

Trends: Close Up

October 2019

Rethinking the Delivery of Justice in a Self-Service Society

Consolidated Remarks of Michael L. Buenger, Executive Vice President for the National Center for State Courts, before the ABA Dispute Resolution Section, April 10, 2019

What does it mean to deliver justice in a world of growing virtual relationships defined by boundlessness? How can the courts establish justice, protect core values, and remain relevant in an increasingly physically disconnected, but virtually interconnected world? The answer lies within four themes: the delivery of justice, self-service, society, and rethinking.

Delivery of Justice

Dispute resolution has become a two-pronged industry—public, meaning the courts, and a newly emerging private system. Long-held beliefs, assumptions, and thinking often prevent courts from being competitive. Those within the courts are often ensnared by the highly complex and sophisticated systems, unable to rethink the judicial schematic. We need to ask: Is our public dispute resolution system designed for modern needs and expectations? The answer: No. An unwillingness or inability to make the intellectual, financial, and institutional investment necessary has resulted in little progress toward change.

About the Series



These special reports are part of the National Center for State Courts' "Trends in the State Courts" series and serve as informative and timely updates for state court leaders. Any opinions expressed herein are those of the authors, not necessarily of the National Center for State Courts.

Self-Service

- Can you recall when a landline was the only electronic connectivity?
- Would ignoring your phone for 30 minutes cause you anxiety?
- Do you use your phone to:
 - View social media and videos?
 - Bank?
 - Book travel?
 - Navigate?
 - Shop?
 - Interact with a government agency, a court, or a dispute resolution system?
- Do you talk to Alexa?
- Is an app your primary means of interacting?
- What if you permanently lost access to a cell phone?

The world is changing. Eighty-eight percent of the largest companies in 1955 no longer exist. The iPhone 6's clock is estimated to be over 32,000 times faster than the best Apollo era computers, performing instructions 120,000,000 times faster. Doctors and judges use systems like IBM

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Watson to aid in decision making. Amazon receives approximately 160 million app inquiries a month and uses approximately 54,000 robots at its fulfillment centers. AI spending is anticipated to increase 37 percent compounded annually from 2018-2022; the use of “digital assistance” between customers and services is expected to increase 45 percent. What does this mean for a workforce? I make these points to get you thinking about how fast times are changing; how much “self-service” you engage in everyday; how innovation is constantly reshaping our world; and how nothing is inevitable—institutions either adapt or fail themselves out of existence.

Society

Dispute resolution processes reflect societal norms, customs, and practices. The public’s confidence in the fairness and capabilities of a justice system correlates to social order, political stability, and a community’s economic well-being. The need for public confidence in the justice system is particularly acute in a democracy like ours where people comply because we believe the consequences are fairly and competently administered. Thus, we must cast a critical eye toward our system, ask hard questions, and ensure we are building capacity and expertise in the courts as we innovate alongside society.

Highly complex systems sometimes constrain people, eliciting the false deduction that the fundamentals work and are above reproach. In his book *Courts: A Comparative and Political Analysis*, Martin Shapiro observed that although people recognize human disputes are not prototypical, most people believe in an archetype court system wherein (1) an independent judge; (2) applies preexisting legal norms; (3) after an adversarial proceeding; (4) where one party is deemed right and the other deemed wrong.

Despite recognizing our disputes lack uniformity, we nonetheless measure success by the ability to adhere to this archetype. Focusing on rules over substance

creates frustration for a self-service-oriented public and relegates judges to deciding whether everyone follows the rules versus ascertaining what the law and justice require. When helping people resolve disputes via approachable rules isn’t a reality, the consequences are serious.

Rethinking

The Constitution establishes the courts but does not guarantee their relevance or require their use. The courts must adjust to public expectations or else the people will go elsewhere, taking the court’s relevancy with them. How do we avoid irrelevancy?

In his 1999 *Harvard Business Review* article “Why Good Companies Go Bad,” Dr. Donald Sull revealed leaders of good companies that failed didn’t ignore or misunderstand the changing environment but were trapped by institutional thinking. We cannot permit making small alterations to the fringe of our operations to lull us into believing we are making radical changes that address competitive threats to the very core of our business. We need to ask: Knowing what we know today, would we design the justice system we have? Short of a resounding yes, we must rethink the system, focusing on changes that promote greater access and result in more meaningful and sustainable outcomes to disputes while also protecting core values.

Springboards for rethinking the delivery of justice:

Should we fundamentally redesign the way people access and interact with the justice system?

People expect to be able to interact at their convenience, but e-filing and online access aren’t revolutionary when the system is grounded in venue and jurisdiction. The world is increasingly virtual, unconstrained by physical location. Why must we go to a physical courthouse? Consider



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online dispute resolution (ODR). While legal issues often cannot be resolved via a few drop-down menus, ODR could become the preferred means of resolution for many cases. In an age where people can increasingly go elsewhere without ever leaving their chair, we need to abandon the “they come to us” model of thinking to secure the vitality of the court system.

Is the complexity of our system meeting the needs of our citizens?

We need rules, but do we need all these rules to serve justice? No. What we need are new, better rules that balance protecting the integrity of the courts with an increased demand for self-service. The rules need to be more flexible, more targeted, and, in some instances, simple enough for the public to understand.

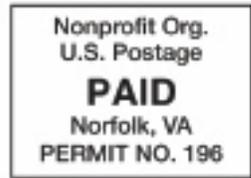
What does it mean to go to court in the future?

Professor Frank Sander proposed the idea of a “comprehensive justice center” that would de-routinize, rethink ways of relating, include nimble approaches, and rethink what the courthouse means with all the historical narrative, connotation, and belief we attach to that term. Forty years post-Sander, we continue to promote the adversarial courtroom above all else. We need to invest in differentiated systems of access to justice and differentiated systems of dispute

resolution to truly focus on public service and not institutional preservation. We should implement deep, systemic changes designed to identify key contested issues early, leading to a targeted approach for resolving those issues using a variety of dispute resolution tools including, at times, alternatives to full adversarial litigation.

Looking Forward

Rethinking the delivery of justice in a self-service society is not an easy task. Courts are tradition-bound institutions, which is good, so long as those traditions are in pursuit of establishing justice. If building our justice system anew today, I suspect many of us would not design our current system. This gives us a starting point to ask penetrating questions as to how we innovate ease of access to the system and our diversity of services while protecting our core values, balancing virtual ways of relating against the complexities of human disputes. If we don't do this, we may all celebrate our legitimacy while losing our relevancy.



Try unscrambling the words on each line. Using the letters in the circles, unscramble to find the four words that will fill in the blanks to complete the quote below.

BILPUC NOEDIFCECN	P U B L I C	C O N F I D E N C E
XPMLCOE	C O M P L E X	
RAASAIDELRV	A D V E R S E R I A L	
VYDLEIRE OF JITSECU	D E L I V E R Y	O F J U S T I C E
LESF-ERCESVI	S E L F - S E R V I C E	
SOETYIC	S O C I E T Y	
NIEKGHIRTN	R E T H I N K I N G	

A D J U S T T O P U B L I C
E X P E C T A T I O N S

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Michael L. Buenger, Executive Vice President and Chief Operating Officer for the National Center for State Courts