



The Justice Index: Measuring Access to the Courts

By Laura Abel and David Udell¹

Justice should not depend on the serendipity of where you live.

Performance measurement can help improve justice everywhere.

The *Justice Index* is a new web-based system, under development by the National Center for Access to Justice, that will gather and present data — including policies, practices, and numerical data — showing the extent to which each of our fifty state justice systems



is able to assure access. The *Justice Index* will promote an understanding of the courts that can be used by courts, legal services providers, the organized bar, legislators, activists, and the public, to achieve reform.

The following provisional categories form the spine of the *Justice Index*:

- I. Resources that enable meaningful participation in a civil case
- II. A neutral, competent and adequately funded judiciary
- III. Access for people with limited proficiency in English
- IV. Access for people with disabilities
- V. Access regardless of gender, race or ethnicity²

We describe these categories in greater detail below.

A primary task in producing the *Justice Index* is to overcome the justice system's failure to systematically track data on its own performance. We have included some criteria in the *Justice Index* precisely because

they can be illuminated through existing data sets and reports. We have included some criteria because we intend for the *Justice Index* to educate people about the importance of data that does not yet exist. Last, we are conducting original research to produce new data relevant to some of the criteria.

As noted throughout this memo, the *Justice Index* builds on other initiatives to establish standards for and track justice system performance, including work done by the American Bar Association, Brennan Center, Conference of Chief Justices, Conference of State Court Administrators, Constitution Project, International Consortium for Court Excellence, National Center for State Courts, National Legal Aid and Defender Association, World Justice Project, and others.

I. Resources That Enable Meaningful Participation in a Civil Case

A. Background

The American Bar Association (ABA) and National Legal Aid and Defender Association have issued standards and resolutions regarding the civil right to counsel and state civil legal aid systems.³ There is a notable paucity of standards concerning the delivery of assistance for people who lack counsel, however.⁴ Likewise, while some data exists regarding the availability of civil legal aid, little data exists regarding the people who need self-help services, the availability of those services, and whether those services are sufficient in quantity and quality to provide court users with meaningful court access.

B. Criteria

1. Lawyers for people unable to afford counsel in civil cases

- a. How many civil case filings and case closings each year in the state trial courts, by type of case?

- b. How many new case filings each year involve at least one unrepresented party, by type of case?
 - i. How many new case filings each year involve an unrepresented person on one side and a person with representation on the other?
- c. What is the total civil legal services funding per person eligible for Legal Services Corporation (LSC)-funded civil legal aid (e.g., for people at X% of the income guidelines)?
 - i. Total LSC funding
 - ii. Is there state funding? If so, how much?
 - iii. Number of people eligible for LSC-funded civil legal aid
- d. Is there a program or programs to provide free or low-cost civil legal aid to people who are financially (or otherwise) ineligible for LSC-funded assistance? If so, what proportion of the need do those programs meet?
- e. Is there a right to counsel for indigent persons in categories of civil cases in which critical interests are at stake, including:
 - i. parents facing removal of a child by the state on abuse or neglect grounds?
 - ii. parents facing termination of their parental rights by the state?
 - iii. parents facing the loss of a child to another person in custody proceedings?
 - iv. children in dependency proceedings (abuse, neglect, termination of parental rights)?
 - v. people who are the subject of an involuntary civil commitment proceeding?
 - vi. people facing civil contempt charges that may result in incarceration?
- f. Is there a structure in place to ensure that attorneys who are providing representation in civil cases in which there is a right to counsel:
 - i. are independent?
 - ii. possess the requisite knowledge and skills?
 - iii. keep caseloads to a level that permits adequate representation?
 - iv. possess sufficient investigative and other resources to provide adequate assistance?
- g. Are civil legal aid services adequately coordinated:
 - i. Is there a statewide Access to Justice Commission?
 - ii. Do judges who sit on the state's highest court participate in the Commission?
 - iii. Does the Commission engage in statewide

planning and oversight of the system for the delivery of civil legal aid to coordinate and support the delivery of services? If not, does a different entity provide such coordination?

2. Systems that support unrepresented litigants ("self help")

- a. Is there a statute, rule of professional conduct, or other guidance document authorizing the provision of unbundled or limited scope legal services? If so, in what types of cases?
- b. Is there a statute, rule of judicial conduct, or other guidance document authorizing or encouraging judges to provide assistance to unrepresented persons in the courtroom? If so, what type of assistance, in what types of cases?
- c. Is there a statute, rule or other guidance document instructing court staff on what they may and may not do to assist unrepresented persons?
- d. Does the state provide (or do the courts allocate) funding for court-based programs (self-help centers, or other structures) to assist unrepresented people?
- e. Is there a statute, rule, or other guidance document requiring that websites, electronic filing systems and other advanced technology used by courts be accessible to unrepresented persons?
- f. Is there a statute, rule or other document establishing the obligation of the court to communicate with people with little or low literacy?
 - i. Do they require important materials to be written in plain English or at a particular reading level?
 - ii. Do they provide for the use of audio or video recordings to communicate important information to people with low literacy?
 - iii. Do they provide for judges to use plain English when communicating verbally?
- g. Is there a person or entity charged with monitoring or ensuring judicial compliance with the above statutes, rules and guidance documents regarding courts' interaction with unrepresented persons? If so, who?
- h. Does the state court website have the following features:
 - i. Are forms available on the website? If so, in which case types?

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- ii. Does the state court website link to local forms?
- iii. Are courts required to accept the forms?
- iv. Are attorneys and parties required to use the forms?
- v. Do instructions accompany the forms?
- vi. Do the courts provide pro se litigants with information about:
 - » the legal elements required for relief? If so, in which types of cases?
 - » legal defenses that may be available to them? If so, in which types of cases?
 - » the procedures they must follow? If so, in which types of cases?
 - » how to prepare for trial? If so, in which types of cases?
 - » post judgment proceedings?
- i. What is the rate of default, by type of case?

II. Neutral, Competent and Adequately Funded Judiciary

A. Background

The ABA, Conference of Chief Justices, Conference of State Court Administrators, and National Center for State Courts have all issued standards to ensure that courts are accessible, fair and impartial.⁵ However, there is little information available to enable members of the public to determine how their court systems are functioning with respect to these standards, and how they compare with court systems in other states.

B. Criteria

1. What is the caseload per judge, by category of case?
2. How much judicial time is allotted to each case, by category of case?
3. Are courts funded so that fees are secondary to the general fund as a means of producing revenue for the courts?
 - a. Is a waiver available for all people unable to pay court-imposed fees and fines?
 - b. Is the standard for waiver of court-imposed fees and fines based on actual ability to pay (as opposed to a percentage of the poverty level, for instance)?
4. Are Judicial Branch budget requests considered by the legislature as submitted by the judiciary?
5. Does the Judicial Branch have the authority to

allocate resources with a minimum of legislative and executive branch controls, including budgets that have a minimal number of line items?

6. Are judges evaluated regularly? Are the results available to the public?
7. Is the performance of the court system evaluated regularly? Are the results available to the public?
8. Is public financing available for judicial elections?
9. Fair recusal procedures:
 - a. Are decisions on recusal motions reviewed by neutral judges?
 - b. Are litigants and counsel required to disclose campaign contributions and independent expenditures made in support of or opposition to any judges hearing their case?
 - c. Are there rules recognizing that a judge's impartiality may reasonably be questioned, and disqualification may be necessary, because of judicial campaign spending by litigants or their attorneys?

III. Access for People with Limited English Proficiency

A. Background

The ABA, Brennan Center, Conference of State Court Administrators, Consortium for Language Access in Courts, Department of Justice, National Asian Pacific American Bar Association and National Center for State Courts have each developed standards for language access in courts.⁶ However, there is currently no central, updated source for information regarding the extent to which each state court system provides access to individuals with limited English proficiency (LEP).

B. Criteria

1. Does the state have a process in place to certify court interpreters?
 - a. Is there a statute, rule, or other guidance document requiring the use of certified interpreters when such interpreters are available?
 - B. Of the proceedings in which court interpreters are used, what percent use certified court interpreters?
2. Is there a statute, rule, or other guidance document requiring courts to provide interpreters for all

criminal and civil court proceedings involving LEP individuals?

3. Is there a statute, rule, or other guidance document requiring courts to maintain the ability to communicate with LEP individuals outside of the courtroom, through the use of interpreters or bilingual staff:
 - a. at clerks' counters?
 - b. in self-help centers?
4. Does the state judiciary's web site provide information:
 - a. about the cases and individuals for which courts will provide an interpreter?
 - b. about whether interpreters will be provided free of charge?
 - c. about how court users can file a complaint regarding court interpreters or other language access problems?
 - d. in any languages other than English?
5. Does the judiciary translate critical documents into languages commonly spoken by litigants?
 - a. Instructions to unrepresented litigants
 - b. Court forms (e.g. form complaints and motions)
 - c. Form orders (e.g. form domestic violence restraining orders)
6. Do civil legal aid providers, and attorneys providing representation in civil and criminal cases in which there is a right to counsel, have the capacity to communicate with and represent LEP individuals?

IV. Access for People with Disabilities

A. Background

The National Association of the Deaf, National Center for State Courts, and U.S. Access Board have issued guidelines and position papers about how to make courts accessible to people with disabilities.⁷ However, there is no single source of data regarding the extent to which specific court systems comply with those standards.

B. Criteria

1. Is there a statute, rule, or other guidance document requiring accommodations for people with disabilities?
 - a. Is there a person or entity charged with monitoring or ensuring compliance?
 - b. If so, who?
2. Is there a statute, rule, or other guidance document

requiring the provision of appropriate auxiliary aids and services for deaf, visually impaired or otherwise disabled litigants, defendants, jurors, spectators, traffic violators, conservators, victims, family members, and attorneys?

- a. Is there a person or entity charged with monitoring or ensuring compliance?
- b. If so, who?
3. Is there a statute, rule, or other guidance document requiring national certification for sign language interpreters and setting qualification standards for computer-assisted real-time transcription (CART) providers?
 - a. Is there a person or entity charged with monitoring or ensuring compliance?
 - b. If so, who?
4. Is there a statute, rule, or other guidance document requiring that information about obtaining auxiliary aids and services be posted clearly in courthouses and on court websites?
 - a. Is there a person or entity charged with monitoring or ensuring compliance?
 - b. If so, who?
5. Is there a statute, rule, or other guidance document requiring court websites to be accessible to people with disabilities?
 - a. Is there a person or entity charged with monitoring or ensuring compliance?
 - b. If so, who?
6. Is there a statute, rule, or other guidance document requiring all areas of the courthouse to be physically accessible to people with disabilities?
 - a. Is there a person or entity charged with monitoring or ensuring compliance?
 - b. If so, who?
7. Does the state judiciary's website tell court users how to file a complaint about difficulty accessing court facilities or services because of disability?

V. Access Regardless of Gender, Race or Ethnicity

A. Background

The Brennan Center, Conference of Chief Justices, Conference of State Court Administrators, Legal Momentum's National Judicial Education Project and National Center for State Courts have promulgated best practices to ensure no court user is treated differently because of gender, race or ethnicity.⁸ However, there is no single source of information regarding the extent to which courts are using these best practices.

B. Criteria

1. Is there a commission or task force that examines racial and ethnic fairness in the courts?
 - a. Does the commission or task force have dedicated staff?
 - b. Is there a person or entity charged with monitoring whether the commission or task force's recommendations are implemented?
2. Is there a commission or task force that examines gender fairness in the court?
 - a. Does the commission or task force have dedicated staff?
 - b. Is there a person or entity charged with monitoring whether the commission or task force's recommendations are implemented?
3. Is there a person or entity charged with monitoring jury diversity? If yes, compare jury diversity with diversity of the general population.
4. Is there a person or entity charged with monitoring judicial diversity? If yes, compare judicial diversity with diversity of the general population.
5. Is there a statute, rule, or other guidance document requiring that judges receive training in how to promote racial, ethnic and gender fairness?
6. Is there a statute, rule, or other guidance document requiring that court staff receive training in how to promote racial, ethnic and gender fairness?
7. Does the state judiciary's website tell court users how to file a complaint about racial, ethnic and gender bias?

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- 2 A sixth category, focusing on public defender systems, is omitted here because of space constraints. It is included in a more complete version of this article available on our website, www.ncforaj.org.
- 3 See ABA, Basic Principles of a Right to Counsel in Civil Legal Proceedings (2010); ABA, Principles of a State System for the Delivery of Civil Legal Aid (2006); ABA, Resolution 112A (2006) (civil right to counsel in "basic human needs" cases); NLADA, Statement of Vision and the Ten Core Values for the National Civil Legal Aid System (2008).
- 4 *But see* John Graecen, Resources to Assist Self-Represented Litigants: A Fifty-State Review of the "State of the Art" (2011).
- 5 See National Center for State Courts, Principles of Judicial Administration (draft 2011); Adam Skaggs & Andrew Silver, Promoting Fair and Impartial Courts Through Recusal Reform (2011); CourTools: Trial Court Performance Measures (2005); Trial Court Performance Standards and Measurement System.
- 6 See ABA, Standards for Language Access in Courts (2012); Brennan Center, Language Access in State Courts (2009); National Asian Pacific American Bar Association, Increasing Access to Justice for Limited English Proficient Asian Pacific Americans: Report for Action (2007); Conference of State Court Administrators, White Paper on Court Interpretation: Fundamental Access to Justice (2007); U.S. Dept. of Justice, Title VI Guidance, 67 Fed. Reg. 41455, 41471 (June 18, 2002); National Center for State Courts, Court Interpretation: Model Guides for Policy and Practice in State Courts (2002); Consortium for Language Access in the Courts, 10 Key Components to a Successful Language Access Program in the Courts (undated).
- 7 See National Association of the Deaf, Communication Access in State and Local Courts (2008); Debbie Howells et al., Court Web Site Disability Access (2008); U.S. Access Board, Justice for All: Designing Accessible Courthouses (2006); Mark Van Bever, Implementing the Americans With Disabilities Act in a Trial Court (2002);

Jo Williams, *Communication Accessibility in the Courts* (2002). See also Dave Yanchulis, *Achieving Accessible Courthouses*, *Building Safety Journal* (2007).

8. See Ciara Torres-Spelliscy et al., *Improving Judicial Diversity* (2010); Madelynn Herman, *Achieving Fairness Through Bias-Free Behavior: A Pocket Guide for Courts* (2005); Conference of State Court Administrators, *Position Paper on State Courts' Responsibility to Address Issues of Racial and Ethnic Fairness* (2001); Lynn Hecht Schafran & Norma Juliet Wikler, *Gender Fairness in the Courts: Action in the New Millenium* (2001). See also National Consortium on Racial and Ethnic Fairness in the Courts, *Resolutions*.

