his or her own approaches. However, judges who have participated in and studied the research on courtroom dynamics conducted by the Self-Represented Litigation Network¹ suggest that the following techniques can increase courtroom efficiency. They are effective, will work in any financial environment, and do not undercut the underlying value of access to justice for all litigants.

Please note that while some of the suggestions may appear to require taking extra time at the beginning of the process, experience has shown they can result in an overall time saving, as well as more relaxed and more satisfied court staff and litigants.

1. Have courtroom staff check in litigants and give them orientation materials.

This helps save your time at the beginning of the hearing, helps filter out any litigants who are not ready, and helps litigants prepare to use their time more efficiently.

2. If possible, have available staff review the file before the hearing to highlight the most relevant papers and issues. In any event, review the file on your own and make a quick list of the issues to be addressed.

This review has been shown to significantly reduce the on-the-bench time taken at the beginning of the hearing and throughout the hearing. Regardless of whether the file has been pre-reviewed, your focus on the issues at the hearing will save time and convince the parties that you are on top of things and that they do not need to repeat everything. Research shows that many litigants are surprisingly sensitive to the judge's level of preparation and knowledge.

3. Start the hearing with a quick summary of the case history and of the issues that will be addressed.

This summary similarly helps the litigants focus, helps you maintain control, makes it easier to avoid repetition, and thus saves bench time. It reassures litigants that their concerns will be addressed.

4. Explain at the beginning of the hearing that you may be asking questions and that this will not indicate any view on your part. It will merely mean that you need to get the information to decide the case.

This makes it much easier to ask questions. It also reassures litigants that you are thinking about their concern for fairness. Some judges also find it useful to explain key governing evidentiary rules, such as hearsay, that are likely to be applied in practice.

5. Make clear that you will hear all sides.

Research has shown how quickly most litigants respond to cues that they will be fully heard. They then feel less need to interrupt or to tell everything in one long narrative. It relaxes everyone, which also saves time.

6. Work through issues one by one and move clearly back and forth between the two sides during the exploration of each issue.

In the hearing itself, move back and forth between the parties, taking each issue one by one. This significantly helps the litigants focus their use of time and creates a sense of progress in the hearing.

7. Do not be afraid to ask questions and follow-up questions to focus the litigants and get the information you need to decide the case in a timely manner.

Self-represented litigants usually appreciate it when judges help them focus on the relevant issues. The time saving is obvious. If you have indicated at the beginning of the hearing that you may ask questions, it is often useful to remind the litigants of that earlier indication at the time that do you ask them.

8. Use body language to maintain control as you move back and forth between the parties and to signal to litigants to stop when they try to interrupt.

Many judges find that, once they have established the pattern, they can control this process through the use of body language, such as by

indeed their own court managers. This leadership is demonstrated by the way judges treat litigants, talk about their role, manage their cases, and encourage members of the bar to provide quality and affordable access-to-justice services. Every time a judge quietly tells a litigant

what is needed to present an issue or finds an appropriate way to mentor an attorney on how to present evidence, the judge advances the cause of access to justice. As Judge David Ortley of the Flathead County Justices' Court in Montana puts it:

After ten years as a trial court judge in a court where the majority of litigants, civil and criminal, are self represented, I can say with confidence that in order for the "court" to be accessible to

turning from one party to the other and possibly also by opening one's hands in the same direction. This is obviously very time effective. (While using one's finger to move the focus of the hearing is effective, it may be culturally insensitive when used with some groups.)

9. Before making a decision on an issue, ask the parties if they have anything else to say.

Litigants report that this is very reassuring, particularly if the judge explains early that he or she will do this. The technique reduces litigants trying to cover everything at once and cuts back on their interrupting, thus reducing the time needed for the hearing.

10. Whenever possible, announce your decision from the bench simply and clearly, with explanation.

While some judges have been reluctant to issue decisions immediately, fearing outbursts or security problems, as a practical matter in most cases such complications do not occur. Rather, the announcement of the decision increases the chance of comprehension and the likelihood that litigants will understand their obligations. It also provides an opportunity to clear up any confusion or ambiguities and to resolve any problems that may be clear to the parties but not necessarily to the judge. This reduces time spent when the case returns to court.

11. Make sure that the litigants understand your decision, what they have been ordered to do, and the consequences of non-compliance.

Some judges specifically ask litigants to repeat their obligations. Others merely ask for confirmation of understanding. The more attention paid to this, the greater the likelihood of compliance and, thus, a reduction in the likelihood that a case will return to court for enforcement. For limited-English-proficiency litigants, there is a particular risk of noncomprehension, and therefore of unintentional, and devastating, noncompliance.

12. Put in place systems that provide litigants written orders without being required to take any additional steps.

Research in one court showed a 50 percent reduction in returns to court in cases in which the court provided a written order, rather than requiring the parties to submit a proposed post-hearing order. Such orders can be generated by software, by volunteers, or even by court staff or the judge writing on carbonless multi-copy paper.

13. Where appropriate, prepare the litigants for the next steps in the case, including future hearings and possible future orders.

When the judge tells the litigants what is generally going to happen at a future hearing and/or the overall direction the case is taking, the parties are able to prepare themselves for the hearing and for potential changes in their lives. This reduces hearing time and increases the chances of pre-hearing agreement.

14. Direct the parties to any resources that are available to assist with compliance or enforcing the order.

Such resources might include self-help services focused on compliance and enforcement, nonprofits that can help with jobs or counseling, or other informational and assistance resources.

15. Develop materials on compliance and enforcement that you or your staff can provide to litigants.

Such materials might include forms and software designed to assist in obtaining the courts enforcement assistance, as well as materials that make clear the consequences of failure to comply with the courts orders.

Many of these techniques are explained in the Judicial Education Curricula developed by the Self-Represented Litigation Network. These are available on www.selfhelpsupport.org. Many are also illustrated in two judicial education videos that accompany the curricula and research: *Judicial Best Practices in Self-Represented Litigation in the Courtroom* and *Improving Courtroom Communications in Cases Involving Two Self-Represented Litigants*. These videos are for judicial education use only and are available from the Knowledge and Information Service of the National Center for State Courts. For additional information, contact Greg Hurely at ghurley@ncsc.org.

We welcome additional suggestions and comments with regard to these ideas;² your input should be directed to the coordinator of the Network, richard@zorza.net. This document was prepared in association with the Self-Represented Litigation Network. Opinions expressed are not necessarily those of the Network, the National Center for State Courts, or the Network's participants or funders. The document is copyrighted by the NCSC, but may be distributed with attribution and with these disclaimers for judicial education purposes.

Endnote

1. The research was conducted by John Greacen of Greacen Associates for the Network and the National Center for State Courts, with funding from the Administrative Offices of the Courts of California and Maryland, and the State Justice Institute. EFFECTIVENESS OF COURTROOM COMMUNICATION IN HEARINGS INVOLVING TWO SELF-REPRESENTED LITIGANTS: AN EXPLORATORY STUDY (2008), available at <http://www.selfhelpsupport.org/library/item.223587>.

all, the judge must be personally committed and engaged. It is not enough to talk the talk of the day. Judges across this country, particularly those in busy trial courts where the bulk of justice is dispensed, have to step outside of the

courthouse and reflect on access. Those judges have to examine at a very personal level what it is that they do, and what is expected of them by the Constitution and the people they serve. It is their judicial system, their courthouse,

and the judges they have elected have a duty to ensure that the system is accessible in a meaningful way. While judges have a duty to protect and promote the institution itself as a means of ensuring respect for the rule of law, we have

a concomitant duty to ensure the institution reflects the reality of the world in which we, and those we serve, live.¹⁴

Moreover, this judicial leadership must extend to challenging the bar. The cost of lawyers can only fall if we encourage and support young lawyers to enter access to justice practice. Law schools must better prepare students for this new world by expanding clinical programs for this kind of practice. The bar, law schools, and access to justice funders must support the technology, office management, and mentoring necessary to keep quality up and costs down. And rules must change to permit the full use of innovative approaches like technology and discrete task representation. With judicial leadership, such changes in the profession and in the courts can occur together and reinforce each other.

Steps Needed Now

The foundations of the twenty-first-century court are already being laid in innovation after innovation around the country. However, some areas are only just beginning to get attention. State and local leaders, particularly judicial leaders, need to focus on the following.

Development of More Advanced Pilot Intake and Triage Systems

Every self-help center, and indeed every legal aid hotline, is already, consciously or unconsciously, operating some form or intake and triage. It is urgent that we work to make the protocols explicit and that we do the research to establish more appropriate and legitimate protocols.

The Hard Work of Simplification

The simplification process has only just begun, although there is much discussion of the need for this approach. State and local leaders should start thinking about how to go beyond “re-engineering” (which tends to focus on paper flow) to look at the whole system and its increasing complexity. In the short term, this too will be greatly aided by the economic crisis and the impossibility of continuing

to fund the ever-increasing complexity of the many players and steps in the system. But a long-term commitment to continued self-assessment and simplification of every step, every form, every process, is required to keep costs down and access up.

Building Early Political Coalitions for Funding

While some of the proposals here, such as simplification, will save money immediately, and others will do so in the long term, as courts take greater responsibility for access, their costs will rise. Moreover, while lack of resources should not be taken as an excuse for not moving forward to the extent possible, nonetheless, it is critical to build political coalitions for funding.

The goal of making the court system much more accessible in the twenty-first century is a natural for the building of a broader coalition for access to justice. Moreover, the construction of such coalitions would help achieve some of the goals discussed here. In some states, the Access to Justice Commissions, which often focused initially on the needs of legal aid, are moving to play this more integrated advocacy role. In others, new institutions will need to be created. In any event, these coalitions will only work when comprehensive solutions find continued roles for all the players.

And, at the national level, there is surely need for advocacy for the twenty-first-century court system.

Conclusion

State courts and their partners have, in the last two decades, been astonishing incubators of change.

The groundwork laid now makes possible a comprehensive vision, a practical agenda, and broad political coalitions in support.

We are lucky to be part of the legal and judicial systems in this time of transformative change. ■

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National Center for State Courts, or the Network’s participants or funders. The article is copyrighted by the NCSC but may be distributed, with attribution and with these disclaimers for judicial education purposes.

Endnotes

1. The most comprehensive description of these innovations probably appears in SELF-REPRESENTED LITIGATION NETWORK, BEST PRACTICES IN COURT-BASED SELF-REPRESENTED LITIGATION INNOVATION, (2nd ed., 2008), http://www.selfhelpsupport.org/library/item.223550-2008_edition_of_Best_Practices_in_CourtBased_Programs_for_the_SelfRepresented (hereafter *Best Practices*). It includes descriptions of 42 best practices, as well as suggested attributes, resources, models, and contacts for each.

2. The major changes of the twentieth century, the merger of law and equity, the establishment of the Federal Rules of Procedure and Evidence, and their ultimate extension to the states, were designed to ensure efficiency and to enable the courts to respond to new types of cases as well as new types of problems. Late twentieth-century caseload management and automation were designed to ensure timeliness and efficiency.

3. One of the most comprehensive, as well as one of the most recent studies of the legal needs of low- and middle-income people is that conducted by the STATE OF GEORGIA, COMMITTEE ON CIVIL JUSTICE, SUPREME COURT OF GEORGIA EQUAL JUSTICE COMMISSION, CIVIL LEGAL NEEDS OF LOW AND MODERATE INCOME HOUSEHOLDS IN GEORGIA, http://www.gaccj.org/pdf/LegalNeeds_Report+FINAL+5.27.pdf.

4. Chief Justice John T. Broderick Jr., remarks to the National Association of Court Managers of New Hampshire (Mar. 10, 2009), <http://www.selfhelpsupport.org/search/item.239480>.

5. Which is not to say that the existing structure and processes of neutral institutions are appropriate or efficient, only that more and more the courts will be looked to for guidance in providing neutral and legitimate conflict resolution.

6. CAMPAIGN FOR EQUAL ACCESS, BRINGING JUSTICE HOME: THE RESEARCH BEHIND THE MESSAGE 4 (2001), available at http://www.abanet.org/legalservices/sclaid/atjresourcecenter/downloads/3_public_awareness.pdf. (“There is broad public support for the concept of legal aid. Close to nine in 10 Americans (89%) agree that legal help for civil matters should be provided for low-income people. Over half (55%) of the public strongly agrees with this sentiment. Eight in 10 (82%; 42% strongly) even support the idea when it is described as a government-funded program.”).

7. The ABA recently changed the Model Code of Judicial Conduct to add the following language to Comment 4 to (renumbered) Rule 2.2, Impartiality and Fairness: “It is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.”

ABA MODEL CODE OF JUDICIAL CONDUCT, (Feb. 2007), available at http://www.abanet.org/judicialethics/approved_MCJC.html. The current status of state adoptions can be found at ABA CPR POLICY IMPLEMENTATION COMMITTEE, COMPARISON OF ABA MODEL JUDICIAL CODE AND STATE VARIATIONS (Jan. 8, 2010), http://www.abanet.org/cpr/code/2_2.pdf.

8. Rule 1.2 (c) of the ABA Model Rules of Professional Conduct now reads as follows: "A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent." <http://www.abanet.org/cpr/e2k/e2k-rule12.html>. ABA MODEL RULES OF PROF'L CONDUCT, R. 1.2(c), available at <http://www.abanet.org/cpr/e2k/e2k-rule12.html>. The ABA Ethics 2000 process also added a new Rule 6.5 relaxing conflict of interest rules and conflict checking rules for those engaged in nonprofit or court-based brief service or advice programs. ABA MODEL RULES OF PROF'L CONDUCT, R. 6.5, available at <http://www.abanet.org/cpr/e2k/e2k-rule65.html>.

9. *Id.*

10. *Best Practices, Part I*, especially *Practice 3, Self-Help Centers*, at 8, and *Practice 12, Initial Assessment Process*, at 35, and resources and models cited. http://www.selfhelpsupport.org/library/item.223550-2008_edition_of_Best_Practices_in_CourtBased_Programs_for_the_SelfRepresent. Self-help centers will also play an expanding role as broader sources of information about what is happening in access to justice, and give litigants, consumers, and the public broader access to empowerment tools.

11. *Best Practices, Practice 12, Initial Assessment Process*, at 35, and resources and models cited. http://www.selfhelpsupport.org/library/item.223550-2008_edition_of_Best_Practices_in_CourtBased_Programs_for_the_SelfRepresent.

12. Self-Represented Litigation Network, *Leadership Package, Module 8, Caseflow Management for Access* (2008), http://www.selfhelpsupport.org/library/item.208589-Power_Points_for_Module_8_Caseflow_Mangement_for_Access, and materials cited.

13. As Judge Gregg Donat of Tippecanoe Superior Court, Lafayette, Indiana, points out, "Judges that make a conscientious effort to provide better justice to unrepresented litigants find not only better job satisfaction; but, also that the effort makes their job easier over the long term." Personal communication to the author, July 8, 2009.

14. Personal communication to the author, July 10, 2009.