

To: National Center for State Courts

From: GBA Strategies

Date: November 17, 2015

Analysis of National Survey of Registered Voters

A new national survey conducted on behalf of the National Center for State Courts demonstrates some of the challenges facing state courts across the country and the broader legal community as they seek to adapt to a changing legal ‘marketplace’ and to serve a citizenry with rapidly shifting expectations for businesses and government. As we have seen over three years of national research, the courts remain the most trusted branch of government, and Americans recognize and value their unique role in protecting individual rights. But persistent concerns about customer service, inefficiency, and bias are undermining the public’s confidence in the courts and leading them to look for alternative means of resolving disputes or addressing problems that would have previously led them into the court system.

Previous research has identified many of these concerns, so we used this survey to examine several of them in greater detail. What we found was a disturbingly pervasive belief in an unequal justice system that systematically produces different results based on race, income, and other socio-economic factors. Not surprisingly, we also found that confidence in the court system varies greatly based on many of these same factors; most notably, there is a massive racial gap on most measures, with African Americans much more distrustful of the courts and the broader justice system.

Looking to the future, there is a clear need for state courts to better understand and then respond to the needs of those who enter the court system. But Americans are not looking for a complete overhaul; they believe technology can play a critical role in helping courts better communicate and serve the people within the system while also increasing efficiency and hopefully lowering costs. These changes are increasingly critical as the courts face increasing competition from various forms of alternative dispute resolution, which holds an undeniable appeal for Americans looking to avoid the spiraling costs, excessive duration, and crippling uncertainty that previous research shows many associate with the courts.

The following are key findings and recommendations based on a survey of 1,000 registered voters conducted October 26-29, 2015. The poll was also administered to an oversample of 200 African Americans over the same period. The base sample is subject to a margin of error of +/- 3.1 percentage points at the 95 percent confidence level, while results for all African Americans are subject to a margin of error of +/- 5.5 percent.

- **Persistent concerns about customer service, inefficiency, and bias make courts a last resort.** In our last survey, we identified public concerns about political bias as the single greatest impediment to greater public confidence in the courts. In this survey, we once again see this issue rise above all others.

Political Bias and the Judiciary		
	% Agree	
	2014	2015
Judges in (STATE) courts make decisions based on an objective review of facts and the law.	48	48
Judges in (STATE) courts make decisions based more on their own beliefs and political pressure.	46	47

While Americans are split on the choice above, a full 61 percent say that the term ‘political’ describes the courts in their state, compared to just 34 percent who feel it does not. Among those with direct experience in the courts, a majority believe judges make decisions based more on their own beliefs and political pressure. These doubts exist alongside longstanding concerns about the courts being inefficient (52 percent, up six points in the last year), intimidating (44 percent, also up six points in the last year). and providing inadequate customer service (53 percent say the courts provide good customer service to people in the court system, down two points in the last year). The result of these persistent concerns is that the courts are seen as a last resort rather than a preferred means of resolving disputes.

Courts Seen as Last Resort		
	% Agree	
	Total	Direct Exper.
The court system is the best means of resolving conflicts and protecting individual rights in our society, and represents the best way for two parties who are in dispute to reach a fair resolution.	43	42
The court system is inefficient, intimidating, and expensive. While some disputes can only be solved by a court, the court system should only be used as a last resort.	54	55

As the table above demonstrates, not only do a majority of Americans view the courts as a last resort, those with direct experience in the court system are marginally more likely to express this view, demonstrating that those walking through the doors of our courthouses are not having their minds changed by seeing the legal process at work.

- **Americans prefer alternative dispute resolution over the court system by broad margins.** Perceptions of the courts as a last resort matter most when there are other viable options for the public to pursue when seeking to resolve a conflict or dispute. As the use of alternative dispute resolution increases rapidly and the ‘marketplace’ offers the public real options, state courts find themselves in an unfamiliar position of competing for customers.

Those customers’ first impulse is to choose alternative dispute resolution over the court system by a margin of more than 2-to-1 (64 to 30 percent), with women and younger, wealthier, and college-educated Americans much more likely to choose ADR; college-educated women prefer ADR by an astounding 52 points (72 to 20 percent).

After measuring initial attitudes on this question, we presented brief arguments on either side to measure how attitudes shift once the public learns more about the choices they face, but the results were essentially unchanged from the initial measure.

Courts vs. ADR		
	% Agree	
The court system is the best way to resolve disputes, because it protects individual rights and is accountable to the rule of law.	43	42
Alternative ways to resolve disputes, like mediation, are faster, cheaper, and more responsive to the needs of the people they serve than the court system.	54	55

It is important to note that we did not conduct a full message test on this question, including messages that could potentially undermine support for ADR by exploring some of the potential risks to those who enter into it. Our goal was to get baseline measures of the appeal of ADR and the core arguments in support of each option; at this baseline level, the appeal of ADR is undeniable.

- **In-depth exploration of bias in courts reveals deep-seated belief in unequal justice based on race, income, and other key socio-economic factors.** Building off of previous research demonstrating extensive concerns about bias in the court system, we sought to unpack those concerns by measuring perceived fairness within the court system as it relates to a variety of different groups that could have dealings with the courts. Furthermore, given the public debates about the role of race in law enforcement and sentencing, as well as less visible debates about corporate personhood and income inequality, we created a split sample exercise that asked half of the respondents about the court system and the other half about the justice system.

First, looking at the results of the split sample exercise, we found that perceived injustice – including worse outcomes for most audiences but better outcomes for the wealthy and large corporations – was higher when looking at the justice system rather than the court system. The perceived injustices still exist within the court system, as we detail below, but they are worse for the justice system, highlighting the importance of exercising message and language discipline that separates the courts from the broader justice system when discussing these issues.

While the justice system consistently fared worse in the split exercise, the same trends of perceived injustice held for the court system as well, just to a slightly smaller extent. Therefore, we used the combined data from both splits to demonstrate the degree to which Americans believe each of the following groups is treated the same, better, or worse than

others within the justice or court system. The table below shows three tiers – the first consisting of groups that a majority (in the case of African Americans and the poor) or at least plurality of Americans believes are treated worse than others; the second consisting of those who a majority believes are treated the same but the balance leans toward worse treatment; and a third tier of those that an overwhelming majority believe receive preferential treatment within the court and justice systems.

Unequal Justice			
	Better	Same	Worse
The poor	4	30	62
African Americans	4	39	51
Divorced fathers	5	40	46
Hispanics	5	43	44
<hr/>			
Single women	14	50	28
Small business owners	9	55	28
Elderly people	12	55	27
The middle class	9	62	24
<hr/>			
The wealthy	70	24	2
Large corporations	71	20	3

- **Massive racial gap reveals deep distrust of courts among African Americans.** On almost every measure of trust, fairness, or customer service, we see dramatically lower marks among African Americans – not just lower than whites, but other non-white audiences as well. The racial gap is pervasive, but it is largest on measures of bias, equal justice, and customer service. On procedural fairness, a majority of African Americans with direct experience in the courts still say they were satisfied with the fairness of the proceedings, although it is 18 points lower than among all Americans (52 vs. 70 percent). The exceptions to this pervasive racial gap are also noteworthy:
 - African Americans have lost a great deal of faith in state courts, but they still see the courts as essential to protecting civil rights
 - There is no racial gap on the U.S. Supreme Court or the federal court system
 - Despite the headlines and unrest in many communities across the country, 70 percent of African Americans still express confidence in their local police department – lower than the country overall (85 percent), but still a significant number
 - African Americans are less likely to embrace the alternatives to the courts; they are less likely to opt for ADR and are less likely to see the courts as a last resort

- **Americans express many reservations about lawyers but recognize their value and view them as essential to navigating the court system.** Previous qualitative and quantitative research has clearly demonstrated that many Americans hold a dim view of lawyers and have

a viscerally negative reaction to them, but this survey shows that there is more nuance to their attitudes than those immediate reactions would suggest. Broad majorities of Americans agree that:

- You are more likely to win court with a lawyer by your side (91 percent)
- I am confident I could find a good lawyer if I needed one (87 percent)
- You are more likely to resolve a dispute without ever having to go to court if you have a lawyer helping you negotiate (80 percent)
- Lawyers can help save time and money by finding answers and resolving issues quickly (75 percent)

At the same time, they reject the notion that ‘hiring a lawyer is usually not worth the cost’ by almost 2-to-1 (33 percent agree, 63 percent disagree). Yet, 56 percent agree that ‘if at all possible, I would prefer to handle a problem myself rather than have a lawyer represent me.’ If you look at this survey as a whole, you can see how the dissatisfaction with the courts overcomes the distrust of lawyers to create an environment where people feel overwhelmed by the prospect of entering the court system without someone to help them navigate its byzantine ways.

- **Marks for procedural fairness strong and consistent despite broad concerns about unequal justice.** While the macro concerns about unequal justice detailed above are real and deeply concerning, it is important to note that those with recent direct experience in the court system continue to express confidence in the fairness of those proceedings. Across three surveys and four years, we have asked the same question of those who have had direct recent experience in the court system, and the results have been both consistent and positive.

Procedural Fairness			
<i>Regardless of the outcome, were you satisfied with the fairness of the process in your dealings with the court system?</i>	2012	2014	2015
Yes	68	72	70
No	25	26	25

Those with direct experience within the court system continue to give the courts lower marks for customer service and other core attributes tested in these surveys, while simultaneously vouching for the fundamental fairness of their own proceedings.

- **Public demand for more self-sufficiency highlights a path forward.** Our last survey found a clear demand for greater use of technology to enable those dealing with the court system to find information they need on their own and to conduct more business with the courts remotely. This survey finds more of the same across multiple measures:
 - 56 percent agree that ‘if at all possible, I would prefer to handle a problem myself rather than have a lawyer represent me.’
 - But, by more than 2-to-1, Americans say the courts are not doing enough to empower regular people to navigate the court system without an attorney (63 to 29 percent)

- A plurality believe courts are not effectively using technology to improve their own operations or how they interact with people.’ (47 to 40 percent)

As we noted previously, as courts seek to be more responsive to public concerns while also dealing with increasing caseloads and tight budgets, technological advances offer clear potential to alleviate demands on court employees and resources over time, as well as address customer concerns about costs and the hassle of interacting with the courts.

- **Voters want to see significant changes in how courts operate, but prefer middle course with emphasis on new technologies rather than complete revamp.** Building on the above data on self-sufficiency and the potential role of technology, we offered three options for the path forward in another split-sample exercise. One split offered a status quo option versus a complete revamp of court operations, while the other offered the same status quo option versus a middle path built on technology. It is telling that in both split exercises, the status quo choice was rejected. But while the complete revamp was preferred to the status quo by only four points (with relatively little intensity for either choice), the middle path built on technology was preferred by 27 points, with intensity running nearly 3-to-1 in support of this path forward.

Court Operations – The Path Forward	
	% Agree
When it comes to internal operations and customer service, (STATE) courts are doing a good job and should continue to operate as they do now.	45
When it comes to internal operations and customer service, (STATE) courts are failing to do their job and need to completely revamp how they operate.	49
When it comes to internal operations and customer service, (STATE) courts are doing a good job and should continue to operate as they do now.	33
When it comes to internal operations and customer service, (STATE) courts are falling behind and need to do a better job of adopting new technologies to break down barriers between the public and the courts.	60