

Paths to Justice SUMMIT SERIES

Learning from this Nationwide Pilot Project— Ensuring Access to Justice in High-Volume Cases

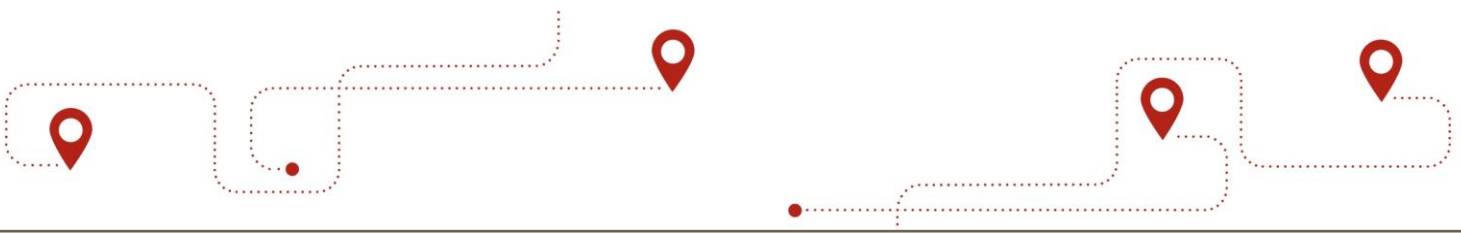
October 14, 2021

The COVID-19 pandemic has forced courts across the country to shift their business practices to ensure the continued administration of justice. Courts have considered and embraced new and creative solutions in this moment, and these changes may have the most impact going forward for high-volume cases—including lower-value contract cases, landlord/tenant, and consumer debt collection cases—where innovation to ensure access to justice has been most needed.

The National Center for State Court’s [Landscape of Civil Litigation in State Courts](#) study in 2015 highlighted that the makeup of civil litigation in our state courts had changed dramatically over the last several decades, and that today state court dockets are dominated by lower-value contract and small claims cases, with attorney representation on both sides in only 24% of cases. These “high-volume” cases share a number of common characteristics. Plaintiffs tend to be represented, with more knowledge of the rules and procedures, as well as greater access to resources. Defendants, on the other hand, are likely to be self-represented, of low or modest income, and face numerous barriers to access to justice. These cases are where most people in our communities experience the justice system, and where civil justice reform efforts have urged more flexibility, creativity, and new solutions to address the gap in access to justice in our system.

During the pandemic, courts have been forced to set aside many antiquated procedures, developed for a bygone era, and rethink how justice can be delivered when the courthouse doors are closed. This is an excellent time to ask a key question: what are the emergent reforms that courts, attorneys, litigants, and others in the justice system have implemented that have helped to ensure access to justice for high-volume cases? What has worked well during this “nationwide pilot project,” and what has this pandemic-induced experiment highlighted that needs further improvement? How can we leverage innovation at this moment—in the areas of communication, procedural fairness, and substantive justice—to expand access to all people?

In September 2021, IAALS, the Institute for the Advancement of the American Legal System, held a convening to brainstorm these important questions, focusing specifically on high-volume cases. The goal was to bring together a group of diverse perspectives and partners to capture the lessons we have learned from the past year, identify continuing challenges, and inspire additional research. While caseloads were down in 2020, many expect a surge in cases in the coming year based on unemployment and financial hardships due to the pandemic. Now is the time to assess what has worked well throughout the pandemic, as well as upcoming challenges, specifically in



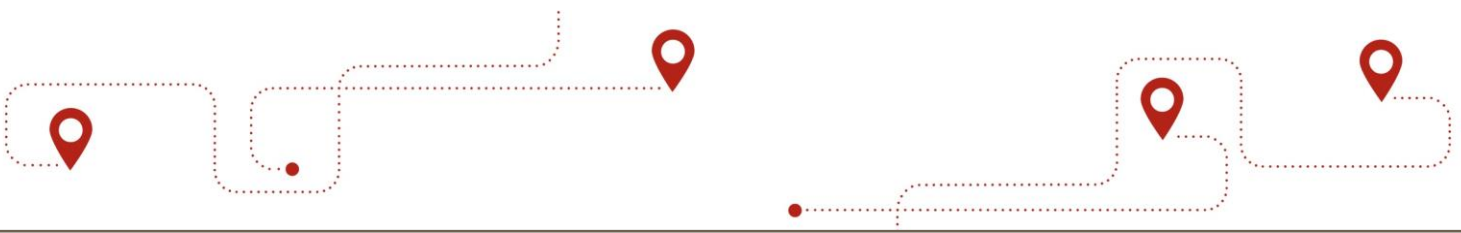
high-volume caseloads, where innovation may be the most impactful and transformative. We hope the following summary helps to bring focus and clarity to the dialogue and ongoing innovation.

Lessons Learned

We need to shift the paradigm to think about courts as a service, not just a location. Courts have been forced to think differently about where and how justice is delivered, and that has created an opportunity to consider meeting litigants' needs in different ways. Traditional in-person hearings create a number of barriers in high-volume cases, including the costs of child care, transportation, and time off work. *To ensure that we capitalize on this lesson going forward—and not just return to pre-pandemic court procedures out of tradition—courts, judges, and attorneys need to fully embrace this shift in mindset.* If this shift isn't embraced, courts will just revert to prior practices post-pandemic.

Holistic upstream solutions have huge potential to solve justice needs in our communities. When we look at the justice system more broadly, holistically, and with a broad array of partners, we can achieve real upstream solutions. We have seen remarkably creative partnerships result—with significant positive impacts on people's lives—in the pandemic. Depending on the case type, courts may offer diversion programs at the start of a case, or provide wraparound services over the course of the case. *By considering a holistic approach, recognizing interconnections of mental and physical health, social, and economic factors, a better outcome for people can be achieved.* For example, the National League of Cities ([NLC](#)), together with the Stanford Legal Design Lab ([LDL](#)), have created [The Eviction Prevention Learning Lab \(EPLL\)](#) program, following the inaugural [Eviction Prevention Cohort](#) in 2020. The EPLL is a nationwide peer-to-peer network for cities and their partners committed to improving human-centered approaches to the eviction crisis. The program encourages cities to increase community outreach and engagement to both landlord and tenants; develop diversion strategies before evictions or after a household has been displaced; use mediation programs; offer financial, legal, and social services; and promote relationship-building with local courts and court officials.

This action requires stakeholder involvement from all perspectives. In Michigan, the Michigan State Housing Development Authority (MSHDA) has federal funds available to help tenants facing pandemic-related hardships avoid evictions through the COVID Emergency Rental Assistance (CERA) program. The Michigan Supreme Court has played a key role in anticipating

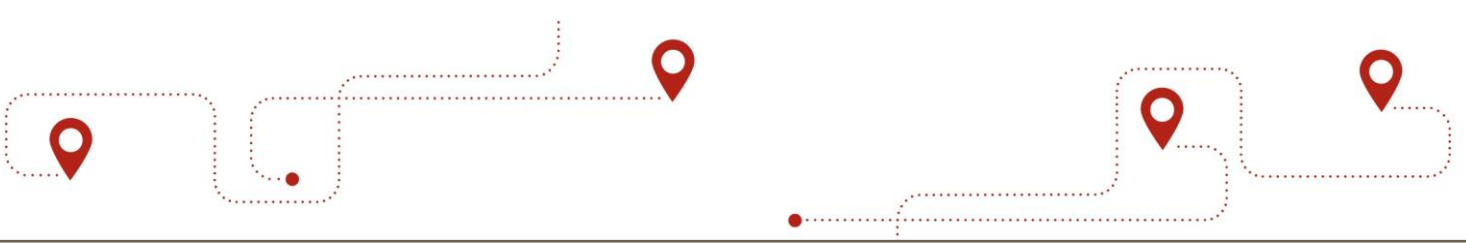


the end of the federal moratorium and working toward short-term and long-term solutions, and the courts statewide are assisting in connecting renters with these resources and giving renters time in the court process to access these resources.

Technology has allowed more people to access the courts in high-volume cases. Technology has allowed people to interact with the court system in new ways. Early data suggest that hearing attendance has increased and default rates have decreased. These increased participation rates suggest that requirements to appear in court serve as a barrier to justice for many people. The ability to appear in a virtual hearing setting reduces costs associated with participating at a physical courthouse, such as childcare and transportation costs. This applies to both litigants and court staff. Some people may be more comfortable appearing by video, especially in certain case types such as restraining orders. Judges, court staff, and attorneys share concerns about lack of formality and seriousness in proceedings, and this remains a factor to consider as we continue to innovate virtual and hybrid hearings going forward.

Not all virtual access is equal. While we see an increased rate of participation in virtual hearings, this does not mean that virtual hearings do not have their own access challenges that need to be solved. Inequities result from people using different technologies, such as a litigant calling in from a phone line at a hearing where the judge and other party appear by video. We have learned many lessons to address these challenges, such as the judge clearly identifying themselves verbally as a judicial officer and calling on parties frequently who are not able to visually raise their hand or otherwise indicate that they have a question. Courts have faced new challenges related to providing interpreters during virtual hearings, and private access to counsel in a Zoom setting, but they have learned ways to navigate these challenges as well. For people who don't have a professional, quiet place to join a virtual hearing, they may find themselves at a disadvantage. Here, too, courts and communities have been innovative, creating spaces at libraries and community centers to help bridge this gap. *As additional research is done from the perspective of the court users, we will learn more ways to improve the virtual experience to ensure fairness and access for all.*

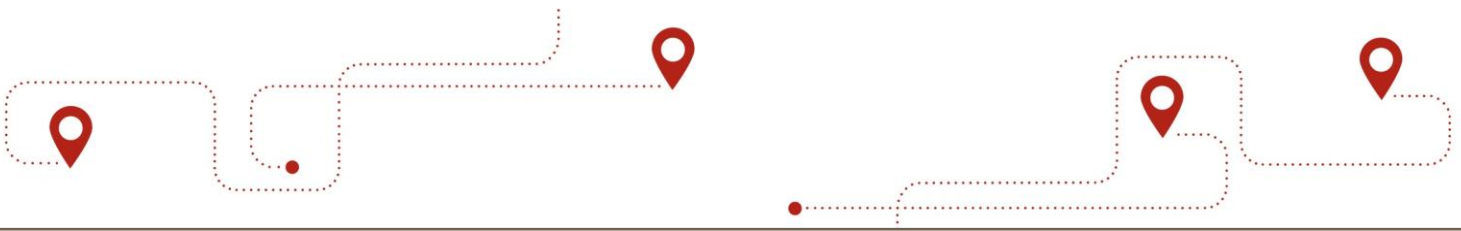
Technology has exposed a digital divide in high-volume cases especially. The pandemic created new opportunities to appear without going to a courthouse, and these remote services come with great benefits to the court and the litigants alike. While remote court services should be lauded and continued as a way to increase access, particularly in high-volume cases, the pivot to remote technology has highlighted the challenge of the digital divide. Court consumers may



lack internet, a stable internet connection, and even the technology—such as a smartphone or laptop—to appear in a virtual setting. In addition to these access challenges, not all court users have the digital literacy to navigate a videoconferencing platform. Bandwidth problems are particularly challenging in rural areas, but we have seen that unstable internet connections can be a challenge anywhere. To best meet the consumer needs, courts should think creatively about how to address this digital divide. In addition to providing spaces with technology, as noted above, some courts have also loaned or driven digital devices out to litigants or witnesses to ensure access to the courts. *Given the increased access to justice in high volume cases afforded by remote court services, it is critical that these services continue post-pandemic.* What is needed is a continued focus on solutions to address the inequities that may exist in virtual hearings and because of the digital divide.

Communication is crucial for a court service approach. Many litigants in high-volume cases lack sufficient information to allow them to navigate their cases effectively. This creates challenges for the litigants and for the court staff. Where court services are provided remotely, courts cannot fall back on visual cues in the courtroom, signage and flyers, and in-person help desks. It is critical that courts communicate adequate information in advance to litigants regarding when and how they should appear, as well as what to expect so that they can easily navigate the proceedings. This is particularly important for self-represented litigants who are rarely familiar with court processes and procedures. Many courts utilized mass calendaring in high-volume cases prior to the pandemic, forcing attorneys and litigants to show up and wait long periods of time for what ultimately was likely to be a brief court appearance. While this may be the most convenient approach for the court in terms of resource expenditure, it does not prioritize the needs of our court users. Courts have experimented with different models for virtual hearings, and while there may still be room for improvement, this service-oriented approach has contributed to increased participation rates and improved access to justice. *We need to continue this commitment to communication with court users where they are—in plain language, in multiple languages, and in a way that increases engagement of litigants.*

Streamlined and relaxed procedures are more important than ever. The process itself remains a barrier to access in high-volume cases, and streamlined processes have been a key goal of civil justice reform efforts prior to the pandemic. In the midst of changes as a result of the pandemic, we have seen courts take a more relaxed approach to proceedings, removing unnecessary procedural barriers that have historically served as obstacles to access. Courts have removed antiquated barriers, such as notaries and in-person payments. While some of these



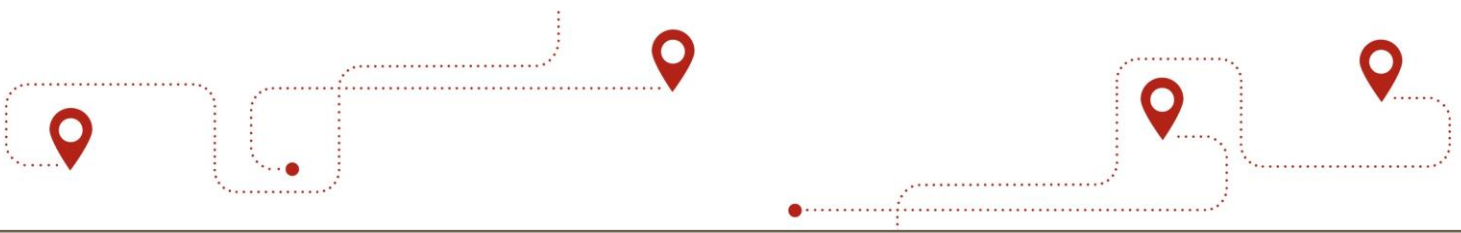
changes may seem small, we have seen the positive benefits to the users without any negative impacts on the administration of justice. High-volume cases benefit from clearly defined streamlined procedures and resources that are right-sized to the needs of the case. *The last year has underscored the point that a one-size-fits-all approach fails to recognize and respond to the unique needs of individual cases, and that is particularly true for high-volume cases.* Courts should build on this momentum and put streamlined user-friendly procedures into place permanently so as to ensure access to justice in these cases.

Court funding, staffing, and technology are crucial to address high-volume matters. The pandemic has underscored the importance of resources, technology, staffing, and funding for courts, as this has made all the difference in courts' responsiveness and ability to maintain the administration of justice through these difficult times. We need continued funding paired with innovation to ensure improved access to justice and to make real impact on people's lives. The Conference of Chief Justices (CCJ) and the Conference of State Court Administrators' (COSCA) [*Call to Action*](#) in 2016 emphasized that we must strategically deploy court personnel and resources and use technology wisely in order to ensure a justice system that meets the needs of the 21st century. Those needs have been driven home in the pandemic. *While high-volume cases may not need the same judicial attention as other more complex matters, these cases need staff support to meaningfully review all of the points in a case and ensure proper documentation, technology to simplify the court-litigant interface, and real-time assistance to navigate the process.*

Upcoming Challenges

In our prior issue paper on [reducing the costs and delay of civil litigation](#), we emphasized that we are still in the midst of the pandemic and will continue to experience challenges that we have not yet fully tackled. This sentiment is even more important for high-volume cases, where there may not be as strong of an attorney constituency pushing to make changes permanent. *Our justice system has learned a lot about how to innovate in the last year to address some of the key challenges of access to justice, and now is not the time to move backwards. We have a unique opportunity to study each challenge and to become more resilient in the face of continued change.*

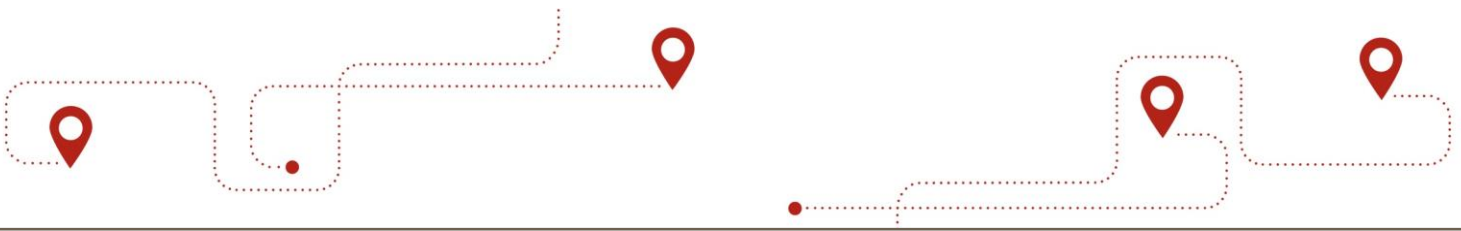
Courts should seek uniformity in procedures across jurisdictions. Innovation has happened on a national scale, but it has manifested in very different ways in each state, local jurisdiction,



and virtual courtroom. *The lack of uniformity is particularly concerning for fairness and equity in high-volume cases, where self-represented litigants may be navigating vastly different circumstances without any knowledge or expertise regarding what to expect or how to navigate different circumstances.* Those who find themselves as defendants in high-volume matters like consumer debt collection cases are overwhelmingly unrepresented, intimidated by court procedures, and uninformed about their rights or how to assert them in court. Creating uniformity across courts, as well as aligning court rules, procedures, staffing, technology, and information for litigants, can provide significant relief for individuals and the court system. IAALS has emphasized the importance of consistency within and across cases in our work on [Redefining Case Management](#), noting that consistency and predictability are essential to implementing technology solutions that are user-centric, efficient, equitable, and effective. Now is the time to take the lessons learned from all the different innovations and implement them nationwide.

We must maintain improvements to substantive justice and procedural fairness. While much of the innovation has come from the shift to virtual proceedings required by the unique circumstances of the pandemic, we have seen important improvements in substantive justice as well. Courts have been more deliberate in ensuring that substantive legal standards are met, and judges have taken more time to ensure that self-represented parties are substantively engaged in their cases. These improvements are equally important to procedural improvements, and while these improvements may prove more challenging in the face of rising dockets over the next year, they are just as crucial. Alongside improvements to proper outcomes, procedural fairness is equally essential to ensure that parties know they have a voice that is heard by the justice system. Courts have moved closer to bridge the gap of procedural fairness through the innovations that we have seen, helping to remove the disparity that exists as a result of differences in legal representation of the parties, lack of knowledge of court practices on the part of self-represented litigants, and mass dockets.

We need more discussion and empirical research regarding remote appearances and a framework for determining in-person versus remote appearances. A key question that has been raised around the country is *who decides who gets to appear remotely and who appears in person?* While judicial discretion plays a role, as does the type of case and type of hearing, it is also essential that the litigants and users of our system have a voice as well. As noted earlier, we have seen positive impacts to participation and access to justice as a result of remote court proceedings. We have seen the implementation of reforms that have long been urged to improve the administration of justice, but rarely implemented. While there may be legitimate questions as



to some of the challenges raised above, it is important to develop and move forward with a framework for making informed decisions regarding remote versus in-person proceedings. We need to consider what metrics and data we are not capturing that we should be used to inform this framework.

Over the next year, courts should pay close attention to changes in high-volume dockets.

Courts have prioritized criminal matters and other emergent cases in the pandemic. Courts must figure out what types of cases are backlogged and what cases are expected to grow over the next year, and then determine the resources needed to address them. Given the challenges of unemployment, housing, and money problems over the past year, high-volume dockets are likely to grow. *These are cases that are likely to need additional court resources—and a continued focus on innovation and improved processes—in the near future.*

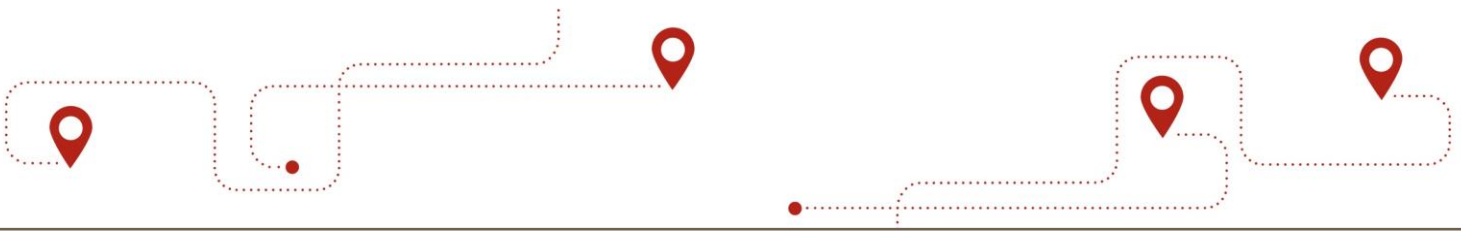
Our court staff has proven to be our greatest resource in this crisis, and this is particularly true in high-volume cases.

In the pandemic, court personnel have gone above and beyond what has historically been asked of them to ensure access to justice in this time of crisis. They have been on the front lines ensuring access in the face of constantly changing expectations. They have suffered losses themselves. In the face of these pressures, court staff remain particularly important interfaces with litigants in high-volume cases, and we need to recognize their hard work and provide them the support they need to continue to play this vital role in these cases.

Need for Continued Dialogue, Research, and Learning

Around the country, task forces, committees, individual judges and attorneys, and numerous other stakeholders are engaged in this process of determining lessons learned and recommendations for what changes should be continued. *These efforts need to consider the unique challenges facing high-volume cases and focus on turning temporary innovations into permanent reforms so as to ensure that the gains we have seen in access to justice are maintained.*

A key piece of this analysis must be further research. We emphasized this in our issue paper on reducing cost and delay, and it is equally important to emphasize for high-volume cases. All of the different aspects of high-volume cases are ripe for research. IAALS and other leaders in civil justice reform have urged many of these reforms—such as remote hearings—for years, and we have now seen these innovations happen on the ground. There remain key questions about what

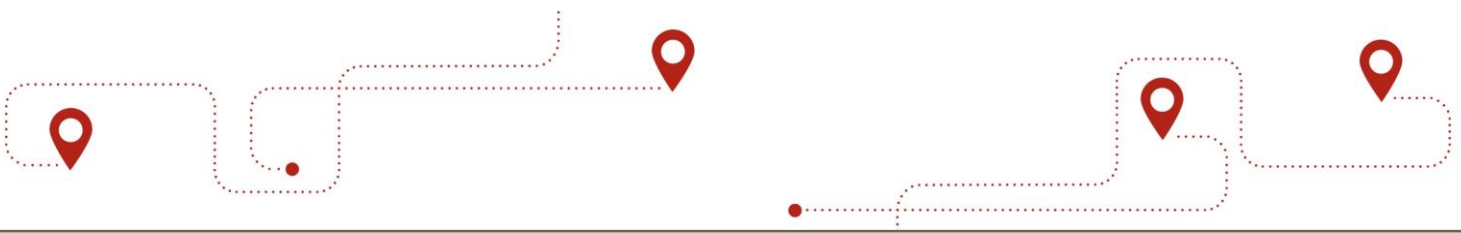


has worked well, and what needs to be kept with improvements from the past. The research to date has suggested that there is increased participation in high-volume cases, and a decrease in default judgments—a key challenge and goal of reform efforts in the past for high-volume cases. *Additional research will help us focus in on the extent to which we have improved access to justice in high-volume cases, and what changes in particular have been effective, so that we can continue to improve and prevent backsliding.*

There is greater interest now than ever before in evaluating what has happened from the perspective of the court users—and we need to capitalize on this. Despite the above positive benefits of technology, we still do not have a full understanding of the user experience and the new challenges posed by virtual experiences. We also need to recognize the limits of this research, as not all court users will feel comfortable providing honest feedback to the court, and we need to recognize and address this challenge in the research. Court staff and attorneys who work on these cases have a good eye and ear to what court users need, and they are an equally important group for feedback.

IAALS and HiiL, The Hague Institute for Innovation of Law, recently published [the results of a nationwide study](#) on access to justice in the United States. The study highlights that certain socio-demographic groups and racial/ethnic groups are particularly disadvantaged in terms of access to justice. *The existence of this inequity in our justice system makes it all the more important that we move forward with the innovations of this past year to ensure that the needs of all are met in an equal, equitable, and fair way.* Consumer debt cases—as one example—come coupled with long-term ramifications on economic stability, housing, credit, and employment. And, low- and moderate-income Americans are disproportionately impacted by consumer debt cases—as are Black and Hispanic communities. By improving the debt collection process, we can help those who are most frequently affected get notice and be heard, respected, and able to get justice—not just in theory but in practice. Improvements in high-volume cases may have the most immediate impact on advancing racial equity and support for underserved communities in our justice system.

The high-volume dockets in state courts and bankruptcy cases in our federal courts are the places where the vast majority of people in the United States experience the court system. After many years of urging reform in these cases, we have witnessed incredible innovation and adaptability in our justice system during a time of crisis. In this new world, we must capitalize on the unique



opportunity to evaluate and learn from these changes to improve access to justice in high-volume cases.

IAALS, the Institute for the Advancement of the American Legal System, is a national, independent research center at the University of Denver dedicated to facilitating continuous improvement and advancing excellence in the American legal system.

This issue paper is from IAALS’ Paths to Justice Summit Series, comprised of multiple invite-only virtual convenings and public webinars—and corresponding issue papers—focused on the unique challenges facing our justice system in this time. Themes include the paths of the pandemic, the paths to access, and the paths to racial justice that our system must walk. Our goal is to connect with other stakeholders tackling these issues, foster conversations among stakeholders and across systems, and move the conversation—and innovation—forward.

Thank you to the attendees of IAALS’ September 2021 convening on this topic who generously gave of their time and expertise to brainstorm around these important questions.

For more on the Paths to Justice Summit Series, including additional white papers as they are published, please visit <https://iaals.du.edu/paths-justice-summit-series>.

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