Online Dispute Resolution

Perspectives to Support Successful Implementation and Outcomes in Court Proceedings

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EXECUTIVE SUMMARY

Court-based online dispute resolution (ODR) encompasses a vast and ever-growing array of technologies and processes that are used to resolve disputes in the legal system. ODR programs have been implemented widely in commercial environments to resolve disputes (e.g., on e-commerce website eBay), but since 2015, court-based ODR programs in the United States have expanded from a handful of exploratory pilots to countless programs in small and large courts alike. Faced with rising case volumes and tightening budgets, court systems across the United States turned to ODR to improve court efficiencies while protecting litigants' rights and promoting just case outcomes. More recently, courts have been drastically affected by the emergence of the coronavirus disease 2019 (COVID-19) pandemic. Early in 2020, stay-at-home orders and other health and safety measures implemented as a result of the pandemic necessitated that all in-person court operations cease. Although courthouses have begun reopening their doors as of this writing, many now face both daunting case backlogs and an opportunity to reassess the potential of ODR programs to resolve legal matters in lieu of in-person proceedings.

On behalf of the National Institute of Justice (NIJ), RTI International and the RAND Corporation convened a virtual panel to develop a prioritized list of needs around ODR programs in the United States. Through a series of individual interviews and online group engagements, the panel members provided their experiences with ODR programs and their perspectives on needs and opportunities to promote ODR expansion in a manner that preserves litigants' rights, promotes access to justice, and increases court efficiencies.

The panel participants identified and prioritized a total of 56 needs—or potential solutions—to address 15 key concerns related to the continued development, use, and evaluation of ODR. This report details the 27 high-priority needs that emerged through the ODR virtual panel and provides further context based on the participant discussion. These high-priority needs relate to the design and implementation of ODR programs and platforms, strategies to improve access to justice, opportunities to

SELECTED PRIORITY NEEDS

RESULTS

Designing ODR programs and platforms

- Guidance should be provided on how to effectively communicate the requirements for due process and other legal protections in the ODR platform.

- Guidance should be developed for incorporating security and privacy considerations into the adoption and administration of an ODR system.

- Approaches should be provided for courts to develop an understanding of litigants' needs.

Increasing access to justice

- Potential strategies and partners, such as local community centers and libraries, should be identified for addressing the digital divide and providing access to ODR, including via telephone assistance.

- Features of ODR should be identified that can promote procedural justice and meaningful participation in the resolution process.

Engaging ODR users

- A set of key principles and best practices for designing ODR systems should be developed that gives primacy to the experiences of litigants.

- Standards for ODR systems should be developed that emphasize user-centered design and features, including mobile-accessible ODR systems that do not require users to have an email address.

Evaluating ODR users

- A set of metrics should be developed that captures key indicators of ODR success, such as litigant engagement and allocation of court resources.

- Opportunities should be provided for courts to experiment with and learn from evaluation techniques of current practices and/or of ODR projects (e.g., cost-benefit analysis, surveys) that get at subjective experiences of procedural justice.

engage potential ODR users, and rigorous research and evaluation of ODR programs.

The panel participants identified several opportunities to broadly reassess what legal matters could be resolved through virtual environments. Courts also need guidance and strategies to design and implement ODR programs that promote efficient case processing while maintaining or expanding access to justice and the rights afforded to all litigants. Such strategies should consider barriers to accessing online forums and seek to reach ODR participants in a manner that promotes procedural justice and engagement in a way that is consistent with or better than what can be achieved through in-person resolution processes. Research and evaluation are needed to assess whether and how ODR programs result in outcomes that demonstrate litigant engagement, preserve court resources and promote efficiency, and are fair.

Workshop participants noted that the use of ODR could remove barriers to access to justice, but the potential barriers to engagement in ODR also need to be better understood and addressed.

WHAT WE FOUND

- Participants identified two different ways of thinking about designing and implementing ODR programs. First, ODR can be used as a tool for simply replicating in-person processes in a virtual environment. Second, ODR provides an opportunity to innovate and reimagine how to perform some court processes better, without relying on in-person proceedings. Participants voiced the need for guidance from objective sources to provide documentation about what ODR features are currently available, which features are critical, and what options are technologically feasible. Participants also noted the need for guidance around why, when, and how to reimagine existing court processes in an online forum. Additionally, courts need to be provided with approaches to better understand and address litigants' needs, including access to justice and ODR program engagement.

- Broadly, workshop participants noted that the use of ODR could remove barriers to access to justice, but the potential barriers to engagement in ODR also need to be better understood and addressed. Courts need guidance to understand the challenges for self-represented litigants in navigating the system and the points at which all litigants are more likely to disengage from the process. Courts need a framework for identifying the access needs of their user base and building these considerations into the design of ODR platforms. Design elements to increase engagement might include elements that are focused on promoting understanding of the technology and how it works and on addressing perceptions of fairness and legitimacy.

- Some limited—but promising—results indicate that ODR programs have the potential to reduce case processing time, make the use of court resources more efficient, and result in more-satisfactory outcomes for litigants, such as a reduction in the number of small claims or evictions proceedings that result in default.

- More-rigorous and more-widespread research and evaluation is needed to more fully understand the processes and outcomes associated with ODR programs. Workshop participants expressed the need for data collection standards related to gathering demographic information, which is critical for understanding both access to the platform for different types of litigants and consistency in outcomes across different demographic groups. The impacts of ODR should be assessed across a broad variety of metrics, such as whether and how ODR results in more timely resolution of disputes and reduces collateral consequences of court processes.

INTRODUCTION

Court-based online dispute resolution (ODR) encompasses a vast and ever-growing array of technologies and processes that are used to resolve disputes in the legal system. In the broadest of terms, court-based or court-annexed ODR can be understood as a "public-facing digital space," hosted or supported by the judicial branch, in which parties can convene to resolve their disputes (National Center for State Courts, undated). The inclusivity of this conceptualization is purposeful; there is not yet a clear consensus among practitioners about what exactly constitutes ODR in a judicial setting. Resolution of a dispute via ODR can take place—in part or in whole—in this digital space, which takes the form of a website or an online application. Communication in these digital spaces can be synchronous (meaning that the communication is happening in real time, as in a videoconference call) or asynchronous (meaning that the parties are not interacting at the same time, as through an electronic file transfer or notification). ODR processes might involve lawyers, arbitrators, or other third parties. In some matters, ODR is offered as an option; in others, litigants are automatically enrolled.

We begin by describing how and where ODR and other virtual platforms are being employed by court systems, summarizing what is empirically known about these programs, and elucidating the need for expert opinions about the challenges and opportunities associated with ODR, particularly in the midst of a global health crisis. Although ODR is in use around the world, this effort focused specifically on needs within the United States. We then present the recommendations stemming from the Priority Criminal Justice Needs Initiative's ODR virtual workshop, organized around the major themes of the participants' discussion.

Online Dispute Resolution Programs in the U.S. Legal System

The technology enabling remote dispute resolution was developed through private-sector innovation in the early 2000s. As broadband networks enabled faster speeds and more-widespread access to the internet, new kinds of interactions between remote parties became possible. Early commercial entities that were built around online transactions, such as e-commerce companies eBay and PayPal, found themselves besieged by transactional disputes and, in response, developed the first peer-to-peer platforms for remote conflict resolution (Dal Pubel, 2018).

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Over the past two decades, ODR has become a common practice in the commercial and corporate realms.

Faced with rising case volumes and tightening budgets, court systems across the United States have found themselves grappling with growing numbers of disputes and have looked to technology for solutions. Moreover, an increasing emphasis on procedural justice (i.e., processes that promote fair and transparent treatment of participants in justice systems) and the access-to-justice gap have motivated courts to value accessibility and user-friendliness. Unsurprisingly, a growing number of courts in the United States and beyond have begun to adapt ODR for use in the public sector.

Although ODR has seen significant adoption internationally, especially in the United Kingdom and China (see Byrom, 2019, and Ebner and Greenberg, 2020), the first cohort of court-administered online dispute-resolution projects arose in the United States in the mid-2010s (American Bar Association Center for Innovation, 2020). These early programs primarily sought to test ODR for high-volume, low-complexity civil cases, such as traffic offenses, warrants, and small claims. The promising experiences of early ODR pilot programs generated a great deal of interest in adopting ODR systems and expanding their use to other types of court cases. Moreover, they highlighted the potential for online technologies to render court processes more user-friendly for the general public and to expand access to justice for underserved populations, such as

ABBREVIATIONS

ADR	alternative dispute resolution
COVID-19	coronavirus disease 2019
NCSC	National Center for State Courts
NIJ	National Institute of Justice
ODR	online dispute resolution
PCJNI	Priority Criminal Justice Needs Initiative

self-represented litigants and those living in rural regions (see Figure 1).

Numerous jurisdictions have adopted or made plans to adopt ODR platforms to facilitate the resolution of legal matters. In 2019, for example, the New Mexico court system unveiled an ODR pilot program for debt and money-due cases, and Connecticut introduced an online ticket review process for resolving traffic offenses. The Hawaii Judiciary and the New York Unified Court Systems also announced plans to develop ODR programs for small claims cases, and the New York City Civil Court launched a pilot program in January 2021 (New York State Unified Court System, 2021). By the end of 2019, the American Bar Association estimated that ODR programs were operating in 66 different sites across 12 states. Of the 14 different types of cases resolved via court-annexed ODR, the most common were traffic offenses (34 sites), warrants (20 sites), civil debt cases (11 sites), small claims cases (eight sites), and criminal cases (seven sites) (American Bar Association Center for Innovation, 2020).
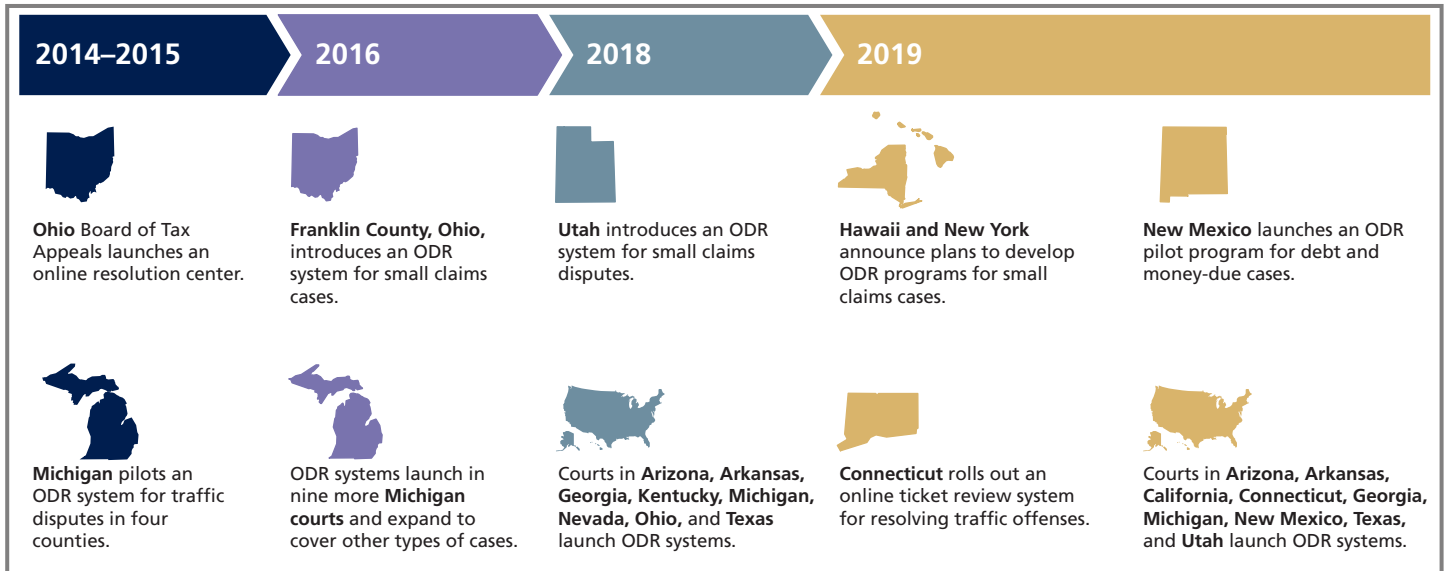
Like almost every facet of the public sector, courts have been drastically affected by the emergence of the coronavirus disease 2019 (COVID-19) pandemic in spring 2020.[1] Early in the year, stay-at-home orders and other health and safety measures necessitated that all in-person court operations cease. Although courthouses have begun reopening their doors as of this writing, many now face daunting case backlogs (Tompkins, 2020; Toutant, 2020; also see Jackson et al., 2021). In response to the ongoing public health crisis, court systems across the country have shifted away from in-person proceedings and toward virtual forums. Against this backdrop, judicial interest in online dispute resolution has increased dramatically, although this interest has largely been confined to maintaining current court functions by recreating them virtually rather than thinking more broadly about how ODR could be a more integrated part of court processes (Susskind, 2020).

The promising experiences of early ODR pilot programs generated a great deal of interest in adopting ODR systems and expanding their use to other types of court cases.

Figure 1. Recent Introductions of ODR in Court Systems

SOURCE: Adapted from Glassmeyer, 2020.

Challenges and Opportunities for Online Dispute Resolution

As a relatively recent application of private-sector technology in the public sphere, ODR presents both challenges and opportunities. Its use has ramifications not just for individual litigants and court practitioners but also for the structure and nature of judicial systems. Among the potential benefits of court-based ODR are

- **broader access to justice** for populations that are underserved by more-traditional court processes, including pro se (i.e., self-represented) litigants; litigants for whom in-person court proceedings are burdensome because of constraints related to child care, transportation, or employment; and those living in rural regions
- **greater engagement in the legal process** by enabling remote and asynchronous communication among litigants and court personnel
- **improved procedural justice** or perceptions of fairness in the legal process by helping litigants understand their rights and options for resolving a dispute, navigating the court system, and providing feedback to the courts
- **increased court efficiency** by streamlining the resolution of disputes outside the courtroom and, in doing so, reducing case backlogs and delays in case adjudication
- **improved case outcomes,** such as fewer arrest warrants and lower rates of default.

As with any technology, the adoption of ODR in the public legal system is not without challenges. Barriers to ODR access and adoption include

- **technological requirements,** infrastructure (e.g., video-conferencing software, cameras, monitors), and support, which can be costly
- **reduced access to justice,** where mandatory ODR programs unintentionally could limit access to justice for select groups, including individuals who cannot meet the technological criteria for engaging in ODR (e.g., those who lack access to the internet) or are not technologically savvy (e.g., those who are unfamiliar with common video-conferencing platforms)
- **data security and privacy concerns** related to the security of information stored or transmitted through online technologies
- **protecting the rights of litigants around due process** and other legal protections in online platforms for dispute resolution
- **reevaluating and/or restructuring existing court processes** to fully realize potential efficiencies and promote positive case outcomes beyond the approach of legacy in-person proceedings.

The State of Research on Court-Administered Online Dispute Resolution in the United States

Research on court-based ODR in the United States remains nascent. Most of what is known about ODR programs pertains to their development, implementation, and immediate outputs and pertains less to their impact on broader outcomes, such as increased access to justice, perceptions of fairness, and improved case processing efficiency. The National Center for State Courts' (NCSC's) Joint Technology Committee has released several reports that provide detailed case studies of ODR programs and trace developments in the field of court-based ODR more broadly (Joint Technology Committee, 2017; Joint Technology Committee, 2020).

A handful of informal ODR program assessments by local jurisdictions have shown positive results. Ottawa County, Michigan, reported that in the two years since the launch of their ODR system, the average number of child support–related arrest warrants and the average number of hearings per month have dropped by 29 percent and 24 percent, respectively, and that child support collections have increased by 28 percent (Bowling, Challa, and Graski, 2019). The Franklin County, Ohio, Municipal Court found that ODR enabled litigants to participate in the court process with greater efficiency, diminished financial burden, and lower stress, and that ODR has resulted in positive outcomes, such as higher voluntary dismissal rates, improved perceptions of fairness, and improved court efficiency. The rate of voluntary dismissal of court cases also is significantly higher among participants in Franklin County's small claims ODR program, particularly for defendants from low- and middle-income neighborhoods (Sanchez and Embley, 2020). According to court officials in Utah, the rate of default in small claims cases has dropped from 71 percent to 53 percent since the launch of their ODR program

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(Quaintance, 2019). These preliminary findings suggest that ODR has the potential to improve court efficiency and result in better case outcomes.

However, the high degree of heterogeneity in court-based ODR programs and in the objectives motivating their use precludes extrapolation of these early findings. Moreover, it renders the measurement of ODR program success a challenging endeavor. Although rigorous program evaluations examining the impacts of court-based ODR are underway in several jurisdictions, including in Utah's small claims court, little has been published to date (Butler et al., 2020; Stiglich, 2017). In addition to the NCSC, the Pew Charitable Trusts Civil Legal System Modernization project and the Harvard University–based Access to Justice Lab are among the entities seeking to fill this gap in empirical research (Access to Justice Lab, undated; Pew Charitable Trusts, undated).

Methodology

In an effort to better understand how ODR programs have navigated these challenges and opportunities in court proceedings, the National Institute of Justice (NIJ) convened an online panel in May 2020. The panel included diverse perspectives, and participants developed a set of prioritized needs around successful ODR program implementation in state court settings. The ODR and other virtual platforms for case navigation and resolution virtual engagement workshop was part of the Priority Criminal Justice Needs Initiative (PCJNI), which was conducted by NIJ in partnership with the RAND Corporation, RTI International, the Police Executive Research Forum, and the University of Denver. The goal of the ODR workshop, which was facilitated by RTI and RAND researchers, was to have experts identify the highest-priority needs of court systems related to ODR in the United States, with an eye toward informing a research agenda for advancing its use and development.

As an initial step in the development of the workshop, RTI staff conducted a national scan of ODR programs and reviewed relevant literature (e.g., scientific studies, technical reports, relevant online convenings) on the use of virtual platforms for case navigation and resolution by U.S. legal systems. This review revealed a high degree of heterogeneity in ODR systems across jurisdictions, including differences in the application of ODR by case and court function and variation in virtual platform origin, functionality, and integration within existing processes. In accordance with these findings, the scope of the workshop was structured to encompass the following topics:

1. ODR
2. other existing court applications of interactive, online platforms for case navigation and resolution
3. opportunities to expand interactive, virtual platforms to other court processes and functions.

The scan of the ODR landscape and review of extant literature also informed the identification of the invited workshop participants. To foster dynamic and robust discussions, RTI staff sought the input and participation of experts from across the country who represent a broad spectrum of stakeholder voices, including judges, court administrators, ODR program managers, legal professionals, and researchers. Many of the experts who were invited to attend the workshop represent court systems that have pioneered the development and use of ODR systems and other innovative virtual platforms. Workshop attendees have made significant contributions to the fields of alternative dispute resolution (ADR) and ODR by developing ODR platforms and processes, evaluating their impact, or collating and circulating case studies and other valuable resources.

The ODR workshop initially was planned as a two-day in-person convening to take place in Washington, D.C., in April 2020. Because of the COVID-19 pandemic, RTI, RAND, and NIJ restructured it as a virtual engagement. Participants who initially agreed to participate in an in-person workshop prior to the pandemic were invited to take part in a two-stage virtual meeting. During the first stage of the meeting, participants took part in individual interviews with RTI staff that were designed to build an initial picture of participant experiences with, views of, and ideas about ODR and other virtual platforms for case navigation and resolution. Following each interview, RTI staff collaborated with interviewees to draft a list of specific problems, opportunities, and potential solutions that arose during the conversation. In the context of the PCJNI, a *need* refers to the pairing of a potential solution to a problem or opportunity for advancing promising innovations. During the second stage of the workshop, participants convened for a series of four virtual sessions, each lasting two to three hours. The purpose of these interactive virtual sessions was to review, revise, and prioritize a consolidated list of needs gleaned from the individual interviews. The list was provided to participants prior to the first virtual session. Although PCJNI participants typically are led through a ranking exercise during sessions, practical and technological constraints necessitated that RTI and RAND staff adjust this approach. In a third and final stage of the process, participants were asked to rank the finalized

list of needs on two dimensions: their importance and their feasibility. For a more detailed description of the methodology employed in this virtual meeting, see the technical appendix.

RESULTS

The primary output of the workshop was a prioritized list of needs. Through the panel discussions, the workshop participants identified a total of 56 potential solutions to address 15 key problems or opportunities related to the continued development, use, and evaluation of ODR. These needs (i.e., pairings of problems or opportunities with a potential solution) were primarily identified from participant input in the initial interviews, although more needs were added and refined by participants during the workshop. The needs were separated into three tiers based on their importance and the likelihood that they would successfully address the associated issue. The 27 needs identified as high priority by participants are shown in Table 1 (the full list of needs and methodology concerning prioritization is included in the technical appendix).

After the workshop, the authors used their judgment to sort the needs into the following four distinct categories based on the broad type of issue or opportunity the needs were intended to address:

- designing ODR programs and platforms
- improving access to justice
- engaging potential ODR users
- evaluating ODR programs.

Of the top 27 needs, nine were related to designing ODR programs and platforms, seven were related to improving access to justice, seven were related to engaging potential users, and four were related to evaluating ODR programs.

It should be noted that, in several instances, multiple potential solutions were identified to address the same issue. Needs that are linked to the same problem or opportunity could be ranked or categorized differently according to their perceived impact and likelihood of success, meaning that not all needs associated with a certain problem were ranked in the same tier.

Participants voiced the need for guidance from objective sources about why, when, and how to reimagine court processes with ODR in mind.

Top-Tier Needs

Designing ODR Programs and Platforms

In the first category of needs related to designing ODR programs and platforms, workshop participants identified nine needs associated with five key problems and opportunities. First, participants saw the adoption of an ODR program as an opportunity not only to create a new channel through which disputes can be resolved but also to reassess what court processes can or should look like, given the capability for new types of interactions enabled by these technologies. In which categories of interactions could ODR lead to more just (i.e., more accessible, fair, and transparent) outcomes, and in which categories might it not be suitable? The answers to this question likely would vary with court type and location, among other factors. To address this opportunity, participants voiced the need for guidance from objective sources about why, when, and how to reimagine court processes with ODR in mind. Additionally, courts need to be provided with approaches to better understand litigant needs related to such priorities as accessibility, confidentiality, and privacy.

A second design-related problem identified by participants was that it can be difficult for courts to identify a suitable platform that meets their needs (which might vary by the type of court process, location, and other factors), given the array of options and variations in pricing and functionality offered by private vendors. With this problem in mind, workshop participants proposed that courts be provided with guidance on how to identify and communicate their requirements to ODR vendors for the technology's functionality and for the incorporation of due process and other legal protections into the platform.

A third opportunity identified by participants is the potential for ODR to be used for a broad variety of case types. To support courts in investigating various applications of ODR across different types of cases, participants called for guidance on which case types have been successfully transitioned to ODR, guidance on which case types are most suitable for a jurisdiction's first foray into ODR, and the identification of

channels through which court systems that are exploring the use of ODR could share information and best practices.

A fourth problem in this category is that certain case types might require different features or functions in an ODR platform. To address this issue, participants highlighted the need to develop protocols for screening approaches that are specific to relevant case types, such as domestic violence.

A final problem related to concerns about authentication, data security, and privacy of sensitive information when using ODR platforms. To address this issue, participants noted the need to develop guidance for incorporating security and privacy considerations into the adoption and administration of ODR platforms.

Access to Justice Through ODR

Under the next category—increasing access to justice through ODR—workshop participants identified seven needs pertaining to three problems or opportunities. Participants noted that ODR can remove barriers to access to justice and enhance procedural justice through more-meaningful participation in the resolution process. They also noted that the barriers to engagement in ODR by self-represented litigants are not sufficiently understood or addressed. In the theme of using ODR to remove access-to-justice barriers, participants noted that there should be guidance for courts on how to ensure that ODR is accessible to litigants, particularly those with limited English proficiency or a disability. Courts need a framework for identifying the access needs of their user bases and building these considerations into the design of ODR platforms, including where these platforms could complement—rather than replace—face-to-face interactions. Courts need to develop strategies and partnerships, for example, with local community centers and libraries, to address the digital divide and ensure that those without internet in their homes, access to a computer, or technological literacy can still take part in the ODR process. Finally, participants identified the need for research on language and other barriers to using virtual platforms. In terms of addressing barriers to ODR engagement, workshop participants highlighted the need to conduct research on the barriers

encountered by self-represented litigants using ODR systems and find potential solutions to these barriers. Participants also noted the need to identify features of ODR that can promote procedural justice and meaningful participation in the resolution process. They prioritized the need to ensure that ODR platforms are mobile-friendly to improve access for litigants in rural areas or other areas with limited internet access.

Engaging ODR Users

The third category captured seven needs associated with five problems or opportunities related to better engaging potential ODR users, including litigants, mediators, judges, and attorneys. The problems and opportunities in this category pertained to the need for courts to increase engagement with users; the need for technical guidance and support for ODR users; the need to determine the right level of participation in ODR for judges, attorneys, and facilitators; the need for strategies to help users understand their rights and options for dispute resolution; and the barriers to engagement with ODR among self-represented litigants. With the goals of improving awareness about the options for using ODR and mitigating any technological or other barriers, participants identified the need to identify design elements that could be incorporated into ODR platforms to increase the engagement of users. A more specific need along these lines that participants noted was to integrate reminder systems into ODR platforms to keep users engaged in the process. Participants observed that all users of ODR—court practitioners and litigants—might require some level of technical guidance and support. To address this issue, they noted the needs to develop standards for ODR systems that emphasize user-centered features and promote the development of self-help resources and informational materials for potential ODR users. They also identified the needs to develop principles and best practices for how to design ODR programs to give primacy to the experiences of litigants and to develop tools and guidelines to help all users navigate ODR. Finally, participants noted the need to conduct research on the use of digital media as a tool for ensuring that potential ODR users understand their rights and available options.

Evaluating ODR Programs

The final category of top-tier needs related to the evaluation of ODR programs. In this category, workshop participants identified three problems or opportunities related to ODR evaluation; specifically, that the impacts of ODR should be assessed across a broad variety of metrics, that ODR could result in more-timely resolution of disputes and reduce the collateral consequences of court processes, and that courts might not be aware of or be encouraged to participate in rigorous studies of ODR. Participants identified four needs that would address the problems and opportunities related to evaluating ODR programs. First, there is a need to conduct research on the benefits of ODR for litigants and court systems. Second, there is a need to develop a set of metrics that capture key indicators of ODR success, such as litigant engagement and allocation of court resources. The third need is to conduct research on whether and how ODR promotes timely and full resolution of disputes and whether it reduces the collateral consequences associated with court processes. Finally, workshop participants identified the need to provide opportunities for courts to experiment with and learn about evaluation techniques that can be used to measure the experiences of users.

Participants observed that all users of ODR—court practitioners and litigants—might require some level of technical guidance and support.

Table 1. The 27 Top-Tier Needs

Problem or Opportunity	Need
Designing ODR programs and platforms	
Courts could reimagine processes for effective ODR implementation and consider the degree to which ODR should be used to replicate in-court processes. Broad goals are clear; specific processes to achieve those goals are not.	• Develop and disseminate guidance from objective sources about why, when, and how (e.g., using models) courts should reimagine their processes, taking into account the capabilities of the technology. • Provide approaches for courts to develop an understanding of litigants' needs.
Given the array of ODR options offered by private vendors and the wide variation in their design, pricing, and functioning, it can be difficult for court systems to identify a suitable platform that meets their needs for due process, accessibility, confidentiality, and privacy.[a]	• Provide guidance to help courts identify the technological requirements to discuss with vendors and providers. • Provide guidance for courts on how to effectively communicate the requirements for due process and other legal protections in the technological platform.
ODR could be used for a broad variety of case types (e.g., traffic offenses, divorce proceedings, criminal cases, small claims cases).	• Develop documentation that can be shared among courts on which case types have been successfully transitioned to ODR platforms. • Develop guidance to identify or provide examples of case types that might be more suitable for a jurisdiction's initial implementation of any ODR program. • Identify channels through which court systems that are exploring the use of ODR in a variety of case types (e.g., small claims, family, traffic, criminal cases) can share information and best practices.
Concerns about authentication, data security, and privacy could be addressed by improving transparency and trust surrounding the transfer of sensitive information via ODR.[a]	• Develop guidance for incorporating security and privacy considerations into the adoption and administration of an ODR system.
Some case types might require specific ODR features.[a]	• Develop protocols for screening approaches that are specific to relevant case types, such as domestic violence.
Increasing access to justice	
ODR can remove barriers to access to justice.	• Develop guidance for courts on strategies to ensure that ODR is accessible to litigants (including user testing), particularly for litigants who encounter barriers to accessing the court system (e.g., individuals with disabilities, individuals who are not proficient in English). • Develop a framework for courts to consider before designing their ODR platforms that includes items related to access that are informed by the needs of their user base. • Identify potential strategies and partners, such as local community centers and libraries, for addressing the digital divide and providing access to ODR, including via telephone assistance. • Conduct research on language and other barriers to using virtual platforms.
The barriers to engagement in ODR by self-represented litigants are not sufficiently understood or addressed.[b]	• Conduct research on the barriers to participation in ODR systems encountered by self-represented litigants, and develop solutions. • Ensure that ODR platforms are mobile-friendly to improve access for litigants who face barriers to engaging in these processes (e.g., because of rural locations, limited internet access, or lack of access to transportation).
ODR can enhance procedural justice and meaningful participation in the resolution process.[a]	• Identify features of ODR that can promote procedural justice and meaningful participation in the resolution process.

Table 1—Continued

Problem or Opportunity	Need
Engaging ODR users	
Courts should work to increase the engagement of users at certain points in the dispute-resolution process.[a]	• Identify design elements that increase the engagement of users. • Promote the integration of a reminder system into ODR platforms that could promote user engagement.
All users of ODR systems, including litigants and mediators, might need technical guidance and support.	• Develop standards for ODR systems that emphasize user-centered design and features, including mobile-accessible ODR systems that do not require users to have an email address. • Promote the development of self-help resources, vignettes, and other informational materials as a best practice for ODR.
Courts need to determine the right level of participation for judges, attorneys, facilitators, and others to help users navigate ODR.[a]	• Develop policies, guidelines, tools, or a process to ensure equal access through ODR.
Court systems need strategies for helping users better understand their rights and options for resolving a dispute, navigating the court system, and providing feedback to the courts.	• Conduct research on the use of digital media, such as video vignettes, wayfinding, chatbots, connections to legal assistance portals, and embedded features within ODR platforms; educate users; and document that the user understands their rights and options.
The barriers to engagement in ODR for self-represented litigants are not sufficiently understood or addressed.[b]	• Develop a set of key principles and best practices for designing ODR systems that gives primacy to the experiences of litigants.
Evaluating ODR programs	
The impacts of ODR have not been assessed across a broad variety of metrics (e.g., participation, case outcomes, user experiences, litigant preparation in court, costs and benefits to the system).	• Conduct research on the benefits of ODR systems for litigants and court systems. • Develop a set of metrics that captures key indicators of ODR success, such as litigant engagement and allocation of court resources.
ODR has the potential to reduce negative collateral consequences for litigants by providing an opportunity to fully resolve disputes in a timely manner.	• Conduct research on the negative collateral consequences of engaging in court processes and assess the extent to which ODR can alleviate these consequences.
Courts should be encouraged to participate in rigorous studies of ODR and other virtual platforms and be made aware of evaluation options.[a]	• Provide opportunities for courts to experiment with and learn from evaluation techniques of current practices and/or of ODR projects (e.g., cost-benefit analysis, surveys) that get at subjective experiences of procedural justice.

[a] Multiple needs were associated with this issue, but others did not fall into the top tier. The other needs associated with this problem or opportunity are shown in the complete list of needs in the technical appendix.

[b] This problem or opportunity is duplicated because other associated needs were grouped into different categories.

DISCUSSION

In this section, we provide further context from the workshop discussions on the identified top-tier needs. As we described in the methodology section, we compiled an initial list of problems, opportunities, and potential solutions from individual interviews with workshop participants. Presented with this list at the start of the discussion, participants first determined whether the list encompassed the full scope of problems and opportunities and then considered the proposed solutions to these concerns.

Although statements in this discussion should be presumed to be derived from the opinions and observations of the workshop participants, references to literature sources have been included where appropriate to provide more detail and support for the statements and assertions of participants (for example, where a participant might have mentioned a program or policy implemented by an agency and where this program is described in a journal or news article).

ODR could help alleviate resource concerns and make the court more accessible by reducing time and travel requirements associated with some in-person appearances.

As noted previously, the goal of the workshop was to have experts identify the highest-priority needs of court systems related to ODR with an eye toward informing a research agenda for advancing its use and development.

How to Best Design ODR Programs and Platforms

There is currently no consensus around how ODR should be used in court settings. Participants identified two different ways of thinking about ODR: (1) as a tool for replicating in-person processes and (2) as a means for reimagining court processes. Participants noted that courts need to be intentional about evaluating their needs, their limitations, their demand for services, and the purpose of their processes to ensure that the resulting technology meets those needs. A critical first step for introducing ODR to a court system is to be clear about the problem or issue needing to be addressed.

ODR can be used to replicate in-person processes in a digital space. From this perspective, ODR could help alleviate resource concerns and make the court more accessible by reducing time and travel requirements associated with some in-person appearances. Courts could address backlogs that were caused or exacerbated by the COVID-19 pandemic by bringing certain functions online. However, because of statutory or other limitations, ODR has limited utility for certain court functions, and it is restricted in its application to certain types of cases and case processes. Courts could assess the types of interactions that must be conducted in person because of constitutional requirements (e.g., the accused's right to confront witnesses, which is guaranteed in the Sixth Amendment to the

U.S. Constitution) and the types of processes that could lead to more-just—not just more-efficient—outcomes using ODR. For example, if ODR enabled more individuals to be present at the court events that affect them, more disputes could be resolved with their active participation rather than by default in their absence. This could lead to more-just processes, but only if other important factors, such as fairness and transparency, are maintained.

When ODR is viewed as a means to replicate in-person processes, it is key for courts to understand the appropriate processes and practices for which ODR can be used, the array of available design options, and the implications of design decisions. From this perspective, it is important for courts to work with vendors to understand the options and features available in ODR programs. Participants also suggested that it would be useful to have an objective body create documentation of what ODR features are available, which features are critical, and which options are technologically feasible. In short, a structured analysis is needed of the needs, priorities, and various constraints associated with the court processes for which ODR can be used. This requirements analysis would need to be followed by an assessment of existing platforms to see which might meet the needs of the court for various use cases. This would enable court personnel to have an informed discussion with vendors about their ODR needs and the features to address those needs. For instance, some of the key features that courts might require from an ODR platform are

- the ability to integrate with their case management system
- form-generation and e-filing capabilities
- the ability to upload and download documents
- a built-in notification system
- a financial system for collecting required court fees
- access to helpdesk resources when questions arise.

However, these needs might vary depending on the jurisdiction, the type of court, or the type of case, and it is important for court personnel and vendors to understand those differences. Court- and case-specific ODR protocols should be developed, in addition to general protocols.

Participants also highlighted the need to develop standards for ODR platforms that must be present in any off-the-shelf or customized ODR platform. Just as courts need to be educated about what features they can expect from an ODR vendor, court personnel need to be able to express their needs related to privacy

and security, user authentication, and data collection and storage when moving processes from in person to the digital realm.

Other participants, however, saw ODR as having the potential to go beyond replicating current processes. Instead, participants thought that ODR could create opportunities to reimagine court processes entirely and to develop new ways to deliver justice and resolution. If the goals of ODR are ultimately to increase access to justice, improve the consistency of outcomes, and make the system more efficient, simply replicating existing processes in a digital space might not be sufficient. Participants suggested that the full benefits of technology might not have been realized because the people who create the technology often think about only the existing processes, and the people who think about changing the processes do not necessarily understand the technology. There must be a way to merge the two perspectives; one way to start is for courts to think about what they need to change before trying to overlay technology.

Increasing Access to Justice

To ensure that ODR is used effectively to reduce access-to-justice barriers for some litigants, participants discussed the need to first identify what the barriers to participation are. Although most personnel know about the technological divide and language barriers in court processes, these barriers alone cannot fully account for the lack of participation in court processes. If barriers are related to such issues as geography and the distance to courts in rural areas, it is an access issue that ODR can address, and courts should be intentional about using ODR for that purpose. For example, ensuring that ODR platforms are designed to be mobile-friendly can help reduce access issues for potential users in rural areas.

Participants noted that there might be other barriers that are not as well known or as easy to identify. Courts need to conduct research to understand the challenges for self-represented litigants in navigating the system and the points at which all litigants are more likely to disengage from the process. Once pain points are identified, design elements can be

built into ODR programs to address the problems and ensure that all litigants have equal access to justice.

Additionally, participants noted the need to better understand and address where ODR can create new challenges for litigants. For instance, there is an inherent barrier for people who do not have access to the internet. Courts have worked to get around that problem by, for example, providing computer stations within the courthouse or in public libraries or creating access-to-justice kiosks. Another challenge is for users who are visually impaired. Participants noted that it is necessary to engage in research and user testing to understand how ODR can be used to improve access to justice for people with disabilities without creating additional access hurdles. However, participants also cautioned that when it comes to the development of ODR, it is important to not let the perfect become the enemy of the good. In other words, ODR might not reduce access-to-justice barriers for all, but if it begins to remove those barriers for some, that should be viewed as a step in the right direction that creates opportunities for continuous improvement.

Engaging ODR Users

Workshop participants noted that courts do not market themselves well or do a good job of making users' options clear. Court users and litigants might not use ODR because they simply do not know about it or understand how it works. This is an issue that courts can work to rectify by exploring different strategies for making potential users aware of their options and the benefits and drawbacks of those options. Participants noted that digital media is one tool for helping the public better understand ODR and their options. These options could include making educational information more readily available to the public through various websites that are affiliated with the courts and embedding videos or hyperlinks within ODR platforms.

Another challenge is that potential ODR users might perceive ODR to be less fair. More research is needed to understand perceptions of ODR in terms of procedural justice. However, participants noted that one criticism that is commonly raised about ODR is that if certain parties (e.g., judges or attorneys) are removed from court processes, the outcomes will

Ensuring that ODR platforms are designed to be mobile-friendly can help reduce access issues for potential users in rural areas.

not be fair, and people will not get what they need from the justice system. Workshop participants expressed concern about this sentiment and suggested instead that ODR provides an opportunity to determine the level of involvement of a successful platform with which all users feel comfortable. Once this appropriate level of involvement is determined, it is important to develop guidance for judges, attorneys, and facilitators.

Participants noted that all users of ODR systems might need technological guidance and support. This need requires personnel to develop standards and resources to assist users in navigating the platform and to provide guidance about the best practices related to ODR. Such guidance might include recommendations about when involvement by members of the courtroom is necessary and what level of involvement is appropriate.

Evaluating ODR

Participants noted that ODR provides an opportunity to collect data that can be useful in demonstrating its impact across a broad variety of outcomes, including increased access to justice. They expressed the need for data-collection standards for court systems as a whole and ODR platforms more specifically for gathering demographic information, such as race, gender, economic status, age, and education. Only by collecting these data is it possible to assess access to the platform and the consistency of outcomes for different types of litigants. Courts are looking for guidance in terms of what types of information they should be collecting and how to use the information that they do collect.

Participants also expressed the idea that courts should be encouraged to participate in rigorous studies of ODR and should be provided with information about where evaluation opportunities exist. Participants noted several barriers to courts' evaluation of ODR, including that court personnel are not aware of options, do not understand how to conduct evalua-

Courts should be given opportunities to partner with researchers and should be granted the freedom to experiment with ODR approaches.

tions, and do not have the capacity to conduct rigorous studies of the impact of ODR. Courts should be given opportunities to partner with researchers and should be granted the freedom to experiment with ODR approaches. Funding is needed to provide courts with the ability to conduct randomized studies on the differences between ODR and traditional court processes.

Court personnel need to understand the extent to which ODR reduces or increases the risk of negative collateral consequences from court processes. A civil claim that is not resolved in a timely manner could have a negative impact on a litigant's financial situation, and this could have a ripple effect on their life outside the court. However, if the introduction of ODR results in civil claims being resolved expeditiously, those potential consequences could be avoided. Courts need to understand the impacts of ODR and be assisted in conducting rigorous evaluations.

CONCLUSION

Over the past five years, court-based ODR programs in the United States have expanded from a handful of exploratory pilot programs to countless programs in small and large—and rural and urban—courts. The experiences of early adopters, including courts in Ohio, Michigan, Connecticut, and Utah, have paved the way for broader interest in and use of ODR. Moreover, the adoption of ODR platforms, which were described as incremental in the final months of 2019, accelerated considerably in 2020 as the United States implemented public-health measures to prevent the spread of COVID-19, including closing courthouses across the country (Joint Technology Committee, 2017; Joint Technology Committee, 2020). Facing long-term restrictions on public gatherings and the exigencies of a growing case backlog, court systems rapidly adopted technologies that enable and streamline the remote resolution of legal disputes on a scale that has never before been seen. Although this environment provides an opportunity to both accelerate ODR program adoption and implementation and reimagine in-person court processes, the challenges and opportunities associated with ODR programs must be assessed and addressed in light of court efficiencies, litigants' rights, access to justice concerns, and other potential implications.

To inform the research agenda and other needs surrounding ODR programs for court proceedings, NIJ convened a virtual meeting in May 2020. The panel of academics and practitioners identified 27 high-priority needs to support

Objective and independent guidance is needed around the features and limitations of ODR technology platforms as courts consider whether and how to expand ODR to additional case types and proceedings.

the successful implementation and expansion of court ODR programs. These high-priority needs relate to the design and implementation of ODR programs and platforms, strategies to improve access to justice, opportunities to engage potential ODR users, and the rigorous research and evaluation of ODR programs. In particular, objective and independent guidance is needed around the features and limitations of ODR technology platforms as courts consider whether and how to expand ODR to additional case types and proceedings. Before further adoption, practitioners should consider both the barriers that litigants face through in-person proceedings and the barriers related to technology access and virtual platform navigation. Courts further need guidance to engage users in the ODR platform, provide them with a thorough understanding of the legitimacy of the ODR platform, describe how the technology works, and show them how it is designed to achieve procedural justice. Finally, rigorous research and evaluation is needed to understand whether and how ODR programs support key outcomes related to increasing court efficiencies, protecting litigants' rights and safety, and achieving just outcomes.

TECHNICAL APPENDIX

In this appendix, we present additional details about the workshop and our process for identifying and prioritizing research and technology needs related to ODR and turning them into the research agenda that is presented in the main report. The descriptions in this appendix are drawn and adapted from those in previous PCJNI publications and reflect adjustments to the needs identification and prioritization process implemented at this workshop.

Workshop Scope and Panel Selection

The topics for PCJNI workshops are selected by reaching a consensus among the action officers and subject-matter experts at NIJ and research staff at the organizations that will be facilitating the workshop. Multiple topic areas, accompanied by brief scoping descriptions, typically are suggested months before the workshop by one or more of the parties involved, and staff engage in group deliberations with NIJ to reach consensus on the topic. We then engaged in further scoping of the workshop to craft a discussion agenda through literature review and/or informal discussions with other practitioners and subject-matter experts. Once the topic and scope were determined, we recruited panel members by identifying knowledgeable individuals through existing professional and professional social networks (e.g., LinkedIn) and by reviewing literature published on the topic. We then extended an invitation to those individuals and provided a brief description of the workshop's focus areas.

The process of expert elicitation was designed to gather unbiased, representative results from experts and practitioners in the field. However, several limitations could affect the findings. The process typically elicits opinions from a relatively small group of experts. To limit the effect of that reality on the representativeness of the results, we strove to make the group as representative as possible of different disciplines, perspectives, and geographic regions. However, the final output of the workshop likely will be significantly influenced by the specific group of experts invited to participate. It is possible that the findings from the workshop would vary were a different group of experts selected. Moreover, although the discussion moderators made every effort to act as neutral parties when eliciting opinions from the collected experts, the background and experience of the moderators had the potential to influence which questions they posed to the group and how they phrased those questions. This also could introduce bias that could influence the findings. In an example that is particular to this workshop, with respect to ODR, participants discussed sometimes opposing perspec-

tives about the importance of due process, which prioritizes the role of attorneys, and the importance of efficiency, which might decrease the need for attorney representation at various junctures. Participants discussed the possibility that implementing ODR more broadly might elicit opposition from legal professional organizations seeking to protect the important role of lawyers in the process. Nevertheless, although multiple legal professionals were present, no representative from one of these professional organizations participated in the workshop. A participant in the workshop who specifically emphasized the potential opposition from such a group might have had a significant influence on assessments of the likelihood of success of certain needs. Although we cannot know how the results from the group might have changed were that perspective included, we suggest that the interested reader examine the following references for an introduction to the issues involved:

- Elayne E. Greenberg and Noam Ebner, "What Dinosaurs Can Teach Lawyers About How to Avoid Extinction in the ODR Evolution," Social Science Research Network, St. John's University School of Law Legal Studies Research Paper No. 19-0004, 2019.
- Noam Ebner and Elayne Greenberg, "Strengthening Online Dispute Resolution Justice," *Washington University Journal of Law and Policy*, Vol. 63, 2020, pp. 65–117.
- Noam Ebner and Elayne Greenberg, "Where Have All the Lawyers Gone? The Empty Chair at the ODR Justice Table," *International Journal of Online Dispute Resolution*, Vol. 6, No. 2, 2019, pp. 154–161.

Identification and Prioritization of Needs

To develop and prioritize a list of technology and policy issues that are likely to benefit from research and investment, we followed a process similar to one that we used in previous PCJNI workshops (see, for example, Jackson et al., 2015; Jackson et al., 2016; and references therein). Participants discussed and refined problems related to each category and identified potential solutions (or *needs*) that could address each problem. In addition, needs could be framed in response to opportunities to improve performance by adopting or adapting a new approach or practice (e.g., applying a new technology or tool in the sector that had not been used before). After identifying and refining the needs, we used a voting process based on the Delphi Method, a technique developed at RAND, to elicit prioritization information from the group about the identified needs (RAND Corporation, undated).

Prior to the COVID-19 pandemic, PCJNI workshops were conducted in person in a group setting. However, under the restrictions and mitigations implemented in response to the pandemic, our participants and staff were unable to travel. Our typical in-person format involves a two-day, 14-hour in-person meeting (eight hours the first day, six hours the second day). However, drawing on several organizations' and individuals' experiences in running and participating in high-intensity virtual events, we determined that it would not be advisable to try to directly replicate this meeting format using virtual conferencing tools. Instead, we planned the following two-stage process:

1. interviews with each participant, either individually or in small groups, for approximately an hour to build an initial picture of their views and ideas
2. a set of shorter, more-focused virtual sessions to provide the group with the opportunity to react to and shape the consolidated picture that came from our synthesis of the individual interview input.

Because of technical and practical difficulties we encountered in adapting our processes to the virtual environment, our virtual sessions were not—in this case—sufficient for us to complete our full voting process for prioritizing the needs identified by the group. As a result, we further adapted our process by adding a third step: a voting stage after the last interactive session, in which the participants provided their rankings of the different needs.

Interviews

During the interviews, we asked practitioner panelists to discuss the challenges they or their colleagues have experienced. We asked panelists who were not practitioners (e.g., academics) to speak from their experience working with practitioners. We also asked them to identify areas in which additional research and development investment could help alleviate the challenge. During these discussions, participants suggested additional areas that were potentially worthy of research or investment. We consolidated and integrated the problems, opportunities, and potential solutions described by the participants in separate interviews into a single summarized list. In advance of the first meeting of the virtual workshop, panelists were provided with the list of issues and needs.

Virtual Sessions

Once each participant had been interviewed and the needs had been consolidated, we held four two-hour virtual meetings using Zoom, a virtual meeting platform. These meetings were configured such that the participants could see each other's video feeds and collaborate to refine and edit the consolidated needs.

At the end of the discussion of each group of needs, participants were given an opportunity to review and revise the list of problems, opportunities, and potential solutions that they had identified. The panelists' combined lists for each topic were displayed one by one on the screenshare portion of Zoom using Microsoft PowerPoint slides that were edited in real time to incorporate participants' revisions and comments.

Post-Session Prioritization

Because of the amount of time required to revise the list of needs, we were unable to conduct real-time voting during the virtual meetings, as we would have done in a live meeting format. Ultimately, the panelists were emailed a six-page Microsoft Word document in which they provided their rankings. In a traditional Delphi process, after a first round of voting, participants are given the opportunity to see the group's responses, engage in discussion, and then revise their response, if desired. These later activities normally compose rounds 2 and 3 of the methodology. We use that final data set to group needs into three tiers of highest, middle, and lowest priority to provide a structure for the results of the workshop.

In this case, because of the technical and practical limitations of adapting our approach to the virtual platform, participants had an opportunity to go through only round 1 of the Delphi process. Because we were unable to allow participants to review their fellow panelists' responses or react to the overall ranking, it is likely that some needs are placed in different priority tiers than they might have been if it had been possible to complete our full process. Although there is no way to identify which specific needs were affected, an examination of prioritization data from other PCJNI workshops suggests that the effect is likely limited: The second and third rounds of the iterative Delphi process typically result in less than 10 percent of the needs changing position as a result of group feedback. We acknowledge that limiting this group to one round was less than ideal, but we were greatly constrained by adaptations to the COVID-19 pandemic, and we believe that the resulting

ranked research agenda is still far superior to applying no ranking at all.

Panelists did have an opportunity to vote on a few needs during the workshop and thus gained some familiarity with our process during that time. However, once the workshop concluded, we sent the complete list to them by email for their ratings and feedback. The final list of needs that we sent to them by email contained a column with two dimensions: importance and probability of success. We asked each participant to score each need and associated strategies to address those needs in the document using a 1–9 scale and return it to us by email. Figure A.1 shows the first page of the form we sent to the panelists.

For the *importance* dimension, participants were instructed that 1 was a low score and 9 was a high score. Participants were told to score a need's importance with a 1 if it would have little or no impact on the problem and with a 9 if it would reduce the impact of the problem by 20 percent or more. Anchoring the scale with percentage improvements in the need's performance is intended to help make rating values more comparable from participant to participant.

For the *probability of success* dimension, participants were instructed to treat the 1–9 scale as a percentage chance that the need could be met and broadly implemented successfully. That is, they could assign the need's chance of success between 10 percent (i.e., a rating of 1) and 90 percent (i.e., a rating of 9). This dimension was intended to include not only technical concerns (i.e., whether the need would be hard to meet) but also the effect of factors that might cause practitioners to not adopt the new technology, policy, or practice even if it were developed. Such factors could include, for example, cost, effect on practitioner workloads, other staffing concerns, and societal concerns.

Twelve of the panelists returned the completed forms. Some panelists were unable to narrow their rating to a single number and responded with, for example, "3 or 4" or "7 or 8." In those situations, we averaged the two responses to be 3.5 or 7.5, respectively.

Once we had ratings from the panelists, we put the needs into a single prioritized list. We ordered the list by calculating an expected value using the method outlined in Jackson et al., 2016. For each need, we multiplied the final ratings for importance and probability of success to produce an expected value. We then calculated the median of that product across all of the respondents and used that as the group's collective median expected value score for the need.

Figure A.1. Microsoft Word Form That Was Sent to Panelists

The following exercise asks you to rank each of the 56 opportunity-need pairs identified during the virtual sessions on two dimensions:

1) **Importance** – If this need is fielded, how much benefit would it deliver? To what degree would it address the opportunity?

2) **Likelihood of Success** – How realistic is it to create and field this need, given any potential technical, operational, and policy complications?

Please assign each of the following opportunity-need pairs (denoted with white and gray rows) a score on a scale from 1 to 9 (1 is low and 9 is high) for "Importance" and "Likelihood of Success".

Opportunity	Need	Importance (1-9)	Likelihood of Success (1-9)	Optional Comments
Given the array of ODR options offered by private vendors and wide variation in their design, pricing, and functioning, it can be difficult for court systems to identify a suitable platform that meets their needs for due process, accessibility, confidentiality, privacy, etc.	Work with other organizations that serve ODR customers including dispute neutrals, ADR Commissions, in house counsel and lawyer/advocates to develop a directory of products and providers.			
	Provide guidance to help courts identify the technological requirements to discuss with vendors/ providers.			
	Provide guidance for courts to effectively communicate the requirements for due process and other legal protections in the technological platform.			
Courts could reimagine processes for effective ODR implementation and consider the degree to which ODR should be used to replicate in-court processes. Broad goals are clear; specific processes to achieve those goals are not.	Develop and disseminate guidance from objective bodies about why, when, and how (e.g., shown models) to reimagine their processes; implementation should be informed by an understanding of the capabilities of the technology.			
	Provide approaches for courts to develop an understanding of the litigants' needs.			

We clustered the resulting expected value scores into three tiers using a hierarchical clustering algorithm. The algorithm we used was the "ward.D" spherical algorithm from the "stats" library in the R statistical package, version 3.6. We chose this algorithm to minimize within-cluster variance when determining the breaks between tiers. The choice of three tiers is arbitrary but was done in part to remain consistent across the set of technology workshops that we have conducted for NIJ. Also, the choice of three tiers represents a manageable system for policymakers. Specifically, the top-tier needs are the priorities that should be the primary policymaking focus, the middle-tier needs should be examined closely, and the bottom-tier needs are probably not worth much attention in the short term (unless, for example, they can be addressed with existing technology or approaches that can be readily and cheaply adapted to the identified need).

As a result of the panelists' ratings and our tabulation and clustering processes, we created a summary of the needs by tier (Table A.1). Figure A.2 is a histogram showing the distribution of tiered needs by their expected value score. We provide the complete list of needs in Table A.2.

Table A.1. Tabulation of Needs by Clustered Tier

Tier	Number of Needs
1	27
2	21
3	8

Figure A.2. Final Distribution of the Tiered Needs
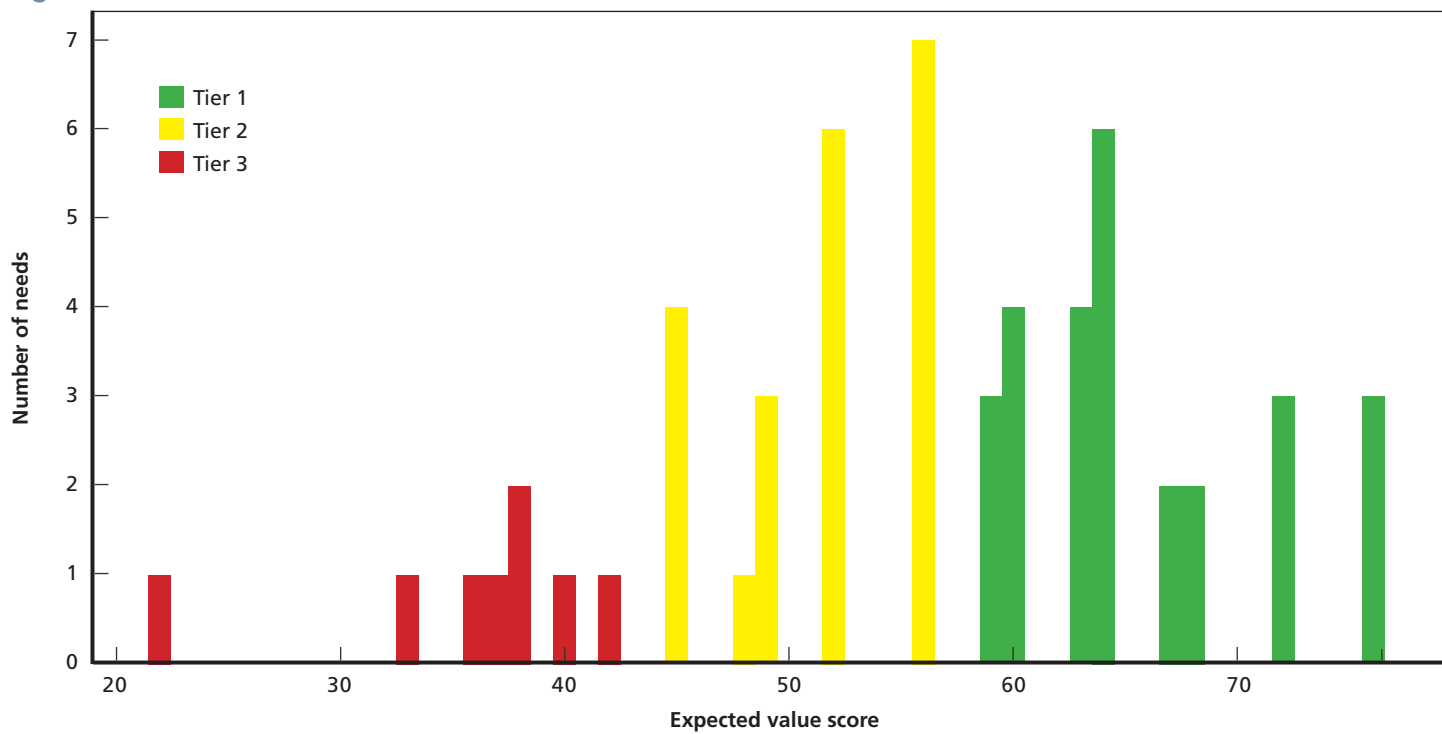
Table A.2. Complete List of Needs, by Tier

Problem or Opportunity	Need	Tier
Designing ODR programs and platforms		
Courts could reimagine processes for effective ODR implementation and consider the degree to which ODR should be used to replicate in-court processes. Broad goals are clear; specific processes to achieve those goals are not.	• Develop and disseminate guidance from objective sources about why, when, and how (e.g., using models) courts should reimagine their processes, taking into account the capabilities of the technology. • Provide approaches for courts to develop an understanding of the litigants' needs.	1
Given the array of ODR options offered by private vendors and the wide variation in their design, pricing, and functioning, it can be difficult for court systems to identify a suitable platform that meets their needs for due process, accessibility, confidentiality, and privacy.[a]	• Provide guidance to help courts identify the technological requirements to discuss with vendors and providers. • Provide guidance for courts on how to effectively communicate the requirements for due process and other legal protections in the technological platform.	
ODR could be used for a broad variety of case types (e.g., traffic offenses, divorce proceedings, criminal cases, small claims cases).	• Develop documentation that can be shared among courts of which case types have been successfully transitioned to ODR platforms. • Develop guidance to identify or provide examples of case types that might be more suitable for a jurisdiction's initial implementation of any ODR program. • Identify channels through which court systems that are exploring the use of ODR in a variety of case types (e.g., small claims, family, traffic, criminal cases) can share information and best practices.	
Concerns about authentication, data security, and privacy could be addressed by improving transparency and trust surrounding the transfer of sensitive information via ODR.[a]	• Develop guidance for incorporating security and privacy considerations into the adoption and administration of an ODR system.	
Some case types might require specific ODR features.[a]	• Develop protocols for screening approaches that are specific to relevant case types, such as domestic violence.	
Increasing access to justice		
ODR can remove barriers to access to justice.	• Develop guidance for courts on strategies to ensure that ODR is accessible to litigants (including user testing), particularly for litigants who encounter barriers to accessing the court system (e.g., individuals with disabilities, individuals who are not proficient in English). • Develop a framework for courts to consider before designing their ODR platforms that includes items related to access that are informed by the needs of their user base. • Identify potential strategies and partners, such as local community centers and libraries, for addressing the digital divide and providing access to ODR, including via telephonic assistance. • Conduct research on language and other barriers to using virtual platforms.	1
The barriers to engagement in ODR by self-represented litigants are not sufficiently understood or addressed.[b]	• Conduct research on the barriers to participation in ODR systems encountered by self-represented litigants and develop solutions. • Ensure that ODR platforms are mobile-friendly to improve access for litigants who face barriers to engaging in these processes (e.g., because of rural locations, limited internet access, or lack of access to transportation).	

Table A.2—Continued

Problem or Opportunity	Need	Tier
ODR can enhance procedural justice and meaningful participation in the resolution process.[a]	• Identify features of ODR that can promote procedural justice and meaningful participation in the resolution process.	
Engaging ODR users		
Courts should work to increase the engagement of users at certain points in the dispute-resolution process.[a]	• Identify design elements that increase the engagement of users. • Promote the integration of a reminder system into ODR platforms that could promote user engagement.	1
All users of ODR systems, including litigants and mediators, might need technical guidance and support.	• Develop standards for ODR systems that emphasize user-centered design and features, including mobile-accessible ODR systems that do not require users to have an email address. • Promote the development of self-help resources, vignettes, and other informational materials as a best practice for ODR.	
Courts need to determine the right level of participation for judges, attorneys, facilitators, and others to help users navigate ODR.[a]	• Develop policies, guidelines, tools, or a process to ensure equal access through ODR.	
Court systems need strategies for helping users better understand their rights and options for resolving a dispute, navigating the court system, and providing feedback to the courts.	• Conduct research on the use of digital media, such as video vignettes, wayfinding, chatbots, connections to legal assistance portals, and embedded features within ODR platforms; educate users; and document that the user understands their rights and options.	
The barriers to engagement in ODR by self-represented litigants are not sufficiently understood or addressed.[b]	• Develop a set of key principles and best practices for designing ODR systems that gives primacy to the experiences of litigants.	
Evaluating ODR programs		
The impacts of ODR have not been assessed across a broad variety of metrics (e.g., participation, case outcomes, user experiences, litigant preparation in court, costs and benefits to the system).	• Conduct research on the benefits of ODR systems for litigants and court systems. • Develop a set of metrics that captures key indicators of ODR success, such as litigant engagement and allocation of court resources.	1
ODR has the potential to reduce negative collateral consequences for litigants by providing an opportunity to fully resolve disputes in a timely manner.	• Conduct research on negative collateral consequences of engaging in court processes and assess the extent to which ODR can alleviate these consequences.	
Courts should be encouraged to participate in rigorous studies of ODR and other virtual platforms and be made aware of evaluation options.[a]	• Provide opportunities for courts to experiment with and learn from evaluation techniques of current practices and/or of ODR projects (e.g., cost-benefit analysis, surveys) that get at subjective experiences of procedural justice.	
Designing ODR programs and platforms		
Concerns about authentication, data security, and privacy could be addressed by improving transparency and trust surrounding the transfer of sensitive information via ODR.[a]	• Develop guidance around virtual authentication and determine whether there are different authentication needs in a virtual environment.	2
Courts should explore and incorporate a broader variety of resources and services (both internal and external) to help determine how to reimagine their processes.	• Develop resources to assist courts in identifying their needs for the design and functioning of ODR systems and identify ODR products that meet those needs. • Develop tools to help courts conduct baseline assessments to identify the specific processes they expect ODR to address.	

Table A.2—Continued

Problem or Opportunity	Need	Tier
Some case types might require specific ODR features.[a]	• Identify ODR features or processes that can meet the needs of litigants in these specific case types and develop best practices using the evaluations and experience of the programs and their participants.	
ODR platforms could be customized to take into account the differences in urban, suburban, and rural jurisdictions.[a]	• Ensure that ODR platforms are inclusive of approaches to serve the needs of rural jurisdictions. • Identify and develop communication channels through which successful ODR models can be shared with and adopted by jurisdictions that serve similar populations.	
ODR platforms should meet multiple court needs, which might include flexibility to allow for tailoring to different types of court cases and integration with the existing systems used by courts.[a]	• Develop and promote the adoption of data standards and application programming interfaces that would facilitate interoperability. • Identify strategies for improving the technological standards of off-the-shelf ODR products.	
Due process protections should be integrated into ODR platforms and features, which might require customization.	• Develop resources to assist courts in articulating litigants' rights to due process in the context of ODR and incorporating these considerations into ODR system design.	
Courts need to determine the right level of participation for judges, attorneys, facilitators, and others to help users navigate ODR.[a]	• Develop guidance on designing ODR programs to provide options for the engagement of judges, attorneys, facilitators, and potentially other professionals.	
Increasing access to justice		
ODR can enhance procedural justice and meaningful participation in the resolution process.[a]	• Conduct research on the impact of ODR systems on perceptions of justice and fairness.	2
Engaging ODR users		
Concerns about authentication, data security, and privacy could be addressed by improving transparency and trust surrounding the transfer of sensitive information via ODR.[a]	• Develop and implement approaches to communicate to the public how the court is protecting privacy and authenticating information.	2
The successful implementation of ODR requires buy-in from a broad variety of stakeholders, who should include recognized decisionmakers and those who provide services that the platform might affect.	• Promote guidance on the engagement of one or more recognized decisionmakers and a broad array of key ODR stakeholders, including clerks and other relevant court staff, in the development and implementation of ODR systems; specifically identify how the introduction of technology might affect the current roles of individuals who perform court-connected services.	
The public might benefit from branding and communications that confirm the validity of the platform for judicial purposes.	• Develop best practices for communications and public-facing materials (e.g., branding) that confirm the validity of the platform for judicial purposes. • Assess the potential challenges for users to verify that the ODR platform as presented is sanctioned by the judiciary.	
Courts should work to increase the engagement of users at certain points in the dispute-resolution process.[a]	• Conduct research on the points during the dispute-resolution process at which users are more likely to disengage (e.g., serving a notice in person).	
Digital media can help engage the public in the court system through strategies for helping users better understand their rights and options for resolving a dispute, navigating the court system, and providing feedback to the courts.[a]	• Develop approaches to identify and connect ODR users with available resources. • Identify the information that must be court-generated as opposed to that which is available publicly.	

Table A.2—Continued

Problem or Opportunity	Need	Tier
Evaluating ODR programs		
ODR platforms should meet multiple court needs, which might include flexibility to allow for tailoring to different types of court cases and integration with the existing systems used by courts.[a]	• Conduct research on the suitability and efficacy of ODR systems for various types of cases or disputes. • Develop a set of standards against which ODR platforms for court systems offered by vendors can be assessed.	
ODR has the potential to reduce bias in case adjudication.[a]	• Develop and provide guidance for courts on the utility of collecting demographic and other information about litigants.	
Designing ODR programs and platforms		
Given the array of ODR options offered by private vendors and the wide variation in their design, pricing, and functioning, it can be difficult for court systems to identify a suitable platform that meets their needs for due process, accessibility, confidentiality, and privacy.[a]	• Work with other organizations that serve ODR customers, including dispute neutrals, ADR commissions, in-house counsel, and lawyers or advocates to develop a directory of products and providers.	3
ODR platforms could be customized to take into account the differences in urban, suburban, and rural jurisdictions.[a]	• Identify and develop open-source channels through which successful ODR code can be shared with and, if indicated, adopted by jurisdictions that serve similar populations.	
Increasing access to justice		
ODR platforms could be used to improve the conveyance of digital evidence and payments to courts and parties.	• Develop a set of best practices for incorporating digital evidence and automated payment features in ODR systems. The best practices should be consistent with needed security protections and authentication procedures and also address logistical challenges to litigants.	3
Engaging ODR users		
Digital media can help engage the public in the court system through strategies for helping users better understand their rights and options for resolving a dispute, navigating the court system, and providing feedback to the courts.[a]	• Convene expert gatherings to explore the potential applications of artificial intelligence or other emerging technologies in ODR systems to support user engagement.	3
Evaluating ODR programs		
Courts should be encouraged to participate in rigorous studies of ODR and other virtual platforms and be made aware of evaluation options.[a]	• Conduct rigorous longitudinal studies examining the impact of ODR systems on a broad variety of outcomes for ODR providers and ODR users. • Provide funding for randomized studies comparing ODR with traditional court processes.	3
ODR has the potential to reduce bias in case adjudication.[a]	• Develop data-collection standards for all matters before the court that include race, gender, ability status, economic status, age, and education. • Ensure unbiased and consistent outcomes in resulting settlements by developing algorithms that identify outlier settlements and live reviews of cases falling outside norms.	3

[a] This problem or opportunity is associated with needs that fell into different tiers.
[b] This problem or opportunity is duplicated because other associated needs were grouped into different categories.

Notes

[1] The Priority Criminal Justice Needs Initiative also convened a multipanel workshop on COVID-19 and the criminal justice system in 2020. Part of this workshop specifically addressed the challenges faced by courts during the pandemic. For more information, see Jackson et al., 2021a; and Jackson et al., 2021b.

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Acknowledgments

The RAND Justice Policy Program

RAND Social and Economic Well-Being is a division of the RAND Corporation that seeks to actively improve the health and social and economic well-being of populations and communities throughout the world. This research was conducted in the Justice Policy Program within RAND Social and Economic Well-Being. The program focuses on such topics as access to justice, policing, corrections, drug policy, and court system reform, as well as other policy concerns pertaining to public safety and criminal and civil justice. For more information, email justicepolicy@rand.org.

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About This Report

On behalf of the U.S. Department of Justice, National Institute of Justice (NIJ), the RAND Corporation, in partnership with the Police Executive Research Forum (PERF), RTI International, and the University of Denver, is carrying out a research effort to assess and prioritize technology and related needs across the criminal justice community. This research effort, called the Priority Criminal Justice Needs Initiative, is a component of the Criminal Justice Requirements & Resources Consortium (RRC) and is intended to support innovation within the criminal justice enterprise. For more information about the RRC and the Priority Criminal Justice Needs Initiative, please see www.rand.org/well-being/justice-policy/projects/priority-criminal-justice-needs.

This report is one product of that effort. In June 2020, RAND and RTI International researchers conducted an expert workshop to address needs related to online dispute resolution and virtual platforms for case navigation and resolution. This report presents the proceedings of that workshop, topics considered, needs that the panel participants developed, and overarching themes that emerged from the panel discussions. This report and the results it presents should be of interest to court practitioners (judges, prosecutors, defense attorneys), court administrators, developers of platforms for online dispute resolution, and researchers. Other RAND research reports from the Priority Criminal Justice Needs Initiative that might be of interest are

- Brian A. Jackson, Michael J. D. Vermeer, Dulani Woods, Duren Banks, Sean E. Goodison, Joe Russo, Jeremy D. Barnum, Camille Gourdet, Lynn Langton, Michael G. Planty, Shoshana R. Shelton, Siara I. Sitar, and Amanda R. Witwer, *The U.S. Criminal Justice System in the Pandemic Era and Beyond: Taking Stock of Efforts to Maintain Safety and Justice Through the COVID-19 Pandemic and Prepare for Future Challenges*, Santa Monica, Calif.: RAND Corporation, RR-A108-8, 2021
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