



The State of State Courts: Reviewing Public Opinion

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If your day job is at one of America's thousands of trial courts, you probably have noticed a significant decline in public trust in recent years. In part, this waning of confidence mirrors a steady downward trend of public faith in government and corporate America that has been apparent since the mid-1970s. And, in part, the decline reflects a general dissatisfaction with all institutions of government that has become more apparent in the last ten or so years. At a macro level, America's trust is diminishing, and its confidence wanes.

But if we are comfortable writing off this decline to larger, societal forces, we are missing a big part of the story—and potentially jeopardizing the future role of courts in American society. For

when we look beyond the large systemic trends, it is apparent that public concerns about the courts are deep-seated and real. It is time to admit that these challenges exist, devise strategies to reverse these trends, and implement them. Though still the most trusted of the three branches of government, courts will continue to lose ground absent a willingness to hear the public's wake-up call.

History of Survey Work

In 2011 the National Center for State Courts (NCSC) embarked on a major public-opinion project. We worked in conjunction with our friends at Justice at Stake, a nonprofit organization based in Washington, D.C., which shared our concerns that judges and court managers were ill-equipped

to communicate about the catastrophic budget crises that were capsizing most state court budgets. Jointly, we hired GBA Strategies, a national public-opinion-research firm, to conduct focus-group and survey work on how courts could improve their arguments for funding.¹ That work was presented to a wide national audience, including the 2012 annual conferences of NACM in Orlando and the Conference of Chief Justices and Conference of State Court Administrators (CCJ/COSCA) in St. Louis. A year later, a follow-up panel at the 2013 CCJ/COSCA annual meeting in Burlington, Vermont, highlighted the effective implementation of the messages. Court leaders reported positive responses to the messages and strategies that had been developed—some even directly tied funding

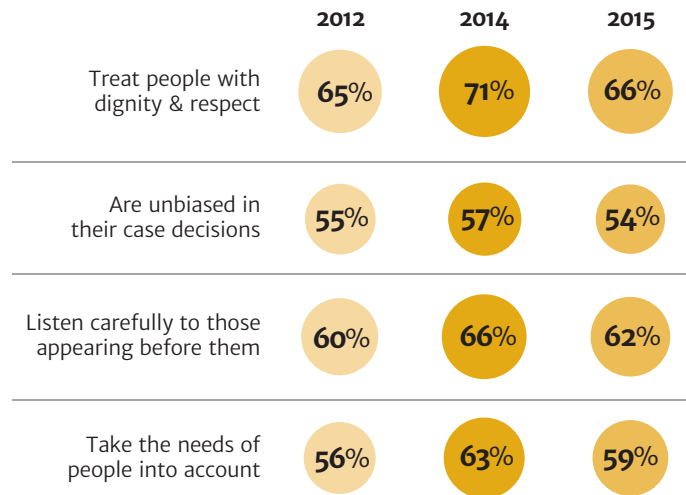
* The author thanks Blake Points Kavanagh of the National Center for State Courts for her assistance with research and editing of this article.

¹ Comprehensive information about this research can be found at ncsc.org/fundingjustice.

FIGURE #1

Opinions have softened (slightly) in the last year.

Q: “Do you agree or disagree with the following statements about state courts?”



Percent saying well or very well.

increases to strategy and tactics gleaned from the research.

In 2014 NCSC established a new program called the “State of the State Courts.” This project aims to replicate the success of the court-funding work by using opinion surveys to identify and track trends in public opinion, identify areas of concern for the courts, and inform strategic planning for the entire court community. A November 2014 national survey was followed by a similar effort in October 2015. Summaries of both surveys were published and disseminated online and in print form.²

Core Survey Findings

These two recent surveys, conducted in the span of about one year, allow significant insight into what

Americans think about the courts. The research provides clarity on community challenges and what actions to take to address public concerns.³

While much of the survey work is designed to highlight public concerns, a fair review of the findings should include the positives who have been identified as well.

At a very high level, the public holds positive views about the courts and their core functions. Overall ratings for the judiciary remain higher than those for the executive and legislative branches of government.

A majority believe that the courts treat people with dignity and respect, are unbiased in their case decisions, listen carefully to those that appear

before them, and take the needs of people into account. These are all positives for the courts, though some detractors would argue that these numbers should be much higher across the board (see Figure 1).

Procedural fairness is another area where the public, especially those with direct experience in a courtroom, gives high marks. Both the 2014 and the 2015 surveys filtered respondents based on their direct experience with a court.⁴

Across both surveys, 70 percent or more indicated that regardless of the outcome of the case, they were satisfied with the fairness of the process in their dealing with the system. Only one in four reported dissatisfaction. Those are solid numbers and are a positive on which courts should seek to build.

² Survey findings and analysis are available at ncsc.org/2014survey and ncsc.org/2015survey

³ GBA Strategies surveyed 1,000 registered voters November 12-16, 2014, with a margin of error of +/-3.1 percentage points at the 95 percent confidence level. GBA surveyed 1,000 registered voters October 26-29, 2015, with the same margin of error. The 2015 poll was also administered to an oversample of 200 African-Americans over the same period, subject to a margin of error of +/-5.5 percent.

A clear-headed review of the data, however, requires one to conclude that negative views about the courts substantially outweigh these positives. Survey work over the past years, also informed by qualitative work in professional focus groups, helps us summarize some of these concerns into four general areas.

Customer Service

Conventional wisdom, widely held in the judicial and legal establishment, says that the key to stronger public support for the courts is increased interaction. Recent surveys indicate not only that this is incorrect, but also that those members of the public who have direct interaction with the courts give them *lower* grades on key customer-service indicators. This upends what is perhaps the community’s most sacred of sacred cows: “To know us is to love us.”

In our 2014 survey, we asked “How would you rate the job being done by courts in (your state)?” Only 41 percent of respondents who reported direct interaction *with* the courts rated the courts as good or excellent on this basic job performance measure, compared to 50 percent of those who reported no direct experience (see Figure 2).

Focus-group work with members of the public that have direct experience with the court system can be almost startling in its negative intensity. Participants in an April 2015 focus group in Atlanta piled on their local courts, describing rude customer service, long lines to accomplish basic tasks like paying traffic infractions, and poorly designed websites. One respondent said of court websites: “It’s almost by design that they have no design.” The implication is: Courts are not helping us solve our problems—they are intent on making it more difficult.⁵

Outdated Technology/Lack of User-Friendliness

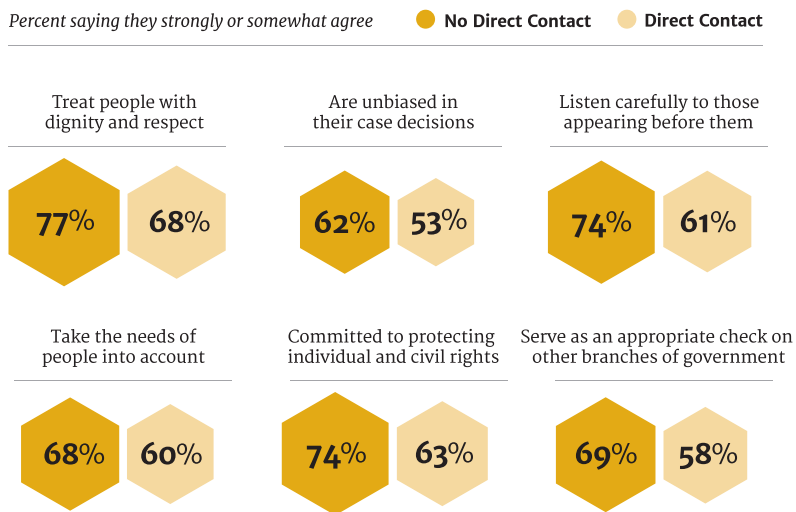
Many judges and court administrators focus their technology dollars on developing e-filing portals or upgrading case management systems. These are key priorities for the court and for good reasons. They represent major internal efficiency gains, save taxpayer dollars, and are often demanded by budget writers. Even so, the public is left with the perception that courts are woefully out of date with their customer-facing technology. In the mobile self-serve era, when many of us complete our holiday shopping without leaving our couch and then pay our credit-card bill without writing a check, the gap between public expectations and what courts are currently delivering is vast.

Our 2014 survey found a plurality of respondents who, when forced to choose between a statement pair,

FIGURE #2

People are more likely to give lower ratings on job performance and customer service.

Q: “Do you agree or disagree with the following statements?”



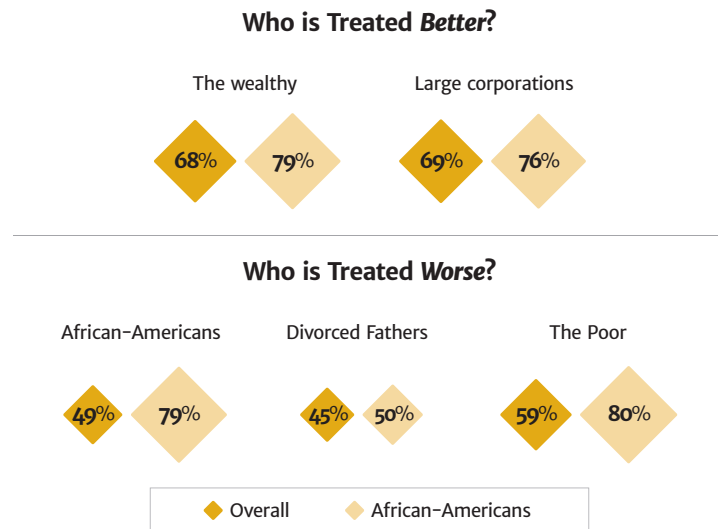
⁴ We asked respondents whether they had been party to a family matter; had been to court for a traffic ticket; had been involved in any way in a criminal case; or had one filed against them. Respondents who said yes on any of these measures were deemed to have had direct contact with the courts; those who said no were deemed not to have had direct contact.

⁵ Focus-group research on file with the author.

FIGURE #3

Beliefs in unequal justice are deep-seated and widespread.

Q: “Tell me whether you believe that group is treated the same as other groups by the (court/justice) system, or whether you believe they are treated differently than others by the (court/justice) system.”



indicated that “courts are not effectively using technology to improve their own operations or how they interact with the people they serve.” Perceptions are not always fair, which may be the case here as many state and local courts are sinking major dollars into backroom technology upgrades. Yet the survey response clearly highlights a missed opportunity by many courts to provide online payment or record-request options that would simultaneously alleviate demands on court employees and boost customer service ratings.⁶

Unfairness/Bias

The public also harbors considerable concern about unfairness in the court system. These viewpoints should be alarming to all of us. Our court system rests on the bedrock principle that everyone should receive equal justice, regardless of an individual’s politics, income, or skin color.

Yet there is widespread concern that politics is having a significant impact on who makes it onto the bench and how they rule once there. Our 2014 survey found stronger support for the statement “Judges in (state) courts are there because of personal connections or political influence” than for its opposing statement that “Judges in (state) courts are selected based on their qualifications and experience.” There is also evidence that negative campaigning in judicial elections is furthering these sorts of perceptions. Digging into the 2014 survey, respondents from the nine states with partisan contested elections to a state’s court of last resort were more likely to feel this way than those from other states.

But concerns about politics affecting justice pale in comparison to the survey results found from talking to Americans about what other factors influence perceptions of unequal justice.

In our 2015 survey, we asked respondents about a series of different demographic groups in American society, and whether that group is treated the same as other groups by the courts. Nearly seven in ten Americans believe that both the wealthy and large corporations receive better treatment in the courts than other groups. Conversely, nearly six in ten believe that the poor receive worse treatment. Almost half of the entire population believes that African-Americans, as a group, receive worse treatment (see Figure 3).

Our 2015 survey oversampled African-American respondents, which allows us to get a more accurate perspective of that community’s perceptions. Virtually across the board, on almost every measure, African-Americans exhibit greater skepticism than the overall population about the fairness of the court system. While half the population believes that African-

⁶ NACM’s 2016 guide will focus on strategies to make courts user-friendly. It is sure to be filled with good ideas for court managers to test in their jurisdictions.

Americans receive worse treatment, eight in ten African-Americans hold this view. And while 59 percent of the overall population believes the poor receive worse treatment, 80 percent of African-Americans hold this belief. This trend is seen throughout the entire survey. While it is easy to be desensitized to an array of polling numbers, one figure in particular stands out: only 32 percent of African-Americans believe that state courts “provide equal justice to all.” That is an astonishing lack of confidence (see Figures 3 and 4).

Cost and Delay

That last two surveys have also confirmed that the public holds the belief that the legal system overall (not only the courts) takes too long and costs too much. For instance, over 70 percent of our 2014 respondents indicated that the cost of hiring a lawyer would dissuade them from taking a

legal concern to court. This was the top reason cited for not taking a legal matter into the court system.

Focus-group participants expressed beliefs that vested parties—particularly lawyers—colluded with judges to defer and delay decisions. Many believe that the financial interests of the few disrupt the efficient administration of justice.

Is the public ready to leave the court system in droves? It is probably too soon to say.⁷ However, our research indicates that the public is certainly very interested in alternatives to traditional dispute resolution in a courtroom setting. Our 2015 survey asked pointed questions about preferences for using the courts or using alternative systems, with about two respondents selecting the alternative option for every one selecting the courts.

Implications for the Real World

Looking at these four core findings, it is fairly easy to stitch together a portrait of what our community needs to do at an operational level to earn gains in public trust.

Strive to Meet Public Expectations

Attorneys and litigants can be better served. This begins with recognizing that the courts can no longer expect to have an enduring monopoly on conflict resolution in American society. For many, this may be a humbling change in perspective. The judiciary is an institution steeped in process and hierarchy, but various forces have coalesced to flatten (some would say democratize) traditionally unequal relationships.

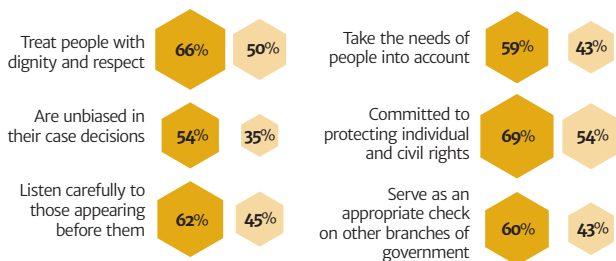
It continues with changing our mind-set: we must treat those who

FIGURE #4

Race impacts perceptions of fairness...

...and less than a third of African-Americans believe courts provide equal justice.

Q: “Do you agree or disagree with the following statements about state courts?”*



Q: “How well does each of the following describe state courts?”**



● Overall ● African-Americans

*Percent saying agree or strongly agree.
**Percent saying well or very well.

⁷ A decline in filings was tracked by NCSC’s Court Statistics Project in their publication *Examining the Work of State Courts: An Overview of 2013 State Court Caseloads* (2015). Trial courts nationwide reported an 11 percent decline in incoming cases during 2008-2013. The population-adjusted rate of total caseloads during the decade from 2004 to 2013 shows an average 6 percent decline in incoming cases.

enter a courthouse to conduct business as customers, not as applicants. Put simply: Bedside manner matters. By investing in the training of our frontline staff, we can improve the basic interactions between a court and its customers. This may sound painfully simple, but it is evident from the research that if we know this is important, we are not executing on it. Develop customer satisfaction surveys on paper and online; provide spot incentives to employees demonstrating outstanding service; integrate public-service expectations into performance plans. These are easily achievable goals that require minimal effort.

Focus on Self-Service Options

We are quickly entering an era where customers are frustrated if they cannot perform basic tasks on their mobile devices. Think of what you may have done on your smartphone in the past week: Renewed your vehicle registration? Ordered groceries? Received updates on your child's performance in school? And yet too many people are taking time out of their busy lives to stand in lines to conduct court business that could and should be handled remotely.

Our 2014 survey turned up truly amazing figures about the public's willingness to conduct business online. More than 75 percent of all respondents said they would definitely or probably use the Internet to access court records, pay fines or fees, or submit questions on procedure to court staff. It is not

surprising that the numbers for those under 40 years of age were even higher. What is a surprise is that more than half of those over 65 echoed these sentiments. The demand is broad based; it is not a whim of the millennial generation.

We need to implement functional, consumer-facing technologies that we already take for granted in most other aspects of our lives. Why can I pay to park on the street electronically in most major urban areas, but not pay for a parking ticket in the same way? How come I can resolve a dispute about a credit-card charge using an online chat function on my desktop computer, but cannot use this technology to be pointed to an appropriate form on a court website?

Help People Help Themselves

The public prefers to help themselves. We know this from the skyrocketing increases in self-represented litigants.⁸ To hear most judges and court managers describe this problem is to lay the problem at the feet of those who cannot afford representation. They do not know the rules; they do not know the process; they come unprepared; they are at fault for slowing down the system.

Maybe it is time to ask the question in a different way. How can we help people help themselves? What education can we provide without crossing into the unauthorized practice of law? How can we get useful information to those who

plan to navigate the system without representation? To be fair, the courts are making gains in this area, but we need to pick up the pace.

Conclusion

Everyone who works in the courts believes in the shared mission to make justice as fair, equal, and accessible as it can be. We want to work in a system where the public feels heard, respected, and confident that they are receiving justice. Survey work provides market research about our customers and helps us better understand their needs. The initial challenges are vast, but there is a roadmap for turning negative perceptions into positive ones and to increasing public trust and confidence in America's state courts.

ABOUT THE AUTHOR

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⁸ One of the most striking findings in the latest NCSC research revealed that 76 percent of the cases studied, which excluded domestic cases, had at least one self-represented party (i.e., tort, contract, and real-property claims). See *The Landscape of Civil Litigation in State Courts* (Williamsburg, VA: National Center for State Courts, 2015). Reliable data for the increase in self-representation has been nearly impossible due to the lack of a standard method for state courts to use when counting and reporting cases in which litigants are self-represented. The NCSC developed a uniform counting methodology for the courts to use, yet implementation is extremely difficult, mainly because it requires customization of a court's case management system. See "Developing Standardized Definitions and Counting Rules for Cases with Self-Represented Litigants," final report, National Center for State Courts, Williamsburg, Va., December 19, 2013.