

Board for Judicial Administration

Court Recovery Summit Discussion Groups Responses

August 25, 2020

As we assess changes to court operations necessitated by the pandemic and plan for the future, access to justice and racial equity must be at the center of our work. Jeff Robinson opened the Summit with a presentation, *Excerpts from "Who We Are: A Chronicle of Racism in America."* Participants then had an opportunity to collaborate in small group discussions to consider how courts can recover from the present crisis to achieve an even better, more inclusive, and accessible justice system. Following is a summary of responses from the group discussions.

Discussion Topic #1: Racial Justice and Reimagining the Justice System

Participants were broken into seven groups and answered two questions. Below is a summary of all of the groups' responses.

What about the current justice system that you work in or participate in reflects systematic racism? Can you identify court practices or policies that you believe are specific instances of systematic racism?

Systematic racism

- Implicit bias is evident in decisions around "appropriate" family placement.
- The assumption that everyone is similarly situated.
- The courts lack connection to the community or the ability to fully understand perspectives, especially when community members have a negative experience within the court community.
- Law firms have power over the community and decide who they want to represent and who they do not. Often times this excludes people of color.
- There is a lack of understanding. Individuals view the justice system as a lack of equity; this is a flawed statement because each of us are not coming from the same place. The lens needs to be via fairness and then try to address the unfairness. Equity doesn't address the barriers. For instance, look at juries – they receive \$10 a day, these are individuals who may have four jobs in order to survive. The parking alone is \$15. We need to look at the fairness.
- Data shows that individuals of color are five times over represented in post-conviction. Participant has observed a pattern that starts in foster care and then is compounded by race, disability, sexual violence, and the history of how African American men are viewed.
- Disproportionately impacts communities with higher instances of single parenting and poverty.
- There are very short-sighted policies that keep families in poverty. Financial triggers are often a trigger for neglect.
- White defendants get to keep their jobs while they are in the court process, while poor individuals can't afford to pay fines or pay bail while in the court process, so they lose their jobs.
- Many judges want to participate, but not in every county, and not every judge in every county. We need transparency in the process. Who does have the power? Judges can't legislate from the bench. Need to educate the public and move to un-silo the silos.
- Unified Family Court system – some counties may not be as eager to do systemic evaluation to make differences. How can we work with rural and urban together to make a difference? We need accountability. Who makes the decisions and how does that impact the family?

Access considerations

- In the attempts to offer equal access to justice (under COVID-19) system there are many

factors that are not even considered when the courts are setting up ways to administer justice under the new system. For example, given technological issues, guarantees of a speedy and public trial make it difficult when courts do not have room to let additional people into the court rooms and technical difficulties arise if providing effective language access.

- Staff have been struggling with identifying how people first get involved in the court/justice system and how we can fix the areas outside of the court's purview and how to be impartial. Some courts are looking internally at community courts and how to look at alternative sentencing options before people end up in the "system" and how we can be not participating in racism.
- This is the culture of the legal system. People don't access the legal system – they fear it – but they also have a poverty of time. There might be resources out there available to them but they don't have the time to figure it all out; it is overwhelming.
- Having the lack of resources does not help someone win their case. Communities that have more resources are more successful.
- Use of Zoom as the only way to enter a courthouse is problematic. Many individuals and communities in more rural areas do not have Wi-Fi.

Decision Making

- In family law you often see value judgments that are set by the dominant (white) culture.
- Public Safety Assessments and the systematic racism that is inherent in these pre-trial release tools. For instance, the use of housing as a score factor. Minorities are less likely to have stable housing. But is that really a measure of community ties and a predictor of public safety?
- Bail is a difficult issue. Using criminal history is problematic because we know that minorities are more likely to have more history. We need to look at the individual, look at the circumstances of the offense. A "violent" crime may not be what it appears in the charging document. If a defendant has a job/housing, don't remove them from stability if the whole picture tells you they are not at high risk offending. Exceptions are DVOs and DUIs.
- A court is conducting video hearings and the judge has been challenging attorneys on bail amounts. Are they asking more on persons of color? Is this something that is grounded in bias?
- Often see more minorities paying legal financial obligations to individuals. Is there a bias we don't see or acknowledge?
- Crimes of 2nd degree punishment, like driving without a license, seem to punish people of color and lower income more extremely.
- Perhaps the Supreme Court's sunset of LLLTs is a form of systemic racism.
- You can get daycare assistance from the state to go to work, but not to go to school.
- Bail decisions and use of risk assessment tools can be problematic.
- The idea that points accumulated in the juvenile system may affect adult sentences is inconsistent with the thoughts on juvenile decision making. This especially impacts people of color who are in the system at a higher rate.
- In the sexually violent predator commitment process and in the foster system, Blacks are overrepresented.
- Stacking offenses.
- Court rules: they are different in each jurisdiction and hard for non-trained people to understand.
- In the '90's with our juvenile super-predator mindset, they did away with automatically expunging juvenile records.
- How much authority do judges have?

Diversity in justice system personnel

- Every level of the courts needs more diversity, particularly in the leadership positions.

- Organizations are not hiring individuals of color for leadership roles to help make decisions.
- The legal community is somewhat overwhelmed. For instance, the WSBA conducts a pro tem training and there isn't much diversity in the audience. We haven't addressed how the system only works if you become the "chosen one." If you become the chosen one you receive the calls. Law firms state they want to hire persons of color but during the interview or when hired you are told to think like the law firm, not as a minority or a woman.
- People of color can sign up to be pro tem judges, but will they be chosen?

Data and evaluation

- When there is no data, it is difficult to develop better systems. There is a lack of data about how cases proceed. We need to better track data so evaluations can be data driven.
- One example of disparity is the sentencing and outcomes are not shared equally among the defendant population, if defined by race and ethnicity in the absence of actions that examine the population and characteristics of the court, and by not trying to address these disparities, then we are perpetuating the racism and inequities.
- No one is aware of data on race being collected in relation to bail decisions. One judge feels like they are chipping away at the edges of disparities in bail decisions, but no data is being collected. However, Spokane County jail has a dashboard that is going live publicly that will offer some transparency.
- Data shows a high level of disproportionality of minority children and families who are involved in the child welfare system. When children are removed due to abuse or neglect you rarely see families who are involved in just one aspect of the system. Factors are interconnected with each other, as well as the results of racism, like a domino effect.
- Incarceration for youth in WA—minority numbers have stayed the same, while Caucasian numbers have gone down due to deferrals. Where can we call attention to it?
- Pipeline – look at the preceding structures before coming in front of judge. For example, juveniles earn points when convicted and that compounds standard sentences in the adult world, which doesn't make sense as brain science tells us the brain is still forming in their youth. Youth of color are predominant in the juvenile system, which is then compounded later in pipeline.
- Young people of color are more likely to be stopped, arrested, and placed in juvenile detention. Then additional points from that adds to sentence as an adult. And because of poverty they are more likely to be involved in crime.
- In King County Juvenile Court the numbers in juvenile detention are going down, but disparities are going up. Sixty percent of youth in juvenile detention are black and Latino.

The Court Recovery Taskforce provides an opportunity to reimagine the justice system. As a founder of this new justice system, what do you most want to accomplish? What is something in the present system that you most want to change?

Systematic Approaches

- What we are talking about is life and death; the delay to actually discuss the issues cost lives. The community most impacted is usually not present at the table when key discussions are taking place. We need to seek what they see as the solutions. Step out of the silos and be accountable to the community that is being most impacted.
- The key for equality in the system is fairness and eliminating barriers to accessing the system.
- What we ask of people to even come to court can be problematic. We should ask ourselves, "Why do we even ask people come to court in the first place?"

- (Juvenile issues) Is there a risk assessment of the “village” where the children are most impacted? Focus on the broader community. Acknowledgement that it isn’t isolated and broader community needs to be examined.
- Are there too many steps in the process to get people through the system?
- When are we going to actually challenge the traditional way of doing things?
- We need to closely examine the pipeline of how individuals come to court and then examine the role of the court once those individuals are in front of us. We need to address early decisions in the life of people and structural racism.
- Judges do have authority and can be instrumental in breaking down silos, and developing rules and practices that affect the pipeline.
- Every court has their own rules and they are written in more complex, legal language. It would help immensely to have easier language.
- Court rules and processes are cumbersome.
- Viewing prevention in a different way would be a great step forward.

Personal Accountability/Exploration

- Recognition of privilege and the people who are summoned to the judicial system.
- Look to understand why people do what they do or don’t do. Really understanding assumptions and understanding the world.
- Listen more to understand.
- What is my role? Need to take a very hard look and move away from the white fragility response.
- Things judges can do—need to understand our authority and voices and how we can maximize that.

Decision Making

- Courts spend more energy on how to stop disproportionality in the justice system.
- Are we really assessing the right factors when using risk assessment tools? Is there a rigorous enough process in place to vetting the information (especially in juvenile cases)?
- Look at how we are processing cases and alternatives to incarceration.
- We have an opportunity to hear from all stakeholders who are impacted. Judges are often put in a role as being neutral deciders when the impacts of those decisions are anything but neutral. Courts could be more proactive in looking at early resolution/diversions.
- Studies show because of implicit bias, people of color receive harsher sentences and are less likely to PR.

Diversity in justice system personnel

- Expanding and improving diversity across the court levels requires working in the schools and mentoring so that people know their options. Focus on younger people.
- Challenge is where do you go to find the people to fill the positions? What do law schools look like? The pool you pull from isn’t diverse. Attorneys of color are very difficult to find. How do you connect the systems? Legal system needs to be involved in the early days of education.
- Valuing people’s experiences and recognizing the barriers persons of color go through to be deemed “qualified.” We need to change the perception that people of color may not be as qualified.

Specific programs and practices

- We have no alternative to incarceration or solutions to incarceration and would suggest that having more therapeutic courts could help with changes.
- The funding or financial support for specialty courts in our juvenile system.
- Accountability is a big part of things, but doesn’t mean jail. It involves growth and creating

opportunities for intrinsic moments. We have created tools to help with probation counselors that help reduce their response to teenage annoyance levels.

- We have incorporated a lot of foundational pieces of therapeutic courts into our juvenile court processes.
- Use of Arnolds Foundation Safety Assessment. Come out with a policy statement that until it can be objective then it should be banned in Washington State. This perpetuates racial disparity.
- Moving away from routine calendar hearings, reducing failures to appear, and making it easier to respond to judicial proceedings.
- There is a need for more inter-agency communication. Things do not work cohesively for the people who are trying to use the services. Also, it is easier to hide racist tendencies/ for things to fall through the cracks when things are not cohesive across the board. There could be CLEs for judges and attorneys to understand the role of these agencies.
- Judges and prosecuting attorneys should not take youth out of school/community. In Clark County they were able to close down three pods in their juvenile detention facility with this approach.
- Clark County decided 30 years ago not to lock up status offenders. Judges met as a group and decided that, even though they had the ability, they wanted to go down a different path. Judges can address and make choices.

Remote hearings

- Remote hearings have decreased the number of failures to appear. Although in some jurisdictions, in-person contact with the judge and defense is preferred.
- Has changed the way courts handle routine calendar management for the better for attorneys and defendants.
- Voir Dire – some attorneys and defendants feel seeing jurors in the Zoom squares allow them to read their reactions better. Others said they have the space for onsite proceedings and have not changed their practice.
- Jail security prefers remote hearings to prevent transporting inmates for health safety.
- Access to the internet is a problem for some jails and defendants.

Data and evaluation

- Work with evaluators to help track your progress and show decision makers and judges that the programs or changes made are making a shift to rehabilitative and transformative work. Greatest hope would be that these alternatives are the way to move to outcomes.
- Measure what's going on – define the outcomes and what are we trying to get to in the end.

Discussion Topic #2: Court Recovery Topics

Participants were broken into seven court recovery topic discussion groups with a facilitator and note taker and asked to answer two questions. The following are the specific highlights from each discussion group and responses to each question. These groups were broken down by content area as described below.

Juvenile Justice – both civil and criminal juvenile issues and considerations.

- 1) Have you made COVID-related changes you want to keep? If so, how do they improve our work? Please provide examples.
 - Continue to allow the same meaningful access.
 - A kiosk in the courthouse.
 - Video access to courts. Use of a format like Zoom is a fantastic tool. The access to justice using these tools should not be reduced for folks. It must be in addition to.
 - Technology has helped courts talk to clients who are in jails across the city, state, and country.
 - Electronic filing has provided public access to the court system. Implementing digital signatures should continue.
 - We need to come together and talk through strategies and work together.
- 2) Are there barriers to moving changes and innovations forward? What are the barriers and how can they be overcome? Would these changes positively affect equity and access and if so how? Please provide examples.
 - Technology has been helpful in some cases where transportation and child care is not available for some people to get to court, but does not work for everyone to have equal access to courts.
 - As courts reopen, courts have been inconveniencing defendants and have asked them to continue to come back into court multiple times.
 - The budget and staff shortages are barriers.

Civil Justice – general civil, unlawful detainers, self-represented litigants, and mental health issues and considerations.

1. Have you made COVID-related you want to keep? If so, how do they improve our work? Please provide examples.
 - There has been beneficial engagement and collaboration between the judicial branch and other agencies. Collaboration is important to keep moving forward.
 - Continue the use of technology, keeping in mind the barriers of urban and rural access, and use of different technology by different courts.
 - Remote technology improves access to the court and decreases the cost of litigation.
 - The crisis has created an opportunity for us to look more systemically and to be more communally involved with one another. Hope those relationships get institutionalized long-term.
 - At the administrative hearing level virtual hearings are much more common with deeper and broader participation.
 - Would like to keep extended hours in the discussion, particularly in smaller counties.
2. Are there barriers to moving changes and innovations forward? What are the barriers and how can they be overcome? Would these changes positively affect equity and access and, if so, how? Please provide examples.

- How do we accommodate lack of technology?
- Would non-traditional court hours (evening or weekends) help courts get through the backlog?
- Wish that were universal perspectives of the bench. Still some child welfare cases where attorney presence continues to be demanded.
- Some courts are advanced with their technology; other courts lack the bandwidth/technology/training to do remote hearings (especially the courts in more rural counties).
- Universal electronic filing in the courts would be very helpful.
- Some sort of simplified filing system (even just an email address on each court website) in the rural counties would be helpful.
- Ability to circulate and get signatures electronically would be a huge help.
- Would love to get input on court hours. Moving a lot of procedures out of traditional courtrooms, what about weekend court/night court and complete online processes?
- For our clients, the big issues are access to childcare and access to technology.

Technology and Logistics – facility and technology infrastructure issues and considerations.

1. Have you made COVID-related changes you want to keep? If so, how do they improve our work? Please provide examples.

- There is broad support for the use of videoconferencing. It has decreased the number of failures to appear, changed the way courts handle routine calendar management for the better for attorneys and defendants, assisted with Voir Dire and allowing attorneys and judges to read their reactions better and to prevent transporting inmates for health safety.
- Appeals Court grateful they went to all electronic records pre-COVID, it's been a good change.

2. Are there barriers to moving changes and innovations forward? What are the barriers and how can they be overcome? Would these changes positively affect equity and access and, if so, how? Please provide examples.

- Access to internet is a problem for some jails and defendants.
- Internet access is needed for court users. Courts are creating high speed internet hot spots for court users in community spaces all over town and in the parking lots of the court facilities. Hot spots could also be set up in community centers or libraries.
- Technology upgrades are needed for some court facilities. Cares money has provided cables, software, hardware, Owl cameras, etc. so courts can conduct remote proceedings effectively.
- Livestreaming proceedings. Good for fulfilling open courtroom laws, and recording potential misconduct. But there are concerns for sensitive litigants, especially defendants and victims in sexual assault cases. How to stop cameras for sensitive testimony is not resolved. When using live-streaming to accommodate open court rules, how do you balance this with privacy needs? This will be an area of litigation.

Equity and Inclusion – racial equity, language access, disability considerations, judicial officers and court personnel diversity issues and considerations.

1. Have you made COVID-related changes you want to keep? If so, how do they improve our work? Please provide examples.

- Video conferencing has increased the access to justice for many, especially in large counties where people have to travel long distances to come to court.

- Technology has increased access for those with transportation issues or who cannot take time away from work or find daycare and can reduce travel costs for others.
- The jail populations are down due to COVID and prosecutors and judges are doing more to keep accused people out of jail. This is a positive development which might reduce disproportionality within the jails.
- The Chief Justice meets with the presidents of the judicial associations and others every Friday morning. They brainstorm issues, across court levels, across counties. Perhaps this would be the starting point.

2. Are there barriers to moving changes and innovations forward? What are the barriers and how can they be overcome? Would these changes positively affect equity and access and, if so, how? Please provide examples.

- Barriers to remote hearings: community members not having internet access, no phones or computers or cell service. One county is looking at creating access points throughout the county where individuals can utilize technology. Perhaps video technology can reduce bench warrants and reduce this disparity of the higher number of Native Americans in their jails.
- Access points are the key. This would be a very concrete action the BJA summit could work on. It would benefit everyone.
- Technology is wonderful but we need to make sure those with disabilities and/or needing language access are not forgotten. Dealing with disabilities within the court setting is one thing but courts have not been able to address it adequately via technology.
- Some organizations' facilities don't have the technological infrastructure needed to address court needs.
- Wearing masks may create a problem for interpreters. ASL Interpreters and other interpreters are having difficulty translating while everyone is in masks.
- It is critical for courts to talk to each other. From an attorney's standpoint it is very difficult and discouraging to have different rules and procedures at the different levels of courts. More uniformity and centralized resources would be helpful. Look at what has already been done, share it, and replicate it.
- It is critical to hear from groups across the spectrum and hearing the good and the bad. This type of forum should continue and continue to add other voices to this forum.
- We need to hear from those within the system, those impacted the most. Are we willing to hear from people in the system? If so, we cannot be defensive.
- We need to recognize and embrace problems and have an honest and blunt assessment.
- Judges need to be willing and able to engage in conversations on needed changes.
- We need to identify and address obstacles to people with no access to Wi-Fi or with disabilities.

Family Justice – child welfare, delinquency, elder and protection order issues and considerations.

1. Have you made COVID-related changes you want to keep? If so, how do they improve our work? Please provide examples.

- The Department of Children, Youth, and Families (DCYF) moved to remote services for parent-child visitation and in-home services. They learned that remote visits were helpful to families, but does not replace in-person visits. Positive change that they would like to keep—for instance, video call to child to say goodnight in addition to visits, and when parents cannot make it to a visit, it will not be canceled, but made remotely.
- Child advocate training—a number of the local programs didn't have the capability to train remotely. Over 140 child advocates trained online statewide during COVID. Now the

training is centralized and there are assurances that volunteers are getting information on disproportionality and bias because it is in the curriculum.

- Scheduling is better than before.
- Those filing protective orders don't have to face perpetrators, and we should use this process going forward.

2. Are there barriers to moving changes and innovations forward? What are the barriers and how can they be overcome? Would these changes positively affect equity and access and, if so, how? Please provide examples.

- Agencies are often siloed. They need to work together to address financial and educational inequalities. We need education, health care, and employment opportunities.
- DCYF provided all phones, hot spots, etc. through concrete goods and services. Most families are able to participate remotely, some remote areas difficult, but a small percentage.
- Technology was not the biggest challenge, giving them permission to use it was.
- Some courts don't have Wi-Fi and at the same time have to be like air traffic controllers to move cases through.
- The number of protective orders has increased. SCJA is drafting legislation to provide consistency with various protective orders in statute to introduce next session.
- Self-represented family law matters. AK, OR, ID do not have informal domestic relations trials. A template would be helpful (Thurston County may be doing it).
- Barriers from the child welfare perspective – they are a reactive point in system. Typically layers and layers of things have occurred by the time they see families. Need to get upstream, think more collaboratively, and need to think about education, economics, medical, etc. Is there a group that can take this on and answer the question: What do we want for all families? People expect DCYF to solve this problem, but they can't do it all. Need to turn system on its head and allocate resources.

Adult Criminal Justice – adult criminal justice issues and considerations.

1. Have you made COVID-related changes you want to keep? If so, how do they improve our work? Please provide examples.

- Continue the current level of cooperation and collaboration.
- Reconsider releases of non-violent offenders.
- Using remote technology for defendants has increased access.
- For efficiency sake, remote work can be done and there could be some cost savings.
- Strategic plan for use of Zoom/de-personalization issues must be considered.
- Requirement of appearance when cases are going to be continued – not requiring them to be present helps to expedite the process.
- Juvenile cases need to be mindful of constitutional rights.

2. Are there barriers to moving changes and innovations forward? What are the barriers and how can they be overcome? Would these changes positively affect equity and access and, if so, how? Please provide examples.

- Think about barriers to access and uniformity of court documents and court processes.
- In the interest of streamlining, consider a central clearing house for information.
- Obtaining documents from the clerk's office and uniformed documents.
- Consider language access needs as we move forward.
- Need for statewide coordination of public defenders – the decentralized nature currently makes communication challenging.

Court Management – case flow management, judicial and court personnel and staffing, training, and accountability issues and considerations.

1. Have you made COVID-related changes you want to keep? If so, how do they improve our work? Please provide examples.

- When motions or other hearings can be held by videoconferencing platforms, this works well for rural courts; they improve the justice system for attorneys and defendants, etc. Doing depositions by Zoom or by remote means saves travel time and cost as well.
- Access to services increases with tele-appointments.
- One court is using videoconferencing for mitigations and if the court user wants an in-person hearing, then parties call. Keeps courts open for backlog. They were able to go to e-courts so many people, including probation officers, are working from home.
- Access to services and remediation of behavior or parental issues in small rural communities is something that has increased because they have been able to increase menu offerings due to video/health and teleservices.

2. Are there barriers to moving changes and innovations forward? What are the barriers and how can they be overcome? Would these changes positively affect equity and access and, if so, how? Please provide examples.

- Consider the difficulty of access when all jurisdictions have different accessibility.
- There are challenges still with docu-signing and sharing documents and for courts that do not want everything out on YouTube.
- One court is trialing a work from home day for all personnel to see if it can be done.
- Interpretation: there are difficulties with simultaneous interpretation if interpreters are not given a separate line for communication and if they are there will be a learning curve. Other barriers for language access: may be hard to hear individuals through the platform, interpreters may not have access to the documents ahead of time, and consecutive interpreting may take more time or things may be missed. How do you connect people to online interpreter if the website is not updated or translations done?
- Biggest hurdle is not having electronic filing and that the postal service is slowing down.
- Not having consistent technology platforms or best practice or standardization from the courts can be challenging for individuals to learn and know where to find things.

Themes from the Summit Discussion Groups

There were several themes that came up in the discussion groups:

- 1) **Universal Access to Technology and Remote Hearings** – Remote hearings and access to technology are important issues to move forward. While remote hearings have often increased access to the courts, there is a need to train on the technology, create access to Wi-Fi and technology tools, and address language and disability considerations for technology usage.
- 2) **Continued Collaboration** – Increased collaboration with justice and community partners has been critical in being successful and must continue past the pandemic.
- 3) **Increased Stakeholder Feedback** – It is critical to engage broad stakeholder feedback including court user (those that come into the courts to utilize services) feedback to ensure identified outcomes are met.
- 4) **Racial Equity and Access Considerations** – Racial Equity, language access, and disability access must be at the forefront as we develop new procedures and ways of doing business.