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BRENNAN LECTURE

ACCESS TO JUSTICE: NEW APPROACHES TO ENSURE MEANINGFUL PARTICIPATION

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This Lecture discusses innovative approaches that courts are employing and developing to ensure that all participants in court proceedings have meaningful access to justice. Approaches include making the most of technological advancements to provide electronic access to information and to promote an understanding of the legal process, working with the legal community to provide representation to self-represented parties, and examining the legal process in order to simplify procedures, better manage cases, control costs, and provide workable alternatives to traditional methods for resolving disputes.

 An earlier version of this lecture was delivered as the 21st Justice William J. Brennan Jr. Lecture on State Courts and Social Justice at the New York University School of Law on February 25, 2015. Many of the observations in this Lecture about the functioning of the legal system and its processes are drawn from my years of experience, both in private practice and in the judiciary. From 1991 to 1998, I was a partner at Cummings & Lockwood, where I specialized in commercial and employment litigation. In 1998, I was nominated to serve on the Connecticut Superior Court. Between 2001 and 2005, I was assigned to the Complex Litigation Docket in Stamford, and from 2005 to 2006, I served as the presiding judge for civil matters in the Stamford-Norwalk Judicial District. In 2006, I was sworn in as an Appellate Court judge; a year later, I was sworn in as the Chief Justice of the Connecticut Supreme Court. I am currently a member of a variety of commissions and boards, including the National Center for State Courts' Expanding Court Access to Justice Project Advisory Committee and the Conference of Chief Justices Civil Justice Initiative Committee. To the extent that this Lecture includes unfootnoted assertions, please treat them as my personal beliefs and views and weight them accordingly.

Good evening. Let me begin by saying what a tremendous honor it is to have been asked to deliver the 21st Annual William J. Brennan Jr. Lecture on State Courts and Social Justice. I am well aware of both the intellect and innovation that my predecessors in giving this lecture have brought to the table, and my goal this evening is to push the boundaries and provoke at least some percentage of the thought and dialogue stemming from those lectures. This may be particularly difficult given that last year's Brennan Lecturer, Chief Judge Jonathan Lippman of the New York Court of Appeals, represents probably the most progressive thinker in the area of administrative reform in the court system.[1] He has set the bar very high but I will do my best.

I would submit to you that our historical approach to access-to-justice issues must dramatically change if we are to continue to make advancements in this area. Although past efforts were mainly limited to educating self-represented parties about the court system, future efforts must go further to strengthen our commitment to fair representation for all parties involved in legal proceedings. In this regard, I am going to limit my remarks to procedures in the civil justice system and not wade into the waters of criminal justice, a field presenting its own unique challenges.

I
ACCESS TO JUSTICE: CHALLENGES AND OPPORTUNITIES

In beginning this discussion, I want to emphasize that we are not talking about access for access's sake; instead, it is essential to provide a pathway for people where we can assure that justice is being achieved and not falling by the wayside because someone does not speak English, does not know what papers to file, does not know what arguments to make, or simply does not understand the purpose of the hearing. Our ability to ensure timely access to justice is undoubtedly

[1] For a discussion of the role of the judiciary in promoting access-to-justice reforms, see Jonathan Lippman, *The Judiciary as the Leader of the Access-to-Justice Revolution*, 89 N.Y.U. L. REV. 1569 (2014).

affected by the remarkable changes that have occurred in our courts—and our society, more generally—since my generation of lawyers graduated from law school.

The first change is advancement in technology. As we know, people in the United States are plugged in and expect to do much of their business, including court business, through computers and the web.[2] It was approximately ten years ago that some states began implementing e-filing of court documents.[3] For instance, civil and family case filings in Connecticut are e-filed and our judges issue their rulings electronically for the majority of cases.[4] Throughout the country, judicial websites include databases with online case lookup and a whole menu of information, including forms and tutorials in multiple languages.[5] In the past, people had to go to courthouses to access this information, where in all likelihood the only language

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[2] *See generally* PAUL H. ANDERSON, NAT'L CTR. FOR STATE COURTS, FUTURE TRENDS IN PUBLIC ACCESS: COURT INFORMATION, PRIVACY, AND TECHNOLOGY 11 (2011), *available at* http://www.ncsc.org/~/media/Microsites/Files/Future%20Trends/Author%20PDFs/Anderson.ashx (discussing a variety of court transactions conducted electronically and noting that the public "not only expects easy access to information, but also expects it to be instantaneous, wherever one is located"). A recent survey found that around three-fourths of respondents would definitely or probably use online services to access court records, pay fines or fees, or submit procedural questions to court staff, if available. NAT'L CTR. FOR STATE COURTS, THE STATE OF STATE COURTS: 2014 POLL 10 fig.6 (2014) [hereinafter THE STATE OF STATE COURTS: 2014 POLL], *available at* http://www.ncsc.org/~/media/Files/PDF/Topics/Public%20Trust%20and%20Confidence/2014-State-of-State-Courts-Survey-Presentation-12042014.ashx.

[3] *See* Christopher G. Blake, *State Judicial Branch to Launch E-filing*, CONN. LAWYER, Mar. 2004, at 2, 2 (noting that the Connecticut Judicial Branch launched an e-filing platform in 2004, joining at least nineteen other states and the District of Columbia, which had already implemented some version of a comparable system); *see also* John T. Matthias, *E-Filing Expansion in State, Local, and Federal Courts 2007*, *in* FUTURE TRENDS IN STATE COURTS 2007, at 34, 34 (Carol R. Flango et al. eds., 2007), *available at* http://cdm16501.contentdm.oclc.org/cdm/ref/collection/tech/id/570/ (claiming that twenty-six states have adopted court rules enabling e-filing statewide or in at least one court).

[4] In Connecticut, where electronic filing is mandatory for most civil matters and for many family matters, the public has nearly instantaneous electronic access to documents and to orders in civil cases. *See* CONN. JUDICIAL BRANCH, CIVIL AND FAMILY E-FILING MANUAL: A GUIDE FOR ATTORNEYS AND LAW FIRMS (2014), *available at* http://www.jud.ct.gov/external/super/e-services/efile/Atty_UserManual.pdf (instructing self-represented parties and attorneys on how to access a variety of judicial services). In family cases, attorneys or self-represented parties who have an appearance in a case can now view orders and most filings in that case online. CONN. JUDICIAL BRANCH, FREQUENTLY ASKED QUESTIONS ABOUT E-FILING (2015), *available at* http://www.jud.ct.gov/external/super/e-services/efile/SRP_FAQs.pdf; CONN. JUDICIAL BRANCH, FREQUENTLY ASKED QUESTIONS ABOUT E-FILING (2015), *available at* http://www.jud.ct.gov/external/super/e-services/efile/ATTY_FAQs.pdf.

[5] On the Connecticut Judicial Branch Website, for example, members of the public may download forms, search to find information about a case or appeal, view videos on a variety of topics, or participate in tutorials on how to perform numerous tasks. *Self-Help Section*, CONN. JUD. BRANCH, http://jud.ct.gov/selfhelp.htm (last visited June 27, 2015).

spoken by judicial staff was English. Now technology has provided us with the ability to communicate in approximately 170 languages through the use of LanguageLine, either by phone or in person.[6] In addition to implementing a pilot program to provide translation services, the use of videoconferencing in Connecticut has increased during the past several years, ensuring access for individuals who might find it difficult to attend court proceedings in person. Similarly, attorneys and self-represented parties have access to a variety of research materials online, making it possible for them to prepare for court even if they do not have access to a nearby law library or courthouse[7] All of these technological changes have created efficiencies and exciting opportunities for the administration of justice that I will later discuss.

Turning to the second major change: The societal environment in which we live has also changed dramatically. Specifically, we have witnessed a large and growing economic gap in this country,[8] which has made it more difficult for people to afford legal representation and has also caused an increase in the number of foreclosure and debt collection actions.[9]

This economic gap is partially responsible for the final major change in our court system that I will focus on—namely, there are more self-represented parties in our courts, from California to Connecticut, than ever before. People are representing themselves in family and civil matters in astonishing numbers.[10] Just looking at Connecticut in family cases, 85% of the cases have at least one party

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[6] See James E. Cabral et al., *Using Technology to Enhance Access to Justice*, 26 HARV. J.L. & TECH. 241 (2012), for an extensive discussion of the variety of ways in which technology is being used to improve access to justice.

[7] *See Quick Links*, CONN. JUD. BRANCH LAW LIBR., http://jud.ct.gov/lawlib/ (last visited June 27, 2015) (providing visitors with links to access a variety of legal resources).

[8] *See* Richard Fry & Rakesh Kochhar, *America's Wealth Gap Between Middle-Income and Upper-Income Families Is Widest on Record*, PEW RES. CTR. (Dec. 17, 2014), http://pewresearch.org/fact-tank/2014/2017/wealth-gap-upper-middle-income/ (describing record levels of economic inequality by a number of metrics).

[9] *See* SONCIA COLEMAN ET AL., CONNECTICUT GENERAL ASSEMBLY, OFFICE OF LEGISLATIVE RESEARCH, 2010-R-0019, EFFECTS OF FORECLOSURE CRISIS IN CONNECTICUT 1 (2010), *available at* http://www.cga.ct.gov/2010/rpt/2010-R-0019.htm (discussing foreclosures in Connecticut).

[10] *See* LEGAL SERVICES CORPORATION, DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 25 (2009), *available at* http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf ("Although there is no national compilation of statistics on unrepresented litigants in court, data from some court systems shows extremely high numbers, often clustered in those courts in which low-income people are particularly likely to appear, such as family and housing courts . . . ."). Data from 2006 indicates, for example, that 70% of litigants in family cases in Wisconsin were unrepresented, that at least one party was self-represented in as many as 80% of family cases in Massachusetts, and that

who is self-represented and, even more surprisingly, approximately 25% of civil cases have at least one self-represented party, which is almost always the defendant.[11] Perhaps most shockingly, at the intermediate Appellate Court approximately 39% of the cases have one self-represented party.[12] Ladies and gentlemen, this would have been unheard of when I graduated from law school.

We know, however, that if we are to sustain public confidence in the justice system and rule of law, we must provide meaningful access to justice for everyone, including people representing themselves. On the national level, it appears that many litigants represent themselves in court not because they choose to, but because they cannot afford an attorney.[13] Equally troubling, studies suggest that this lack of representation has a negative impact on both the litigants and the courts.[14]

So, how do we ensure continued meaningful access to justice for all amid these many changes? How do we effectively and efficiently continue to meet our obligation under the social compact we have with the people we serve, so we maintain their support, as a branch of a democratic government? The answer, I would submit, is this: We need to change the mindset that has defined, for centuries, the process by which we handle civil cases.

When my contemporaries and I went to law school, all of our training was in the context of an advocacy system that culminated in a trial.[15] The key players always included two attorneys, one per party, and a judge, regardless of the complexity or the merits of the case. The essential feature of the court system was—and remains—a one-size-

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67% of petitioners and 80% of respondents in family cases in California were unrepresented. *Id.*

[11] CONN. JUDICIAL BRANCH, SELF-REPRESENTED PLAINTIFFS AND DEFENDANTS IN ALL FAMILY CASE TYPES BY STATE FISCAL YEAR (2014) (on file with the New York University Law Review); CONN. JUDICIAL BRANCH, SELF-REPRESENTED PLAINTIFFS AND DEFENDANTS IN ALL CIVIL CASE TYPES BY STATE FISCAL YEAR (2014) (on file with the New York University Law Review).

[12] CONN. JUDICIAL BRANCH, KEEPING COURTS RELEVANT IN A CHANGING SOCIETY: BIENNIAL REPORT AND STATISTICS 2012–2014, at 45 (2015) [hereinafter BIENNIAL REPORT], *available at* http://jud.ct.gov/Publications/es191.pdf (counting 1157 appeals filed in the Appellate Court during fiscal year 2014, of which 457 had at least one self-represented party according to an internal report generated in July 2015).

[13] LEGAL SERVICES CORPORATION, *supra* note 10, at 23 ("Based on their own observations and currently available data, many judges, court administrators, members of the legal aid community, and commentators have raised concerns about unrepresented litigants, arguing that most people who appear in court without an attorney do so because they cannot afford one . . . .").

[14] *Id.* at 26.

[15] *See* U.S. DEP'T OF JUSTICE, NCJ 223851, CIVIL BENCH AND JURY TRIALS IN STATE COURTS, 2005, at 1 (2009), *available at* http://www.bjs.gov/content/pub/pdf/cbjtsc05.pdf ("In the nation's 75 most populous counties, the number of general civil cases disposed of by jury or bench trial declined by about 50% from 1992 to 2005.").

fits-all approach to disposing of cases. This approach, I argue, is completely ill-suited in the twenty-first century. Put another way: The foundations of the court system and the processes by which claims are resolved are outdated and require serious rethinking.

II
Managerial Judging in the Twenty-First Century

I am pleased to report that this discussion is well underway at the national level. Chief Justices from all the states meet regularly to discuss issues of mutual concern and to provide education regarding possible solutions.[16] In 2013, the Conference of Chief Justices passed a resolution creating a national committee to focus on civil justice.[17] As a member of the Civil Justice Initiative Committee, I can tell you that we have been hard at work over the past year to identify common issues, best practices, and new ways to provide timely and cost-efficient resolutions to civil cases. It has been an exciting project funded by the National Center for State Courts and the State Justice Institute, and we have been working under the able leadership of Oregon Chief Justice Thomas Balmer.[18] Based on our progress to date, I am absolutely certain the Committee's final product will be useful in our individual states as we all look for ways to improve our civil justice system.

A. Aligning Judicial Resources with Case Needs

The first important change is for court systems to shift their focus and recognize that expediency is not the only goal. Rather, we must also take some responsibility for helping to reduce the amount of money it takes to resolve a civil or family case. The added benefit of reducing costs is that litigants are more likely to hire legal counsel for at least a part of their court matter when the prospective costs are lower. At the same time, we must also recognize that some people will continue to represent themselves in court proceedings, and we must do everything we can to ensure just outcomes in their cases.

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[16] *See* Conference of Chief Justices, The History of the Conference of Chief Justices 72–84 (2009), *available at* http://ccj.ncsc.org/~/media/Microsites/Files/CCJ/Web%20Documents/CCJ%20History%2061709.ashx (listing topics of discussion at annual and midyear meetings of the Conference of Chief Justices since 1949).

[17] Conference of Chief Justices, Resolution 5: To Establish a Committee Charged with Developing Guidelines and Best Practices for Civil Litigation (2013), *available at* http://ccj.ncsc.org/~/media/microsites/files/ccj/resolutions/01302013-civil-litigation-establish-committee-charged-with-developing-guidelines.ashx.

[18] *Committees*, Conference of Chief Justices, http://ccj.ncsc.org/Committees.aspx (last visited June 27, 2015).

There is no question that the bar must find ways to reduce the costs of representation. In fact, the National Center for State Courts recently conducted a survey finding that people perceived the cost of hiring an attorney to be the greatest barrier to accessing justice.[19] Having listened to the current ABA president, Bill Hubbard, recently speak, I can tell you that bar leadership is also trying to reduce costs to ensure representation for litigants and sustainable legal practices for their attorneys. Although we look forward to seeing the bar's approach to this problem, we in the judicial system must also help find an affordable solution. Seeking techniques to make the process less expensive, therefore, has been a recurring theme in the Committee's discussions.

So how do we reduce cost? Consider the following scenario: You are one of the most experienced judges in a civil courtroom in your state. Half of your day is spent on handling discovery motions on a docket consisting of slip-and-fall or minor motor-vehicle cases. You have several more complicated cases in the mix, including a complex commercial matter with a motion for summary judgment, that must all wait until you get through the morning docket. As the day wears on, somewhere amid the myriad cases before you, you think: "Is this really an efficient use of judicial resources—not to mention the party resources expended on attorneys' fees or opportunity costs incurred waiting for an argument regarding discovery?"

We are finally starting to recognize that one size no longer fits all. Cases involving numerous parties, extensive discovery, a significant number of motions, complex issues, and numerous witnesses require more time and resources than those involving limited numbers of parties, minimal discovery, few motions, simpler issues, and one or two witnesses. We need to find a way to distinguish straightforward cases in civil court from those requiring more judicial involvement so we can efficiently allocate resources. Of course, I am *not* suggesting some cases are unimportant; we all know that parties consider their cases very important, regardless of the circumstances. Yet when it comes to *managing* a docket, it is important to categorize which cases require substantial judicial oversight and time, and which ones require less. If we are simply *processing* a docket, rather than managing it, we run the risk of costly outcomes that may also take too long to resolve. We also run the risk that the resources and effort invested in a case are not proportional to the damages at stake.

The Civil Justice Initiative Committee is operating from the same premise as our hypothetical judge sitting on the bench worrying about

[19] THE STATE OF STATE COURTS: 2014 POLL, *supra* note 2, at 16 fig.11.

the necessity to oversee certain stages of the judicial process in certain types of cases. Essentially, we are talking about aligning our judicial resources so that a civil case may be handled in the most cost-efficient manner, from the moment of filing all the way through resolution. Not only would these efficiency measures benefit the litigants by saving them time and money, but they would also benefit the courts, which have limited resources.

In this regard, the Committee has been looking at developing a system that segregates cases into three different pathways, each with a process tailored to reach an efficient resolution of its type of matter. This approach proceeds from a simple and uncontroversial premise: Not all cases require the same level of discovery and judicial management. In a simple debt collection matter, for example, why require that parties follow procedures in place to govern discovery, depositions, expert witnesses, and motions practice in complex cases like medical malpractice suits? It really does not make any sense and consequentially results in increased costs for the parties.

This "three-pathway approach" can be characterized by streamlined, standard, and complex tiers. Although the details defining this approach are not yet fully developed, the basic premise is established: When a case is initially filed it should be categorized, by case type, into one of the three tiers. A party may file a motion to be removed and relocated in a different tier. As we proceed in developing this idea, some of the questions necessitating consideration include what criteria should be used to slot cases, what role the parties and the courts should play in the process, what procedures should apply to different pathways, and whether cases should be reassessed periodically to determine whether they have been assigned properly.

Streamlined cases would require little judicial oversight, which, by way of example, may include slip-and-falls, debt collections, and small claims appeals. Here, the intent is to institute different procedures for these cases, so as to limit judicial involvement and discovery. As a result, the system could resolve cases efficiently and at minimal cost within a predefined period of time. For instance, there could be mandatory and limited discovery that would be exchanged almost immediately. There may also be simpler rules and less time contemplated for resolution of these types of matters including limited trial length. Interestingly, a majority of the cases we handle fall within this category[20] and many of these cases involve people who represent

[20] Between the 2006–07 and 2010–11 fiscal years, the number of contract collection cases doubled. Contract collection and foreclosure cases accounted for approximately 55% of pending civil cases in Connecticut in fiscal year 2010–11. CONN. JUDICIAL BRANCH, COMMISSION ON CIVIL COURT ALTERNATIVE DISPUTE RESOLUTION: REPORT AND

themselves. A simpler process with less motion practice can only improve access and our corresponding ability to provide justice.[21]

The second group, which has been described as the standard pathway, involves all the cases falling between streamlined and complex. To some extent, this is a "catch-all" group. These are the cases that require some regular judicial management and oversight but do not rise to the level of a complex case, in which discovery and judicial involvement is extensive. Again, we anticipate recommending mandatory disclosure of all relevant evidence proportional to the case and early judicial involvement to set up a schedule including a firm trial date to take place within approximately twelve months of filing. Courts may intelligently use technology, such as videoconferences or phone calls, to handle matters that arise. For example, a judge may require such a conference to preview whether a discovery dispute should be formally filed in writing or can be resolved, instead, by conference. Although far more controversial, we are also considering whether judges may want to preview by conference whether a summary judgment motion should be filed at all.

As I have already mentioned, the last category would be complex cases, such as those involving complicated issues, multiple litigants, and/or demands for significant damages, that are labor intensive for judges, court staff, and the parties. These cases generally involve more discovery, more complicated legal issues, and more regular involvement by a single judge who is familiar with the discovery and legal issues in a particular matter. Fortunately, a number of states have extensive experience with this category of cases because they have already carved out complex litigation dockets.

The overarching goal for the three-pathway approach is to manage the process so that the court can give each case sufficient time and attention to ensure fair handling without giving each case more

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RECOMMENDATIONS 6 (2011) [hereinafter ALTERNATIVE DISPUTE RESOLUTION], *available at* https://www.jud.ct.gov/Committees/ADR/Commission_Final_Report_122111.pdf; *see also* Paula Hannaford-Agor, *Measuring the Cost of Civil Litigation: Findings from a Survey of Trial Lawyers*, VOIR DIRE, Spring 2013, at 22, 28 n.2, *available at* http://ccj.ncsc.org/~/media/Files/PDF/Services%20and%20Experts/Areas%20of%20expertise/Civil%20Justice/Measuring-cost-civil-litigation.ashx ("Although many other categories of civil cases including products liability, intellectual property, defamation (libel/slander) are cited as some of the most time-consuming and expensive types of civil litigation, individually they comprise a very small proportion of civil cases.").

[21] *See, e.g.*, Thomas M. Clarke & Victor E. Flango, *Case Triage for the 21st Century*, *in* FUTURE TRENDS IN STATE COURTS 2011, at 146, 148 (Carol R. Flango et al. eds., 2011), *available at* http://ncsc.contentdm.oclc.org/cdm/ref/collection/ctadmin/id/1847 ("The [Maricopa, Arizona, family] court discovered that about half of all the family cases required only an entry of decree or judgment by default or consent to dispose, so it . . . began to offer online decree-on-demand and default-on-demand capabilities.").

time and attention than is required. By setting up these pathways, we can use judicial resources most effectively, allowing judges to spend more time on the cases that should actually require more of their time. This is just common sense in terms of court management, but it is also a major change that not everyone, including some members of both the Judicial Branch and the bar, will embrace initially.[22] Fortunately, we have already learned from some states' experiences about changes in procedure that appear to work well and where problems may arise. For instance, experience suggests that systems such as the three-pathway approach should be designed around an opt-out rather than an opt-in mechanism because concerns about limited discovery make lawyers reluctant to opt in. We have also found that cases should be tiered by case type and not by dollar amount because some lawyers will overstate their damages to avoid limitation in discovery.

B. Improving Specific Case Management Practices

Connecticut is taking additional steps to restructure our civil system with the goal of providing relevant, affordable, and accessible service. Based on the results of stakeholder focus groups, we identified four general areas for restructuring: 1) improving litigation management; 2) confronting current discovery issues; 3) enhancing alternative dispute resolution options; and 4) evaluating the needs and impact of self-represented parties.

With regard to the first two categories of improving litigation management and confronting discovery issues, just as we have identified on the national level that we have to manage our dockets differently depending on case type, we learned from focus groups that it is not just a "timely resolution" that is important.[23] Over the years, we have made changes that allow virtually any civil matter in the State to be tried within twelve months. So getting to a resolution is not the issue for us. Instead, it is essential to examine the *entire* process of reaching that timely resolution. The current process results in higher costs and less confidence in the efficacy and fairness of dispute resolu-

[22] *See, e.g.*, Judith Resnik, *Managerial Judges*, 96 HARV. L. REV. 374, 425, 432–45 (1982) (cautioning that transforming judges from adjudicators to managers "substantially expands the opportunities for judges to use—or abuse—their power," then suggesting safeguards to preserve judicial impartiality and discussing alternatives to judicial management).

[23] Internal Report Concerning Second Phase of Strategic Plan drafted by the Conn. Judicial Branch 3 (2014) [hereinafter Second Phase of Strategic Plan] (on file with the New York University Law Review).

tion.[24] For example, attorneys in nearly all focus groups expressed frustration with current discovery rules and practices.[25]

As a result, national proposals for a three-tier system and the requirement of automatic and proportional discovery are under serious consideration in Connecticut. Several other changes are already underway. For instance, we have begun to implement individual calendaring for most types of cases where one judge is responsible for a case from start to finish instead of multiple judges handling pretrial matters.[26] My guess is that attorneys who practice exclusively in federal court are surprised to hear that multiple judges may handle different aspects of a single case. The reality is many states have this system, mainly because our dockets are so much larger than those of the federal system. In Connecticut last year we disposed of over one-half million cases in our trial courts,[27] whereas all of the United States District Courts combined disposed of fewer than 400,000 cases.[28] Despite the difficulties in managing such a large docket through individual calendaring, we are excited that this change is occurring in Connecticut. Individual calendaring should make the process more efficient for the courts and for the parties because each matter in a case will be handled by a judge who is already familiar with the facts, procedural history, and the law in the case as well as the parties. Similarly, the parties are familiar with the judge and his or her methods and practices. We are confident that this system will enhance the consistency and predictability of rulings on motions and discovery disputes and increase the possibility for settlement.

We also plan to continue to take advantage of technology. For example, instead of filing and arguing motions, the parties now will be able to resolve many pleadings and discovery disputes through status conferences by phone or videoconferencing, saving lawyers and parties a lot of time and money.[29]

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[24] *Id.*

[25] *Id.* at 16. Attorneys also expressed frustration with: a lack of uniformity with respect to scheduling of proceedings; the date of jury selection; the way individual voir dire is conducted; the availability of telephone or video conferencing; and inconsistency that results when multiple judges are assigned to handle rulings on motions, discovery, and scheduling in a single case. *Id.* at 3–7. In the focus groups, attorneys suggested education and training for judges and members of the bar in substantive law topics, case management, and settlement strategies and techniques. *Id.* at 14.

[26] *Id.* at 7–10.

[27] *See* BIENNIAL REPORT, *supra* note 12, at 41, 44 (providing statistics for the year ending on June 30, 2014).

[28] *Federal Judicial Caseload Statistics 2014*, U.S. COURTS (last visited Sept. 22, 2015), http://www.uscourts.gov/statistics-reports/federal-judicial-caseload-statistics-2014 (providing statistics for the year ending on March 31, 2014).

[29] Second Phase of Strategic Plan, *supra* note 23, at 7.

In addition to changing our pretrial case management, we are also enhancing our alternative dispute resolution services in the hopes that we can help individuals settle their differences without the costs associated with trial. This initiative has actually been in the works in Connecticut for some time. While the traditional role of the courts is to resolve disputes through trial, we all know that the vast majority of cases settle as opposed to being tried to conclusion.[30] I, therefore, believe that if we are to stay relevant, we need to also provide a high level of alternative dispute resolution.

Not surprisingly, in-house counsel and lawyers are now telling us that arbitration and private mediation are not the mecca they had anticipated.[31] Instead, they are telling us that arbitration is turning out to be costly and unpredictable and that private mediation is even more expensive.[32] As a result, they are willing to return to the court system if they can expect a high level of service. I see this as an opportunity and, in our court system, we have worked to simplify the process of requesting and scheduling a judicial alternative dispute resolution session in a civil case. We have also increased, statewide, the number of judges available to mediate cases, and we have ongoing judges' education programs that focus on mediation models, techniques, and strategies to resolve cases through alternative dispute resolution.[33] Without highly trained judges, we cannot succeed in this area, particularly since judicial mediation requires a completely different skillset than presiding over a trial.

We are also looking at the idea of creating an actual mediation center and docket, which could potentially ensure that effective and skilled mediation is widely available for all parties, not just those who can afford private mediation. This center may mirror what is available in the private sector with, for example, multiple conference rooms and

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[30] *See* Presentation Slides of the Connecticut Judicial Branch presented at the Connecticut Bar Foundation's Kravitz Symposium on the Vanishing Trial (Dec. 4, 2012) (on file with the New York University Law Review) (reporting many more cases are resolved than actually reach civil judgment, implying a high settlement rate).

[31] *See, e.g.*, CORINA D. GERETY & BRITTANY K.T. KAUFFMAN, INSTITUTE FOR THE ADVANCEMENT OF THE AMERICAN LEGAL SYSTEM, SUMMARY OF EMPIRICAL RESEARCH ON THE CIVIL JUSTICE PROCESS: 2008–2013, at 34–35 (2014), *available at* http://iaals.du.edu/images/wygwam/documents/publications/Summary_of_Empirical_Research_on_the_Civil_Justice_Process_2008-2013.pdf (observing a majority of attorneys surveyed view court-ordered alternative dispute resolution as "a positive development for managing costs," but most would not choose private mediation over litigation, and opinions on arbitration were mixed).

[32] *See* ALTERNATIVE DISPUTE RESOLUTION, *supra* note 20, at 70–71, 89, 93–94 (2011) (polling attorneys and soliciting comments on their participation in alternative dispute resolution programs).

[33] BIENNIAL REPORT, *supra* note 12, at 2–3.

extended hours. The significant difference, of course, is this service would be free, thereby making it accessible to all.

The need to come up with best practices and dedicated resources in the area of alternative dispute resolution is again based on a recognition that mediation resolves appropriate cases more efficiently, at an earlier point in the process, and at considerably less cost to the parties.[34]

C. Providing Justice for Self-Represented Parties

Finally, I want to turn to the remaining focus area in Connecticut and one of the initial major changes I identified for you in the administration of justice: addressing the needs and impact of the ever-increasing number of self-represented parties in our court system. This phenomenon is directly impacting access to justice, and you simply cannot consider restructuring court processes without considering it.

As stated before, 25% of civil cases in Connecticut have at least one self-represented party, and this number is 85% in family cases.[35] We know that some of them have no choice because the cost of legal representation is too high.[36] We also know that others, who may have resources to hire an attorney, believe they can navigate the court system effectively on their own.[37] Either way, I would submit to you that the reason is immaterial. The self-represented population is increasing, and we must find ways to improve their access to justice while at the same time remain aware of the impact on judges, court staff, attorneys, and the entire justice system. In sum, our job is to offer a fair and efficient forum to all litigants, regardless of whether they are self-represented or represented by counsel.

To address the needs of self-represented parties, the Connecticut Judicial Branch for many years has been committed to a variety of programs and services. Some are focused on helping self-represented parties navigate the system, and others are geared to identify ways to find legal representation for them.

By way of just a few examples, with regard to people who cannot afford an attorney or just decide to go it alone, we have Court Service Centers and Public Information Desks in almost every judicial dis-

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[34] *See* ALTERNATIVE DISPUTE RESOLUTION, *supra* note 20, at 7 (recommending ADR program design that treats the litigants fairly and reduces the time it takes to dispose of cases).

[35] *See* BIENNIAL REPORT, *supra* note 12 and accompanying text.

[36] *See* THE STATE OF STATE COURTS: 2014 POLL, *supra* note 2, at 16 (suggesting, on the basis of a national opinion poll, that the cost of legal representation is the primary factor keeping potential claims out of court entirely).

[37] *See* LEGAL SERVICES CORPORATION, *supra* note 10, at 1–2 (reporting increased numbers of unrepresented litigants).

trict.[38] Not only do these resources provide members of the public with general information about the court, but they also answer questions about scheduling and deadlines, offer work space and computer access, provide information to parties about their case files, direct individuals to additional sources of help and information, and review papers to ensure that they are complete. In 2014, they provided assistance and services to 348,182 court patrons, including self-represented parties, attorneys, and other individuals.[39] The overarching goal is to provide information and assistance that lead, ultimately, to a better understanding of the court system and the proceedings.

In addition, materials and forms on the Judicial Branch website are revised and simplified on an ongoing basis to include the addition of Spanish translations as well as employee training to assist court patrons of limited English proficiency.[40] We have also developed online tutorials and guides to assist self-represented parties in defending lawsuits and filing appearances.[41] These services help, but we all know that under our current civil system, justice is better served if people are represented by counsel.[42] In this regard, we have worked with our legal aid community to increase its funding.

We have also concentrated on making partial legal representation available to those individuals who cannot afford an attorney to handle all of their case. We recently made it possible for clients to hire attorneys to file limited scope appearances to represent them in at least the most crucial proceedings in a case.[43] For those who cannot afford an attorney at all, but want some assistance, volunteer attorney programs in the areas of foreclosure, domestic violence, and family law have been established.[44] With the continued generous cooperation of the bar, we anticipate expanding these programs.

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[38] *Court Service Centers*, CONN. JUD. BRANCH, http://jud.ct.gov/CSC/services.htm (last visited July 14, 2015); *Public Information Desks*, CONN. JUD. BRANCH, http://jud.ct.gov/pid/ (last visited July 14, 2015).

[39] *See Court Service Centers*, CONN. JUD. BRANCH, http://jud.ct.gov/CSC/services.htm (last visited July 14, 2015) (providing information and listing services); *Public Information Desks*, CONN. JUD. BRANCH, http://jud.ct.gov/pid/ (last visited July 14, 2015) (same).

[40] *See generally* BIENNIAL REPORT, *supra* note 27, at 35–38 (outlining initiatives in recent redesigns of the Judicial Branch website).

[41] *See How Do I?*, CONN. JUD. BRANCH, http://jud.ct.gov/howdoi.htm (last visited July 14, 2015) (providing instructions on filing and defending various civil matters).

[42] *See* LEGAL SERVICES CORPORATION, s*upra* note 10, at 1–2 (reporting research showing worse legal outcomes for unrepresented litigants).

[43] *See* BIENNIAL REPORT, *supra* note 27, at 6 (documenting a pilot program which allows attorneys to agree with clients to represent them only for specific events or proceedings in family court matters).

[44] *Id.* at 1–2.

Additionally, one of the more exciting developments we have seen is the creation of *LawyerCorps Connecticut*, which is modeled roughly on Teach For America. The program was conceived two years ago as a means of engaging Connecticut's business community on this issue. I reached out to leaders in the business community, and I asked for their help. Today, I am pleased to report that United Technologies and General Electric, as well as other corporations in Connecticut, are sponsoring *LawyerCorps Connecticut*, which provides new attorneys with the opportunity to receive a fellowship to work for a legal aid organization for a two-year period.[45] Funding for these positions comes from the business community as opposed to state government, and legal aid will supervise the new attorneys to make sure they are providing excellent legal representation for their clients.[46] As you can see, this is a win-win all the way around. In the short term, those in need will receive direct legal assistance for civil matters. In the long term, our justice system reaps the benefits of a new generation of attorneys whose career paths, we hope, are geared towards, at a minimum, providing pro bono service.

Finally, we have also spent a great deal of time encouraging attorneys to do more pro bono service. In 2011 and 2014, the Judicial Branch organized summits to brainstorm ideas and energize attorneys who want to help the disadvantaged.[47] Again, we asked and they came. The results have been excellent—some of the attorneys who attended have been incredibly dedicated in terms of developing their own signature pro bono programs. Just as one example, there is now a cooperative pro bono project to provide assistance to indigent clients in domestic violence cases.[48]

As one last example, I am especially proud of the Young Lawyers Section of the Connecticut Bar Association. It stepped up to the challenge through its Pro Bono Service Campaign, which took place from March to May 2013. The number of pro bono hours performed in con-

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[45] *See* PUBLIC SERVICE & TRUST COMMISSION PRO BONO COMMITTEE, CONN. JUDICIAL BRANCH, ANNUAL REPORT: OCTOBER 2014, at 14 (2014), *available at* http://jud.ct.gov/Committees/pst/probono/ProBonoAnnualReport2014.pdf (detailing the inception of *LawyerCorps Connecticut*); LAWYERCORPS CONN., http://lawyercorpsct.org/ (last visited July 14, 2015).

[46] *See* LAWYERCORPS CONN., http://lawyercorpsct.org/ (last visited July 14, 2015) (listing founding corporate partners, foundations, and individual donors providing assistance).

[47] *See* PUBLIC SERVICE & TRUST COMMISSION PRO BONO COMMITTEE, *supra* note 45, at 2, 9–10 (describing focus and work of 2011 and 2014 summits).

[48] *Id.* at 13.

nection with the campaign was double what was anticipated, equaling more than $2 million worth of pro bono services.[49]

Finally, the need for legal representation is perhaps clearest at the appellate level. Simply put, how is a nonlawyer supposed to identify issues, write about, and ultimately argue effectively in support of their case? In this regard, pro bono appellate lawyers are looking into the viability of having an "attorney-of-the-day" program to assist self-represented parties in navigating the appellate process.

III
Conclusion

Yet with all of these efforts, there is still much more work to be done. Self-represented litigants have changed our legal landscape and will continue to do so for the foreseeable future. We have no choice but to continue to explore ways to make the system accessible to them in order to ensure that we are achieving our ultimate goal of justice for all.

All of the changes on both the national level and in my State that I have discussed tonight do not happen easily. At this point, however, it is clear that we are going to have to rely heavily on technology and extensive changes in case management to achieve our goals. The irony is that by adopting change in our courts, we ensure that the fundamental principles that make the courts what they are in this country will never change. In other words, by evolving to meet the needs of today, we ensure that the rule of law and the public's trust and confidence in us to provide meaningful access to justice will remain strong.

It would be interesting to know what the speaker will be saying at the 2035 Brennan Lecture. I cannot even envision what challenges will exist twenty years from now, and it will be up to a new generation to figure it out. I can tell you, however, that the Chief Justices throughout the United States are vigilantly trying to make sure that a fair and accessible court system will be available to the public in 2035.

In closing, I hope that I have provided you with some ideas to bring back home, and I look forward to hearing your thoughts. Thank you again for the tremendous privilege of addressing you this evening.

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[49] Press Release, Connecticut Bar Association, Young Lawyers Campaign Results in Over $2,000,000 Worth of Pro Bono Services (July 14, 2013), *available at* http://articles.courant.com/2013-07-14/community/hcrs-77436-statewide-20130712_1_connecticut-bar-association-small-firms-pro-bono-network.