



THE JUSTICE INDEX & CIVIL LEGAL AID: Q&A

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In December 2014, the Management Information Exchange Journal Committee invited the staff of the National Center for Access to Justice (NCAJ) to help



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illuminate the practical value of *The Justice Index*, www.justiceindex.org, to the *Journal's* audience of national civil legal aid leaders and programs. It is the hope of the NCAJ staff and of the *Journal* editors that this article will be of use to all who are working in the states to strengthen civil legal aid and to increase access to justice.

1. What is *The Justice Index*?

The Justice Index, at www.justiceindex.org, is the online resource created by NCAJ that presents findings showing the degree to which states are adopting selected best practices for assuring access to justice.

Whether you are examining the performance of your state as compared to a neighboring state or encouraging your state to adopt best practices already adopted in other states, the findings in *The Justice Index* as visualized through its dynamic interface offer insights unavailable elsewhere.

The Justice Index is unique. It shows you which states are doing a better (or worse) job of providing access to justice. It reveals where best practices are present (and where they are absent). It relies on original research, offers comparisons, presents findings visually, and is accessible to all.

The Justice Index is not just about its findings. It is

also about starting conversations. Why does one state score higher than another? Why is a supposed best practice actually best? What new subjects should be researched? What existing or new data sets should be included in *The Justice Index* to make it stronger? This dialogue itself can help to promote improvements in our justice system.

2. How can civil legal aid programs and other stakeholders use *The Justice Index* to advance the access to justice movement?

Civil legal aid programs have always worked to strengthen the rights important to their clients and client communities — for example, to obtain fairer landlord-tenant laws and to increase the level of welfare grants. Programs will continue to advocate in these areas of substantive law, and we respect each program's right to identify the reforms that are important and that should be championed.

Among their priorities, some programs are working to improve the justice system itself. With allies in the courts, bar, access to justice commissions, legislatures, social services organizations, and other settings, this has included working to increase the number of civil legal aid lawyers and to establish a civil right to counsel. But, it has also included working to develop innovative approaches that expand legal assistance to people who do not have lawyers, people with limited English proficiency, and people with disabilities.

The Justice Index offers an opportunity to examine and accelerate the progress being made through this modern access to justice movement. By tracking and highlighting best practices endorsed by experts and supported by research, and by showing where they have been adopted (and where they have not yet been adopted), *The Justice Index* creates incentives for state officials to replicate them. Civil legal aid lawyers and a broad range of other justice system stakeholders can also proactively cite *The Justice Index* to urge officials to adopt these models.

3. Which best practices for access to justice does *The Justice Index* focus on?

The Justice Index currently examines selected best practices in four categories:

- *Civil legal aid lawyers* — *The Justice Index* counts full time equivalent attorneys who provide direct services based on a financial eligibility criterion. At the present time, it does not count pro bono attorneys, judicare attorneys, or law students.
- *Self-represented litigants* — *The Justice Index* asks if the state assigns a person to handle initiatives concerning unrepresented litigants, authorizes judges and clerks to help people without lawyers, approves of the provision of “unbundled legal services,” relies on official court forms, and more.
- *Limited English Proficient Litigants* — *The Justice Index* asks if the state has a process for certifying interpreters, requires interpreters to be used in all civil and criminal matters, makes interpreting available in the courts and at clerks’ desks, and more.
- *Litigants with disabilities* — *The Justice Index* asks whether the state prohibits courts from charging for sign language interpreters, identifies a person as liaison for purposes of asking questions about the Americans with Disabilities Act, makes clear how to file a complaint under the ADA, and more.

The Justice Index computes and visualizes a score for each state in each category, and then combines those four scores into a “composite index” that yields an overall ranking for each state relative to the others.²

4. What are the criteria for selecting the best practices in *The Justice Index*?

The Justice Index criteria are selected from expert literature and standards developed by a number of the most highly regarded organizations in the country that focus on the courts, including, for example, the American Bar Association. The best practices it includes are widely accepted as key factors in making the justice system accessible. The strength of the indexing methodology is in its capacity to cast light on complex institutions — in this case, state justice systems — based on the comparison of a limited number of essential data points.

However, there are many beneficial practices that might have been included but are not. It would be impossible to attempt an entirely comprehensive listing

of all the initiatives, procedural safeguards or methods of assisting litigants that those who work serving vulnerable people might identify as best practices. We also recognize that some of the models included in *The Justice Index* may be viewed as unsettled in some quarters and not necessarily accepted as best practices by all stakeholders.

The following guiding principles underlie our approach:

First, we rely on widely accepted sources and look for those standards that have been identified by multiple respected organizations or scholars to provide a core set of recommended practices.

Second, we are completely transparent. Every question we ask is shown on the website, along with the answer for each state. Whether they agree or disagree with the inclusion of each question, users know exactly what we have done.

Third, we limit ourselves to procedural rather than substantive rules. The variance in substantive rules is even greater than that in procedural best practices. Moreover, the degree to which substantive rules reflect not only the values of fairness and access, but also social and political judgments, makes it more difficult to develop a set of core standards that are broadly accepted. This does not mean that it is impossible to incorporate substantive rules in our standards and, in fact, we will likely do so in the future. It does, however, mean that incorporating substantive rules is complex. *The Justice Index* is a long-term resource. We are building it in stages and applying the experience we gain each year to address more complex issues as we grow.

Fourth, we focus, with some exceptions, on “laws on the books” rather than looking to the effectiveness of their application in the field. Laws (including rules, practice guides, and so forth) have only modest value if they are not being applied, but they are still an important starting point for analysis. They reflect the foundational commitment of the state to providing access to justice. This is important both symbolically and practically. It sets the standard to which courts and other stakeholders must aspire. It also provides recourse for those denied access to justice to hold to account those not meeting the stated aspirations. There is also the practical reality that studying effectiveness of application across all fifty states and the thousands of sub-jurisdictions therein would be nearly impossible in a single resource. But, as noted above, we do include some findings that can only be measured at the level of effectuation on the ground — most significantly, the

count of civil legal aid lawyers in each state.

Finally, we look at statewide laws rather than attempting to look at the level of practice in the counties, cities, and sub-jurisdictions. It is rare, and difficult for a variety of reasons, for the states to monitor the existence and application of best practices in each of their subdivisions. Our judgment, supported by much expert opinion, is that statewide standards are therefore more effective and preferable. It is by definition not a best practice to leave the administration of the fundamental guarantee of access to justice to individual courts or counties without support or oversight.

5. Will the criteria in *The Justice Index* change over time?

The Justice Index is an evolving resource. We believe that the standards we study now are important and our results provide invaluable information for those seeking to make our state justice systems as effective and efficient as they can be. As we learn more from the national conversation about access to justice that *The Justice Index* contributes to, we plan to improve our questions and add criteria where we believe that to do so will increase the power of *The Justice Index* as a tool. As we carry out research in the year ahead, one of our hopes, to provide an example, will be to include findings on the presence of certain civil right to counsel laws in the states.

6. How does *The Justice Index* weigh all the findings together?

The exercise of ranking reflects value judgments about which elements to include, their importance relative to one another, and the weights to be accorded to the sub-parts of each element.

We took into account standards for justice system performance created by established organizations, consulted with experts, and proceeded as follows:

- We gave the four basic categories equal weight. We did not discern a rationale for giving one element greater weight than any other.
- Within each element, we gave each sub-part a weight of 1, 5, or 10, based on our judgment of its relative importance. We assigned more weight to fundamental requirements (such as the expectation to use certified interpreters) and less weight to features derived from the basic requirements (such as the requirement to train court staff on how to use interpreters).
- We assigned greater weight to a sub-part if it measured a single distinctive feature of access to

justice, and less weight if it was joined with other sub-parts to comprise a larger issue. We did this to avoid giving excess weight to the larger issue through accrual of sub-parts. For example, we gave less weight where a particular part measured an aspect of a court website if other sub-parts focused on other aspects of the same website. Of course the reliability of *The Justice Index* depends ultimately on the quality of its research. The research was carried out under NCAJ's supervision by law firm attorneys and staff, corporate attorneys and staff, and law students.

7. How can *The Justice Index* help me identify the missing best practices that my state should adopt?

Well, there is no substitute for clicking around www.justiceindex.org yourself. However, here is some guidance that may help you when you start clicking.

The best place to start is on the home page, www.justiceindex.org. From there, we suggest you hover your cursor over "findings," www.justiceindex.org/findings, and select the "composite index" or any of the four individual categories of *Justice Index* findings: attorney access, self representation, language access, or disability access.

The attorney access section will be most familiar to civil legal aid programs. Click on the link to visit the page titled "Number of Attorneys for People in Poverty." On this page you will see findings for every state showing the number of attorneys for the poor as compared to the number of attorneys for people in the general population. Of course, the count is not perfect. Some providers may not yet be included, but the intention of *The Justice Index* is that it will be sufficiently accurate to use in your state to help explain whether and why your state may need more civil legal aid lawyers.

None of the states come close to meeting the aspirational goal identified in *The Justice Index* of ten lawyers per 10,000 poor, which *The Justice Index* shows is just one fourth of the national average of forty lawyers per 10,000 people in the general population.

For the other three categories, we encourage you to visit the data visualizations, such as "State Adoption of Best Practices" (see, for example, bottom of the page at www.justiceindex.org/findings/self-represented-litigants/). These visualizations allow you to sort for all the "no" and "n/a" answers for a particular state, which is the easiest way to learn whether your state has failed to adopt a particular best practice. If a particular best practice is missing from your state, here is where

you can acquire that information, while also seeing which other states have already adopted the practice that is missing from your state. You can download the complete set of findings for any category of data that you sort for — which allows you to easily print all the “no” and “n/a” findings for your state.

Of course, *The Justice Index* contains a great amount of additional information — too much to summarize here. We hope you will continue to explore the site, and contact us at NCAJ if you have additional questions (justiceindex@ncforaj.org).

8. How can civil legal aid lawyers use *The Justice Index* to promote adoption of best practices?

If you are a legal aid leader (or are engaged in justice system reform from within another setting), you can use *The Justice Index*:

- to increase the number of civil legal aid lawyers
- to replicate best practices for interpreting and translation services
- to increase access to the courts for people with disabilities
- to replicate best practices for access for people who do not have lawyers.

You can take action by partnering with other stakeholders who share your interest in obtaining justice system reform based on *The Justice Index*, including:

- court officials: judges, attorneys, clerks and others
- government agency officials
- legislators and legislative staff
- law firms, the organized bar, Access to Justice Commissions, IOLTA Commissions
- Self Represented Litigants’ Network
- reporters³
- law school deans, teachers and students
- social services organizations
- social justice and good government reform organizations
- members of the public.

You can use *The Justice Index* to persuade decisionmakers to take action to increase access to justice. *The Justice Index* can help decisionmakers learn about best practices and then work to replicate them in their own states. Decisionmakers in your state may include:

- court officials — These officials have the power to promulgate new court rules and policies, and to

make new hires.

- legislators — These officials have the power to seek adoption of new laws and to recommend appropriations of state funds.
- government agency officials — These officials can make grants to civil legal aid programs, and can sometimes fund research to help determine what methods work best to assure access to justice.
- foundation officials — These officials are sometimes able to make grants to civil legal aid programs.

9. Can I help to strengthen *The Justice Index*? Does NCAJ accept questions, suggestions, corrections, donations?

Yes. Definitely. There are many ways to help support *The Justice Index*, including the following:

- send us your questions, suggestions and corrections for *The Justice Index*.
- tell us when your state adopts reforms that increase access to justice (and that would increase your state’s score) so that we can post the news on *The Justice Index* website.
- share your data for posting in *The Justice Index* (NCAJ will acknowledge organizations that provide data used in *The Justice Index* and will guide *Justice Index* visitors to the website which is home to the data).
- help us carry out our pro bono research initiatives
- consider offering your expertise in data analytics, web design, and related fields.
- invite NCAJ staff to talk to your stakeholder community about how *The Justice Index* can help to increase access to justice in your state.
- make a financial contribution to NCAJ at www.ncforaj.org/donate.

10. Who is responsible for *The Justice Index* and what is the NCAJ?

NCAJ created *The Justice Index*. David Udell, founding director of NCAJ, and Laura Abel, NCAJ’s initial deputy director, decided to use data indexing to increase access to justice in state judicial systems. The core idea was to promote reform by bringing to state justice systems the same reliance on data and indexing that is spreading through all sectors of our society. *The Justice Index* is also inspired in part by *The Democracy Index*, authored by Professor Heather K. Gerken of Yale Law School, which shows how indexing systems can help to reform voting systems in the US.

NCAJ and its funders sustain *The Justice Index*.

David Udell, Executive Director, Jamie Gamble, Senior Counsel and Director of *The Justice Index*, and Aaron Sussman, Staff Attorney, share responsibility for guiding *The Justice Index*. Laura Abel continues to consult to NCAJ on strategic planning for *The Justice Index*.

A number of firms have provided important support to *The Justice Index* through their respective pro bono efforts, including Deloitte, Kirkland and Ellis, Pfizer, and Skadden Arps. Cardozo Law School students and University of Pennsylvania Law School students helped to build *The Justice Index*. Cardozo Law School provides a home and additional in-kind support for NCAJ.

NCAJ is the academically affiliated non-partisan law and policy organization dedicated exclusively to increasing access to our nation's civil and criminal justice systems. In carrying out its reform initiatives, NCAJ works closely with the bar, the judiciary, law schools, the legal services community, and many other stakeholders including social services agencies and client groups. NCAJ's tools include litigation, reports, public education and public advocacy, conferences, legislative drafting, and the latest data visualization tools. NCAJ makes its home at Cardozo Law School where NCAJ staff teach the Access to Justice Clinic.

- To learn more about *The Justice Index*, visit www.justiceindex.org.
- To correspond with NCAJ's staff about *The Justice Index*, email justiceindex@ncforaj.org.
- To learn more about NCAJ, visit NCAJ's web site, www.ncforaj.org.
- For news of NCAJ's activities and about the civil legal aid and access to justice movements, sign

up for NCAJ's blog and NCAJ's newsletter, www.ncforaj.org.

- To learn more about Cardozo Law School, visit www.cardozolaw.org.
- 1 David S. Udell, Executive Director, National Center for Access to Justice, and Visiting Professor from Practice, Cardozo Law School, leads NCAJ's Justice Index Project, www.justiceindex.org, and NCAJ's other reform initiatives, www.ncforaj.org. David founded and then directed for twelve years the Justice Program at the Brennan Center for Justice at NYU Law School. He has also served as a managing attorney at Legal Services for the Elderly and at MFY Legal Services Legal Services. He is a 1982 graduate of NYU Law School. David may be reached at udell@yu.edu.

Jamie Gamble, Senior Counsel and Director of the Justice Index Project, guides on a pro bono basis NCAJ's Justice Index, helping to develop its research criteria, indexing methodology, public profile and pro bono support. Jamie also counsels NCAJ on strategic direction for the organization's research and policy reform initiatives. Jamie is a 1994 graduate of Columbia Law School (JD) and Columbia Business School (MBA, Finance). Jamie may be reached at jggamble@me.com.

Aaron Sussman, staff attorney, helps to guide NCAJ's Justice Index project, research initiatives, and other policy reform projects. Aaron also writes about justice system reform, on the school to prison pipeline, excessive force and police weapons technology, and the rights of youth in juvenile detention facilities. Aaron received his J.D. from the UCLA School of Law in 2012,

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where he was enrolled in the David J. Epstein Program in Public Interest Law & Policy. Aaron may be reached at asussman@yu.edu.

- 2 For an explanation of all the criteria considered in each category of *The Justice Index*, see <http://ncforaj.org/wp-content/uploads/2014/12/The-Justice-Index-All-Questions-2014.pdf>.
- 3 See how reporters are covering *The Justice Index*, at <http://ncforaj.org/2014/12/04/the-justice-index-is-covered-in-state-news-stories-following-revisions-in-november-2014/>.