

The Things We Think and Do Not Always Say

NCSC Access To Justice Manifesto

March 2024

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Overview

■ ***We believe in state courts.***

State courts have an outsized impact on the lives of Americans, protecting rights and advancing justice. More than 70 million cases are filed each year in state courts, more than 95% of all cases that are filed. And yet, the current system fails to meet the needs of many who require just resolution in a court of law.

Each year, tens of millions of people — including a disproportionate number of people who are part of communities of color — encounter difficult moments in their lives that implicate the law: wage theft, debt collection, domestic violence, the care and custody of children and dependent adults, and eviction matters. When these problems are not resolved effectively, Research shows a disturbing trend: only a small fraction of these justice problems is resolved through the legal system.

As Texas Supreme Court Chief Justice Hecht has repeatedly said,

“Justice for only those who can afford it is neither justice for all nor justice at all.”¹

There are many barriers that stand in the way of justice: complexity of the law and process, inequality between ordinary people and experienced well-resourced parties, the cost of and difficulty of hiring a lawyer, the fear of governmental authority, and the belief that the system is biased or rigged.

■ ***Access to justice doesn't have one single meaning or a simple solution. The work is multi-faceted. It requires many interconnected and overlapping strategies.***

CCJ/COSCA Resolution 5 reflects the complexity of this work, setting an aspirational goal of 100% access to the justice system through a continuum of meaningful and appropriate services. State and local courts have made enormous progress establishing policies that help people who don't have lawyers learn their rights, advance their claims, and protect their interests. And yet, there is much more to do.

■ ***We can create a justice system that every community member can easily understand and navigate.***

Individual access to justice is achieved when a person facing a legal issue has timely and affordable access to the level of legal help that they need to get a fair outcome on the merits and can walk away believing that the legal system treated them fairly in the process.

Justice for all means that everyone has the information and assistance they need to address civil legal needs, when and where they need it, and in a format that they can use.

To reach this goal, lawyers, judges, court and clerk staff, legal aid, law schools, allied legal professionals, other branches of government, and community-based organizations must work together to plan, implement, assess, and improve access to justice.

¹ See e.g., <https://www.txcourts.gov/media/1456217/soj-address-2023-final.pdf> (last checked October 27, 2023).

We use an access to justice ecosystem as a metaphor to explain how different actors must work together in cooperation and coordination to achieve our goals.

The work of NCSC's Access to Justice Team helps courts understand, develop, and implement a continuum of services to ensure that every community member can access court services and legal resources when they experience a legal problem regardless of their income, race, gender identity, disability status, language need, technological skills, or any other individual factor.

We start every project with a foundational query: how can we improve procedures and communications while also expanding access to legal information and legal advice.

By combining these strategies and engaging with many different court and community partners to ensure accuracy and wide reach, we can create a justice system that every community member can easily understand and navigate, whether they choose to do so on their own or with help. All these strategies and interventions are part of a vibrant larger access to justice ecosystem.

■ ***Access to justice needs range from simple asynchronous legal information to complex jury trials and everything in between.***

Courts and their partners must use a broad array of processes exhibiting a mix of costs, speeds, degrees of complexity, and convenience to match appropriate interventions to the types of legal problems and needs of individual court users.

As we define the access to justice ecosystem, our work can be divided into four broad, interconnected and equally important strategies:

Rethinking, simplifying, and improving court procedures and requirements.

Courts should examine their procedures critically and remove any unnecessary components that make court processes onerous without corresponding benefits. This should include both court-directed and court-annexed processes and requirements. Done right, this increases procedural fairness and ensures equity in the system.

Increasing access to legal information and legal advice.

Courts should provide litigants with the legal information they need to navigate court and facilitate access to legal representation and other services where possible.

Increasing access to court proceedings and services.

Courts should remove barriers that prevent litigants from accessing the courthouse, effectively participating in a case, or using available court services and resources.

Improving how courts communicate with and engage community members.

Courts should engage community partners and communicate clearly and effectively with court users and the broader public.

A responsive access to justice ecosystem must understand the needs of all court users and identify areas and opportunities for change. Every court user is different, and the level and type of service or support they may need to successfully navigate the court system depends on their unique needs and circumstances.

Communities of color, litigants with limited English proficiency, individuals with disabilities, people living in poverty, and members of other historically marginalized groups often face additional hurdles in accessing the justice system.

Meaningful access requires both high-touch, individualized support for those who may need it and wide-scale process improvements and technology solutions to ensure that the justice system remains accessible, inclusive, and effective for all stakeholders.

At the surface, many of our projects focus on one topic or one type of access to justice intervention within the larger ecosystem, but all our work can be positioned within the larger goal of 100% access. This ATJ Manifesto serves as a starting point to help us learn from and connect to each other's work.

1

Rethinking, Simplifying, and Improving Court Procedures and Requirements

Creating more predictable, consistent, and streamlined court procedures can make every other access to justice intervention more effective.

Process simplification benefits all. If a process is streamlined to remove unnecessary steps, attorneys can serve more clients. If a process is intuitive and easy to explain, self-help materials don't have to be so long and complex. Technology is more effective when there is less variation in a court process. While some process simplification requires statutory change, others can be achieved through court or operational alterations.

One way to simplify a court process is to offer an alternative to the standard litigation process. Alternative dispute resolution and civil diversion programs may not simplify an underlying court process, but they offer court-sanctioned alternatives for litigants who prefer to avoid a time-consuming and complex court experience. Small claims courts are the best-known simplification efforts, but other types of early resolution programs are becoming more common including in family law and housing dockets.

The gold standard diversion programs build in multiple entry points both before and after filing of a lawsuit, creating the maximum number of opportunities for the parties to engage with the program. Pre-filing diversion programs offer parties a pathway to resolve legal disputes

even before a case is filed in the court system. By moving upstream, parties have the potential to resolve their issues quickly, affordably, and without potential negative consequences that sometimes come with a court filing. Pre-filing resolution also reduces the burden on the court system, preserving court resources for cases that most require their attention. Post-filing diversion programs are open to parties after the point of filing and may be accessed at any time before or during the scheduled court date. Many courts have implemented post-filing diversion programs which are popular because the court already has jurisdiction over the matter, and any settlement agreement can be entered into and enforced by the court.

Another area for exploration is the interoperability of information, through data sharing between courts, justice partners, and other entities (for example, public benefits providers, educational services, and veteran's affairs). The coordinated use of shared information has the potential to increase the efficiency and quality of court proceedings, reduce manual work, improve the speed of case processing, and enhance access to justice. Moreover, policy and process decisions should consider their costs — both fiscal and human.

2

Increasing Access to Legal Information and Legal Advice

Access to justice work should increase both the availability and efficacy of legal information and legal advice.

Both legal advice and information play important and complementary roles. Interventions can range from free legal representation in court (a high-touch, but low-volume strategy) to print or online self-help guides (a low-touch, but high-volume strategy). To reach 100% access to justice, there must be space for all strategies to thrive.

Expanding Access to Legal Services

Though expanding access to legal representation is often the first thing that comes to mind when discussing access to justice, laid and pro bono attorneys cannot be scaled enough to meet the overwhelming number of civil legal needs. Nor should it be necessary to operate a justice system that requires legal representation for every legal problem or court process. Courts can and should play a role in supporting the work of legal aid and pro bono attorneys, while also recognizing their limitations.

Bar associations and legal aid organizations are often lead partners in efforts to expand access to legal services, although courts can adopt rules and policies that make it easier for legal aid and pro bono attorneys to effectively serve clients. Many courts share physical and virtual space with legal aid providers, train staff members to make referrals to legal aid, provide court data to assist legal aid outreach efforts, and implement rules that make legal aid and pro bono representation easier and more cost-effective.

Expanding Who Practices Law

Increasing access to legal representation may require a corresponding effort to expand the pool of people who can provide that legal advice. Courts should be familiar with the demographics of the communities they serve and take action to build a legal profession that can meet those community needs.

In recent years, states have started revising court rules to expand the pool of legal professionals authorized to provide legal assistance. There are many ways to implement regulatory reform and courts are thinking creatively and holistically about how to increase the number of people who can provide legal assistance.

Across the country, there is a growing recognition of the lawyer shortage in rural communities (“legal deserts”), where there are few to no options for legal representation. This scarcity is a critical backdrop for the development of innovative programs and partnerships with service providers to ensure access to justice. Rural communities often experience unique challenges, as lawyers tend to be concentrated in urban settings turning

some rural areas into “legal deserts.” Courts should understand where lawyers practice in their jurisdiction and consider ways to support and strengthen the rural lawyer population.

The legal profession has a history of exclusion and does not fully reflect the diversity of our country. Courts can and should take proactive steps to diversify the bench and bar, and to create a more inclusive legal profession.

Diversity on the bench, among courtroom and chambers staff, and those practicing law is critical to serving a diverse population.

One way to achieve this goal is to take steps to broaden the range of applicants for clerkships, internships, and externships. This will help to make the hiring process more equitable for people with different backgrounds and gives more people a pathway into legal careers that may otherwise not be available to them.

Rules and policies that authorize and encourage the use of unbundled legal services can further expand access to counsel and increase the capacity of both legal aid organizations and the private bar to serve more low-income and modest means clients.

Expanding Access to Legal Information

Few legal problems ever end up in court. Many can be and are resolved outside of court. For some, navigating the court process is a bigger challenge than navigating the substantive legal issue. Legal information is neutral information about court procedures that is generally applicable and not fact specific. Legal information can give litigants the foundational

information they need to determine what steps they must take to advance their objectives. Legal information may come from court staff or shared via print or online self-help resources.

Self-help materials should be written in plain language, and accessible to individuals with limited English proficiency and disabilities.

Materials should be easy to find and available in multiple formats, including online, in print, and displayed in the courthouse. Courts should develop self-help materials with legal providers and community partners and share them widely. Materials should also be tailored to individual needs and circumstances as much as possible.²

Court staff should play an active role in sharing information and resources with litigants. Staff from courthouse self-help centers and navigator programs may provide procedural information, directions, legal information and referrals with litigants. Clerks, law librarians, and other public-facing staff can also share legal information as part of their regular duties. Court policies that cover the distinction between legal information and legal advice can help prepare staff for this important role.

Courts should also leverage self-service options, such as process maps, flyers, and “how to” guides, which can be published online, distributed at court, or shared with community partners. Interactive chatbots and guided interviews can provide curated information on demand that respond to individual litigant needs. Courts should dedicate staff to ensure legal information resources are regularly updated and reviewed for accuracy.

² For example, if someone needs information about getting divorced without children, a document that contains information about custody, child support, and parenting plans can be overwhelming and not helpful.

3

Increasing Access to Court Proceedings, Services, and Resources

Courts should anticipate barriers that prevent litigants from accessing court proceedings and services and address them. Courts should be accessible, welcoming, and inclusive spaces that can be easily navigated regardless of the individual needs of a litigant. As courts adopt new technologies and move more proceedings and services online, they should proactively ensure that all court users may share the benefits of technology.

Accessible Courthouses

Litigants face barriers simply to travel to court. They include financial, logistical, physical, and linguistic. Courts can take steps to make courthouses more welcoming, easier to navigate, and more user-friendly through simple changes to the physical courthouse spaces. Remote court proceedings have the potential to expand access for many by eliminating the cost and complexity of traveling to court, but courts should consider whether remote proceedings impose new barriers or challenges for litigants who lack access to or familiarity with technology.

Accessible Language

Courts should carefully consider the language they use to communicate with the public. Plain and inclusive language ensures that litigants can easily understand and act on orders and other directives from the court.

Language and disability access are crucial components to this work. Courts should use language and literacy data to make sure court communications meet community needs. Courts located in areas with a high number of people with limited English proficiency should translate forms and other content into multiple languages.

Every litigant should be able to understand what happens in their court case and what is expected or required of them. This may require the court to communicate in different ways or in different languages.

To effectuate meaningful language access, courts must have a robust pool of qualified court interpreters to assist in court and court-annexed proceedings. State courts recruit, train, and certify court interpreters. They coordinate the appointment of qualified professional interpreters to assist limited English proficient and deaf and hard of hearing court users so they can understand court proceedings.

The Access Team plays a pivotal role in supporting state court's work by developing and maintaining exams used to credential state court interpreters in 18 of the most spoken languages.

As such, judicial education and court training programs should adhere to adult learning best practices and cover topics to support how to engage effectively with self-represented litigants; what the best local resources, services, and referrals are; the distinctions between legal information versus advice; procedural fairness; accessibility issues and resources; and diversity, equity, and inclusion.

Accessible Technology

In recent years, courts have moved rapidly to adopt new technologies such as remote court appearances, electronic filing, digital court records, online dispute resolution, video remote interpreting, and others. Technology is a powerful tool that can help simplify court procedures and expand access to court services. But technology solutions must be designed, implemented, and evaluated to work effectively for diverse groups of court users. This requires careful planning and consideration of existing processes as well as user testing throughout the stages of development.

Courts should use new technology projects as an opportunity to improve and simplify existing court procedures. Courts should build tools — like guided interviews, boarding passes, and text reminder systems — that provide limited and relevant legal information to give people the specific information they need as they need it.

Technology is not a panacea. As court processes become increasingly intertwined with technology, procurement officers, IT professionals, and other stakeholders must work to ensure continuity of service, through seamless upgrades, evaluate data privacy, and plan for contingencies.

More Americans have access to technology than ever before, but the digital divide persists, and special considerations must be made for court patrons who do not have home access to high-speed internet, lack basic technology literacy or English language skills, or have disabilities that make certain technologies difficult to use.

Courts should implement technology that is designed to meet the needs of all court users and reduce barriers to access.

Online services must be mobile responsive, and accessible to accommodate the needs of people with disabilities and limited English proficiency. Platforms should accommodate payment of fees and fines, and courts should not require users to pay to use technology. Not all technology is appropriate for all court users, and users must be permitted to opt out. If they do, they should not incur disparate outcomes or reductions in trust and confidence in the courts, nor feelings of reduced procedural fairness if they cannot or choose not to use certain technology. Court policies should cover troubleshooting, and contingencies that do not disadvantage court users because of how they choose to interact with the court.

4

Improving How Courts Communicate and Engage with Communities

Court can be a scary place: often conjuring up images of a formal, intimidating atmosphere where legal procedures and jargon are commonplace.

The fear of the unknown and the feeling of being out of one's depth can be overwhelming and leave people feeling unsure of their rights and powerless.

Not to mention that in the legal system the stakes are very high, often lifechanging. The possibility of a negative outcome — like a criminal sentence, fine, and/or losing a case — only adds to the anxiety.

Another factor is the nature of the proceedings themselves. **Court cases often involve sensitive and personal issues, including divorce, custody battles, housing, or financial security.** The reasons that people need to use the courts often involve confusing, stressful, and very personal issues. This can bring up feelings of vulnerability and expose people to scrutiny and judgment from a judge, jury, or the public.

The adversarial nature of court proceedings can heighten emotions and tensions, making the experience even more intimidating.

The presence of lawyers—who are trained to advocate for their clients — can create an atmosphere of conflict and competition, especially for individuals without counsel.

The formality of court proceedings and the rigid rules of evidence and procedure can also make it difficult for people to present their cases effectively, leading to feelings of frustration and helplessness. Against this backdrop, it's easy

to imagine why some community members simply opt out of engaging with the court system altogether.

Court leaders should examine how they can reduce disparities in operations, systemically and transparently. Longstanding concerns about racial disparities may be most prevalent in criminal courts, but they play significant roles in civil courts, too. Courts must evaluate how to handle housing disputes, traffic and citation processes and civil debt claims proceedings to ensure fair treatment of litigants regardless of race.

Court leaders must also emphasize the need for educating judges, clerks, and administrative professionals on community engagement, racial and ethnic disparities, and how they play out in the legal system. They must also address the need to diversify the legal profession across the bench and bar, in part to help ensure that inequitable practices are not replicated and that the bench and bar are representative of the communities that they serve.

Courts exist as part of larger communities and should seek out opportunities to partner with community organizations and to better communicate with community members. Partnering with stakeholders outside of the legal system, particularly those trusted by communities of color, can help to bring light to those policy areas most in need of reform and to build greater confidence in the legal system.

To do engagement and outreach effectively, courts can use tools like asset mapping, GIS mapping, and available census data to gain insight into their community's existing resources, public transportation routes and availability (if any), broadband capacity, census data, and language access needs. Courts should also take steps to identify and engage the community institutions and resources that often serve people with unmet legal issues. Such data can assist court leaders in identifying the necessary resources, relationships, structures, and barriers that affect if and how court users engage with the courts, and offer avenues for collaboration, resources, and attention.

Communities are never static, and courts should commit to revisit available resources, partners, and needs to ensure that partnerships and solutions are responsive to the needs of the time and place.

When they better understand their communities, courts can improve both the methods by which they communicate with the public, as well as the substance of their messages, to increase both community engagement and trust. Procedural fairness is a critical strategy for ensuring that litigants feel engaged in the court system, regardless of the outcome of their case. Research shows that the public's view of the justice system is driven more by how they are treated than whether they win or lose their case. The perception of procedural justice can

be even more important than the outcome: when court users perceive the justice system to be fair, they are more likely to comply with court orders and follow the law in the future, regardless of the outcome in their cases.

By partnering with community organizations and other trusted messengers, courts can amplify their messages and better understand the needs of their communities. Courts need to have a shared understanding of where low-income and otherwise vulnerable people commonly go for information and help — often referred to as trusted community partners — including food banks, public libraries, senior centers, schools, and religious institutions. Courts should take active steps to improve access to information and communications with the bar, litigants, and the public. Courts should also think about ways to engage community members outside the life cycle of a pending case. Users of legal resources and services and the community partners they rely on should be centrally involved in creating, assessing, and improving the legal resources and services they use.

Legal problems rarely begin or end in a courthouse, and courts should look for opportunities to holistically address the legal and non-legal needs of community members, including through earlier and ongoing connections to services and resources.

Putting it All Together

■ *Courts must provide access to swift, fair justice.*

To achieve this fundamental goal, courts must continuously examine court processes, resources, and outcomes, and consider whether there are ways to do it better. As courts modernize and adopt new technologies, many court processes are still lagging behind the times. Manual and complex processes, legal jargon and hard-to-find legal information, and structural inequities cause people to lose trust in courts and inhibit their ability to function effectively.

The NCSC Access team believes that optimism, support, and partnerships will fuel the change we aspire to see. While courts face many challenges, it is possible to solve them and courts throughout the country are innovating and evolving. It is important to lift up and learn from these successes. It is equally important to learn from missteps and omissions — to allow

others to avoid easily avoidable mistakes — and we must make space to share honest and constructive lessons of what to avoid and/or do differently.

Change is sometimes hard and often incremental. Court leaders need help and support to make meaningful and lasting change. Courts are constrained by state and federal statutes, several hundred years of common law, and often lack necessary funding. We are here to assist courts with targeted support, resource development, and feedback, and to do so in partnership with the broader community.

Our work is critical in assisting courts and their partners to be more community-connected, user-friendly, accessible, and welcoming for people facing legal issues. The work is never done, but we can and should do better.



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