

Remarks by Chief Justice Loretta Rush
As delivered to the House of Delegates
2023 ABA Midyear Meeting
February 2023

Thank you for that warm introduction. I would also like to thank President **Deborah Enix-Ross**, President-elect **Mary L. Smith**, and all members of the House of Delegates for your warm welcome today. I also want to thank the Indiana Delegation for escorting me today. Indiana State and Local Bar Associations have been a large contributor to my 40 years as a lawyer and judge.

It is my high honor to continue the tradition of addressing the House on the work of the Conference of Chief Justices along with the far-reaching work of the state courts. It's a tradition that allows for an open exchange of ideas; a sharing of priorities and strategic objectives; and an opportunity to coordinate our efforts. And New Orleans is a great place for this to happen!

Next year the CCJ will celebrate its 75th anniversary. And the ABA was instrumental on making that happen. In 1948, at both the American Law Institute meeting and the ABA meeting in Seattle, the judges of many state supreme courts met at luncheons presided over by the Chief Justice

of Nebraska and with assistance from the ABA Section on Judicial Administration. They decided to organize a national conference of chief justices. The group met for the first time the following September in St. Louis. Since that initial meeting, the Conference's impact and influence have grown exponentially. And it a pleasure to thank you in person for the ABA's longstanding support.

I'm proud to lead this organization of remarkable individuals. CCJ is experiencing change. In the last few weeks, two of our Past Presidents—Chief Justice John Minton of Kentucky and Chief Justice Maureen O'Connor of Ohio—retired from the bench. In fact, there are 12 new state Chief Justices since October 2022 alone, which is a significant amount of turnover. Even more remarkable? In eight of our ten largest states, the incumbent Chief Justice has been in their position for less than a year.¹ With new people come new ideas, and I am confident that the influx of new leadership will continue to make us stronger.

Our newest members join a thriving organization committed to advancing fair, impartial, and independent courts and to confronting—not shying away from—the challenges we face every day. From bail reform and

pretrial release to the opioid and eviction crisis, CCJ has been on the frontline of addressing difficult challenges. I want to briefly talk about three state court priorities: embracing new technology, responding to the nation's mental health crisis, and increasing public trust in the judicial system.

Because 96% of all cases in our nation are filed in our over 30,000 state courts, we must constantly grow and adapt to meet the needs of our millions of court users (that I like to refer to as court customers—because we are here to serve them). Meeting those needs includes using court technology and procedures implemented during the pandemic. During the pandemic, state courts expanded their reliance on virtual hearings, e-filing, online mediation programs, case diversion initiatives, and procedural simplification. There is no question that many of these solutions are here to stay. The challenge is how we make them better and fairer.

For example, we have learned that court proceedings work well when everyone is in the same “room” together, an in-person hearing. Likewise, they work when everyone is on a videoconference hearing together—fully remote. But I bet many of you could share a story of a hybrid procedure that did not work well. We can change that and make sure full access to justice is available in all types of court proceedings. To support successful hybrid court proceedings, CCJ—in cooperation with the National Center for

State Courts—is currently engaged in a yearlong pilot to identify best practices for the necessary technology and operations. We look forward to the findings of that study, which are scheduled to be published this spring.

Coupled with our increased use of technology during the pandemic is the reality that a growing number of Americans have greater comfort with and reliance on technology in their day-to-day dealings with people, businesses, and governments. Indeed, the National Center for State Courts' 2022 State of the State Courts report revealed that 59% of respondents are comfortable appearing remotely in court. And that figure increases to 67% for those under fifty years old. To remain connected to the public, we must continually review our procedures and consider the changing expectations of implementing technological advances into the judicial process. And we depend on you for quality feedback to make progress.

A second challenge is the prevalence of mental illness, substance use disorder and other behavioral health challenges in justice served individuals that find themselves our state and local courts. Nearly one in five adults across the country—more than 67 million people—live with a mental illness. Over 13 million adults live with *serious* mental illness. And these individuals are 10 times more likely to be incarcerated than they are

to be hospitalized. In fact, 70% of incarcerated individuals suffer from serious mental illness, substance use disorder, or both.

But jails are not treatment centers, and they were never intended to be. The unfortunate reality is that the criminal justice system has become a primary referral source, the entry point, to obtain treatment and services. And it is not just the criminal justice systems. Almost all state court dockets have litigants struggling with substance use disorder or mental health challenges: child welfare, guardianships, endangered adults, housing and employment issues. And there is overwhelming public support for courts doing more on behavioral health. The 2022 State of the State Courts' report revealed that 82% of respondents believed state courts should help individuals find treatment options, and 79% believed courts should divert low-risk offenders with behavioral health issues.

To assist courts and attorneys in more effectively responding to justice-involved individuals with mental health issues, in 2020, CCJ—working with our collaborative partners in the Conference of State Court Administrators (COSCA) NCSC and State Justice Institute—established the National Judicial Task Force to Examine State Courts' Responses to Mental Illness. This effort produced a first-of-its-kind partnership between the Conference and the Substance Abuse and Mental Health Services

Administration. Walls came down, cooperation increased, and the people we serve are benefiting as a result.

The final report issued last fall—engaged in research, developed tools and resources, delivered training, education, and technical assistance, and established best practice and policy recommendations for courts and communities. The Mental Health Task Force final report, just as the National Opioid Task Force report, is publicly available to all of you at the NCSC website. It includes bench cards, best practices, solutions, and information not only for courts, but for all of you. As attorneys representing these litigants in court, this information will aid you in your advocacy for better outcomes for so many of those struggling before our benches.

The Task Force concluded that states and state courts should: convene justice and behavioral partners to improve the required responses, promote treatment not further justice system involvement, and examine case management practices to ensure efficiency.

Now, these recommendations won't solve the problem overnight, and we are only beginning to implement solutions. But we are committed to their pursuit—justice demands it.

Justice also demands that we confront a third challenge: the falling public trust and confidence in both our courts and the justice system

generally. NCSC's survey has found that 60% of respondents have confidence in state courts, which is higher than reported confidence in state legislatures, state executives, or federal courts. However, that number is still on a significant downward trend. And the report reflects additional decreases on specific confidence measures. For example, the survey shows a declining confidence in the courts' ability to provide equal justice. This is certainly a gut punch to all of us.

We must respond and we need your help. We cannot simply hope that it will go away—social media and disinformation guarantee that it will not. Why, you may ask, is public trust so critical to the courts? Because it's our currency. As Alexander Hamilton famously pointed out in the Federalist Papers, we have “no influence over either the sword or the purse.” True, but we do have tremendous influence over Americans' trust in state courts. Every day, millions of people enter our courtrooms, where they are guaranteed a fair, impartial, and accessible justice system. So, it is imperative that we operate a justice system that bolsters our currency. To do so, we must identify new strategies to emphasize that a few highly contentious cases shouldn't distract from the fact that, since our nation's founding, **state** courts and **state** constitutions have played—and will continue to play—an enormous role in shaping law, forming precedent, and

protecting constitutional rights. And we must also better educate a new generation of Americans on their civic duties.

CCJ remains committed to pursuing stronger civics education and improving media literacy. For example, at our annual meeting in Chicago this past summer, we recognized the work of Baylor University's iEngage program. That program was honored with the 2022 Sandra Day O'Connor Award for the Advancement of Civics Education, which is presented annually by the National Center for State Courts.

iEngage is a camp for fifth through ninth grade students that focuses on developing their civic and political competence and strengthening their community and political engagement. The students learn about the structure of government, what it means to be an active and engaged citizen in their communities, and how they can work to make changes.

Your CCJ is also committed to changing court procedures and practices when needed to make access and fairness-front and center. Here are just a few examples: we are working to bring court to the people with 24/7 access to the courts, electronic filing, on-line dispute resolutions, text message reminders, eviction diversion programs, equity and fairness

commissions, civil and family court justice initiatives, criminal justice reform through pre-trial, bail and fees and fines best practices.

On behalf of the Conference of Chief Justices, let me again thank you for your time, attention, and engagement. Next week, ABA **President Deborah Enix-Ross** will join me and my CCJ colleagues at our midyear meeting in Austin. We look forward to hearing her remarks and to learning more about the ABA's priorities—many of which match our fundamental goals.

As President of the CCJ, I recently met in Helsinki with Justices from Ukraine, Kazakhstan, Kosovo, and other countries around the world. We discussed shared challenges and aspirations. I heard stories about decades-long backlogs and the critical need for “anti-corruption” courts. And I listened as a Ukrainian Justice emphasized their judiciary's unrelenting resolve to keep the courts open for their citizens and their economy despite war-torn, bombed-out courthouses.

These stories gave me the utmost appreciation for the strength and efficacy of our legal system in America and our shared work. The organized bar is a powerful force to ensure our courts remain fair, impartial,

independent, and accountable to the rule of law. Thank you again for your time and attention.