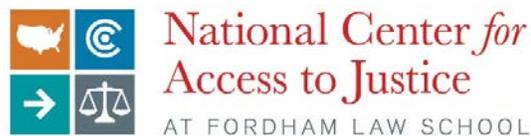


**Recommended Access to Justice Indicators
for
Implementation of Goal 16 of the
UN 2030 Sustainable Development Agenda
in the United States**

**Developed for the
“Civil Society Consultation with
White House Legal Aid Interagency Roundtable on
Goal 16 Access to Justice Indicators and Data”
*Thursday, September 15, 2016
Washington, DC***

**This Consultation was Coordinated by the
Columbia Law School Human Rights Institute and the
National Center for Access to Justice at Fordham Law School**



**This report may be downloaded at:
<http://web.law.columbia.edu/human-rights-institute> &
<http://ncforaj.org>**

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Introduction

On September 15, 2016, access to justice experts from the academic and nonprofit communities gathered for a Consultation with U.S. government officials to recommend “access to justice indicators” to guide data collection for tracking and promoting access to justice in the United States.

The Consultation, the first held between U.S. government officials and civil society experts on access to justice indicators, is a step towards U.S. implementation of Goal 16 of the 2030 Sustainable Development Goals, or SDGs. It was organized jointly by the Columbia Law School Human Rights Institute and the National Center for Access to Justice at Fordham Law School, and hosted by the Open Society Foundations in Washington, D.C.

Participating in the Consultation were fifteen officials from agencies in the White House Legal Aid Interagency Roundtable (WH-LAIR), as well as thirty access to justice experts from the academic and nonprofit communities. The event is described in the [Justice Blog: The White House Legal Aid Interagency Roundtable and Goal 16 – One Year On](#).

The recommended indicators contributed by the civil society experts are contained in the pages that follow this introduction.

The adoption of the SDGs, the inclusion of Goal 16 calling on all countries to assure access to justice, and these initial steps by civil society to build access to justice indicators in dialogue with the federal government, are significant developments in the effort to harness the power of data to expand access to justice for all.

I. Background

Adopted by the United Nations in 2015 as part of the 2030 Sustainable Development Agenda, the seventeen SDGs call on all countries to address diverse social, economic, and environmental challenges and are intended to end extreme poverty around the world by 2030.

Goal 16 of the SDGs calls on all countries to ensure access to justice. In particular, Goal 16 calls on countries to: “[p]romote peaceful and inclusive societies for sustainable development, provide access to justice for all, and build effective, accountable and inclusive institutions at all levels.” One of Goal 16’s designated “targets”, intended to guide implementation of the goal, is: “[p]romote the rule of law at the national and international levels and ensure equal access to justice for all.”

Goal 16 reflects increasing recognition by the global community that access to justice is an essential component in the fight against extreme poverty.

II. Global Indicators for Goal 16

The United Nations member states have developed an initial set of “Global Indicators” that begin to set global benchmarks for the practical implementation of the SDGs in all countries. The Global Indicators are intended both to promote progress within countries and to facilitate comparisons of the progress made by countries relative to one another.

To date, the Goal 16 Global Indicators, created by the United Nations Interagency Expert Group on Sustainable Development Goals, or IAEG-SDG, focus on criminal justice. Although civil access to justice is also understood to be important in assuring fair resolution of many types of vitally important disputes (for example, concerning shelter, food, personal security, work, proof of national identity, child custody), IAEG-SDG has not yet created civil access to justice indicators, in part due to concern over the near-term availability and cost of data collection. The global indicators will be revisited over time.

The UN has also developed a system for countries to report data voluntarily on their progress, and to allow comparisons of their respective progress, toward meeting the seventeen Goals. The voluntary reporting and review system is overseen by the United Nations High Level Political Forum.

III. U.S. National Indicators

In light of the differences that distinguish countries from one another, all countries, including the United States, are also expected to establish their own “national indicators” for measuring progress toward achieving each of the Goals, including Goal 16.

In the United States, on the eve of the UN’s adoption of the SDGs, President Obama issued a [Presidential Memorandum](#) formally establishing the White House Legal Aid Interagency Roundtable (WH-LAIR), and charging it with responsibility for assisting the United States in implementing Goal 16. As part of this effort, the federal agencies in WH-LAIR are collaborating to identify U.S. national indicators for Goal 16.

As recognized in the Presidential Memorandum, the broader focus of WH-LAIR is to “increase the availability of meaningful access to justice for individuals and families and thereby improve the outcomes of an array of Federal programs.” Co-chaired by the Attorney General and the Director of the White House Domestic Policy Council and staffed by DOJ’s Office for Access to Justice, WH-LAIR currently has twenty-two participating agencies, including Health and Human Services, Housing and Urban Development, Homeland Security, Legal Services Corporation and Veterans Affairs.

On November 30, 2016, the U.S. Government issued the [First Annual Report of the White House Legal Aid Interagency Roundtable: Expanding Access to Justice, Strengthening Federal Programs](#). The Report documents the many steps taken by the WH-LAIR agencies to ensure that agency goals are advanced where possible by reliance on civil legal aid.

With respect to WH-LAIR’s efforts to implement Goal 16, the Report notes that a WH-LAIR Working Group on Access to Justice Indicators and Data Collection is expected to release an overview of its activities on national indicators soon.

IV. The Importance of Goal 16 and Access to Justice Indicators in the United States

In the United States, Goal 16 is creating opportunities for policy advocates, government officials, leaders in philanthropy, community based reformers, and many other stakeholders to improve the quality of the justice system in the United States.

Goal 16 helps to reinforce the broad understanding that access to justice is valuable in reducing poverty. More specifically, it highlights the essential dispute resolution functions of courts, legal aid programs, the

pro bono bar, law schools, and their social services partners in communities across the country. And it draws attention to the need to support the growing field of research on access to justice.

In jump-starting the process of defining access to justice indicators and collecting access to justice data, Goal 16 is likely to create additional opportunities by:

- Prioritizing “access to justice” as a societal goal, and establishing the relationship between access to justice and poverty reduction
- Creating incentives for federal, state, and local officials to expand access to justice
- Producing data and findings that empower reformers to expand access to justice in public institutions and in areas of law and policy in which they possess expertise
- Building a field of research (and researchers) on access to justice
- Expanding sources of funding for civil legal aid, indigent defense services, and courts
- Implementing the [“100% access to effective legal assistance” resolution](#) adopted in 2015 by Chief Justices and Chief Court Administrators, and
- Strengthening human rights treaty reviews and the Universal Periodic Review with respect to barriers to access to justice in the United States.

V. Developing U.S. National Indicators for Goal 16: the 2016 Civil Society Consultation with WH-LAIR on Access to Justice Indicators

The SDGs anticipate that countries will involve diverse stakeholders in forming national indicators and tracking national data. To that end, on September 15, 2016, fifteen representatives from the WH-LAIR met with thirty access to justice experts from the academic and nonprofit communities, to receive recommendations for how the United States can measure progress towards meeting Goal 16.

The experts, working across a diverse set of civil and criminal justice issues, including housing, healthcare, gender-based violence, rights of indigenous peoples, veterans’ issues, disability, immigration, and problems at the intersection of criminal and civil justice, presented ideas for “access to justice indicators” to track data and promote access to justice in the United States as a step towards implementing Goal 16.

The United States is among the first countries to move forward with Goal 16 in the way anticipated in the SDGs: that is, by consulting with civil society leaders on the formation of national indicators. The Civil Society Consultation followed an earlier meeting of members of a civil society Expert Working Group on Access to Justice Indicators that took place on January 12, 2016, in New York City. Both meetings were organized by the National Center for Access to Justice at Fordham Law School and the Columbia Law School Human Rights Institute.

The Consultation was notable not only for its value in illuminating access to justice indicators and data sets for consideration by the WH-LAIR officials, but also for its deep engagement of civil society leaders in the task of determining how government should best develop and track data to expand access to justice within their own respective areas of expertise.

VI. The Recommended Indicators

Indicators, and the data-collection initiatives and policy advocacy they inevitably drive, can help to increase access to justice by making progress (and its absence) instantly transparent and obvious to a wide audience that includes not only the lay public, the press, the academy, and the nonprofit sector, but also public officials in all three branches of government, in federal, state, and local systems.

In recent years, new access to justice indicator systems have come online that track key elements of civil justice systems. The World Justice Project's [Rule of Law Index](#) directs survey questions to experts and lay people to gauge people's experiences of access to justice in countries around the world as part of a more comprehensive examination of the rule of law. The [Justice Index](#), created by the National Center for Access to Justice at Fordham Law School, ranks the 50 states, Washington, D.C. and Puerto Rico on their adoption of best policies for access to justice in four categories: the ratio of civil legal aid lawyers to the poor (tracking an actual count of civil legal aid lawyers), and systems for helping people without lawyers, people with disabilities, and people with limited proficiency in English (tracking policies and practices).

As part of the Civil Society Consultation with WH-LAIR on September 15, 2016, the academic and nonprofit experts provided government officials with recommended indicators in the following categories:

- Criminal Justice Indicators, focusing on indigent defense, the intersection of the civil & criminal justice systems, and reentry
- Civil Justice Indicators, focusing on:
 - disability
 - disaster response
 - education
 - employment/labor
 - family law and matrimonial matters
 - finance and consumer protection (including credit card debt and home foreclosure)
 - gender-based violence
 - healthcare
 - housing
 - immigration
 - public benefits
 - tribes and tribal members
 - veterans and service members

The recommended indicators take a broad range of forms, rely on a broad range of data types, and take into account data sets that currently exist as well as those that do not yet exist but that experts believe could and should be collected in the future, both in and outside of government.

With respect to their form, some indicators track primarily “inputs,” such as demographic data, laws, structures, mechanisms, and programs. Others emphasize “outputs,” such as numbers of clients served, and numbers and types of cases. Still others focus on “outcomes,” both near and long-term, personal and societal, including impacts of access to justice on individual well-being, and on overall reduction in the numbers of people living in poverty.

With respect to types of data, some indicators track “administrative data,” for example data collected in routine record-keeping carried out by governmental agencies. Others emphasize “experimental data,” for example the results of research studies and evaluations. Still others focus on “survey data,” for example lay people’s opinions and experts’ opinions.

The recommendations also referenced indicators currently being used to guide data collection for the [Rule of Law Index](#) and the [Justice Index](#).

With respect to all indicators and data, many experts urged the collection of data that is disaggregated by race, ethnicity, gender, age, disability, and other categories.

VII. Next Steps

As a new presidential Administration prepares to assume office in 2017, the federal government and nonprofit communities are well-positioned to continue their efforts to track and expand access to justice as a response to poverty in the United States.

However, to ensure the success of these efforts, further work will be needed to establish the concepts that serve as indicators, identify existing and future data sets, put into place the means of gathering the data that is required, and create a system for reviewing progress.

This work can and should be undertaken not just at the federal level, but also at the state and local level. Indeed, the SDGs are intended to be implemented at every level of government, including by state and local governments. A few U.S. cities, including Baltimore and New York City, have already taken up the mantle of local SDG implementation.

More fundamentally, the call for data to track and expand access to justice has implications beyond government. As emerged during the process leading to the Consultation with the federal government, advocacy organizations and philanthropies have an independent interest in determining what data to track, and how best to track it. And they have a learning curve as they draw on the power of the data revolution to increase the impact of their own efforts to assure access to justice for their constituents and stakeholders.

The use of data to identify, establish, and support the implementation of best policies, whether by government or by those in the nonprofit sector, has become the favored practice across the entire political and policy landscape, and in society at large. It is expected to continue to drive the activities both of government and civil society, throughout the United States and around the globe, in the months and in the years ahead.

I. Criminal Justice Indicators, Specific to Indigent Defense, the Intersection of the Civil & Criminal Justice Systems, and Reentry

Civil Society Consultation
on
Goal 16 Indicators for Access to Justice in the United States
September 12, 2016

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Our study seeks to enhance understanding of how attorney representation and other more limited forms of legal assistance affect civil court proceedings for low-income litigants. Specifically, we investigate how different legal assistance models shape legal access in the context of child support enforcement proceedings. Our study intends to inform questions of whether and how legal assistance should be provided to individuals who cannot afford civil counsel. The following list of indicators provides suggestions of access to justice measures at various points in the legal process. Each of these points could be considered a challenge that limits opportunities to utilize access to justice services – either in the form of representation through civil right to counsel provisions or of services designed to enhance self-representation.

1. The Costs of Appointed Counsel to Pro Se Litigants

On the criminal law side, indigent defendants are often charged fees for appointed defense counsel. In some instances the same practice takes place with respect to appointment of counsel in civil cases. For example, some states provide for a right to counsel for obligors facing civil contempt in child support enforcement cases. However, state law in some jurisdictions also directs the public defender to impose a fee on litigants who are appointed counsel. Concerns are raised that poor people will accrue a large debt as a result of taking on “free” counsel. Additional research is needed to assess to what extent a civil right to counsel is not truly free counsel. Where fees are charged, more needs to be known about the extent of the fees, whether they discourage litigants from accessing counsel, and how those fees impact low-income civil litigants.

Additionally, charging poor litigants fees for accessing representation should be examined within the broader context of local governments’ and courts’ imposition of fees (and fines) on the public to recoup costs and generate municipal revenue. Mounting evidence shows that such practices are widespread in some communities, involving myriad fees associated with legal processes and municipal services, and that the impact on poor residents can be economically and socially devastating. Research is needed to understand the extent to which counsel fees associated with administering right to counsel contributes to this troubling phenomenon.

2. Existence of, access to, and pro se litigants use (and nonuse) of legal aid resources

Data could be collected on the legal aid resources that are offered to pro se litigants at the local level. Specifically, the type of legal aid resources that are being offered should also be collected when trying to measure access to justice (offering full representation, free legal advice, assisting

with completing paperwork, providing information, etc.). Based on our research examining child support enforcement cases in several different counties in two states, the type and quantity of legal assistance resources available to pro se litigants varies tremendously from jurisdiction to jurisdiction. In some jurisdictions, there was a lack of resources offered to unrepresented litigants in regards to how to properly handle their cases. This data could include how litigants are being informed about and gain access to self-help desks and other legal aid resources (through posted flyers, social networks, court personnel, legal actors in court proceedings, etc.). Moreover, to determine the accessibility of legal assistance resources, it is also important to note their location (whether they are at the courthouse vs. in the community).

Finally, data on litigants' take up rate of available legal assistance resources is needed. We do not know to what extent pro se litigants are accessing the self-help resources and the free counsel that is available to them. Data from our study examining access to justice in child support enforcement cases show that pro se defendants who are eligible for appointed counsel in civil contempt nonsupport proceedings rarely get counsel. Underutilization of appointed counsel raises questions regarding why eligible unrepresented parties are not in fact getting attorneys. Additional research is needed to assess the take up rate for legal assistance resources. Where findings demonstrate low take up rates, further research is needed to understand the contributing factors. Our research has uncovered several potential contributing factors, including: (1) lack of knowledge about and/or inaccessibility of appointed counsel; (2) subtle discouragement by judges and government lawyers; and (3) structural barriers that impede access to appointed counsel, including impersonal and demeaning bureaucratic processes and eligibility criteria that are set at extremely low income levels. Additionally, where research shows high take up rates for appointed counsel and other legal assistance resources, comparative research can uncover what mechanisms can be employed to increase the take up rate.

3. Mechanisms and processes that explain statistical correlations and outcomes

Many indicators that rely on survey data can suggest correlations between variables of interest (e.g. representation and favorable outcomes), but cannot effectively describe the processes that underlie these correlations. For example, descriptive statistics can indicate that access to justice initiatives have a low take-up rate, but data on litigants' experiences and perceptions can more fully account for why this is. Qualitative research also can more effectively identify the mechanisms that produce favorable outcomes by investigating what lawyers specifically do to impact case outcomes. Ethnographic and interview data provide a necessary complement to survey research and can address essential questions, such as how funding is allocated to civil legal aid programs, how litigants make use of access to justice services, and how their experiences in court impact citizens' perceptions of the legal system.

Qualitative research has the capacity to answer these questions with nuance and rich description. It acknowledges that legal dynamics are complex and contingent. Yet, while access to justice efforts are geographically and historically situated, qualitative studies can identify theoretical mechanisms that transcend local contexts. They may also provide the foundation for future efforts to document the representativeness of dynamics within the larger population. For instance, our study suggests that subtle discouragement by judges and state attorneys is one mechanism accounting for the low take-up rate of counsel in child support cases. Nationally representative survey research could incorporate indicators of discouragement by legal actors and subsequently measure the prevalence of such dynamics beyond our study's empirical case.

Civil Society Consultation with the White House’s Legal Aid Interagency Roundtable on Goal 16 Access to Justice Indicators and Data

Stephanie Campos-Bui and Jeffrey Selbin, UC Berkeley School of Law

In the [Policy Advocacy Clinic](#) at the University of California, Berkeley, School of Law, we supervise interdisciplinary teams of law and public policy students pursuing non-litigation strategies on behalf of underrepresented individuals and groups to address systemic racial, economic and social injustice. Current projects include efforts to reduce the burden of juvenile administrative fees on low-income youth and families, to end the criminalization of homeless people, to reform the money bail system, and to increase police accountability.

In each of these project areas, we attempt to identify and obtain data that is often scarce or inaccessible through public record requests, including information that should be tracked by local, state, and national jurisdictions. We believe the following indicators would shed light on and increase access to justice in these areas.

Intersection of Civil and Criminal Justice Systems

Police Accountability

With a renewed focus on police misconduct following high-profile shootings of unarmed African-Americans, questions around the efficacy of civilian oversight and other accountability mechanisms have been raised. The government has a particular interest in creating a culture of transparency and accountability in order to build public trust and legitimacy.

First, local governments should gather and make available information about officer-involved shootings that result in injury or death (e.g., total number or percentage that result in death), especially in jurisdictions where discipline and personnel records are unavailable to the public.

Second, the federal government should track the total number of police oversight bodies, such as departmental internal affairs units and civilian review boards. Correspondingly, local governments should gather and make available data about complaints filed with police oversight bodies and their outcomes (e.g., sustained/not sustained or discipline recommended/imposed).

Such data should include the age, race, ethnicity and gender of peace officers and civilians in officer-involved shootings and complaints to oversight bodies.

Reentry (Post-Incarceration, Criminal Records)

Reentry

We will not repeat here the research indicators related to reentry and civil legal aid in the [White House Legal Aid Interagency Roundtable: Civil Legal Aid Research Workshop Report](#) (pp. 13-18). We describe indicators related to reentry and criminal justice debt.

Criminal Justice Debt

The issues of criminal justice debt—fines, fees and bail—imposed on low-income people has received considerable attention, including in a recent report by the [Council of Economic Advisors](#). States across the country charge fees to individuals (both [adults](#) and [juveniles](#)) and their family members for court and probation/parole-related costs. While some states require an ability to pay determination before charging

individuals, there is little data on whether people who cannot afford to pay are being accurately identified and [the harm such fees cause](#).

First, local governments should collect data on the assessment and collection (e.g., amount and number of individuals assessed annually) of all criminal justice-related fines and fees in state and local jurisdictions that impose them.

Second, local governments should collect data on ability to pay determinations, including whether low-income people are required to pay excessive costs that harm families and undermine the criminal justice system (e.g., by increasing recidivism or hindering rehabilitation).

Because low-income people of color are overrepresented at every stage in the criminal justice system, even when controlling for alleged behavior, the data should include the age, race, ethnicity, gender and socioeconomic status of all such individuals.

Indigent Defense Reform/Access to Justice in the Criminal Justice System

Pretrial Detention and Bail

[More than half of people awaiting trial in U.S. jails have not been convicted of a crime](#). The majority are detained because they cannot afford to post bail. The process of setting bail typically occurs before trial and without a lawyer. Poor people face particular harm because they must either remain in jail or turn to the expensive bail bonds industry.

First, local governments should track data about the number of people with legal representation when bail is set and the outcomes of such proceedings (e.g., release on own recognizance or money bail set).

Second, local governments should track data about the length of bail hearings, the number and kind of cases in which bail is required, and the relationship between bail and subsequent court appearances.

Again, because low-income people of color are overrepresented at every stage in the criminal justice system, even when controlling for alleged behavior, the data should include age, race, ethnicity, gender and socioeconomic status of pretrial detainees.

Criminalization of Homelessness

Due to state and federal cuts to affordable housing, municipal governments must address homelessness with local laws and resources. Cities have responded in recent decades by increasingly enacting and enforcing [new vagrancy laws](#)—a wide range of [municipal codes](#) that target or disproportionately impact homeless people.

First, local governments should track the number of homeless people who are cited or charged under such municipal and state laws that prohibit daily activities in public such as sitting, sleeping, or food sharing.

Second, local governments should track the municipal and state costs of enforcing such laws on the police, courts, jails and other public entities.

Because low-income people of color are overrepresented among homeless people, the citation and arrest data should include age, race, ethnicity, gender and socioeconomic status.

Please direct any questions to Stephanie Campos-Bui at scamposbui@law.berkeley.edu.

Indicators of Access to Justice for Defendants in Criminal Cases

Andrew Davies, Ph.D. – Director of Research, New York State Office of Indigent Legal Services

Prepared for the Civil Society Consultation with WH-LAIR on

Goal 16 Access to Justice Indicators and Data, Sept. 15, 2016, Washington D. C.

If we measure just one thing, make it be this

When *Heckman, et al. v. Williamson County* was settled in Texas in 2013 it was revealed that “Williamson County appointed attorneys in only 8% of all misdemeanor cases.”¹ Simply by requiring defendants to speak with prosecutors prior to applying for counsel, and making the process of applying for a lawyer as forbidding as possible, the right to counsel was, for all intents and purposes, effectively undone.

The threshold for access to justice in criminal courts is access to counsel because ‘lawyers are necessities, not luxuries.’² Yet examples of ‘no counsel courts’ have been found across the nation.³ Accordingly, I recommend that if we are able to adopt only one metric for access to justice in criminal courts, it should be the following.

The percentage of defendants in a court for whom counsel is appointed in a given year

(Disaggregated, if possible, by felony vs. misdemeanor)

A major advantage of this metric is that obtaining it should be relatively straightforward. Courts are ultimately the bodies responsible for making assignments of counsel and so a national survey of courts similar to the *Civil Justice Survey of State Courts* or the *Court Statistics Project* could be conducted to request this information.⁴

Fundamentally, courts need to supply only their total annual caseload (the denominator) and the number of assignments of counsel made (the numerator).⁵

Access to justice indicators must be feasible to obtain across the nation, relatively intuitive, and above all profound and direct indicators of access to justice itself. We could do little better than this metric.

And then one day, we can measure all this too

For indigent defendants, access to justice⁶ means the assurance of access to lawyers (1) who provide quality services (2) and are adequately supported in their work (3) leading to defendant clients experiencing the system as just (4). In the next two pages I suggest additional metrics in these areas.

¹ Sixth Amendment Center (2013), *Williamson County TX settles “no counsel court” lawsuit*. <http://sixthamendment.org/williamson-county-tx-settles-no-counsel-court-lawsuit/>.

² *Gideon v. Wainwright*, 372 U.S. 335 (1963), at page 372.

³ See e.g. Smith & Maddan (2011) *Three-Minute Justice: Haste and Waste in Florida’s Misdemeanor Courts*, <https://www.nacdl.org/reports/threeminutejustice/>; Boruchowitz, Brink & Dimino (2009) *Minor Crimes, Massive Waste: The Terrible Toll of America’s Broken Misdemeanor Courts*, <https://www.nacdl.org/reports/misdemeanor/>.

⁴ Bureau of Justice Statistics, *Civil Justice Survey of State Courts*, <http://www.bjs.gov/index.cfm?ty=dcdetail&iid=242>; National Center for State Courts, *Court Statistics Project*, <http://courtstatistics.org/>.

⁵ In a pinch, providers of defense could be asked to supply the latter, taking care to make sure cases are counted similarly to the courts.

⁶ The United Nations Development Program defined access to justice as the “ability of people...to prevent and overcome human poverty by seeking and obtaining a remedy, through the justice system.” Ramaswamy Sudarshan (2003). *Rule of Law and Access to Justice: Perspectives from UNDP Experience*.

#1 Access to lawyers

For defendants, access to justice hinges on access to lawyers themselves. But the time between arrest and meeting an attorney can vary from minutes to months.⁷ Additionally, procedural and logistical barriers may prevent indigent defendants obtaining access to lawyers. The metrics in Table 1 would capture this variety.

A survey of courts would be one approach to gathering these data.

<i>Table 1: Metrics for access to lawyers</i>
How many cases are processed annually in which the right to counsel attaches?
In what percentage do defendants apply to have counsel appointed?
In what percentage is counsel actually appointed?
After a person is arrested or summoned to court, how long, on average, until:
- An opportunity to request or apply for counsel is provided?
- A decision on eligibility for assignment of counsel is made?
- An attorney is assigned?
- An in-person meeting between the attorney and the client occurs?
% defendants provided opportunity to apply for counsel at first appearance in court
% defendants where counsel is present at first appearance in court
% defendants provided with lawyer's contact information
% defendants charged for some or all of the cost of their representation
% lawyers informed of new assignments within 24 hours
% jurisdictions which levy an application fee for counsel
% jurisdictions which assign counsel immediately upon request
% jurisdictions requiring defendant to speak to prosecuting attorney prior to application
% courts with standards for determination of financial eligibility for counsel
% courts considering assets of persons other than the accused in eligibility determination
% courts automatically declining counsel to persons able to post bond
% courts requiring documentary proof of defendant financial status
% courts providing an appeal process for persons denied counsel

#2 Quality and extent of representation services

Access to justice implies that the legal services defendants receive are of sufficient quality. National standards set out expectations for what such services should include.⁸ Defense providers also emphasize the need for 'holistic' legal assistance encompassing both criminal defense and mitigation of enmeshed penalties (sometimes known as 'collateral

consequences'). Representation is rarely available on the latter matters, but assessing needs in this area would quantify unmet access to justice needs. Table 2 contains proposed metrics.

<i>Table 2: Metrics for quality of legal representation & vulnerability to enmeshed penalties</i>
In what percentage of cases did an attorney, or other member of the defense team...
Visit the alleged crime scene?
Interview a potential witness?
Request records other than the defendant's criminal history or discovery materials?
Consult with an expert witness?
Retain an expert witness?
File a written or oral motion to suppress evidence?
File a written or oral motion to dismiss the case?
Retain an interpreter to communicate outside of court?
What percentage of defendants are:
Non-citizens
Resident in public housing
Lost access to children since arrest
Disclose prior mental health diagnosis

These data would most appropriately be gathered from providers of defense services to indigents. Traditionally the Bureau of Justice Statistics has conducted censuses of such providers, though in a recent RFP it has also contemplated surveying individual lawyers providing representation.⁹ Both approaches may be helpful here.

#3 Resources and justice system structures

⁷ Douglas Colbert (2011). "Prosecution Without Representation", 59 Buffalo Law Review, 333 at 428 & *infra*.

⁸ See for example National Legal Aid and Defender Association (1995) *Performance Guidelines for Criminal Defense Representation*. Available at: http://www.nlada.net/library/article/na_performanceguidelines (accessed 9/7/16).

⁹ See Bureau of Justice Statistics, *Indigent Defense Systems*, <http://www.bjs.gov/index.cfm?ty=tp&tid=28> and *Survey of Public Defenders: A Design Study*, <http://www.bjs.gov/content/pub/pdf/spddssol.pdf>.

Chronic underfunding and other structural impediments to access to justice have been documented across the nation.¹⁰ Certain funding and structural factors may impede access to justice directly. Table 3 contains suggested metrics.

<i>Table 3: Metrics for resources and justice system structures</i>	
May attorneys be compensated for representation of defendants at the following stages:	
Prior to arrest?	
Prior to the defendant’s first appearance in court?	
Prior to the determination that the defendant is eligible for assignment of counsel?	
In post-conviction cases other than direct appeals?	
In any case where incarceration is not a possibility?	
Do providers of legal services:	
Have the ability to refuse cases?	
Have the ability to assign themselves to cases?	
Have the authority to promulgate legally binding rules?	
Have direct control of their own budget (its amount, and authority to expend it)?	
Do judges:	
Have control over appointment of attorneys to cases?	
Have control over approval of payments to lawyers? And investigators or experts?	
Must attorneys:	
Undergo regular training and/or certification to handle cases?	
Meet experience requirements to handle cases?	
Discuss their case files with another attorney (i.e. a mentor, supervisor) periodically?	
How much is expended on defense by locality	
Per capita?	
Per UCR index crime?	
What is the salary of the chief public defender? (What percentage is this of the district attorney’s salary?)	

These data would most appropriately be gathered from governments under the auspices of which defense services are provided. The Bureau of Justice Statistics series on *Justice Expenditure and Employment Extracts* may be helpful here, as well as recent BJS publications on defense spending itself.¹¹

#4 Client experiences

The metrics in Table 4 may capture aspects of client experiences relevant to access to justice. The source of these data would need to be a nationally representative sample of defendants. Several researchers and at least one state agency have conducted surveys of defendants.¹² A survey modeled on the Bureau of Justice Statistics’ *National Crime Victimization Survey* might be appropriate.¹³

<i>Table 4: Client Experience Metrics</i>	
% defendants reporting they had access to an attorney to assist in their defense	
% represented defendants reporting attorney listened to their needs	
% represented defendants reporting attorney pursued their best interests	
% represented defendants reporting they are satisfied with the outcome of the case.	

¹⁰ The Constitution Project (2009) *Justice Denied: America’s Continuing Neglect of our Constitutional Right to Counsel*. Available at <http://www.constitutionproject.org/manage/file/139.pdf> (accessed 9/8/16).

¹¹ See Bureau of Justice Statistics, *Justice Expenditure and Employment Extracts Series*, <http://www.bjs.gov/index.cfm?ty=dcdetail&iid=286> and *State Government Indigent Defense Expenditures, FY 2008-2012 – Updated*, <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5052>.

¹² For a review see Campbell, Moore, Maier & Gaffney (2015), “Unnoticed, Untapped, and Underappreciated: Clients’ Perceptions of their Public Defenders.” *Behavioral Sciences and the Law*; Office of the Legislative Auditor, State of Minnesota, 2010, Evaluation Report: Public Defender System, available at: <http://www.auditor.leg.state.mn.us/ped/pedrep/pubdef.pdf>.

¹³ See Bureau of Justice Statistics, *National Crime Victimization Survey*, at <http://www.bjs.gov/index.cfm?ty=dcdetail&iid=245>.

National Indicators for People with Criminal Records Would Address Major Cause of Poverty

Need for criminal record/reentry indicators

Nationally, an estimated 70 to 100 million American adults, or about one in three people, have criminal records.¹ Almost half of American children, between 33 and 36.5 million, are believed to have a parent with a criminal record.² People with criminal records and their families encounter broad-ranging civil barriers on the most fundamental aspects of American life, including employment, housing, public benefits, and education.³ Unsurprisingly, a strong connection between mass incarceration and poverty has been documented.⁴ Minority populations are disproportionately affected.⁵

In Philadelphia, Community Legal Services (CLS) has seen these trends play out in the community that our legal aid program serves. Criminal records and incarceration have impeded our clients in obtaining rental housing, qualifying for public benefits, and retaining custody of their children in child welfare proceedings. But nowhere have these trends been more pronounced than in our employment law practice. In 2000, 56, or 11.8%, of the new requests for employment representation that we received were on the issue of criminal records. By 2015, that number had swelled to 1,020, or 67.1% of all requests for employment law assistance.

Despite the enormous role of criminal records as a cause of poverty in the United States, there are surprising and significant gaps in data around many key issues. Most notably, even an exact number of people with criminal records is elusive. CLS proposes national indicators in the following areas: (1) numbers of people with criminal records; (2) information on record clearing through procedures such as expungements and sealing; (3) data on employment of people with criminal records; and (4) information on the background screening industry.

Indicator Area #1: Numbers of People with Criminal Records

Although it is well accepted that one out of three Americans has a criminal record, that figure is an estimate, not a precise count.⁶ Reasons for the lack of a solid figure include the lack of a comprehensive dataset that includes all arrests, juvenile adjudications, and infractions with grades below misdemeanors, along with disagreement as to whether such dispositions should “count” as criminal cases.⁷ For instance, the FBI database generally does not include juvenile cases and low-level infractions; however, in CLS’s experience, employers often reject job candidates with such cases if they learn of them through a background check. Efforts should be made to better quantify the number of people with criminal records, using a broad definition. We propose the following indicators, including related sub-issues that have not been confirmed in empirical research.

- Number of persons with criminal records, along with demographic information such as their race, age, average number of cases, and grades of offenses
- Number of persons with only cases disposed without a conviction (acquitted, withdrawn, etc.)
- Number of persons with convictions of felonies/misdemeanors/infractions
- Number with only non-violent convictions (particularly drugs and thefts)
- Number with only sentences without incarceration (probation and/or fines)
- Other sentencing and supervision information, along with demographic information such as race, age, type and grade of offense
- Number with convictions that are no more recent than at least seven years old
- Economic impact of criminal records



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Indicator Area #2: Information on Record Clearing

In CLS's view, record clearing through expungement, sealing or similar procedures is the most important remedy for people with criminal records; the only way to ensure that a person will not be penalized for an old or non-predictive record is if it does not show up in background checks. However, each state has its own procedures, with their own legal meaning.⁸ Moreover, expungement data is virtually uncaptured; it should be recorded, going forward, so that the take-up rate of these remedies can be assessed. We propose the following indicators for each state.⁹

- Record-clearing remedies and their legal effects¹⁰
- For each year going forward, numbers of cases expunged or sealed and their ages and grades
- Number of cases potentially eligible for expungement or sealing but remaining public, and their ages and grades
- Number and identity of non-profit organizations assisting individuals with record clearing at no cost
- Availability of simplified court forms and procedures for expungement and sealing
- Availability of procedures providing automatic expungement or sealing without filing of a petition
- Data about the economic impact of expungements and sealing on earnings expectations

Indicator Area #3: Data on Employment of People with Criminal Records

Remarkably little data exists about the employment of people with criminal records. Most of the data that has been extrapolated to employment risk is from research about recidivism.¹¹ While this research convincingly shows that risk of recidivism is high initially but decreases over time, it does not directly address negative employment outcomes caused by employees with criminal records, especially old ones. CLS recommends the following indicators on employment.

- Number of incidents of workplace theft or injury and percentage caused by people with criminal records (measured before and after seven years from conviction and by type of prior conviction)
- Number of negligent hiring cases brought based on employment of a person with a criminal record, and the outcomes of these cases
- Number of workers bonded through the US Department of Labor's Federal Bonding Program, and number of claims made on those bonds
- Economic impact of criminal records on individuals' earning lifetime
- Number of people with criminal records progressing beyond entry level jobs

Indicator Area #4: Information on the Background Screening Industry

Since 2000, an industry providing criminal background checks to employers, landlords and others has grown from almost nothing to a multi-billion dollar industry. Millions of American lives are impacted by these reports, which often contain shocking errors.¹² Yet very little is known about these companies, including the absence of a comprehensive list of all companies in the business. The last thorough study of the industry was in 2005.¹³ The following indicators for the industry should be updated or developed.

- Number and identity of all commercial background screeners
- Number of background checks prepared by the industry
- Amount of industry gross profits
- Number of errors discovered in background checks
- Number of consumer disputes and outcomes
- Procedures through which consumers can submit disputes and obtain free background checks
- Industry procedures for correcting errors, eliminating expunged and sealed cases from their data, and avoiding mismatches with cases not belonging to the consumer.

¹ [Rebecca Vallas and Sharon Dietrich, “One Strike and You’re Out: How We Can Eliminate Barriers to Economic Security and Mobility for People with Criminal Records” \(Center for American Progress, Dec. 2014\)](#)(“One Strike and You’re Out”), at 1.

² [Rebecca Vallas, et al., “Removing Barriers to Opportunity for Parents with Criminal Records and Their Children” \(Center for American Progress, Dec. 2015\)](#), at 1.

³ One Strike and You’re Out, *supra* note 1, *passim*.

⁴ *Id.* at 1 (citing [Robert H. DeFina and Lance Hannon, “The Impact of Mass Incarceration on Poverty,” Crime and Delinquency \(Feb. 23, 2009\)](#)).

⁵ *Id.* at 1.

⁶ *Id.* at 68, n. 1; [Jo Craven McGinty, “How Many Americans Have a Police Record? More than You Think,” Wall Street Journal \(updated Aug. 7, 2015\)](#)(“How Many Americans Have a Police Record”).

⁷ How Many Americans Have a Police Record, *supra* note 6.

⁸ Margaret Colgate Love, Jenny Roberts & Cecilia Klingele., *Collateral Consequences of Criminal Conviction: Law, Policy and Practice*, at Appendix A-7 (Thomas Reuters 2016)(“Collateral Consequences of Criminal Conviction”).

⁹ Note that there is virtually no record-clearing remedy for federal criminal cases. [Doe v. United States](#), ___ F.3d ___, 2016 WL 4245425 (2d Cir. Aug. 11, 2016).

¹⁰ Collateral Consequences of Criminal Conviction, *supra* note 8, is an excellent starting place for this information, if information-sharing can be negotiated.

¹¹ *E.g.*, [Alfred Blumstein and Kiminori Nakamura, Extension of Current Estimates of Redemption Times: Robustness Testing, Out-of-State Arrests, and Racial Differences \(U.S. Department of Justice 2012\)](#).

¹² [Persis S. Yu and Sharon M. Dietrich, “Broken Records: How Errors by Criminal Background Checking Companies Harm Workers and Businesses” \(National Consumer Law Center, April 2012\)](#).

¹³ [SEARCH, The National Consortium for Justice Information and Statistics, “Report of the National Task Force on the Commercial Sale of Criminal Justice Record Information” \(2005\)](#).



Civil Society Consultation with WH-LAIR on Goal 16 Access to Justice Indicators and Data

Proposed Indicators at the Intersection of the Civil and Criminal Justice Systems to Address Cyclical Poverty submitted by the National Legal Aid & Defender Association – Sept. 2016

(Jo-Ann Wallace: j.wallace@nlada.org / Radhika Singh Miller: r.singhmiller@nlada.org)

Involvement with the criminal justice system, particularly for poor people, results in collateral effects in other critical areas of life, such as employment, education, housing, immigration, and elsewhere. Additionally, poor people's inability to access justice in these other systems often causes involvement in the criminal justice system. A participant in an NLADA training recently remarked, "The failures of other systems get worked out through the criminal justice system." Access to indigent defense counsel is at the heart of access to justice, and this includes the capacity to address underlying issues. It requires collaborative efforts from partners and federal agencies driving policy and procedure, not just in the legal system, but also in areas such as mental health services, employment, education, immigration, and housing. Measuring access to justice at the intersection of these civil systems and the criminal justice system is critical in ending the cycle of poverty. These proposed indicators encompass significant work by the North Carolina Systems Evaluation Project (NCSEP)¹, the Values Committee created by Travis County, Texas², and the National Legal Aid & Defender Association³.

Access to Counsel, Quality of Counsel, Resources and Capacity: Measure in set time increments.

- Percent of people facing criminal charges who are eligible for appointed counsel (compare to percent of poor people in general population). Disaggregate by race, gender, age, disability, national origin, and by urban, rural, metro areas.
 - Percent of qualified defendants who waive counsel
- Ratio of public defenders to number of eligible defendants (by county, state, in the country)
- Percent of criminal cases handled by indigent defense system. Disaggregate data by race, gender, age, disability, national origin, and by urban, rural, metro areas.
- Workload of indigent defense counsel (Cases assigned, cases closed, cases open / Number of attorneys / Experience level of attorneys)
- Number of jurisdictions allowed to make appointments outside of initial indigence determination (reflects ability to look at individualized circumstances)
 - Number of appointments made to those not initially determined indigent (state also as percent of total cases with appointed counsel)
- Time spent with each client at initial interview (ability to learn about client, collateral concerns). Disaggregate by race, gender, age, disability, national origin and by urban, rural, metro areas.

Early Entry: Early entry may allow for more individualized bond determinations, allow an attorney to conduct a more thorough investigation, spend more time with the client and their family, and determine potential for and counsel client about collateral consequences. It also allows the client more time to analyze options.

- Percent of initial bail determinations in which defendant had access to defense counsel

- Percent of first appearances in which defendants had access to counsel
- Average number of days from arrest/detention of defendant to first attorney contact
- Average number of days from assignment of attorney to first (private, in person) contact

Case Outcomes: Compare cases with counsel to cases without counsel. Disaggregate by appointed v. retained counsel, and by defendant's race, gender, age, disability, national origin and by urban, rural, metro areas.

- Pre-trial status / Result of first appearance (Detained or Released; if released, PR or money bond)
- Disposition of case (Guilty, Not Guilty, Nolle Prose, Deferral)
 - Resulting criminal record or chance for criminal record
- Sentencing (Incarceration, probation, fines / Plea)
 - Number of cases with pleas / admissions to reduced charges, particularly where felonies were reduced to non-felonies vs. sentence for original top charge
 - Sentence specifics (length, fine amount) and whether an alternative to incarceration or jail time was achieved
 - Diversion of case to a drug or other specialty court
 - Number of cases receiving supervised probation v. unsupervised probation
 - Percent of convictions and jail sentences that were time served (raises question of whether defendant's pre-trial incarceration was based on being too poor to make bail)
 - Percent of cases that ended in time served where defendant waived counsel (defendants may be pleading guilty in order to be released from pretrial incarceration)
 - Percent of cases where length of pretrial detention impacted plea
- Client life outcome (employment before and after the case; housing before and after the case; recidivism within three years; what about immigration status consequence; parental rights consequence; access to higher education consequence)

Capacity to address civil and administrative needs of criminal defendants: Often, a criminal offense may be the first point of entry to address underlying needs to reduce recidivism and end poverty. Disaggregate by income, race, gender, age, disability, national origin and by urban, rural, metro areas.

- Number of indigent defense providers that train attorneys on collateral consequences
- Number of indigent defense providers that employ team model for holistic defense services, with partnerships or staff capacity to address civil and administrative needs (access to engage social services advocate, civil legal aid and experts of other disciplines)
- Number of cases where individual was screened for co-occurring disorders
 - Number of cases where individual was diverted from criminal justice system (e.g., to receive mental health services)
- Number of cases in which social services advocate or expert in other discipline was engaged

Court Debt and Municipal Fines and Fees: Requiring indigent defendants to pay court debts they are unable to pay prolongs contact with the criminal justice system and feeds a cycle of recidivism when failure to pay results in additional penalties/incarceration. Likewise, the inability to pay fees for civil infractions can be the basis for involvement in the criminal justice system (and collateral consequences that perpetuate poverty and recidivism). Outstanding debts also may bar access to housing, employment, jobs training and education, among other things. Disaggregate each of the

indicators below by income, race, gender, age, disability, national origin and by urban, rural, metro areas.

- Maximum potential court fees and fines faced for each case (individual cases by jurisdiction) compared to the total court fees and fines imposed in each case
- Number of people per year arrested or detained for failure to pay municipal fines and fees
 - Number/percentage of people who proceed without counsel
 - Disposition of case compared to those who have counsel
 - Sentences imposed compared to those who have counsel
- Impact on individual (employment before and after the case; housing before and after the case; recidivism within three years)
- Number of public defender and legal aid providers that face restrictions on provision of services in these cases (by jurisdiction and including restrictions on Legal Services Corporation grantees and prohibition on defender organizations to represent clients in probation violations, which may be from technical violations due to failure to pay fines)

Addressing the School-to-Prison Pipeline: Youth may first contact the criminal justice system through school disciplinary procedures. Disaggregate by income, race, gender, age, disability, national origin and by urban, rural, metro areas.

- Number of criminal cases referred to system for offenses at school/by school authorities (also state as percentage of all youth with criminal cases)
 - Disposition of case (Guilty, Not Guilty, Nolle Prose, Deferral)
 - Resulting criminal record or chance for criminal record
 - Sentencing (Incarceration, probation, fines / Plea to reduced charges vs. sentence for original top charge)
- Number of cases where individual was screened for co-occurring disorders
- Number of cases where individual was diverted from criminal justice system
- Client outcome (education enrollment before and after the case; employment before and after the case; recidivism within three years)

Perception of Access to Justice in the Criminal Justice System:

- Percent of people in general population who think criminal justice system is fair/unbiased
- Percent of defendants who think the process was fair/unbiased. Include measurements of:
 - Number who think disposition of case was fair
 - Number who think counsel was effective advocate
 - Number who think length of time from arrest or detention to resolution was fair

Number who believe treated with respect (by defense counsel, court, jury, et

¹ NCSEP was established in 2005, and is led by Margaret A. Gressens, Research Director for the North Carolina Office of Indigent Defense Services. NCSEP identified outcomes that indigent defense systems seek to achieve as well as indicators for these outcomes. NCSEP's reports are available from <http://www.ncids.org/Systems%20Evaluation%20Project/>.

² As part of NCSEP, Travis County, Texas, developed performance measures for its newly-created managed assigned counsel system, the Capital Area Private Defender Services (CAPDS), which launched in 2015 (<http://www.capds.org>), and created a Values Committee that chose six system values to measure: Quality, Efficiency, Fairness, Compliance, Access and Continuous Improvement. A chart with these values and measures is available at: <http://www.nlada100years.org/sites/default/files/valueschartwithmeasuresv8v2.pdf>.

³ With the support of the Open Society Foundations (OSF), NLADA expands defenders' data and research capacity through information, training, and technical assistance. See <http://www.nlada.org/tools-and-technical-assistance/defender-resources/research>. This work is guided by the Defender Research Consortium, which has called for more thought about how to define and measure "quality" in indigent defense.



THE INTERNATIONAL LEGAL FOUNDATION

***Proposal for Inclusion of Access to Counsel/ Legal Aid Indicator
Jennifer Smith – Executive Director, The International Legal Foundation***

***Prepared for the Civil Society Consultation with WH-LAIR
on Goal 16 Access to Justice Indicators and Data,
Sept. 15, 2016, Washington D. C.***

While commemorating the fiftieth anniversary of the Supreme Court’s decision in *Gideon v. Wainwright*, then-Attorney General Eric Holder declared “far too many Americans struggle to gain access to the legal assistance they need...In short, America’s indigent defense systems exist in a state of crisis” that is “unworthy of a legal system that stands as an example for all the world.”¹

Despite this recognition, more than fifty years after *Gideon*, little data is available to inform us about the state of indigent defense in the U.S. We don’t know how many defendants are represented by the indigent defense systems in this country, how many misdemeanor defendants have a right to or access to counsel, or what percentage of defendants who are entitled to court-appointed counsel go unrepresented. There is also little information about what stage of the criminal process the indigent accused receive access to counsel, or about the quality of legal representation being provided by court-appointed counsel. Without data, it is impossible to meaningfully assess progress towards realizing the constitutional right to defense counsel over the last fifty years, and know the extent of any violations around the country.

Similarly, there is little data about the need for or availability of legal aid for the poor in civil or administrative proceedings. As WH-LAIR is intended to raise federal agencies’ awareness of how civil legal aid can help advance a number of Sustainable Development Goals, including improved access to health and housing, education and employment, and public safety, it is critically important to collect data on the availability of and access to counsel in civil and administrative proceedings.

The Sustainable Development Goals provide an unprecedented opportunity to strengthen stakeholder engagement and cooperation to alleviate the crisis in access to legal assistance for the poor. The U.S. has long understood that the most significant barrier to access to justice for the poor is access to counsel. It is also the greatest measure of inequality in the U.S. justice system; those individuals who can afford to hire counsel will do so, recognizing that a layperson untrained in the law is ill-equipped to efficiently and effectively navigate justice systems. As a result, in too many disputes, the ability to access justice and fair outcomes depends on financial means and not the merit of one’s claims.

The International Legal Foundation (ILF) urges the U.S. government to demonstrate its understanding of the fundamental nature of the right to counsel by including access to legal assistance as a central measure of national progress towards Goal 16 of the Sustainable Development Goals. Specifically, the ILF proposes the following indicator of access to justice under goal 16 of the Sustainable Development Goals:

111 John Street, Suite 1040, New York, NY 10038 ▪ Tel: +1-212-608-1188 ▪ <http://theilf.org>

¹ <https://www.justice.gov/opa/speech/attorney-general-eric-holder-speaks-justice-departments-50th-anniversary-celebration-us>

Percentage of those who have been accused of a criminal offense, are a victim or witness in a criminal case, or who are a party to a civil or administrative case, who accessed legal assistance.

Any measure of access to counsel should be broad enough to encompass criminal, civil, and administrative matters, as well as a range of legal assistance, including access to both lawyers and non-lawyers (for example, clinical students), and self-help and community education. All data gathered on this indicator should also be disaggregated, to the extent possible, by age, sex, gender, racial identity, income, type of dispute (criminal, civil, administrative), type of legal assistance (attorney, non-attorney legal professional), source of legal assistance (where the individual hired a private attorney, was represented by appointed or pro bono counsel), type of resolution mechanism (court, alternative dispute resolution mechanism, etc.) and jurisdiction. All of these are factors which, past studies have shown, have a significant impact on an individual's or class's ability to meaningfully access legal assistance, and so disaggregation is key to drawing out disparities or prejudices in access so that specific plans for remediation can be made.

Beyond the indicator's focus on the foundational question of *whether* someone had access to legal assistance, it is also important for the government and other stakeholders to encourage data collection on points related to the *quality* of the legal assistance. Measuring quality is not as straightforward, but it can be done by looking beyond outputs (e.g. total number of clients served) and outcomes (e.g. criminal convictions versus acquittals), focusing additionally on key inputs (e.g. how soon after appointment attorneys meet their clients, how often they meet with clients, average time attorneys spend on each case, investigations completed, motions filed, referrals (e.g., to social workers) made, completed continuing legal education hours, etc.) and opinion survey data (e.g. client satisfaction surveys). This deeper data probes the fullest meaning of "access," which, to be meaningful, must mean access to more than an untrained, disinterested, overwhelmed professional who provides legal assistance in name only.

Data on this indicator is already being gathered by justice stakeholders, including police, prosecutors and courts, and by both government and non-government stakeholders; it just needs to be uniformly and effectively aggregated. Administrative data gathered by dispute resolution mechanisms as well as legal service providers can provide a great deal of information on the most basic inquiry: the number of people who had a legal dispute versus the number of people who had legal assistance. More nuanced data will have to be sought to answer more complex questions around the true meaning of "access;" for example, are there geographic or transportation barriers to people reaching existing legal service offices? are there a sufficient number of legal service providers for them to provide meaningful services, as opposed to hurried five minute consultations with one of hundreds of clients assigned to them?; how can we quantify the connections between legal disputes and non-legal bad outcomes? Relevant data is, again, discoverable through existing data-gathering mechanisms, including reports conducted and published by legal service providers themselves and academic institutions.² The Department of Justice and Bureau of Justice Statistics undertook a significant effort as of 2007 to conduct a Census of Public Defender Offices to gather data on office expenditures, number and types of cases handled, staffing, funding sources, use of technology, training opportunities, and the adherence to standards and guidelines by the offices.³ More significant support for these undertakings by both public and private stakeholders, and coordinated efforts to aggregate and analyze their findings at the state and federal levels, will provide the information necessary to effectively assess the proposed indicator, and ensure its utility in broader access to justice efforts.

² For example: Primus, Eve Brensike, *The Illusory Right to Counsel* (August 1, 2011). *Ohio North University Law Review*, Vol. 37, pp. 595-618, 2011. Available at <http://ssrn.com/abstract=1927274>; Decker, Scott H., *Criminal Stigma, Race, Gender and Employment: An Expanded Assessment of the Consequences of Imprisonment for Employment* (January 2014). *Arizona State University*. Available at <https://www.ncjrs.gov/pdffiles1/nij/grants/244756.pdf>; American Bar Association, *Standing Committee on Legal Aid and Indigent Defendants, The Missouri Project: A Study of the Missouri Public Defender System and Attorney Workload Standards* (June 2014). Available at http://www.americanbar.org/content/dam/aba/events/legal_aid_indigent_defendants/2014/ls_sclaid_5c_the_missouri_project_report_authcheckdam.pdf.

³ <http://www.bjs.gov/index.cfm?ty=dcdetail&iid=401>

II. Civil Justice Indicators, Specific to Subject Matter Areas

A. Disability

Civil Society Consultation
Goal 16 Indicators for Access to Justice in the United States

Proposed Disability Access to Justice Indicators
McGregor Smyth (New York Lawyers for the Public Interest)

Nearly 1 in 5 (more than 56 million) people in the US have a disability. The disability community cuts across geographic, socioeconomic, racial, ethnic, and language groups. People with disabilities are disproportionately poor and members of underserved communities of color. They face an array of barriers to accessing education, work, housing, public benefits, public accommodations, and government services. However, we know too little about the actual prevalence of these barriers, all of which have legal solutions. In addition, low-income people with disabilities are often unable to access legal services (beyond SSI/SSD assistance) due to isolation, language, physical or mental barriers, and lack of funding.

Overall, indicators should ensure that what matters to the disability community is measured and reported. In the words of the disability rights movement, “Nothing about us without us.” In accordance with Goal 16, measures and programs must have inclusion and representation by design. People with disabilities and those with expertise about disabilities must be included in the planning process of all projects receiving government funds. Otherwise, people with disabilities are forced to fight for access to programs or settings that were never designed with them in mind. In addition, given that the bulk of enforcement of consumer/participant rights in federally funded program such as Medicaid, special education, and housing depend on state level enforcement of federal standards, it is critical that indicators track how well the states are doing in overseeing local programs.

The indicators below create measures critical for inclusion and access to justice for people with disabilities. They generate a more accurate and granular baseline of prevalence of disability and access to justice needs, create incentives for inclusion, flag barriers and problems susceptible to legal solutions, and create more accountability. These indicators would help identify potential civil rights violations, from disparate treatment and impact to failure to provide reasonable accommodations.

I. General data collection

- a. Require all programs, providers, or agencies of any type receiving government funds for which individual participation can be tracked to disaggregate all participant data by disability, as well as socioeconomic indicators and standard demographic information, including housing type/homelessness and primary language spoken in the home.
- b. Disaggregate participant data regarding disability by disability category (for example, mobility impairment, sensory impairment, mental health impairment, developmental disability, neurological impairment, etc.). Also require disaggregation by severity level.

- c. For all programs, providers, or agencies, report the total and per capita expenditure (mean, median, range and mode) for individuals with disabilities, disaggregated by type of program and the factors above.
- d. Track short- and long-term medical outcomes by provider (particularly for services funded by HHS/CMS), disaggregated by disability, primary language, race, ethnicity, income, and insurance type (including Medicaid vs. private).
- e. # and prevalence of incidents involving people with disabilities, the number of complaints received, the amount of time it takes to resolve the complaint, whether or not an investigation was conducted in person or was simply a paper investigation, the number of founded complaints, the number of complaints that resulted in action being taken against an employee of an agency, the number of complaints that resulted in regulatory action being taken against an agency itself, and what ongoing continuous quality improvement measures are in place. "Incidents" would include abuse or neglect of a person with a disability in an institution (medical, correctional, or immigration), disability complaints to any agency, bullying in schools, lack of accessibility, and failure to provide reasonable accommodation. To protect against underreporting, states and the agencies that report to them should be required to explain low numbers of complaints. A precedent for this under federal education law assumes that only 1 to 2% of the population should be exempted from statewide testing and requires states to explain if more children than that are exempted.

II. Community Integration (Olmstead)

- a. #/% people with disabilities in institutional settings, disaggregated by disability type, severity, location, and all other demographic factors.
- b. #/% people with disabilities in integrated settings, disaggregated by setting type, disability type, severity, location, and all other demographic factors.
- c. # supportive housing units by location and type.
- d. # new placements in integrated settings, by setting and disaggregated by disability type, severity, location, and all other demographic factors.
- e. #/per capita use of psychotropic medications disaggregated by setting, provider, geography, disability type and severity, and all demographic factors (including location).
- f. Spending disaggregated by setting, geography, disability type and severity, and all demographic factors (including location).
- g. Require all programs, especially those funded by Medicaid, to develop validated outcome measures to capture the externalities and intangible costs of failing to provide integrated settings. These could include measures of lack of socialization, use of psychotropics, lack of employment, and repeated stays in hospitals or jails/prisons. (These measures would inform the true costs of institutional settings, delaying care until hospitalization or jail, and denial of care by insurers or providers.)

III. Public accommodations

- a. #/% of physically accessible new construction and completed alterations, disaggregated by location.
- b. #/% of new construction and completed alterations inspected for physical accessibility, disaggregated by location.
- c. #/% of physically accessible government buildings, schools, and offices, disaggregated by location and entity. For NYLPI's report on courthouse accessibility, see <http://bit.ly/2cdaVmL>. For an example of a government audit of accessibility, see www.nyc.gov/html/dcas/downloads/pdf/cityrecord/cityrecord-02-02-16.pdf, starting at page 370.

- d. #/% of government buildings, schools, and offices inspected for physical accessibility, disaggregated by location and entity.
 - e. #/%, and list of government agencies providing universal access to 911 services, disaggregated by location and entity.
 - f. #/%, and list of government agencies with designated disability access/504/ADA coordinator, disaggregated by location and entity.
 - g. #/% default rates at courts and administrative proceedings, disaggregated by disability, primary language, race, ethnicity, income, location etc.
- IV. **Survey** (as part of ACS and CDC Behavioral Risk Factor Surveillance System (BRFSS)). Each affirmative answer signals the significant need for legal services.
- a. In past 12 months, have you had a dispute with health provider due to a [disability/your primary language]?
 - b. In past 12 months, have you experienced difficulty [receiving appropriate health care/accessing a court/entering a government office/using public transportation/entering a police station/accessing a jail or prison/entering a store/using a public restroom/entering your home] because of a [physical disability]?
 - i. [same question substituting “unable to” instead of “experienced difficulty.”]
 - c. [Same questions replacing “physical disability” with “mental disability,” “vision, hearing, or speech disability,” and also “language barrier.”]
 - d. For our report on physical barriers to health care, see <http://bit.ly/2cFzKa0>.
- V. **Accountability**
- a. To ensure open data, require every state to have every agency report all publicly-available data annually, display it prominently on its website and in a centralized portal, and have a plan, approved by the federal agency administering their grant, for making the information reported comprehensible and available. Examples of reporting laws: toxins in public schools (<http://on.nyc.gov/2c1o6aN>) and physical education in public schools (<http://physed4all.org/intro-644-goals>).
 - b. Every government agency should be required to designate an individual responsible for responding to inquiries and providing data to members of the public.
 - c. The federal government and the state and local governments should publish reports and data on the quality control measures they take every year to audit the accessibility of programs and a timeline for addressing identified deficits.
- VI. **Inclusion by design**
- a. All programs above a certain dollar amount should report how they are including people with disabilities in the design of the program, what outreach they will do to get greater participation, and what percentage of the individuals designing and running the program either have a disability or have ties to a community group representing people with disabilities.

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**Civil Society Consultation with the White House’s Legal Aid Interagency Roundtable on
Goal 16 Access to Justice Indicators and Data**

Proposed Indicators on Disability

**Rebecca Vallas, Esq.
Managing Director, Poverty to Prosperity Program
Center for American Progress**

I. Access to Justice in the Nation’s Civil and Criminal Justice Systems

People with disabilities are dramatically overrepresented in the nation’s prisons and jails today. According to the Bureau of Justice Statistics, or BJS, people behind bars in state and federal prisons are nearly three times as likely and those in jails more than four times as likely, to report having a disability as the non-incarcerated population.¹

People with disabilities are also especially likely to be the victims of police violence. While data are limited, one study by the Ruderman Family Foundation estimates that people with disabilities comprise a staggering one-third to one-half of all individuals killed by law enforcement, and an investigation by the Washington Post estimated that one-quarter of the individuals fatally shot by police officers in 2015 were people with mental health conditions. Countless more have suffered brutality and violent treatment at the hands of police, often stemming from misunderstandings related to mental health conditions and other disabilities, and the number of individuals who have acquired disabilities while in police custody is unknown.

Moreover, for people with disabilities, law enforcement officials are often the entry point into the criminal justice system. Between 7 and 10 percent of all police interactions involve individuals with mental health conditions—and the result is that people with disabilities needlessly enter the criminal justice system, all too often because the police are ill-equipped to appropriately respond to them. Data collection on the incidence of these interactions and the circumstances that lead up to them is key to understand the extent of—and prevent—unnecessary incarceration of people with disabilities.

Title II of the Americans with Disabilities Act mandates that individuals with disabilities be provided an equal opportunity to participate in court proceedings and services and places an affirmative duty on government entities to provide “reasonable accommodations” where needed. For example, courts must provide reasonable accommodations for individuals who are deaf or hard of hearing or who have other communication disabilities, including “furnish[ing] appropriate auxiliary aids and services where necessary... to ensure that communications with applicants, participants, and members of the public are as effective as communications with others.” Nonetheless, lack of accessibility and failure to provide needed accommodations, such as a sign language interpreter, is widespread throughout the nation’s courts. Data collection is critical to ensure that litigants with disabilities are able to understand and fully participate in their own cases and to prevent unjust outcomes—up to and including wrongful convictions.

While behind bars, people with disabilities are often deprived of necessary medical care, as well as needed supports, services, and accommodations. is is despite long-standing federal disability rights laws—namely the ADA and Section 504 of the Rehabilitation Act—that mandate equal access to programs, services, and activities for all people

with disabilities in custody. Poor conditions in jails and prisons and inadequate access to health care and mental health treatment can not only exacerbate existing conditions, but also lead to further physical and mental health problems that individuals did not have prior to incarceration. Prison and jail inmates with disabilities are also at special risk for mistreatment by guards and other correctional employees, and abuse at the hands of their fellow inmates. And many inmates with disabilities are held in solitary confinement due to a lack of appropriate alternative accommodations, with severe and long-lasting consequences. Data collection here is critical for prevention, enforcement, monitoring, and policy development.

As policymakers explore policies and reform strategies to reduce incarceration of people with disabilities and ensure fair and appropriate treatment in the civil and criminal courts as well as behind bars, data collection and tracking along areas such as the following is critical:

Policing:

- Frequency of disability training (on the ADA, Section 504, disability sensitivity) for law enforcement personnel
- Police encounters with people with disabilities, as well as the circumstances leading up to these encounters
- Police-involved shootings and deaths involving people with disabilities
- Disabilities acquired while in custody
- Requests as well as provision/denial/removal of reasonable accommodations at the time of arrest or at any time while in custody

Courts (civil and criminal):

- Whether states and localities have laws, regulations, or other forms of written guidance in place mandating full accessibility of their court systems
- Frequency of disability training (on the ADA, Section 504, and other relevant disability law) for court personnel
- Provision of sign language interpreters without charge to the litigant
- Provision of counsel at no cost to the litigant as a form of reasonable accommodation
- Admittance of service animals on court premises
- Clear information on court websites on how and from whom to request accommodations—and how and to whom disability access complaints should be filed
- Requests as well as provision/denial/removal of reasonable accommodations in court proceedings

Cellblock:

- Number of Americans with disabilities behind bars in prisons and jails (current figures are just estimates)
- Frequency of disability training (on the ADA, Section 504) as well as disability sensitivity training to prevent needless and unjust punishment due to misunderstandings about instructions or other perceived noncompliance
- Number of ADA coordinators at correctional facilities to handle requests for accommodations and to ensure accessibility of all physical spaces and programming
- Number of independent ombudspople in correctional facilities to hear grievances and address complaints
- Requests as well as provision/denial/removal of reasonable accommodations at any point while behind bars
- Access to needed medical care behind bars, including number of mental health professionals in correctional facilities

- Inmates with disabilities held in solitary confinement as a substitute for appropriate accommodations, as well as length and number of stays
- Presence and availability of appropriate communications accommodations for inmates who are deaf or hard of hearing or have communications disabilities, both for everyday activities within prisons and jails and for communications with loved ones and visitors (e.g. installation of videophones, captioned telephones, and other auxiliary aids)
- Whether use of force policies contemplate disability
- Presence of policies to prevent prison rape

II. Social Security disability benefits

Two core pillars of our nation’s Social Security system are Social Security Disability Insurance, or SSDI, and Supplemental Security Income, or SSI—which together protect Americans in the event of disability or illness that prevents substantial work.² While modest, the benefits that these programs provide are key to the economic security of disabled workers and their families, helping to ensure that they are able to keep a roof over their heads, put food on the table, and afford needed medications. These programs can also serve as gateways to health insurance through Medicare and Medicaid.

However, because it is so difficult to qualify for Social Security disability benefits—just 4 out of 10 applicants are approved under Social Security’s strict disability standard—many individuals are wrongfully denied despite significant disabilities and severe health conditions. Further steepening the uphill battle, the difficulty of navigating a byzantine application and appeals process itself can prevent eligible claimants from accessing needed benefits. Legal representatives (as well as non-lawyer representatives such as paralegals and social workers) play a critical role in securing and synthesizing medical records and other needed documentation; demonstrating a claimant’s eligibility to the adjudicator by applying the facts of his or her case to Social Security’s laws and regulations; keeping track of deadlines, hearings, and evidence; and more.

Making matters worse, due to many years of insufficient administrative funding for the Social Security Administration, lengthy backlogs can mean years-long waits before individuals appealing an adverse decision get to have their case heard before an administrative law judge, leaving desperate individuals to struggle for months and years, often without any source of income at all, and countless claimants to die each year waiting for needed benefits. Continued under-resourcing of SSA can also result in lengthy processing delays of appeal forms, “non-disability” filings such as requests for waivers of overpayments, and other critical paperwork being lost and never processed at all, which impacts not just claimants but also current beneficiaries facing loss of or reduction in benefits. One important form where delays in processing (or loss of the form altogether) can create serious problems is SSA’s “1696” appointment of representative form, the filing of which triggers SSA’s awareness that an individual has legal representation (and SSA’s sending of all relevant correspondence to that rep). Data collection on a great deal more than just the share of claimants and beneficiaries with representation is essential for evaluating individuals with disabilities’ access to justice regarding the Social Security disability programs.

As policymakers seek to ensure fair and appropriate treatment of people with disabilities seeking Social Security disability benefits, data collection and tracking along areas such as the following is critical:

- Claimants/beneficiaries with legal representation (disaggregated by lawyer/non-lawyer representatives, whether fee-charging, stage of the application and appeals process, type of appeal, and type of disability)

- Length of time claimants must wait for a decision (and where appropriate, a hearing) at all stages of the application and appeals process (disaggregated by whether the individual is represented/unrepresented)
- Number of claimants who die before receiving needed benefits and accompanying wait times
- Processing time of 1696 forms, and number of forms lost/not processed/requiring re-submission by the representative
- Processing time of “non-disability” filings such as appeals of benefit reductions, requests for waiver of overpayment, etc. (disaggregated by whether the individual is represented/unrepresented)
- Number of applications filed before an individual is determined eligible
- Wait times for appointments at local field offices (average as well as disaggregated by field office)
- Wait times to get through via SSA’s 1-800 number

¹ For a fuller discussion of these issues, please see Rebecca Vallas, “Disabled Behind Bars” (2016), available at <https://cdn.americanprogress.org/wp-content/uploads/2016/07/18000151/2CriminalJusticeDisability-report.pdf>.

² For a fuller discussion of Social Security’s disability programs, please see Rebecca Vallas and Shawn Fremstad, “Social Security Disability Insurance: A Bedrock of Security for American Workers” (2015), available at https://cdn.americanprogress.org/wp-content/uploads/2015/06/SSDI_update-brief-6.16.pdf; see also Shawn Fremstad and Rebecca Vallas, “The Facts on Social Security Disability Insurance and Supplemental Security Income” (2013), available at <https://www.americanprogress.org/issues/poverty/report/2013/05/30/64681/the-facts-on-social-security-disability-insurance-and-supplemental-security-income-for-workers-with-disabilities/>.

B. Disaster Response

Civil Society Consultation with WH-LAIR on Goal 16 Access to Justice Indicators and Data Statement of the New York Legal Assistance Group¹

The New York Legal Assistance Group (NYLAG) is pleased to submit this statement providing proposed indicators to measure access to legal services for people recovering from major natural disasters. Founded in 1990, NYLAG provides comprehensive, high quality, free civil legal services to low-income New Yorkers who cannot afford attorneys. In 2015, NYLAG served more than 75,000 New Yorkers.

Disaster Indicators

Following Superstorm Sandy, NYLAG created a dedicated Storm Response Unit (SRU) to provide free, comprehensive civil legal services to low and moderate income New Yorkers who were impacted by that devastating disaster. SRU grew to have 35 staff members, and today, almost 4 years after Sandy, SRU remains active with more than 13 staff continuing to assist clients with their post-Sandy legal issues. SRU has handled more than 11,400 legal matters impacting more than 26,000 Sandy victims.

The federal government's role in disaster response is of critical importance as the vast majority of disaster relief funds originate there. For example, after Sandy, Congress approved more than \$60 billion in recovery funding. The funds are then administered through a variety of federal, state and local agencies, including the FEMA Individuals and Households Program (IHP), the National Flood Insurance Program (NFIP) and Community Development Block Grant – Disaster Recovery (CDBG-DR) funds.

Civil legal service providers can directly assist disaster clients and advance the aim of FEMA and other federal agencies to assist people to respond to, recover from and mitigate against future disasters. Some recovery programs exist and are operational immediately after a disaster declaration, such as the FEMA IHP and NFIP programs. Other programs, such as Build it Back and NY Rising, which were funded with CDBG-DR grants, are created months later. Without knowledgeable legal assistance, victims are left to navigate what can seem like a bewildering number of programs on their own. Each program has or must create eligibility criteria, an application process, an appeal process for those who believe they were improperly denied or did not receive the full amount to which they are entitled and a process for the program to recover allegedly improperly paid funds. Lawyers help clients understand and identify what they are eligible for and assist them to apply and obtain a range of benefits faster. They help victims navigate the relationship between the various programs. Lawyers also prevent or defend against mortgage foreclosures, contractor fraud and unlawful evictions, all of which can spike after a major disaster.

¹ Submitted by Ann Dibble, Director, Tenants' Rights Unit and former Director, Storm Response Unit (ADibble@nylag.org); William Friedman, Acting Director, Storm Response Unit (WFriedman@nylag.org); and Beth E. Goldman, President (bgoldman@nylag.org).

Indicators of the impact of civil legal assistance on disaster victims could include the following:

- Measure 1: The amount of recovery dollars obtained and the period of time before completion of program processing;
- Measure 2: The number of administrative appeals filed by victims for increased recovery funds;
- Measure 3: The number of administrative recoupment or clawback actions brought by recovery agencies for allegedly improperly paid benefits;
- Measure 4: The number of foreclosures and insurance lawsuits filed; and
- Measure 5: The number of debt collection lawsuits commenced.²

NYLAG would welcome the opportunity to continue the discussion regarding these indicators.

² Finally, we note that disaster victims and government agencies may be better served by a “victim compensation fund” model of disaster recovery. A victim compensation model would create a single point of contact to which disaster victims could present their claims. With funding included for legal representation, victims could seek awards from a single fund administrator empowered to allocate all federal funds, including FEMA IHP, NFIP and what would otherwise be awarded through CDBG-DR grants. This would eliminate the millions spent on creating and implementing *sui generis* programs on the local and State levels. The process would likely be more cost effective, speed up the recovery process and decrease the administrative costs associated with separate programs.

Civil Society Consultation with WH-LAIR on Goal 16 Access to Justice Indicators and Data:

Disasters

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Federal disaster declarations come for events that suddenly disrupt daily life for many people at once, causing harm. The expectation is that damage from disasters is increasing and will increase, in part due to [increasing property damage](#) that accompanies wealth and increasing population density in places subject to extreme weather events¹. While disaster events draw attention in the short term, it is worth remembering that some people experience daily life as a cascade of disasters.

A couple of problems are worth remembering in considering assistance after disaster, particularly for the most vulnerable people, beyond the level of damage we can continue to expect. First, people who have been involved with the criminal justice system can try to avoid other government programs, or may mistrust them. That can make delivering assistance after disaster more challenging, beyond the immediate emergency relief.² Second, sometimes law and legal assistance cannot help. For example, renters in the private market have no right to housing if their home is uninhabitable, and housing prices often go up after disaster.

We know very little about what works with regard to legal assistance generally. We don't know if good information sheets can be as effective in some matters as in-person assistance, or whether casework assistance from volunteers or family members can be as effective as professional legal assistance. [One team](#) is conducting a randomized control trial concerning debt relief³. RCTs are expensive, time-intensive and may not generalize beyond the specifics of the situation the scholars are studying.

Housing loss or damage are outcomes of disaster. It may not be easy to have stable new housing, especially for already low income or vulnerable people, or for people who were homeless. Therefore, housing stability is an outcome legal assistance may help attain. Below I outline problems and at the end suggest some indicators to consider.

Housing stability: For renters in particular, disaster may disrupt housing for a long time, since rental properties can be more expensive or less available after disaster. For low-income people who inherited homes, documenting title or clarifying ownership can be difficult. This was an issue after the Oakland fires, Katrina, and probably in the recent rainstorms.

Housing assistance: FEMA and HUD sometimes offer rental assistance after disaster. From FEMA it is first emergency assistance and then as individual assistance. It requires documenting where one lived and that one's house was damaged. Not everyone keeps documents at hand. Disasters sometimes destroy documents. Some people do not document where they live in any case. (They don't get bills and don't have a lease.) Assistance can be [paid to those who don't qualify](#) and not paid to those who do⁴. Since disaster ends, so does assistance. Low income people after Katrina who moved from FEMA to HUD assistance [did not transition easily out of assistance](#)⁵. Accessing it and ensuring it does not end too quickly can be difficult.⁶ FEMA trailers can be inappropriate, for example by not accommodating people with disabilities, and in any case are also meant to be temporary.

Assistance can include SBA loans. Both the application and what to make of getting denied is not obvious, including to well-educated people accustomed to negotiating complex bureaucracies.

Multiple benefits are implicated in disaster: unemployment insurance, federal disability benefits, Individualized Education Plans for children in school, TANF, SNAP, pensions. Some require documenting who one is and who one's children are. Some people do not travel with documents, or did not need them before disaster. Disaster upends household arrangements that can have implications for benefits. For example, if one moves in with a relative who is on disability benefits, income can require benefits to change. Disasters may require health care or require applying for disability benefits that people did not require before the disaster.

Insurance can be difficult to navigate for all property owners, and difficult to even access, particularly for lower income people. We have some evidence that there may be disparities in insurance payouts to lower income people's detriment.⁷

Indicators to consider

❖ **Housing stability** 1-2 years after a disaster. To be assessed as other housing stability is assessed, including by affordability. There is not yet a good way to track people who flee after disaster. Current studies are based in samples accessed different ways; they recognize that they are incomplete, and that they may end at an arbitrary time.

❖ **Legal Assistance** people used:

- None
- Web
- Informational forms
- Caseworkers
- Nonprofits
- Lawyers

Note: people do not always know all the assistance they might need, and they may not define problems as legal needs. Therefore, asking about how people define the problems they've

had and who or what has helped would be a better assessment than asking if they needed legal help.

- ❖ **Demographic variables**, including age, race, gender, family status, income. Often family is defined as most immediate nuclear family. However, in disaster, people can take responsibility for members of extended family, or neighbors or friends. Women especially tend to take responsibility for kin. Therefore, assessment of family status should ask people about who they see in their family, and who they are helping.
- ❖ **Assessment of satisfaction with legal services** This is the most common assessment. This has been used by the scholar Tom Tyler in other circumstances to assess trust in the law. Satisfaction may assess whether people believe they have been treated well, but it may not be well-connected to any outcomes of interest.

¹ <http://fivethirtyeight.com/features/disasters-cost-more-than-ever-but-not-because-of-climate-change/>

² Brayne, Surveillance and System Avoidance: Criminal Justice Contact and Institutional Attachment. *American Sociological Review* (2016).
<http://asr.sagepub.com/content/early/2014/04/02/0003122414530398.abstract>

³ <http://today.law.harvard.edu/greiner-hls-students-spearhead-new-consumer-debt-relief-project/>

⁴ <https://www.hudoig.gov/sites/default/files/documents/audit-reports/ig08a0801.pdf>

⁵ https://www.huduser.gov/portal/pdredge/pdr_edge_research_041913.html

⁶ Sterett, Disaster, Displacement and Casework: Uncertainty and Assistance after Hurricane Katrina" *Law and Policy* (2015).
<http://onlinelibrary.wiley.com/doi/10.1111/lapo.12029/epdf>; Sterett, "Bureaucratic documents and Home: Assistance after Hurricane Katrina" in *Indiana Journal of Global Legal Studies* (2016) ; Sterett, Disaster Assistance and Displacement: Care and Surveillance" *Studies in Law, Politics and Society*, issue entitled "Cassandra's Curse: Forecasting Future Disasters," edited by Lloyd Burton and Lisa Sun. Emerald Publishing Group (2016).

⁷ Baker, Tom and Karen McElrath, "Whose Safety Net? Home Insurance and Inequality." *Law and Social Inquiry* (1996): 229-262.

C. Employment/Labor

**Civil Society Consultation with WH-LAIR on Goal 16 Access to Justice Indicators and Data
Statement by the National Employment Law Project
On Employment and Labor Indicators**

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Existing labor and employment protections are not consistently enforced in too many workplaces, especially in those low-wage, labor-intensive sectors where wage theft, health and safety violations, and discrimination occur with near impunity. This has led to an epidemic of wage theft in lower-wage jobs, health and safety violations and rampant discrimination in hiring and promotion. Employment-based safety net protections like unemployment insurance and workers compensation also suffer from employer evasion and lack of enforcement. The lack of effective enforcement is due to a number of well-documented barriers faced by low-wage workers in particular, who fear retaliation and other reprisals in our complaint-driven system that requires individual workers to come forward to state a claim. Federal public agencies like the USDOL, the EEOC and the NLRB can do more to affirmatively audit and investigate employers instead of waiting for the vulnerable workers to step forward with workplace complaints. And, data collection and dissemination as outlined below could help under-resourced public agencies share information about enforcement actions and violations so that workers and their advocates and law-abiding employers could understand the problems and address them privately or in concert with the public enforcement agencies.

It's not only important to collect all of the data suggested below, but to make it publicly available so that other enforcement efforts at the state or local level and by individuals can benefit and understand the magnitude and type of problems.

I. Indicators for Access to Labor and Employment Rights Generally

Much has been written on the fissured nature of work, and the accompanying lack of quality jobs that can follow when companies outsource their work to smaller and smaller contractors and subcontractors, denying responsibility for the workers in those layers, and when companies misclassify their employees as independent contractors. These business strategies can result in wholesale carve-outs of employees (who are called independent businesses and not covered) and employers (who claim their subcontractors are solely responsible for labor and employment protections).

The federal agencies charged with enforcing labor and employment rights should engage in inter-agency collaboration and data-sharing, as is currently begun with the US DOL's independent contractor initiative, for example, to target enforcement actions and better understand the magnitude and characteristics of contracting-out. More can be done.

- A. Reprise the previously-canceled Contingent Work Survey conducted by the Bureau of Labor Statistics and other data sources, and continue the collection and dissemination of those surveys.
- B. Require audits of companies calling workers independent contractors in large numbers, targeting priority industries where the misclassification is rampant; share and target audit data with the IRS tax filing data and state information.

- C. Explore employer subcontracting and domestic outsourcing, including use of temp and staffing agencies, by using innovative employer-reported data sets collected by the Department of Commerce, DOL, IRS and other agencies.

II. Indicators for Wage Theft and Health & Safety Justice

- A. Document the prevalence of minimum wage and overtime and health and safety violations: There is an urgent need to generate comprehensive representative data on the prevalence of wage and hour violations by region and by industry. This documentation can be done via audits and investigations in priority industries that are already targeted by the Wage & Hour Division (WHD) and OSHA, as was done in 1999-2000.¹ The data could be used by DOL to inform its strategic enforcement and to assess impact, but must also be public so that community groups, employers, and state and local enforcement agencies can also benefit from the information.
- B. Collect details on existing claims or inquiries to the agencies (WHD and OSHA): as GAO reports chronicled in 2009, the WHD data collection and dissemination on complaints and queries coming into to the Division is woefully inadequate, both to determine the quantity and quality of the claims. While some progress has been made in the last few years, the existing WHISARD database must be updated to include all incoming queries to the hotline, We Can Help, and any contact the WHD receives, whether or not the contact turns into a bona fide complaint. Each contact should collect and report publicly on: employer identification and workforce characteristics from other data sources, alleged claimed hours worked and pay received, including for each year of work, whether or not the work falls within the statute of limitations, any disposition of the claims or referrals made to outside resources, including back pay recovered (not simply assessed) and from whom, liquidated damages recovered, and whether the recoveries are for a single claimant or workplace-wide. For each complaint or query, document information as to whether the worker(s) were represented by outside counsel or other worker advocate.
- C. Collect and report publicly on audits and investigations conducted by the WHD and SOL, and the extent of any back wage recoveries, details on orders to comply, etc.
- D. Report on the number and type of WHD and OSHA matters referred to the SOL or DOJ or other government agency for litigation or prosecution, including all Bridge to Justice referrals to private counsel, and dispositions of those referrals.
- E. The number of SOL filings made in WHD cases and all settlements and recoveries in those cases.
- F. An evaluation of each hot goods proceeding, by industry and by region, including all resulting monetary recoveries.
- G. The number of u-visa certifications, from which area of the country or referrals made to other agencies, and the results of those referrals. For each u-visa request, document information as to whether the worker(s) were represented by outside counsel or other worker advocate.
- H. The number of retaliation complaints or inquiries made to the WHD and any referrals or action taken on those complaints or queries. The number of whistleblower cases filed under OSHA 11 C as well as the number of cases where there are merit findings and the number resolved by settlement.

¹ US Department of Labor. 2001. *1999-2000 Report on Initiatives*. Employment Standards Administration, Wage and Hour Division, February 2001.

- I. Statistics comparing federal WHD enforcement with state and local wage and hour enforcement, and federal OSHA enforcement with state OSHA enforcement including the number of claims processed and found merit; the number of audits and inspections conducted, and the average value of penalties, back wages or fines levied and collected.

III. Indicators for anti-discrimination access to justice².

- A. Expanded EEO-1 data to ensure a wider disaggregation of the composition of employers' workforces, and to ensure that more employers (e.g., temp and staffing agencies) have to comply with EEO-1 reporting and data collection.
- B. Number of DOL, Civil Rights Center complaints filed by workers seeking to enforce their Title VI protections, broken down by type of discrimination (e.g., limited English proficiency, race discrimination) and the statutory violation.
- C. The number of and demographic characteristics of those employed by federal contractors, broken down by the number employed on the specific contract and across all the contractor's operations.

IV. Indicators for Access to Unemployment Insurance

- A. The number of enforcement actions taken against the states by the Employment and Training Administration implementing the "fair hearing" and "when due" requirements of the Social Security Act, broken down by state and issue area (e.g., late payment of benefits, inadequate hearings).
- B. The total amount of federal and state UI contributions that were not collected against employers due to independent contractor misclassification (broken down by state and the status of the state and federal recovery efforts).

² The list for employment-based anti-discrimination indicators is incomplete and should be amplified by consultation with experts in anti-discrimination laws and enforcement.

D. Family Law and Matrimonial Matters

Civil Society Consultation with WH-LAIR on Goal 16 Access to Justice Indicators and Data

September 15, 2016

Her Justice provides this statement in order to propose certain data points the United States government should consider tracking as a means of measuring progress toward improving access to justice in accordance with UN Goal 16 and in support of the Consultation to be held on September 15, 2016.

For over 23 years, Her Justice (formerly known as inMotion) has aimed to ensure that women and children in New York City have access to the legal tools necessary to help them achieve safety and self-sufficiency. We provide advice and counsel, brief services, and direct representation to over 3,000 clients annually in the areas of family, matrimonial, and immigration law. There are not enough lawyers for all who need them in our civil courts, so most litigants have to manage complicated and intimidating cases on their own. Her Justice addresses that gap by recruiting, training and mentoring volunteer attorneys from the private bar to stand side-by-side with women who cannot afford to pay for a lawyer, giving them a real chance to obtain vital legal and financial remedies. Informed by our work, Her Justice proposes the following three indicators to aid in the implementation of Goal 16 in the United States.

- 1. Pro Bono Contribution to Achieving Access to Justice.** Her Justice recognizes the importance of considering the number of legal aid lawyers available to represent vulnerable and underserved populations as an indicator of access to justice. (See Expert Working Group Draft Indicators, May 26, 2016, p. 3.) Yet legal aid organizations may lack the funds and staff necessary to meet the full demand for representation and advice/counsel. Organizations like Her Justice bridge the gap in the availability of legal aid by engaging private attorneys to provide pro bono legal assistance to low-income populations in family law matters (custody, support, and domestic violence/orders of protection) and divorce cases. The availability of pro bono private attorneys means more individuals will be represented in civil courts. In addition, increasing the availability of this legal resource will aid the courts in running more efficiently because more litigants will be represented by counsel. For those reasons, Her Justice proposes that the “value” of pro bono contribution to access to justice in civil courts be considered, including in terms of the number of pro bono attorneys available to underserved populations (by jurisdiction and by the number and nature of cases handled). This could also include measuring outcomes of representation involving pro bono attorneys in terms of whether they cause or lead to a reduction in poverty, accounting for amounts of money awards per client, or client income at intake versus income at the conclusion of the case. This proposal builds on the draft indicator proposed by the Maryland Access to Justice Coalition, namely to consider the number of pro bono hours by private attorneys per year. (See Expert Working Group Draft

Indicators, May 26, 2016, p. 2.) While Her Justice is particularly interested in the value of pro bono contribution in family and matrimonial cases given the scope of our work, we recognize that these indicators are pertinent to ascertaining access to justice in all civil court matters.

- 2. Measuring Advice and Counsel and Brief Services.** Her Justice and many legal services organizations provide services to those in need short of full representation. We believe that there is great value in assisting individuals in identifying their legal problems and advising them on possible solutions, both within and outside of the civil court system. To that end, Her Justice has expanded its reach into communities that may not readily access legal centers such as New York City’s Family Justice Centers or court-based legal help programs. For individuals in these communities, obtaining advice and counsel can prevent legal problems from becoming crises. Moreover, some individuals may only need or be best served by advice and counsel or brief services. For those reasons, we propose that the “value” of services short of full representation, including advice and counsel and brief services, in family/matrimonial cases and in other types of civil court cases be considered. This could be measured in terms of the number of people reached for possible services, the number of people receiving pro se assistance, and/or the number of localities in which pro se assistance is available.
- 3. Litigant Trust in Justice Systems.** Her Justice serves indigent and working poor individuals who identify as women. It is well-documented that there is gender bias in state court systems. While many states have made strides in achieving gender fairness in the courts, our clients report certain challenges they face relating to their gender (and their identity as mothers, as most often the lower-income spouse, or the victim of abuse). A growing body of literature underscores the necessity of litigant trust in the system in order for the system to function. Varying degrees of trust, possibly falling along gender, race, and/or class lines, could significantly undermine the courts’ ability to provide justice for all. We propose that the United States consider as indicators low-income litigants’ trust of the courts in family/matrimonial cases and in other types of civil court cases and in whether the process is fair and is likely to lead to a fair outcome, accounting for individuals’ gender and status as victims of domestic violence. This proposal builds on the draft indicator proposed by National Legal Aid & Defender Association (see Expert Working Group Draft Indicators, May 26, 2016, p. 4), namely the percentage of people at or below 200% of the poverty line who believe that the legal system, including courts, can provide a fair outcome in their disputes.

Amy Barasch, Esq.
Her Justice, Executive Director

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Managing Policy Attorney

E. Finance and Consumer Protection (Includes Credit Card Debt, Home Foreclosure)

Civil Society Consultation
Goal 16 Indicators for Access to Justice in the United States

Proposed Consumer Protection Access to Justice Indicators
by
Ira Rheingold
National Association of Consumer Advocates

As Mary Spector indicates, millions of lawsuits against consumer “debtors” are filed in state courts every year. While the Professor has provided an important roadmap for the collection of empirical data on consumer access to information and representation in these cases, my focus is on examining the opportunities and the barriers faced by low and moderate income consumers who need access to legal counsel. I start with the well-grounded assumption that individuals fare far better in “debt collection” cases when they are represented by an attorney (I expect that Professor Spector’s suggested empirical analysis will more assuredly make this point). Based on my personal experience and countless conversations with private and legal aid attorneys – the results of debt collection cases can generally be broken down as follows: consumer fails to show up = default judgment; consumer appears = “negotiated” settlement and/or judgment; attorney representation = immediate dismissal and/or judgment for the consumer. While I understand that we will never provide sufficient civil legal representation for consumers in need, significantly increasing their representation could potentially save tens of millions of dollars for our nation’s poorest families.

Untapped opportunities for legal representation

Unlike many areas of law, the representation of consumers in financial service cases comes with a ready-made funding source: statutory attorneys’ fees. When federal consumer statutes were created in the 1960s and 1970s, they were based on the fundamental principle that to be effective, these laws require not only public, but private enforcement. Thus, the Truth in Lending Act, the Real Estate Settlement Procedures Act, the Equal Credit Opportunities Act, the Fair Credit Reporting Act, the Fair Debt Collection Procedures Act, et. al. provide not only for statutory damage claims, but also attorneys’ fees for successful plaintiffs. (Similarly, state consumer protection statutes included these provisions, although these laws are currently under concerted attack by big business).

The role of legal aid attorneys

During the first two decades that federal consumer protection laws existed, most cases under these statutes were filed by legal aid attorneys. With an aggressive mindset about using consumer protection statutes to achieve systemic change, as well as provide supplementary funding to their underfunded programs, legal aid attorneys sat on the cutting edge of defining the federal legal protections available to consumers. Unfortunately, this trend came to an abrupt halt, when in 1996, Congress prohibited federally funded legal aid programs from filing class action complaints or collecting attorneys’ fees. While some creative legal aid programs found ways to continue to successfully enforce these laws – either by rejecting federal legal service funds, or by building a different practice model for consumer law – for many/most programs, the practice of consumer law slowly, but steadily faded away.

In the late 2000s, brought on by the devastating mortgage crisis and the sudden influx of funding for foreclosure prevention legal work, many programs rediscovered the worth of having a robust consumer law unit. The potential value of legal aid programs practicing consumer law was further enhanced in 2010 when the ability of federally funded programs to collect attorneys' fees was restored. While some/much of that foreclosure prevention funding has begun to dissipate, it appears that a number of legal aid programs continue to maintain a consumer law unit, and many have begun to focus some of their work on debt defense cases. The following are access to justice indicators that can help us determine both the current and potential increased capacity of legal aid programs to provide help to consumers faced with debt collection lawsuits.

- **Proposals to evaluate access to counsel provided by legal aid programs**
 - Collect data on number of legal aid programs that have consumer law units;
 - Collect data on the number of legal aid attorneys who provide legal representation to consumers sued by a debt collector;
 - Collect data on the number of appearances filed in “debt” cases;
 - Collect data on the number of legal programs that actively pursue attorneys' fees in consumer representation and the amount that was collected;
 - Collect data on the amount of *cy pres* money legal aid programs received from consumer class action cases.

The role of law schools and the private bar

Over the years, a small, but robust private attorney's bar has developed with a business model that allows them to represent consumers regardless of income (based on the fee-shifting provisions of federal and state consumer protection laws). At a time when the legal job market continues to shrink, the practice of consumer law, with strong civil protections and an unending supply of wronged consumers has enormous room for growth. Unfortunately, even though many law schools continue to struggle to place new graduates, few schools have adapted their curriculum or their program offerings to match the needs of their students or potential consumer clients. The following are potential access to justice indicators the consumers can help us determine the degree that law schools are currently training students to provide legal assistance to low and moderate income consumers.

- **Proposals to evaluate access to counsel provided by legal aid programs**
 - Collect data on number of law schools that teach consumer law, in particular the federal consumer law statutes.
 - Collect data on the number of law schools that maintain a consumer law clinic and the number of students in those clinics.
 - Collect data on the number of cases clinic students represent consumers in debt cases.
 - Collect data on attorneys' fees collected by consumer clinics and *cy pres* received as a result of consumer class actions
 - Collect data on the number of law schools that teach law firm management to their students
 - Collect data on the number of law schools that provide incubator programs for attorneys looking to build their own small or solo law practice.

**Civil Society Consultation
with WH-LAIR on**

Goal 16 Access to Justice Indicators and Data

Proposed Consumer Protection Access to Justice Indicators

by

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In a 2014 study, the Urban Institute found that approximately 34% of all Americans had at least one nonmortgage account reported as being in collection.² Collection of that debt is a \$13 billion industry.³ Although collectors use a number of methods to obtain payment, it is estimated they file millions of lawsuits in state courts each year to collect the debt those accounts represent.⁴ State courts collect data regarding those lawsuits, including such things as the number and types of cases filed and closed, as well as the outcomes of the cases.⁵ While these databases can be a rich source of information, they do not provide a complete picture of consumers' inability to access justice in collection litigation.⁶

Enhanced statistical reporting by the courts can help measure **access to counsel** as one indicator of access to justice in debt collection cases. The vast majority of creditors are represented by counsel in collection litigation; consumers are not and data regarding self-represented litigants in collection cases is not widely available.⁷ Although, state courts have begun to report the number of cases in which self-represented plaintiffs appear, they may not report information on self-represented defendants,⁸ nor do they report outcomes based on whether parties are represented. Additionally, cases to collect commercial and consumer debt may be reported in a single category.⁹ Accordingly, the state court databases cannot report what other studies have shown regarding parties' unequal access to counsel, i.e., that consumers appearing by counsel have better outcomes in collection litigation than consumers who don't.¹⁰

Access to information can be another measure of access to justice. A recent study of debt collection in the Texas courts shows wide disparity in outcomes across the state.¹¹ One explanation was the significant difference in the type and quality of information available to the self-represented litigants through the courts. A forthcoming white paper describes in detail the variation found, not only from county to county within the state, but also between courts within individual counties.¹² More troubling, however, is a finding that most information made available to self-represented litigants by the courts was directed to *plaintiffs*; none of the courts surveyed offer comprehensive, practical online resources designed to help pro se defendants in collection cases navigate the complex court process.¹³

A third measure of access to justice for consumers is **physical access to the courts**. Can consumers reach the courts during regular business hours? Are they accessible by public

transportation? Are court staff trained to provide service to the public? Are resources available for language minorities or persons with disabilities? The answers to these questions and others can be determining factors in the quality of access to justice for many consumers.

The following are suggested access to justice indicators in each of three categories: 1) access to counsel; 2) access to information; and 3) physical access to the courts. The suggestions below are not exhaustive but should provide a starting point for further development.

- **Proposals to enhance courts' statistical reporting and measure access to counsel**
 - Collect data and report number of self-represented plaintiffs *and* defendants in all case types across all jurisdictions
 - Report outcome categories for represented and self-represented parties
 - Update number and type of outcome categories to better reflect disposition, e.g., is a dismissal with prejudice, or without prejudice? Did the dismissal occur before service of process? Does it represent a settlement or other agreement regarding the case?
 - Update reporting categories of cases to reflect practical distinctions in case types, e.g., separate categories for reporting of commercial and consumer debt collection

- **Proposals to measure access to information**
 - Collect data on scope and quality of online legal information available to litigants through the courts' own websites
 - Determine availability of court-approved forms for both plaintiffs and defendants and whether they are tailored for type of case
 - Collect data on availability, scope and usefulness of printed material on-site at courts, e.g., does it relate to court process or substantive law? Was it helpful?
 - Assess existence of court-sponsored self-help centers, navigator programs, if any, including location, method of staffing (attorney or nonattorney, volunteer or paid), number of persons served, etc.
 - Assess accessibility of information to language minorities whether written or available on-site, e.g., translators, trained court-personnel, etc.

- **Proposals to measure consumers' physical ability to access courts**
 - Collect data regarding courts' business hours, including data regarding any special operating hours on weekends or evenings
 - Collect data regarding average distance traveled by litigants to reach courts
 - Determine accessibility of courts by public transportation
 - Determine availability of resources for persons with limited sight or hearing or other disabilities
 - Determine availability of on-site resources for language minorities, including interpreters, and any associated costs to be paid by litigants
 - Collect data on training of court staff to work with members of the public

¹ I provide my institutional affiliation for identification purposes only. The proposals contained in this submission are my own and are not intended to reflect the opinions or views of the University.

² CAROLINE RATCLIFFE ET AL., URBAN INST., DELINQUENT DEBT IN AMERICA 1, 9 (2014) (using data from one of the three largest credit bureaus).

³ See CONSUMER FIN. PROTECTION BUREAU, FAIR DEBT COLLECTION PRACTICES ACT, CFPB ANNUAL REPORT 2016 (“2016 FDCPA REPORT”) http://files.consumerfinance.gov/f/201603_cfpb-fair-debt-collection-practices-act.pdf.

⁴ Maria Aspan, *Courthouse "Rocket Dockets" Give Collectors Edge of Debtors*, American Banker (Feb. 11, 2014), (“Rocket Dockets”) http://www.americanbanker.com/issues/179_29/courthouse-rocket-dockets-give-debt-collectors-edge-over-debtors-1065545-1.html?zkPrintable=1&nopagination=1.

⁵ See, e.g., Tex. Office of Court Admin., Annual Statistical Report for the Texas Judiciary: Fiscal Year 2014 (Texas OCA 2015 Report) (2015) <http://www.txcourts.gov/media/1308021/2015-ar-statistical-print.pdf>; see also NATIONAL CENTER FOR STATE COURTS & CONFERENCE OF STATE COURT ADMINISTRATORS, STATE COURT GUIDE TO STATISTICAL REPORTING, (“NCSC & CSOA Guide”) <http://www.courtstatistics.org/>.

⁶ The Consumer Financial Protection Bureau’s Consumer Complaint Database is an especially rich source of information regarding consumer debt collection. See CONSUMER FIN. PROTECTION BUREAU, 2016 FDCPA REPORT, *supra* note 3 at 16-22. http://files.consumerfinance.gov/f/201603_cfpb-fair-debt-collection-practices-act.pdf. See also Judith Fox, *Rush to Judgment: How the Fair Debt Collection Practices Act Fails to Protect Consumers in Judicial Debt Collection*, 13 FLA. ST. U. BUS. REV. 37, 37 (2014) (reporting “real harm” to consumers resulting from collection litigation).

⁷ See JON LEIBOWITZ ET AL., FEDERAL TRADE COMM’N, REPAIRING A BROKEN SYSTEM: PROTECTING CONSUMERS IN DEBT COLLECTION LITIGATION AND ARBITRATION 7 (July 2010) (reporting consumers failing to appear in collection litigation at rate between 60% to 90%).

⁸ In 2014, the Texas Office of Court Administration (“OCA”) reported only the the number of cases in which a plaintiff is self-represented in the district and county-level courts; it does not report the number of cases in which the defendant is self-represented. It reported no statistics for self-representation in the Justice Courts, the preferred venue for consumer collection cases under \$10,000. TEX. OFFICE OF COURT ADMIN., ANNUAL STATISTICAL REPORT FOR THE TEXAS JUDICIARY: FISCAL YEAR 2014 (TEXAS OCA 2014 REPORT) <http://www.txcourts.gov/media/885306/annual-statistical-report-fy-2014.pdf>.

⁹ For example, the NCSC & CSOA Guide identifies one category of cases as “Seller Plaintiff (Debt Collection)” without regard to whether the debt is consumer or commercial or whether the defendant is individual or an entity. See NCSC & CSOA GUIDE, *supra* note 5, at 6. As a result, the case category as used in Texas courts encompasses both consumer and commercial cases at the district and county court level, while the more specific “debt claim case” as defined in the Texas Rules of Civil Procedure is used to designate cases in the Justice Court only. See TEXAS OCA 2015 REPORT, *supra* note 5 at Detail 44.

¹⁰ See, e.g., Peter A. Holland, *The One Hundred Billion Dollar Problem in Small Claims Court: Robo-Signing and Lack of Proof in Debt Buyer Cases*, 6 J. BUS. & TECH. L. 259 (2011); Mary Spector, [*Debts, Defaults and Details: Exploring the Impact of Debt Collection Litigation on Consumer and Courts*](#), 6 VA. L. & BUS. REV. 257 (2011).

¹¹ See *Collection Texas Style: An Analysis of Consumer Collection Practices In and Out of the Courts*, 67 Hastings L.J. 1476 (2016) (with Ann Baddour).

¹² See Texas Appleseed & SMU Dedman School of Law Consumer Advocacy Clinic, *Improving Access to Justice in Texas Courts: Pro Se Defendants and Debt Collection Claims in Justice Courts* (Sept. 2016) (draft on file with the author).

¹³ *Id.*

F. Gender-Based Violence

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White House Interagency Access to Justice Consultation Statement on Domestic Violence Data Gathering

Domestic Violence & Access to Justice

All individuals should be able to access the civil and criminal justice systems and obtain fair and just outcomes, regardless of social status, immigration status, or past involvement with the criminal justice system. For survivors of domestic violence, access to justice is often intrinsically tied to legal remedies that maintain the safety and security of victims and their children.

Communities can enhance access to justice by eliminating barriers that prevent survivors from understanding and exercising their legal rights and obtaining the outcomes they seek. New data measures may focus on victim ability to access resources, court processing of domestic violence cases, procedural fairness, community response and technology.

Proposed Data Measures

Domestic Violence and the Community

Data on available victim services and the referral process within a community measures whether courts and their partners are actively engaged in preserving the agency and security of survivors and how the current community response can be improved.

Data measures include:

- the number of victims referred to services;
- types of services;
- follow-up contact with victims and ongoing contact with victims and their families;
- exit interviews with victims;
- and the presence of court security.

Detailed data measures on stakeholder involvement include:

- whether the court continually seeks new and relevant stakeholders and agencies to participate in stakeholder meetings;
- whether the court partners with culturally-specific service providers to ensure that underserved populations are able to access voluntary and mandatory services;
- and the training of court staff and service providers.

Domestic Violence and Courts

Data on domestic violence courts and cases reveals current challenges and gaps in case processing and court administration.

Quantitative data indicates the level of efficiency in case processing as well as how cases are adjudicated:

- the number of domestic violence cases,
- types of cases,

- time from incident to arraignment,
- number of pre-order appearances;
- number of continuances,
- percentage of dismissals,
- number of dedicated staff and non-dedicated staff,
- whether the judge grants child-related relief, child support, and/or maintenance with orders of protection,
- and whether the judge orders removal of firearms/weapons.

Qualitative data uncovers more nuanced details about the obstacles the court faces in achieving safety for victims:

- reasons for dismissal,
- reasons for granting orders,
- and court protocol in dealing with overlap of cases (e.g. orders of protection and child custody).

Domestic Violence and Procedural Fairness

Procedural Justice refers to the fairness of justice procedures and interpersonal treatment of litigants, victims, and defendants. Research indicates that litigants are more likely to comply with court orders and follow the law if they felt that they were treated fairly, even if the final outcome was not in their favor.

Increased compliance is important in domestic violence cases because it results in fewer violations of court orders, fewer returns to court, reduced dockets, and less strain on funding and resources. Measuring data on procedural fairness reveals whether courts are facilitating greater victim safety and reducing offender recidivism by giving parties a voice in the courtroom.

Data measures include:

- the physical structure of the courtroom, i.e. separate waiting rooms, clear signage, access for people with disabilities, and gender neutral facilities;
- the availability of services for limited English proficient litigants, i.e. interpreter services and training, materials in different languages of the jurisdiction;
- and the availability of pro-bono and/or low-cost attorneys for both petitioners and respondent.

Domestic Violence and Technology

The use of technology in domestic violence cases is a recent innovation for courts, attorneys, and law enforcement. Data on technology demonstrates whether courts are at their full potential in responding to domestic violence using technological innovations, namely with information sharing between agencies and within the court (e.g. the clerk's office and the judge, the civil and criminal court, etc.).

Data measures include:

- the use of the databases to flag presence of domestic violence in cases;
- the presence and usage of accessible registries for orders of protection;
- the existence of court protocol for timely entering information on databases and registries;
- and whether the decision-maker has access to the order of protection history for each case.

Civil Society Consultation with WH-LAIR on Access to Justice Indicators for Implementation of Goal 16 of the 2030 Agenda for Sustainable Development

Written Submission of Pamela Brown, Director, Bi-National Project on Family Violence at Texas RioGrande Legal Aid, Inc.¹ September 15, 2016

Thank you for the opportunity to present these comments today. I direct a small project that represents survivors of domestic violence in legal cases that are made more complicated by virtue of international borders. Most of our cases involve a perpetrator using the existence of an international border, most often the U.S. - Mexico border, and all that means in terms of immigration status, language, culture, geography, etc., to exert dominance and control over the victim/survivor. Despite having this niche practice, I have tried to develop indicators that would be relevant to access to justice efforts for domestic violence survivors in general. And, because statistics continue to show that most victims of domestic violence are women, particularly women of color,² you will note that my proposals reflect that fact.

Because I have represented many domestic violence survivors who come from different legal systems and traditions from our own, and who refer to me as a human rights attorney, I have evolved to view my work in that context. So, it is from this perspective that I approached the challenge of proposing some indicators for evaluating U.S. progress in meeting SDG Goal 16 for those who have experienced domestic violence (and/or been victims of human trafficking).³

Goal 16 has been broadly referred to as relating to “access to justice” although it also mentions building effective, accountable and inclusive institutions at all levels. In my experience, it is this latter objective that is critical for securing justice for survivors of domestic violence⁴. Thus, the indicators I propose will primarily be directed to evaluating what the institutions that touch the lives of survivors of domestic violence do to facilitate the ability of this population to access justice. In addition, because others, including several agencies among those here today, have devoted much more thought than I to conceiving potential quantitative indicators for evaluating whether progress is being made in securing access to justice for this population, I have chosen to focus my efforts on indicators related to process and outcomes.⁵

Process or Policy Indicators

a. Broad Access to Legal Services

- Do the institutions established to promote access to justice have policies that prevent classes of domestic violence survivors, often the most marginalized, such as the incarcerated or undocumented victims, from being eligible for services?
- Is the state or its institutions restricting the ability of legal services providers to sue government institutions on behalf of survivors?
- Is the state or its institutions unduly limiting the populations to be served or the legal remedies or mechanisms to be relied upon to assist survivors?

- Do the institutions established to promote access to justice have policies in place that limit the tools available for advocates to assist low income victims/survivors achieve justice and effectuate change, such as organizing, lobbying, participating in class actions?
- Do the institutions established to promote access to justice have policies that actually limit access for marginalized populations, such as undocumented persons or those who may be incarcerated?
- Do laws exist to prevent or discourage perpetrators of violence from using the justice system to further victimize the victim, i.e., vexatious litigant statutes?
- Are laws in place to provide immediate and consistent income support to victims who seek to leave the intimate partner perpetrator?
- Are there laws in place that provide women who are subjected to violence meaningful access to just and effective remedies for the harm they have suffered?
- Are there policies in place that recognize the adverse impact of economic and psychological abuse and provide means to redress their effects?

b. Resources

- Are states providing adequate resources for legal services providers to pursue justice for survivors in multiple contexts-immigration relief, unemployment, housing, civil rights, criminal justice, etc.?
- Are sufficient state resources devoted to reaching, engaging and providing remediating services to survivor populations marginalized by language, disability, or culture?
- Is the state providing adequate resources to inform survivors, particularly those in marginalized communities, of potential legal remedies or services available to them to move toward lives free from violence?
- Are state institutions providing adequate resources to address both sex and labor trafficking?
- Are state institutions providing adequate resources to address the legal needs of both sex and labor trafficking victims?

c. Training

- Are law enforcement officers adequately trained to identify victims of trafficking?
- Are other state institutions that may encounter victims of trafficking sufficiently trained to identify them as such and guide them to the services they need?
- Are laws in place requiring appropriate training and evaluation of institutional actors, such as law enforcement officers, child protective agency personnel and judges, whose decisions affect survivors of domestic violence?
- Do state institutions such as prosecutors' offices and law enforcement agencies have domestic violence units with specialized training on the issue and the special populations most affected?

d. Inclusiveness

- Is the state inclusive in developing policies that affect survivors-including marginalized populations⁶ to develop policies that avoid adverse impacts (example: mandatory arrests)?
- Has the state adequately publicized remedies and services available to survivors in marginalized communities so that they can access them?
- Are state institutions supporting efforts to organize marginalized communities to be able to meaningfully participate in creating the solutions they determine they need?
- Do the institutions take into account the particular problems faced by low-income survivors of domestic violence and recognize the role of the survivors to participate in the elaboration and implementation of development planning at all levels?
- Are there policies in place that encourage organizing marginalized communities to participate in law reform to seek to improve their circumstances from their point of view?

Outcome Indicators

Is there a reduction in the disparity of incidences of domestic violence between the most disadvantaged groups and the rest of the population?

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² Black, M.C., Basile, K.C., Breiding, M.J., Smith, S.G., Walters, M.L., Merrick, M.T., Chen, J. & Stevens, M. (2011). The national intimate partner and sexual violence survey: 2010 summary report. Retrieved from http://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf.

³ It is impossible to engage in this exercise without acknowledging the tremendous quantity of work that the U.N. has devoted to establishing the human rights framework on which the SDGs are based, starting with the UN Universal Declaration of Human Rights <http://www.un.org/documents/ga/res/48/a48r104.htm> and including the UN Declaration Against Violence Against Women (1993) A/Res/48/104 <http://www.un.org/documents/ga/res/48/a48r104.htm> and the Convention on the Elimination of Discrimination Against Women <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>, as well as developing transnational indicators on which to measure progress.

⁴ In referring to survivors of ‘domestic violence’, I intend to incorporate the broad definition of violence against women set forth in Articles 1 and 2 of the UN Declaration Against Violence Against Women, *Id.*

⁵ I’m also more interested in obtaining a broad and holistic picture of progress towards the goal. By way of example, if we simply count how many victims have obtained restraining orders without taking into account the reasons survivors don’t want to pursue restraining orders, e.g., the impact on their intimate partner to retain employment when the survivor relies on the partner to pay child support, we lose track of victim centered advocacy and whether the survivor is accessing the justice she actually needs.

⁶ The term “marginalized’ community refers broadly to **groups that are confined to the lower or peripheral edge of the society**. Such a group is denied involvement in mainstream economic, political, cultural and social activities and for the purposes of this paper includes, but is not limited to people of color, new immigrants, undocumented immigrants, migrants, non-English speakers, and homeless, geographically isolated, disabled and incarcerated persons.

G. Healthcare

**Written Statement for the Civil Society Consultation with
WH-LAIR on Goal 16 Access to Justice Indicators and Data**

Joel Teitelbaum, J.D., LL.M., Co-Director (joelt@gwu.edu)

Ellen Lawton, J.D., Co-Director (ellawton@gwu.edu)

National Center for Medical-Legal Partnership, George Washington University

Thank you for the opportunity to provide a statement concerning data points that the United States government could track and collect as a means of improving access to justice in the field of health care. Considered broadly, having “access to justice” helps some of our country’s most vulnerable individuals and populations stabilize and improve their lives across a range of needs, resource limitations, and structural barriers, and the need for justice in the areas of health care access, quality, and financing is particularly acute. Indeed, of all the core entitlements essential to human fulfillment, a right to the highest attainable standard of physical and mental health may be the most fundamental: While good health is obviously necessary for general well-being and comfort, it also allows individuals to exercise a range of other rights such as political participation, education, employment, and personal safety, and it allows society more broadly to strive for economic prosperity, political stability, and collective security.

In furtherance of this notion of health equity, the National Center for Medical-Legal Partnership aims to improve the health and well-being of people and communities by leading health, public health and legal sectors in an integrated, upstream approach to combating health-harming legal and social conditions. As co-Directors of the National Center, we offer first not a specific data point for tracking, but rather an overarching recommendation which would, we believe, have enormous positive consequences for individuals and populations whose health is negatively impacted by unmet legal and social needs: that the civil legal aid community take a page from the fields of public and community health and adopt a model of *preventive law*, permitting the field to move from individual legal interventions at moments of crisis to broader systemic impact at the institutional and community levels. Thus, in the same way that individual medical care cases act as diagnostic tools for failed policies at the community or population level, so to should individual legal representation be used in the aggregate by the civil legal aid field to target structural and other failures which are health-harming in nature.

In terms of specific suggestions regarding data points that the government could track as a means of improving access to justice in the field of health care, we offer the following:

- Data on patients' own assessments of their interactions with their health care providers and with the representatives of their health plans. These data should focus on patients' assessments of trust, impartiality, cultural competence, and their own participation in medical decision-making.
- Data on where legal aid recipients receive their health care services.
- Data on whether providing formerly incarcerated individuals with access to medical, behavioral health, and social services contribute to a reduction in crime/recidivism.
- Data on the percent of health care professionals who have received training in the social determinants of health (including the notion of law as a social determinant of health).
- Data on the percent of medical care patients who were screened for health-harming legal needs.
- Data on the percent of medical care patients who are determined to have at least one health-harming legal need and in turn have that need addressed by the health care organization.
- Data on the percent of patients who are referred to civil legal aid services by a health care professional/organization and in turn are subsequently administered a legal screening.
- Data concerning the average amount of financial benefit that has an associated monetary value and is received by a patient as a result of a legal intervention.
- Data concerning the total dollars recovered by a health care organization from Medicaid and Medicare as a result of a legal intervention on behalf of a patient

Civil Society Consultation
with WH-LAIR on Goal 16 Access to Justice Indicators and Data
Proposed Health and Healthcare Indicators by James Teufel, MPH, PhD

Better access to justice is associated with higher overall health, greater life expectancy, fewer reported unhealthy days, less food insecurity, as well as lower rates of obesity, hypertension, diabetes, uninsured, low birth weight infants, and preterm births. The magnitude of association between access to justice and these state health outcomes meets or exceeds the association of income inequality and the same health indicators.¹ Of the four Justice Index scales, access to legal aid attorneys (legal aid attorneys per number of people in poverty) and the quality of state self-representation policies are most predictive of state health.² Studies of individuals also support positive health outcomes of access to justice. Patients receiving legal aid services improve in their patient activation, reduce self-reported stress, and decrease their asthma severity.³ Legal aid cases or threats of litigation can also improve access to payer sources for care.⁴ In reviewing case types, legal aid efforts focus on key factors linked to population health: socioeconomic status, the physical environment, and payer sources; these factors predict 60% of population health in the United States.⁵ The access to justice movement in legal practice and population health movement in public health and healthcare share values. Both have an interest in improving the living conditions of vulnerable or economically disadvantaged people and communities. Five categories of justice indicators applicable to health and healthcare are recommended.

Monitoring the prevalence of health harming socioeconomic and psychosocial using ICD-10

The ICD-10-CM could be used to collect key screening metrics that are promoted to be at the intersection of justice and health. During October of 2015, as supported by the American Medical Association and the Centers for Medicare and Medicaid Services, healthcare providers switched to the tenth revision of the International Statistical Classification of Diseases and Related Health Problems (ICD-10) for coding patient diagnoses. ICD-10 includes approved and billable codes that, if utilized, will enable healthcare systems to monitor proxies for access to justice while coding patient diagnoses.⁶ ICD-10-CM codes Z55-Z65 cover diagnoses of persons with potential health hazards related to socioeconomic and psychosocial circumstances.⁷ These codes provide context to a medical encounter and the potential barriers to enacting treatment plans. Similar to screening areas promoted by the National Center for Medical-Legal Partnerships,⁸ these ICD-10-CM codes identify potentially health-harming legal needs related to education, employment, physical environment exposures, housing, income, social environment, food security (also, malnutrition, E40-E46) and familial problems (Z55-Z64). Additionally, Z65 subcodes address more specifically problems related to legal circumstances.⁹ Building a monitoring strategy based on the ICD-10-CM immediately overcomes the necessary condition of establishing a systematic coding system for healthcare providers in the United States. Providers would need to receive training and be incentivized to use Z55-Z65 codes to avoid underestimating justice-related diagnosis.

Legal aid health-related social return on investment

The health-related social return on investment of legal aid should be estimated annually for the nation. For example, although less frequent after the passage of the Affordable Care Act, legal aid continues to advocate for wrongfully denied Medicaid applicants.¹⁰ Won Medicaid cases sometimes include retroactive payment for medical care three months prior to the application.¹¹ Successful cases also link a patient to a payer source that tends to stay with them across time; annually approximately 70% of Medicaid enrollees remain on Medicaid into the following year. Recording patient retroactive payments and inferring the typical Medicaid expenditure using Centers for Medicare and Medicaid Services actuarial tables (based on category and year of Medicaid enrollment),¹² the past and future monetary value of Medicaid enrollment cases can be estimated. Beyond individual cases, class actions or threats of litigation can result in broader policy changes with health-related impacts. For example, beginning July 1, 2016, Medicaid rules were changed in the state of Delaware to include payment for early treatment of hepatitis C. The policy changes were inspired by actions of legal aid of

Delaware Community Legal Aid Society, Inc.¹³ Expanding access to early hepatitis C treatment among Medicaid enrollees opens opportunities to save 1050 to 1750 years of healthy life across the next three years. The expansion of covered services could pay for 41 to 69 million dollars in services. As highlighted in recent popular press articles, the federal government values a year of human life at approximately \$120,000. On a monetary scale and from the perspective of justice, the estimated cost to pursue the legal action was \$20,000. The resulting value of human life and payment for services gained is between 167 and 278 million; a return on investment between 830,000% and 1,400,000%.¹⁴ It is feasible and useful to connect legal aid cases at the individual and policy level to existing health research to estimate health-related social return on investment of legal aid.

Evaluate nonprofit hospital contributions to justice at the community level

Nonprofit hospital IRS documentation could be analyzed for contributions to community justice. Benchmarks could be established to evaluate nonprofit hospitals benefiting communities. Nonprofit hospitals in the United States have an obligation to provide community benefits to maintain their nonprofit status. These activities are reported annually in schedule H of nonprofit hospital 990s. Within schedule H, financial assistance is recorded in part I and community building activities are described in part II. Part II of Schedule H documents nonprofit hospital contribution to community housing improvements, economic development, community support, coalition building, and community health advocacy.¹⁵ An in-depth review and report of part I (financial assistance), part II (community building), and part VI (supplemental information) would explore nonprofit hospitals' investment by type, quality, and quantity to justice and equity efforts in the United States. This analysis would also result in identifying variability among hospitals. To supplement an analysis of Schedule H, the National Center for Medical-Legal Partnership¹⁶ could be engaged to estimate the national investment by nonprofit hospitals as well as other types of healthcare entities (e.g., insurers and community health centers) in medical-legal partnerships that provide legal aid services to patients in the United States.

Analyzing ecological associations between justice and health surveillance systems

Annual access to justice data collected at the level of the state through the Justice Index¹⁷ can be statistically tested for associations with key health indicators also collected annually at the level of the state.¹⁸ Examples of public health surveillance systems include CDC WONDER National Health and Nutrition Examination Survey (NHANES), The Behavioral Risk Factor Surveillance System (BRFSS), and Youth Risk Behavior Surveillance System (YRBSS).¹⁹ These ecological studies can explore the impact of significant policy or resource changes assumed to impact populations. Epidemiological studies also support that averages of populations are sometimes useful in predicting the number of new cases of health or social problems. Ecological associations build upon existing resources and generate hypotheses to be further tested at multiple or individual levels.

Legal aid descriptive and analytic health research studies

Allostatic load is a key biological indicator of stress that could be measured among legal aid clients in partnership with health researchers. Chronic stress is linked to many health conditions and outcomes.²⁰ A study to measure the allostatic load of legal aid clients would be useful in improving understanding of the level of stress of clients related to the type, quantity, and quality of their presenting legal aid issue(s). Broader self-reported health histories could be embedded within this type of study to collect and explore the association of legal issues and other health problems. Additionally, given that 50% of legal aid clients are currently turned away due to lack of attorney supply,²¹ it would be more feasible and ethical to randomly assign clients to treatment groups (representation or advice) and control groups (no representation or no advice) to attempt to isolate the impacts of legal aid on access justice and client health using a large scale study. Of the few studies to date conducted on the topic of civil justice and health, most include small sample sizes.

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H. Housing

CIVIL SOCIETY CONSULTATION WITH WH-LAIR ON GOAL 16 ACCESS TO JUSTICE INDICATORS AND DATA

Proposed Indicators that Reflect the Role of Access to Justice in Ending Extreme Poverty and Protecting and Fostering Well-Being

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This statement proposes the collection of data on the impact of legal assistance on human well-being as an important access to justice measure. Access to justice has a profound impact on people's well being. Indeed, low-income people, much like the wealthy and the middle class, are fundamentally interested in meaningful access to justice in order to be able to adequately protect and advance their interests, not because "access to justice" has any inherent value for them on its own. People who live in poverty want to keep their homes, their jobs and their government benefits. They want to preserve their families, their communities and their way of life. They want to protect their health and safety. And they want opportunities for education, housing, jobs and health care. All of these concerns may require, or only be achievable, with appropriate legal assistance. The Global Goals call for measures intended to end extreme poverty. Using metrics that reflect the impact of access to justice on human well-being as an indicator of progress under Goal 16 thus ties access to justice directly to the Global Sustainable Development Goal of ending extreme poverty.

The impact of access to justice on human well-being can be divided into three categories:

- *Material well-being*, which includes retaining and acquiring income and assets;
- *Physical well-being*, which includes protecting and advancing health and safety; and
- *Social well-being*, which includes resolving family matters, preserving communities and securing opportunities for education and development

Tracking the impact of legal help on these categories of well-being, and not simply tracking the extent to which people get legal help when they need it, is not a new or novel approach. Government agencies and private foundations that support delivery of free civil legal services, like the Legal Services Corporation, have long used outcome results of legal help as indicators of success in delivery of legal services, and have been moving in that direction increasingly in recent years.¹ The financial benefit of legal assistance for clients is, for

¹ See, e.g., LSC, Civil Legal Outcomes Toolkit: <http://clo.lsc.gov/home/>

example, a commonly used metric by IOLTA programs as well.² The Robin Hood Foundation in New York City, in particular, has been a leader in developing metrics for demonstrating financial and other impacts of legal and other assistance on clients' lives.³

A range of outcome data that correlates to the impact of legal assistance on well-being is already collected from civil legal services programs by funding entities.

- Data currently collected that correlates to material well-being includes data-points such as: homes saved; social security, unemployment and other government benefits secured or protected from loss; and employment secured or protected from loss.
- Data currently collected that correlates to physical well-being includes data-points such as: improved living conditions; various forms of abuse halted; physical health protected or advanced through access to health care; and protection from environmental hazards.
- Data on social well-being may be somewhat more difficult to collect because it has a potentially subjective element, but there is relevant hard data in the reporting by civil legal services programs on outcomes such as: families kept together by retaining child custody; divorces secured; and special education and other education benefits obtained.

Outcome data collected by government and private funders from civil legal services organizations can provide a rich array of information that has bearing on the impact of access to justice on human well-being. If aggregated and collected over the long term, this data can provide valuable insight into the extent to which legal assistance contributes to eradicating extreme poverty, and the longitudinal data set can demonstrate how that impact changes over time. It would be enormously useful for LAIR to promote the collection and aggregation of this type of outcome data from the broadest array of funders who collect it. It would also be extremely useful for LAIR to encourage and support greater uniformity in data-reporting requirements on outcomes by federal government agencies and, to the extent possible, by state and local agencies, IOLTA programs and private foundations. Uniformity of data points collected on outcomes of legal assistance would make the aggregated data far more useful. It would also have the added benefit of simplifying the data-collection and reporting obligations of the civil legal services providers, which, as funding sources have multiplied over the past couple of decades, have had to grapple with multiple and often overlapping data-reporting requirements.

² See, e.g., 2014 Annual Report of the IOLA Program of the State of New York, p.3, reporting that New York's IOLA-funded civil legal services programs had obtained \$680.1 million in benefits for clients and had saved clients \$70.1 million in 2013-2014.

³ See, <https://www.robinhood.org/programs>

NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

Civil Society Consultation with WH-LAIR on Goal 16 Access to Justice Indicators and Data: Housing & Homelessness Issues

Homeless and poor people's access to justice in the U.S. is severely limited as the result of limited substantive and procedural rights, and most especially in the lack of access to counsel that makes the substantive and other procedural rights real, in both the civil and criminal context.

Access to civil counsel and substantive rights in housing matters

While those accused of committing certain crimes are entitled to an attorney, 70-90% of tenants facing eviction or homeowners facing foreclosure, an equally life-altering occurrence, do so without counsel, while up to 99% of landlords are represented.¹ Many, even those with meritorious defenses, simply fail to appear and receive default judgments against them because they are intimidated by the process. Numerous pilot projects have shown access to counsel dramatically changes the outcomes in housing cases.² It is essential for the Legal Services Corporation, the Department of Justice, and/or the Department of Housing and Urban Development track the numbers around evictions and foreclosures:

- how many tenants/homeowners are served with eviction/foreclosure suits;
- how many show up in court;
- how many receive judgments for/against them;
- how many tenants/homeowners are represented by counsel;
- how many landlords/banks are represented; and
- how many tenants/homeowners are receiving assistance through limited legal access programs short of full counsel.

In addition to procedural rights, access to justice can be equally shared or denied by substantive laws and policies around eviction and foreclosure. Indicators should track how many communities have policies that support tenants/homeowners rights, including:

- Just cause eviction;
- Judicial foreclosure;
- Warranty of habitability;
- Protecting Tenants at Foreclosure notice/survival of lease;
- Source of income non-discrimination;
- Local Violence Against Women statutes applying federal VAWA protections to private housing; and
- Nuisance abatement ordinances that exempt domestic violence calls from counting against a tenant/landlord.

Much of this data is already available or should be already tracked at the municipal level or by non-governmental organizations, but it is important to collect it all into a national database. Currently, HUD is reviewing its assessment tools for communities to demonstrate they are Affirmatively Furthering Fair Housing.³ Because many of the above policies have disparate

impacts in communities of color, HUD should require communities to submit this information through that form or some similar method.⁴

Access to Justice for Persons Experiencing Homelessness

While not a federally protected class, several states and municipalities have protected persons experiencing homelessness by including them in human rights statutes, hate crime tracking legislation, or other substantive right legislation because they face significant discrimination and obstacles to accessing justice, just as other protected classes do.⁵ Numerous federal agencies have made combating criminalization of homelessness a priority, including through the White House's new Data-Driven Justice Initiative which seeks to track those who are homeless, mentally ill, and/or substance abusers who are frequent targets of law enforcement.⁶ Communities that are engaged with the Data-Driven Justice Initiative may have more data available than other communities, but it is important to attempt to gather as much data as possible, disaggregated by housing status, including:

- Citations given to homeless persons for:
 - Panhandling/begging;
 - Loitering;
 - Camping/sleeping (including in parked vehicles);
 - Sitting/lying;
 - Trespass;
 - Public urination/defecation;
 - Public intoxication;
- Days spent in pre- and post-trial detention;
- Bail denied because of lack of permanent address;
- Number of pleas taken;
- Amount of fees and fines imposed;
- Probation denied because of lack of permanent address; and
- Violations of probation due to lack of permanent address.

In addition, the Education Department (ED) issued important guidance in July emphasizing that states and school districts should refer homeless families or youth to counsel in the event of a dispute between the district and the family regarding homelessness services and that such procedures should not have strict evidentiary standards.⁷ ED should track:

- Numbers and outcomes of disputes;
- Whether families/youth are represented by counsel;
- What evidentiary standards and standards of review are used.

Additionally, many homeless families have their children removed from their custody due to their lack of housing, often compounded by lack of counsel. The Health and Human Services Family & Youth Services Bureau (FYSB) should track:

- In how many removal cases is inadequate housing one of the reasons given; and
- Numbers of cases where families are represented by counsel.

For more information, please contact Eric Tars, Senior Attorney, National Law Center on Homelessness & Poverty, etars@nlchp.org, 202-638-2535 x.120.

¹ See Columbia Law School Human Rights Clinic, Access to Justice: Ensuring Meaningful Access to Counsel in Civil Cases (2013), <https://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/Access%20to%20Justice%20Shadow%20Report%20-%20Final%20%28small%20size%29.pdf>. See also, Office of Civil Justice, New York City Human Resources Administration, Annual Report 2016, 1 (2016): “...in calendar year 2013 only 1% of tenants in New York City housing court were represented by attorneys. ... Only 1% of landlords in eviction proceedings appeared in court without counsel.”

² See, e.g. Office of Civil Justice, New York City Human Resources Administration, Annual Report 2016, 2 (2016). “Residential evictions by city marshals declined 24% in 2015 compared to 2013, a period during which New York City substantially increased funding for legal services for low-income tenants. During 2015, orders to show cause – motions by tenants to reverse a court’s order of eviction – also declined nearly 14%, while the volume of residential eviction cases filed remained largely stable, suggesting increased efficiency in the courts with the increase in legal representation.”

³ See National Law Center on Homelessness & Poverty, Letter to Regulations Division Re: Docket No. [FR-517-N-08] (May 23, 2016), <https://www.nlchp.org/documents/HUD-AFFH-LocalGov-Comment-2016>.

⁴ See id, citing .S. Interagency Council on Homelessness, *Council Confronts Racial Disparities in Homelessness, Reducing Criminal Justice System Involvement*, available at <https://www.usich.gov/news/council-meeting-update-october-2015> (Nov. 5, 2015). U.S. Dep’t of Housing & Urban Dev. Off. of Community Planning & Dev., The 2015 Annual Homeless Assessment Report (AHAR) to Congress, available at <https://www.hudexchange.info/resources/documents/2015-AHAR-Part-1.pdf>. See also National Law Center on Homelessness & Poverty, Homelessness in America: Overview of Data and Causes, available at https://www.nlchp.org/documents/Homeless_Stats_Fact_Sheet (Jan. 2015); Joint Center for Housing Studies of Harvard University, The State of the Nation’s Housing 22-26 (2014), http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/sonhr14_txt_bw-full.pdf (Reporting that, in 2012, 27% of African-American households paid over 50% of their incomes in rent, along with 24% of Hispanic households and 21% of Asian households, while only 14% of white households paid over 50% of their incomes in rent.)

⁵ See National Law Center on Homelessness & Poverty, Human Right to Housing Report Card 2015, 13-16 (2015), https://www.nlchp.org/documents/Right_to_Housing_Report_Card_2015.

⁶ See, *ibid.* “This August, the Department of Justice filed a brief in the Law Center’s case against a Boise, Idaho anti-camping ordinance, stating ‘[i]t should be uncontroversial that punishing conduct that is a universal and unavoidable consequence of being human violates the Eighth Amendment. . . Sleeping is a life-sustaining activity—i.e., it must occur at some time in some place. If a person literally has nowhere else to go, then enforcement of the anti-camping ordinance against that person criminalizes her for being homeless.’ ... The U.S. Interagency Council on Homelessness also contributed by issuing long-awaited guidance on encampments, specifically stating, ‘The forced dispersal of people from encampment settings is not an appropriate solution or strategy.’ A month later, HUD followed through by creating funding incentives to stop criminalization in their \$1.9 billion grant program for homeless Continuums of Care.” See also, White House, Office of the Press Secretary, FACT SHEET: Launching the Data-Driven Justice Initiative: Disrupting the Cycle of Incarceration, (June 30, 2016), <https://www.whitehouse.gov/the-press-office/2016/06/30/fact-sheet-launching-data-driven-justice-initiative-disrupting-cycle>.

⁷ Dept. of Education, Education for Homeless Children and Youths Program Non-Regulatory Guidance, 31, 33 (July 27, 2016), <http://www2.ed.gov/policy/elsec/leg/essa/160240ehcguidance072716.pdf>: In establishing a strong effective dispute resolution process, LEAs may also consider including the following items in information distributed to parents, guardians, or unaccompanied youths when informing them of decisions regarding enrollment: ... List of legal and advocacy service providers in the area that can provide additional assistance during any part of the process...”... “The dispute resolution process should be as informal and accessible as possible, including not requiring unnecessary notarization or authentication of documents or other materials submitted, not requiring strict legal evidentiary standards, and allowing for impartial and complete review.”

I. Immigration

Civil Society Consultation
on
Goal 16 Indicators for Access to Justice in the United States

Proposed Immigration Access to Justice Indicators
by
Professor Peter L. Markowitz

Hundreds of thousands of immigrants are placed in removal proceedings (colloquially known as deportation proceedings) each year by the United States government.¹ Deportation is among the most severe deprivations of liberty meted out in any judicial proceedings in the United States and has been likened by the United States Supreme Court to the “loss of all that makes life worth living.”² Many of the individuals facing removal are detained—indeed the United States detains hundreds of thousands of immigrants annually.³ The barriers to access to justice for immigrants in removal proceedings generally, and detained immigrants in particular, are numerous and profound. However, apart from changes in the substantive law governing removal, the single greatest barrier to access to justice for immigrants in the United States is the lack of access to counsel and, relatedly, the lack of recognition of a right to appointed counsel for indigent immigrant facing removal. Accordingly, the metrics and pilot study proposed below focus primarily on the issue of access to counsel.

I. Measuring Access to Counsel and Its Impact

In the last several years, a number of studies have emerged exploring the issue of access to counsel in removal proceedings.⁴ The studies have revealed the scale of the immigrant representation crisis and given us some sense of the significant impact counsel can have on the outcome of a removal case. These studies, however, are insufficient to adequately assess the state of access to justice for two reasons: (1) they were all limited by the current data collected by the Executive Office of Immigration Review (EOIR)⁵ and by the Department of Homeland Security (DHS);⁶ and (2) they all provide a snap shot assessment and none are ongoing longitudinal studies that will allow the measure of progress over time. In order to address these shortcomings, EOIR and DHS should begin collecting⁷ and regularly publishing the following data:

- a. Represented vs. Unrepresented** – EOIR currently gathers data on whether respondents in removal proceedings are represented or unrepresented. In order to understand the contours of the representation problems, EOIR should disaggregate its represented vs. unrepresented data by the following groups:
 - i. Disaggregate lawful permanent residents vs. other respondents;**
 - ii. Disaggregate detained vs. non-detained respondents;**
 - iii. Disaggregate by immigration court;**
 - iv. Disaggregate by respondents age groups (e.g., under 10 yrs, 10-13 yrs, 13-16 yrs, 16-18 yrs, 18-21yrs, 21 yrs+);**
 - v. Disaggregate by individuals who deny alienage allegation vs. those that concede they are not U.S. citizens;**
 - vi. Disaggregate by individuals who concede removability and forego any application for relief vs. those who either challenge removability or submit applications for relief;**
 - vii. Individuals who assert a mental impairment or for whom the Immigration Court conducts a competency hearing.⁸**

- b. Outcomes by Representation Status** – For each of the groups enumerated in Part I(a)(i)-(vii), EOIR should publish outcome metrics explaining what percentage of the represented vs. unrepresented group had their cases disposed of by (1) a removal order, (2) termination upon a finding that the respondent was a U.S. citizen, (3) termination upon a finding that the respondent is otherwise not removable; (4) a grant of relief based upon a finding of potential persecution if returned; (5) a grant of relief on non-persecution grounds; (6) administrative closure; (7) or a grant of voluntary departure.

II. Pilot Study of Universal Access to Counsel Programs – There is no other arena of law in the United States where the federal government locks individuals up and forces them to litigate for their liberty against trained government lawyers without any assistance of counsel. This phenomenon is made all the more troubling because immigration law is one of the most counter-intuitive and complex fields in America law and immigrants are the group least likely to be familiar with our domestic law and most likely to face significant linguistic barriers. The lack of appointed counsel for detained immigrants in particular is a stain on the America system of justice. Recently some local jurisdictions have developed assigned counsel universal representation programs to attempt to bring a measure of justice and humanity to their immigrant communities. Most notably, New York City has launched the New York Immigrant Family Unity Project (NYIFUP). This program presents an extraordinary opportunity for the DOJ and DHS to study the impact and feasibility of establishing a national right to appointed counsel for indigent detained immigrants. The government should:

- a. Study the Impact of NYIFUP on:**
 - i. Outcomes in removal proceeding;**
 - ii. Efficiency of removal proceedings and resultant cost savings to EOIR**
 - iii. Efficiency and cost savings to detention and other DHS operations;**
 - iv. Collateral cost savings to local and states governments.**
- b. Create and study replication universal representation projects in detained Immigration Courts in other parts of the country.**

Ultimately, DOJ should produce a report assessing the desirability, feasibility and cost of establishing a national right to appointed counsel for detained indigent respondents.

III. Measuring Other Access to Justice Indicators

- a. Detention** – Together with access to counsel, detention is the greatest barrier to access to justice for immigrants. DHS should gather and regularly publish detention rates and average bond amounts for each of the groups enumerated in Part I(a)(i)-(vii).
- b. Venue** – Access to justice is significantly undermined when detained immigrants are placed in removal proceedings in remote detention facilities thousands of miles from their homes and communities. DHS should gather and regularly publish the percent of detained immigrants placed in removal proceedings outside the immigration court having jurisdiction over their place of residence for each of the groups enumerated in Part I(a)(i)-(vii).
- c. Family Unity** – Family unity is the corner stone of the American immigration system. However, one of the greatest substantive barriers to access to justice for immigrants is that Immigration Judges are often unable to even consider the impact of deportation on (1) spouses, (2) minor children, (3) adult children and (4) elderly parents. DHS should gather and regularly publish the percent of removed immigrants who have family members in the United States in each of the foregoing categories who are U.S. citizens and who are not U.S. citizens.

¹ See DHS Table on Aliens Removed or Returned: FYs 1892 to 2014, available at <https://www.dhs.gov/yearbook-immigration-statistics-2014-enforcement-actions>.

² *Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922).

³ New Data on 637 Detention Facilities Used by ICE in FY 2015, TRAC Immigration, available at <http://trac.syr.edu/immigration/reports/422/>.

⁴ See, e.g., National Immigration Law Center, Blazing a Trail: The Fight for Right to Counsel in Detention and Beyond (March 2016), <http://www.nilc.org/wp-content/uploads/2016/04/Right-to-Counsel-Blazing-a-Trail-2016-03.pdf>; Dr. John D. Montgomery, Nera Econ. Consulting, Cost Of Counsel In Immigration: Economic Analysis Of Proposal Providing Public Counsel To Indigent Persons Subject To Immigration Removal Proceedings (2014), http://www.nera.com/content/dam/nera/publications/archive2/NERA_Immigration_Report_5.28.2014.pdf; *Accessing Justice: The Availability and Adequacy of Counsel in Removal Proceedings New York Immigrant Representation Study Report: Part 1*, 33 CARDOZO L. REV. 357, 358 (2011); Peter L. Markowitz, *Barriers to Representation for Detained Immigrants Facing Deportation: Varick Street Detention Facility, A Case Study*, 78 FORDHAM L. REV. 541, 542 (2009).

⁵ EOIR is the division of the Department of Justice that houses the nation's immigration courts.

⁶ DHS is the department that houses the nations immigration enforcement agencies.

⁷ Some of the below data is already being collected and all that would be required is to cross-reference data the agencies already gather.

⁸ With one exception, all of the groups enumerated above at Part I(a)(i)-(vii). are either groups of particular vulnerable individuals (such as children and the mentally ill) and/or groups with heightened due process rights arguably requiring the appointment of counsel (such as lawful permanent residents or people with colorable claims of U.S. citizenship). The sole exception is Part I(a)(iii)—disaggregation by immigration court—which is aimed at allowing government actors and advocates to garner and deploy resources to areas of greatest need.

J. Public Benefits

**Civil Society Consultation
On
Goal 16 Indicators for Access to Justice in the United States**

**Proposed Public Benefits Justice Indicators
by
Don Saunders**

This year the United States recognizes the 20th anniversary of the Temporary Assistance to Needy Families (TANF) program that arose from political efforts to “reform” the basic safety net welfare program protecting American families living in poverty. This so-called reform led to a decrease from 68 percent of poor families receiving basic subsistence benefits under the Aid to Families with Dependent Children (AFDC) program to just 23 percent of such families under TANF.¹ These opposing trends — TANF caseloads falling while poverty is rising — primarily result from changes in the basic structure of the welfare system; but the inability of low-income people and families to effectively assert their rights in the justice system have undoubtedly contributed to the shredding of the safety net for people living in poverty and extreme poverty. These justice gaps have also had a considerable impact on the ability to enforce access to basic needs in other benefit programs, such as the Supplemental Nutrition Assistance Program (SNAP), child care and support, Medicaid and the Supplemental Security Income program.

Measuring the defects in the justice system that have an impact on access to public benefits requires the government to take a much deeper look at the way in which our administrative agencies and courts approach the adjudication of individual and collective rights under the respective benefit programs. Among the leading factors affecting fair outcomes in these systems are:

I. Access to the Federal Court System

Over the years, court cases have formed the backbone of the social justice movement, enabling low-income and working poor people to enforce their rights to a variety of cash assistance programs, health care, and other public benefits when states have chosen not to provide such assistance as federal laws require. These cases are critical to ensuring that private citizens are able to enforce their legal rights in court and provide a true avenue for social justice.

However, recent trends in the United States Supreme Court have made it increasingly difficult for individuals and advocates to challenge state policies under 42 U.S.C. § 1983 or claim a private right of action under the provisions of the statutes enacting public benefit programs.² While Supreme Court jurisprudence may be beyond the scope of relevant agency activities (beyond the Department of Justice), having data and indicators demonstrating how removing federal court review of state policies impacts the fair treatment of potential recipients of public assistance would significantly improve the ability of advocates to ensure fairness within the public benefits system.

¹ <http://nclej.org/wp-content/uploads/2016/08/Mannix-Cohan-TANF-Clearinghouse-article-2016.pdf>;
<http://www.cbpp.org/research/family-income-support/chart-book-tanf-at-19>

² *Armstrong v. Exceptional Child Center, Inc.*, 135 S. Ct. 1378 (2015); *Gonzaga University v. Doe*, 536 U.S. 273 (2002); *Blessing v. Freestone*, 520 U.S. 329 (1997)

Such measures should include data **tracking denials** in states that develop public assistance policies that vary from federally-established principles, and the impact those policies have on levels of participation in programs providing cash assistance, nutrition, or health care or that address other basic human needs. The **negative impact** of these policies should be documented, including their effect on poverty levels, health care outcomes, family stability and the well-being of at-risk or underserved populations (e.g., youth, the elderly and disabled).

II. Impact of Modernization Efforts on Fairness in the Application Process

The seminal case creating the right of individuals to fair treatment in the welfare system, *Goldberg v. Kelly*, 397 U.S. 254 (1970), ensured an applicant's right to basic procedural due process of law in the consideration of welfare denials and terminations. While this case did not provide for a right to representation in the administrative process for welfare claims, it did ensure the right to a hearing, ability to confront witnesses, adequate notice and other tenets of procedural due process that apply more generally in judicial proceedings.

The mechanics of public assistance administration have changed dramatically in the nearly 50 years since *Goldberg* was decided. A number of these changes hold the potential for either significant progress or harm to fairness and the due process rights of applicants for benefits. The system itself is changing from one based upon individual interactions with a case worker to a fully automated process wherein an applicant has no one assigned to his or her claim, call-in hotlines are used for interviews, and the process is essentially paperless from start to conclusion.

These changes are being implemented at a time of severe budget cuts and personnel reductions in welfare offices across the United States. As a result, in many cases clients have experienced benefits disruptions at the end of recertification periods or have suffered from a lack of supervisory reviews of cases that were terminated or denied for paperwork or missed interviews. The Business Process Reengineering model has often focused more on cost savings than the needs of clients/applicants. These problems have been exacerbated among clients with disabilities, cultural or language differences, or literacy challenges.

The "modernization" of welfare systems has given rise in many jurisdictions to a number of issues that affect fundamental fairness and due process. Among these are:

- Lack of ascertainable standards
- Arbitrary decision-making
- Defects with automated notices
- Patterns of terminations based on flawed computer system
- Failure to make individual determinations based on available information
- Federal statutory entitlement violations (e.g., application delays / denials / terminations)
- Americans with Disabilities Act (ADA) violations
- Ineffective call centers
- Deficient online applications procedures

On the other hand, significant improvements have been realized in jurisdictions that have used technology and innovation to improve client access and information, consolidate the application processes for multiple benefit programs and otherwise improve the administration of benefit programs from the applicant's perspective. Such successes have generally been accompanied by the commitment of adequate resources to the administration of the programs. Tracking data that indicates what factors within a system ensure **fairness in online application, the consideration of individualized**

circumstances, eligibility determination, timeliness of decision-making, multiple program eligibility, and applicant satisfaction by relevant administrative agencies would develop essential indicators to measure the fairness and effectiveness of these new methods of handling the applications/claims processes across the various public assistance programs available to people in poverty.

III. Indicators of Fairness within the Administrative Hearings/Appeals Process

As mentioned earlier, the right to counsel (or a publicly-provided advocate) before administrative adjudicatory bodies considering public assistance claims was not provided within the panoply of due process rights guaranteed in the *Goldberg* decision. Little data exists regarding these processes as to **how many claimants are represented in administrative adjudications, the impact of such representation on claimant outcomes, or the availability and impact on outcomes of pro se materials and assistance on both procedural and substantive issues.** Capturing data that indicates and compares various outcomes based upon the provision of representation or effective pro se assistance could significantly inform the improvement and standardization of this critical component of the justice system affecting public assistance programs.

IV. Access to Representation; Full Range of Legal Options

The availability of attorney or paralegal representation is the most important safeguard in ensuring that our public assistance programs are administered in a fair and just manner. The bulk of welfare case representation is provided by publicly financed civil legal aid programs. One clear indicator of a fair and just system is the **amount of support provided at the federal, state and local levels for such representation. How many attorneys or paralegals in a state are identified as working on public benefits representation? How many pro bono hours are provided by members of the private bar? How many claimants are forced to proceed pro se due to a lack of available representation?**

For nearly a half century, advocates for low-income people in need of public assistance have used the law creatively to challenge policies that undermine the purposes of the safety net programs. These cases have often been brought on behalf of many similarly situated clients through the use of class action litigation or administrative or legislative advocacy. Many legal aid providers face restrictions on the provision of these kinds of representational strategies available to other lawyers and advocates. **The Department of Justice should track data regarding the availability at the state or local levels of unrestricted representation that can address the systemic problems that exist with the administration of public assistance programs.**

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K. Tribes and Tribal Members

Civil Society Consultation
on
Goal 16 Indicators for Access to Justice in the United States

Comments re:
Proposed Access to Justice Indicators for Tribes and Tribal Members

by
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Native American/Alaska Native (NA/AN) tribes and tribal members are subject to an incredibly complex jurisdictional web of treaties, federal, state, local and tribal laws that present many legal issues (both civil and criminal) that are unique to NA/AN status and which impact the health, safety and well-being of tribal communities and members. Legal issues impact tribes' ability to self-govern and individual tribal members in ways that do not impact other populations or communities. At the same time, many tribal members also subject to the access to justice challenges faced by marginalized groups in general. As such, any access to justice indicators for tribal members should be inclusive of the other indicators used for the general population, as well as using indicators that address access to justice challenges that are unique to tribes and tribal members.

Many tribes are severely under-resourced and often located in extremely rural locations (*i.e.* roughly 40% (226) of the nation's tribes are located in Alaska and most of those communities are accessible only by plane or boat) making physical access to justice systems difficult and legal resources scarce. Furthermore, effectively navigating such a complicated justice eco-system requires highly specialized knowledge and skill sets which further limit the pool of potential resources.

Measuring access to justice in this context should focus both on the individual needs of tribal members and also on assuring that the tribes themselves have the necessary infrastructure, respect and support needed to effectively self-govern. Such indicators could include the availability of funding for and access to legal resources including those needed to support operational culturally appropriate justice systems; to support the ability of tribes to control land and natural resources; to determine tribal membership; to protect culture and artifacts, and to protect the health, safety, and well being of tribal members including tribal children. Access to justice indicators should seek to evaluate whether tribes are able to effectively enforce their rights under the Indian Child Welfare Act.

Indicators should also seek to assess the infrastructure and needs of tribal courts, the level of local/state/federal cooperation with tribal governments including the recognition and enforcement of tribal court orders, document the existence of jurisdictional gaps for tribal members, availability of access to competent legal advice for tribes (as sovereigns), as well as for individual tribal members.

Indicators in this context should also aim to gauge tribal members' access to locally available, justice systems that reflect tribal culture and values as well as protecting constitutional rights.

Specific proposed indicators are set out below:

Access to justice indicators for tribal self-governance

- # of tribes who have operational tribal courts and the subject matters that those courts can address, noting the existence of any jurisdictional gaps (i.e. subject matter gaps, or gaps related to jurisdiction over non-members)
- # of tribes who have a general counsel or funding for and access to legal advice/representation
- # of tribes with legal resources/funding to assist with for code drafting, development of court procedures, training of court personnel, and enforcement of tribal court orders
- # of states that have formal processes/procedures for recognition and enforcement of tribal court issued orders (noting any limitations with respect to subject matter, or non-member jurisdiction)

Access to justice indicators for enforcement of the Indian Child Welfare Act

- % child welfare proceedings involving tribal children where a tribe has intervened
- % of tribes that are represented by an attorney in formal state child welfare court proceedings
- % of tribal members who have representation by an attorney in child welfare court proceedings

Access to justice indicators for tribal members on issues unique to their status as NA/AN

- % of tribal members who have an unmet civil/criminal legal need v. the % general population
- % of tribal members who have access to an operational tribal court
- # tribal members who have unresolved legal issues that are unique to their NA/AN status (such as probate, trust property, access to healthcare, access
- # of legal aid attorneys with appropriate expertise per tribal member within in service area

Data currently being collected and reported:

- The Tribal Law and Order Act of 2010, P.L. 111-211 requires a significant amount of data and reports to be gathered on tribal justice systems (See Appendix H to ILOC Report, available online at <https://www.indianlawandordercommission.com>). Much of the data required under that Act would be useful in developing ATJ indicators in tribal communities specifically in the criminal context, but there is also overlap that would be useful.
- Child Welfare agencies (typically operated by tribes, state and counties) collect and report significant demographic information to DHHS. It is likely that much of the information re: tribal representation in ICWA cases is being collected through those systems and could be reported to DHHS with little effort.

Further discussions of indicators for SDG #16 as it relates to tribal communities should include tribal consultations.

L. Veterans and Service Members

Civil Society Consultation with WH-LAIR on Goal 16 Access to Justice Indicators and Data Statement of the New York Legal Assistance Group¹

The New York Legal Assistance Group (NYLAG) is pleased to submit this statement providing proposed indicators to measure access to legal services for veterans. Founded in 1990, NYLAG provides comprehensive, high quality, free civil legal services to low-income New Yorkers who cannot afford attorneys. In 2015, NYLAG served more than 75,000 New Yorkers.

LegalHealth, a division of NYLAG since 2001, is the nation's largest medical-legal partnership (MLP), working at 26 partnering hospitals throughout all five NYC boroughs and Long Island. As part of the Veterans Project, LegalHealth runs legal clinics at three area VA hospitals.² LegalHealth offers legal services in housing, public benefits, family law, consumer issues, employment issues, discharge upgrades, and advance planning. The demand for services among veterans has been staggering: In 2015, the Project staff handled 1,500 matters for 1,177 veterans at the three VA sites. In addition, LegalHealth trains healthcare professionals at the VA hospital partners to recognize legal issues that adversely affect veterans' medical and mental health outcomes.

Veteran Indicators

Each year the VA's Project CHALENG (Community Homelessness Assessment, Local Education and Networking Groups) asks homeless veterans, VA staff and CBOs to measure veterans' needs within communities. The results of the most recent survey show that five of the top ten unmet needs for male homeless veterans involve a civil legal issue; similarly, four of the top ten unmet needs for female homeless veterans require civil legal assistance. While the Department of Veterans Affairs collects data that sheds light on the legal needs of the veteran population, the VA does not yet have an infrastructure to implement programs and strategies that could address veterans' needs.

Legal services providers that have recognized this deficit are finding resources to establish legal programs and partnerships, but more resources are needed to address veterans' needs. For example, just eleven of the 152 VA Medical Centers across the country have a medical-legal partnership. Additional funding would increase veterans' access to MLPs and also enable greater study of the MLP model in the Veterans Health Administration, enabling more targeted and efficient services delivery. Below are six metrics that the National Center for Medical-legal Partnership has developed for all MLPs, including MLPs in VA medical centers³:

- Measure 1: Percent of healthcare partner staff trained in MLP;
- Measure 2: Percent of patients screened for health-harming legal needs in a given population;
- Measure 3: Percent of patients with at least one health-harming legal need who are treated/addressed by the healthcare organization;

¹ Submitted by Beth E. Goldman, President (bgoldman@nylag.org), and Randye Retkin, Director, LegalHealth Division (rretkin@nylag.org).

² The James J. Peters VA Medical Center (Bronx VA) and the VA New York Harbor Healthcare System (Manhattan VA), and the Northport VA Medical Center on Long Island (Northport VA).

³ <http://medical-legalpartnership.org/wp-content/uploads/2015/08/MLP-Performance-Measures-Handbook-Apr-2016.pdf>

- Measure 4: Percent of patients who are referred to civil legal aid services and receive a legal screening/intake;
- Measure 5: Average financial benefit received by a MLP patient-client; and
- Measure 6: Estimated financial benefit received by the MLP healthcare partner organization.

Additional metrics to help legal services providers serving veterans measure needs and success in specific legal areas:

- Measure 1: The number of Veterans whose housing is stabilized because of eviction prevention and other housing advocacy;
- Measure 2: The number of older and disabled veterans whose receipt of a VA pension has increased income and access to homecare;
- Measure 3: The number of veterans who, because of a discharge upgrade, have improved access to service-connected disability compensation, healthcare, education assistance, pension, life insurance, housing loans, or employment assistance;
- Measure 4: Number of veterans whose access to healthcare is improved through representation in Medicaid and Medicare matters; and
- Measure 5: The number of veterans whose income is increased due to: receipt of public benefits, including Social Security and VA benefits; downward modification of child support payments; and addressed consumer debt issues.

NYLAG would welcome the opportunity to continue the discussion regarding these indicators.

**STATEMENT OF BARTON F. STICHMAN
JOINT EXECUTIVE DIRECTOR
NATIONAL VETERANS LEGAL SERVICES PROGRAM**

UNMET LEGAL NEEDS OF VETERANS OF THE U.S. ARMED FORCES

There are currently nearly 22 million veterans of the U.S. Armed Forces. I cannot speak to the unmet needs of these veterans for legal assistance on many issues for which access to a legal representative is helpful or necessary. But I do have knowledge of the unmet legal needs of veterans for legal assistance in accessing the federal government benefits to which they are entitled as a result of their military service to the United States.

Many of the 22 million U.S. veterans are disabled, often as a result of their military service. The U.S. Department of Veterans Affairs (VA) currently provides disability compensation to nearly 20% of the veteran population: more than 4.2 million veterans receive monthly payments for service-related disabilities and 290,000 totally disabled, low-income veterans receive monthly payments for non-service related disabilities. Approximately 800,000 new disability claims are filed with the VA each year. Tens of thousands of other veterans receive disability compensation from the U.S. military services, rather than the VA, for service-related disabilities.

The fact is that many disabled veterans who should qualify for these disability benefits do not receive them, or if they do receive benefits, they receive a lower monthly payment than they should be paid. This is because the quality of VA decision-making on claims for VA benefits is low. The Board of Veterans' Appeals (BVA) – the second tier of the two-tier VA claims adjudication process -- affirms the decision made by the first tier – the agency of original jurisdiction (AOJ) – *in less than 20%* of the AOJ decisions that are appealed to the BVA. The BVA reverses the AOJ decision and grants benefits in more than 30% of the claims it reviews and in more than 45% of all cases, the BVA sends the claim back to the AOJ to correct the AOJ's wrongful failure to obtain the evidence needed to properly adjudicate the claim. To make matters worse, in the cases in which the BVA denies benefits and the veteran appeals to the U.S. Court of Appeals for Veterans Claims, the Court finds *in approximately 70% of all appeals* that the BVA committed one or more prejudicial errors that require a Court award of benefits or a remand for the VA to correct the error and redecide the claim.

The U.S. military services, which presides over a disability benefit system that is a corollary to the one managed by the VA, has a similar lack of quality. Congress found in 2008 that the quality of decision-making by the military medical boards was so low that it created a new military appeals agency – the Physical Disability Board – to allow veterans who were “low-balled” after 9/11 by the military boards on the amount of military disability benefits to obtain a new, unbiased review.

The low quality of the government's claims adjudication system makes effective legal representation of veteran claimants essential to ensure that disabled veterans receive the government financial assistance they need and deserve. The good news is that there are

thousands of VA-accredited non-lawyer and lawyer representatives available to veterans to represent them on VA claims at no cost to the veteran. But the unfortunate fact is that the existing network of veterans advocates is overburdened. The thousands of non-lawyer advocates employed by the major veterans service organizations and the state department of veterans affairs simply have too many cases to handle effectively, especially given the obstacles they have to overcome to obtain benefits on behalf of their numerous individual veteran clients. Obtaining the necessary medical and lay evidence to support a disability claim is essential, and this takes a good amount of an advocate's time – time that they do not currently have in all cases.

What is needed to ensure access to justice on claims for government disability benefits is an enhancement of the advocacy network available to the millions of disabled veterans of the U.S. My recommendations are as follows:

- The United States should provide financial assistance to the existing advocacy network - veterans service organizations, state department of veterans affairs, and non-profit legal services organizations --- so that they can train and employ additional advocates to represent veterans at no cost on claims for disability benefits filed with the VA or the military review boards
- The United States should provide financial assistance to one or more organizations to operate pro bono programs to recruit, train, and mentor private bar attorneys in the United States to represent disabled veterans before the VA and military review boards on a pro bono basis.
- The military service departments should appoint a military lawyer (a judge advocate general) to represent a service member who is being considered for a medical discharge at all stages of the medical separation process – before a medical evaluation board, before an informal physical evaluation board, and before a formal evaluation board – so that the veteran receives legal representation to help ensure receipt of the proper amount of military disability benefits.
- The military departments should notify those veterans who wish to apply or have already applied to a military discharge review board or board for correction of military records of the advocates and organizations potentially available to represent the applicant before these boards at no cost.

III. Broader Approaches to Measuring Access to Justice & Developing Indicators

Civil Society Consultation on Goal 16 Indicators for Access to Justice in the United States

Proposed Access to Justice Indicators to Assess Consumer Need and Sufficiency of Activities

Submitted by Katherine Altenecker, JD

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For the past 15 years, state courts have experienced an ever increasing number of self-represented litigants (SRLs) primarily in the hugely impactful case types of divorce, custody, child support, domestic violence, small claims, landlord-tenant and probate; depending on case type and location, self-represented rates generally range from 75% - 100% of the cases having at least one self-represented party. While counting the exact number has proven very challenging, reasonable estimates suggest 23 million adults are self-represented in the civil courts each year, and when traffic cases are included, that number surges to 36 million.¹ Federal courts also report a significant percentage of their docket populated by SRLs, as do administrative agencies and state, federal and administrative appellate bodies. The conventional wisdom assumed that there were not enough lawyers, whether because private attorneys had priced themselves out of the market or a dearth of legal aid attorneys. However, Professor Rebecca Sandefur's 2014 report *Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study* forces the access to justice community to re-examine that assumption. She found that two thirds of American adults have problems that could be resolved through legal intervention, however very few access the justice system. Her research shows that the most common reason why people do not access or seek legal assistance is because they are unaware that their problems are legal in nature. They may go to social service providers and friends, but rarely seek legal counsel. These results directly contradict the widely held belief that the primary reason individuals do not seek legal assistance is due to cost concerns. Her research found that while cost is a major issue, it is only the fourth or fifth most common reason why people do not seek legal assistance.

As we construct access to justice indicators, it is critically important that we internalize the reality that people do not know they have legal problems, and when they do, they seek resolution options that essentially avoid the justice system as it currently exists. Based on Sandefur's research, it would be fair to conclude that the majority of the millions of self-represented litigants have been forced into the various tribunals against their will; they are not availing themselves of power of the law, but rather caught up in something that is out of their control. We can create indicators that simply look inward (e.g. at lawyer productivity) and measure a bad system, or we can strive to create indicators that will challenge us to build a better system, one that:

- responds to the needs of the actual population (as opposed to the needs of the lawyers)
- exploits the efficiencies and expanded access offered by technology
- provides appropriate legal and non-legal services
- commits to ongoing reform and maintenance of rules, statutes and policies

¹ See *SRLN Brief: How Many SRLs?* At <http://www.srln.org/node/548/srln-brief-how-many-srls-srln-2015>. It is worth pausing for a moment and considering that by comparison Legal Services Corporation grantees closed a total of 757,983 cases in 2014, 60.3% of which consisted of counsel and advice. *2014 LSC By the Numbers* at <http://www.lsc.gov/media-center/publications/2014-lsc-numbers>. The courts and administrative agencies are the dominant source of legal information, which makes it particularly important that high quality resources are provided through those outlets.

- prioritizes judicial education to teach the skills of neutral engagement that allow for decisions on the merits

Fellow participants have proposed a wide range of indicators that will certainly help in our shared endeavor of expanding access to justice, and importantly, many datasets already exist and by comparison relatively few need to be created. The following additional datasets and indicators are offered to ensure a focus on the consumer's needs and preferences, whether or not counsel is needed or available.

Geo-Spatial Data to Understand Consumer Need and Impact

Consumer oriented solutions require a deep and accurate understanding of the people being served and where they are located. Each county is different, with unique needs, resources and service networks. The SRLN has identified the following publically available geo-spatial data sets that could be used to help estimate the prevalence of various legal problems, identify high value collaborations, evaluate responsiveness of providers, help planners respond to spikes, trends and crises and evaluate over time the impact of various interventions: population density; breakdown of various age groups; high school graduates; rentals; vehicle access; active duty in the armed forces; veterans; racial diversity; foreign-born; language spoken at home; poverty at a variety of levels, as well as a breakdown of children versus adult in each of those poverty categories; availability and actual subscription by county of mobile and wired broadband, as well as available and subscribed download speeds. View maps at <http://www.srln.org/node/1111/resource-americas-civil-courts-who-do-we-serve-srln-2016>.

Technology Indicators for Courts, Administrative Agencies and Legal Aid Organizations

- *Web Pages* (responsive design, multilingual, mirror site in dominant languages and glossaries in multiple languages, forms with embedded instructions, procedural break-down of each case type, general information/FAQs for each case type, community resources, multiple formats to include pdf capability, video, decision tree apps)
- *E-filing status* (data transmission vs electronic document management; best practices, see <http://www.srln.org/node/36/best-practices-best-practices-e-filing-lsc-srln-2013>)
- *Remote Services*, including telephonic appearances, video conferencing, on-line case access, and diagnostic tools (see also <http://www.srln.org/node/997/report-resource-guide-serving-self-represented-litigants-remotely-srln-2016>)

Additional Indicators

The indicators included in the May 26 letter addressed to Ms. Jweied provide a comprehensive picture, however I would submit the following additional indicators for consideration, all to be tracked at county level:

- Number of human services – legal partnerships, perhaps measured by MOUs between court or administrative agencies and other legal (e.g. legal aid or bar) or non-legal (e.g. human services, law enforcement, tribes etc)
- Alternative Dispute options, including ADR and ODR
- Publically accessible unbundled attorney list and referral system
- Judicial education to teach the skills of neutral engagement that allow for decisions on the merits
- Number, funding and professional status (i.e. attorney/non-attorney) of staff dedicated solely to access to justice initiatives (e.g. self-help, community relations, executive leadership, strategic planning, forms, rules committees, grant writing etc.) at courts, administrative agencies, bar associations and legal aid offices

- Court case information: number of fee waivers granted and for what case type; case type by county; housing cases with a Section 8 voucher implicated
- Litigant data to be collected by tribunal: date of birth, zip code and county of residence, representation status at the conclusion of the case, number of people in litigant's household, number of cases EVER within the particular system and case type of each
- Access to Justice Commissions and/or Committees (state and local) and budget size

Goal 16 ATJ Consultation Written Statement

Peter Chapman, Open Society Justice Initiative

Rebecca L. Sandefur, American Bar Foundation and University of Illinois at Urbana-Champaign

September 7, 2016

One of the most striking facts about access to civil justice in the United States is how very little we know about it – particularly when we compare our knowledge in this field to our resources of information about other important social and economic activities. The kinds of fundamental data infrastructure that exist in our country today for major social institutions such as education¹, family and population², labor markets³, health⁴, and criminal justice⁵ simply do not exist for civil justice. So, for example, we can estimate with good accuracy the rate at which unemployed job seekers find employment, but we have no information to do the same for the rate at which victims of wage theft either seek assistance or find relief. Similarly, we can estimate with good accuracy how high school dropout rates vary across communities and groups in the population, but we cannot do the same for the risk of foreclosure, the experience of eviction, or victimization by consumer fraud. We confront enormous knowledge gaps, with little ability to fill them. Neither the public nor policy makers nor civil society groups can know even basic facts about the workings of civil justice in the United States.

The data deficit persists despite research revealing that civil justice problems are a common experience, affecting half to two thirds of the US population at any given time.⁶ The deficit persists despite recognition that experience of these problems can have wide-ranging and powerful impacts on core areas of life such as livelihood, shelter, the care and custody of minor children and dependent adults, neighborhood safety, and environmental conditions. These consequences can create large human, social and monetary costs both for the individuals directly affected and for society at large. Yet, we lack systematic information about these consequences and their collateral costs. Most civil justice problems do not reach the formal justice system, nor do people seek legal advice about them, nor are they reported regulatory agencies, elected government or other

¹ For example, the Schools and Staffing Survey, a periodic survey of schools, districts, teachers and principals producing data on “a wide range of topics from teacher demand, teacher and principal characteristics, general conditions in schools, principals’ and teachers’ perceptions of school climate and problems in their schools, teacher compensation, district hiring and retention processes to basic characteristics of the student population” (National Center for Education Statistics 2016).

² For example, the National Survey of Families and Households, a multi-wave study of American households and families begun in 1987 (National Survey of Families and Households 2005), as well as the United States Decennial Censuses and the Census Bureau’s American Community Surveys.

³ For example, the Current Population Surveys, a periodic survey of labor force activity that is a joint project of the US Bureau of Labor Statistics and the US Census Bureau, and the Census Bureau’s Economic Censuses.

⁴ For example, the public health data and statistics collected, compiled and distributed by the federal Centers for Disease Control and Prevention, and the National Longitudinal Study of Adolescent Health, a study of a nationally representative sample of adolescents who have been followed since the 1994-95 school year (Carolina Population Center 2012).

⁵ For example, the Uniform Crime Reports compiled and published by the Federal Bureau of Investigation, and the Census of Jail Facilities conducted by the U.S. Bureau of Justice Statistics (Bureau of Justice Statistics 2011).

⁶ For example, a 2013 survey of a mid-sized American city found that two-thirds (66%) of a random sample of adult respondents had civil legal issues (Sandefur 2014).

authorities (Sandefur 2016). Thus, those administrative records that are available provide thin information about only a small minority of the public's access to justice experiences.

Other countries have invested in the data infrastructure necessary to have this fundamental information about the workings of civil justice. The most notable example is England and Wales, which for over a decade fielded the Civil and Social Justice Surveys⁷, large-scale, repeatedly administered population surveys that allowed policy makers, law makers, and civil society groups to track the incidence and prevalence of specific kinds of civil justice problems, the services used in their resolution (or failure to resolve), their consequences for the people who experienced them, and the collateral costs of those consequences. The surveys collected rich demographic information, permitting comparisons across groups, communities and areas of the county, as well as across time as policies and service delivery practices changed. This survey project, like the US Bureau of Justice Statistics' National Crime Victim Survey, was a project of central government.

Representative population surveys that track both the incidence and the conduct of civil justice problems, including use of services, results, and consequences, are essential to assessing the American public's true access to civil justice. These efforts need not be stand-alone. The US government already fields a number of representative population surveys – for example, the Current Population Survey, the National Crime Victim Survey, the Survey of Consumer Finance, the American Community Surveys – to which civil justice modules could be added.

Survey-based efforts to improve *global* measurement of access to justice have begun. Under the Sustainable Development Goals, the Open Society Justice Initiative (OSJI) and the World Justice Project (WJP) are collaborating to explore meaningful indicators that capture people's lived justice experiences. As a component of its annual Rule of Law Index, WJP conducts national polls delivered to 1,000 individuals in the three largest cities of more than 100 countries, including the United States. This small survey explores specific experiences of the general population in each country. This year (2016), for the first time, WJP has introduced a module to map legal issues faced by respondents and take into account the possibility of using multiple methods of resolution for the same dispute. The module will explore peoples' subjective assessment of the process of resolution, whether this resolution occurred in a formal or informal court system. This will generate -- for the first time -- globally comparable data on experiences of legal need and effective access to dispute resolution. A second aim of the project is to explore whether a focused but adaptable access to justice survey module could be used in multiple national contexts in a range of different kinds of surveys.

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⁷ See, for example, University College London. Faculty of Laws. (2015). *English and Welsh Civil and Social Justice Panel Survey: Waves 1-2, 2010-2012*. [data collection]. UK Data Service. SN: 7643, <http://dx.doi.org/10.5255/UKDA-SN-7643-1>



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Civil Society Consultation with WH-LAIR on Goal 16 Access to Justice Indicators and Data

Proposal: Make Implementation of Goal 16 an Evidence-Based Endeavor

At least a century ago, John Wanamaker, considered by some to be [the parent of modern advertising](#),¹ said, “[Half of the money spent on advertising is wasted. The trouble is, we don’t know which half.](#)”² Wanamaker’s statement might have been said of access to justice in the modern United States. But with all due respect to the nation’s marketers, in access to justice, the stakes are higher. For individuals and families involved in litigation, consequences include eviction, foreclosure, lack of legal protection from an abusive partner, incarceration, deportation, loss of custody of a child, inability to marry (due to inability to obtain a divorce), devastation of financial (and thus often mental) health, and denial of life-sustaining government benefits, among others. For non-litigants, at stake is the (comparative) tranquility and prosperity that comes from a social commitment to fairness in government and to the rule of law. For why should aggrieved individuals voluntarily turn to the formal justice system, as opposed to violence, to resolve disputes if that system is structurally stacked against them?

With these stakes, it is intolerable for us to lack basic knowledge of what works and what does not in access to justice. If knowledge is power, then we in the access-to-justice community are more powerless than those we purport to serve.

Here are four truths that we do know. Unfortunately, all four are inconvenient.

First, given its indifference to [a parent facing loss of a child](#)³ and to a [litigant facing a year in prison for civil contempt](#),⁴ the United States Supreme Court is unlikely to solve, by the stroke of a pen, our access to justice problem by creating a civil analog to [Gideon v. Wainwright](#)’s⁵ right to counsel at state expense for defendants accused of serious crimes. More fundamentally, it is unlikely that there will be a societal consensus to commit [enough resources](#)⁶ to offer a traditional, attorney-client relationship to each low- or moderate-income individual

[facing an adversarial civil adjudication of an issue affecting a basic human need](#).⁷ Finally, [the experience with Gideon](#)⁸ suggests a real need for caution in relying exclusively on attorneys to solve the United States problems in access to justice.

Second, there is no shortage of ideas and innovations in the area of access to justice. The last two-three decades have seen an explosion of creative proposals in this field. A few examples include [unbundled representation](#),⁹ [non-lawyer representation](#),¹⁰ [court services centers](#),¹¹ [self-help legal instructional materials](#),¹² [standardized statewide court forms](#),¹³ [online document assembly protocols](#),¹⁴ reform of adjudicator [practices](#)¹⁵ and [ethical rules](#),¹⁶ [simplification of adjudicatory procedures](#),¹⁷ and [redesigning the spaces in which adjudication takes place](#).¹⁸ A [well-known book written over a decade ago](#)¹⁹ discusses a half-dozen or so others idea. Creative proposals are in generous supply.

Third, in terms of reliable information about what works and what does not, United States law in 2017 is roughly where United States medicine was in the late 1930s, *i.e.*, in the Dark Ages. In the 1920s, the field of statistics [invented the randomized control trial \(“RCT”\)](#)²⁰ as an unparalleled way to discover what promising-sounding proposals actually work. In a process [beginning between the two World Wars](#)²¹ and [continuing today](#),²² United States physicians embraced the RCT as part of a transformation of medicine from an art into a science. Physicians recognized that, like any knowledge-producing technique, RCTs have limits, but that they also have an incomparable power to tell us what works and what does not. 80 years later, we have tens of thousands of RCTs to inform delivery of medical services. United States lawyers did not embrace the RCT, and law underwent no transformation. 80 years after the [first use of randomization to analyze a legal problem](#),²³ we have available to us a grand total of [50 or so RCTs to help us understand what works over the entire field of United States law](#).²⁴ Tens of thousands for medicine, half-a-hundred for law.

Fourth, when fields have made a commitment to evidence-based thinking, including investigation via RCTs, they have found that many standard practices [were either no more effective than less expensive alternatives](#)²⁵ or, for some, actually dangerous. Examples are frighteningly numerous: in medicine, consider [hormone replacement therapy](#);²⁶ in crime prevention, consider [scared straight](#);²⁷ in public health and pregnancy prevention, consider [robot babies](#).²⁸ Do we think that we (lawyers) in access to justice are that much smarter than physicians, criminologists, public health specialists, and everyone else? Perhaps we should not answer that question, for fear of embarrassing ourselves.

Given the stakes in access to justice, we can no longer afford to remain in the Dark Ages. Recently, a grant from a [private foundation](#)²⁹ spurred the creation of the [Access to Justice Lab at Harvard Law School](#).³⁰ The A2J Lab is dedicated to transforming access to justice into an evidence-based field, and is pursuing or has pursued RCTs in [government benefits](#),³¹ [housing](#),³² [debt management](#),³³ [domestic violence](#),³⁴ [pretrial release](#),³⁵ [engagement with the legal process](#),³⁶ [divorce](#),³⁷ [mediation](#),³⁸ and other areas. [A short course on conducting RCTs in the law](#),³⁹ as well as more studies, are in planning.

But one research center cannot rip the field of access to justice out of the Dark Ages. The United States government played a central role in the transformation of medicine from an art into a science. It funded one of the [first and most consequential RCTs in medicine \(showing that streptomycin was an effective treatment for tuberculosis\)](#),⁴⁰ and later, it [required by law that RCTs precede the marketing of new drugs and medical devices to the public](#).⁴¹ It must take the lead in the transformation of access to justice as well. And Goal 16 provides an opportunity to begin this fight. We propose that United States Government include as indicators for compliance with Goal 16

- whether governments and access to justice funders are insisting on RCTs to evaluate effectiveness as part of their grant-making-processes;
- whether legal services providers, courts, and access-to-justice-promoting actors are engaging in and promoting RCTs as a basic part of their programs; and
- whether governments, courts, funders, and others are promoting and funding knowledge-generating efforts about what works and what does not, especially RCTs, in access to justice.

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² <http://www.quotationspage.com/quote/1992.html>.

³ <https://www.law.cornell.edu/supremecourt/text/452/18>.

⁴ <https://www.law.cornell.edu/supct/html/10-10.ZS.html>.

⁵ <https://www.law.cornell.edu/supremecourt/text/372/335>.

⁶ <https://richardzorza.files.wordpress.com/2012/10/hadfield-testimony-october-2012-final-2.pdf>.

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⁹ http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2038616.

¹⁰ http://www.courts.wa.gov/court_rules/Word/gaapr28.doc.

¹¹ http://www.courts.wa.gov/court_rules/Word/gaapr28.doc.

¹² http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2633032.

¹³ <http://www.ncsc.org/microsites/access-to-justice/home/Topics/Forms-and-Document-Assembly.aspx>.

¹⁴ <http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2541&context=ulj>.

¹⁵ <http://lms.dccouncil.us/Download/36307/AU21-0063-Introduction.pdf>.

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¹⁷ <https://accesstojustice.net/category/simplification/>.

¹⁸ http://www.zorza.net/Res_ProSe_SelfHelpCtPub.pdf.

¹⁹ <https://www.amazon.com/Access-Justice-Deborah-L-Rhode/dp/0195306481>.

²⁰ <http://ije.oxfordjournals.org/content/32/6/925.full>.

²¹ <http://www.cambridge.org/us/academic/subjects/history/history-medicine/progress-experiment-science-and-therapeutic-reform-united-states-19001990?format=PB>.

²² <https://www.povertyactionlab.org/sites/default/files/publications/Using%20Randomized%20Evaluations%20to%20Improve%20the%20Efficiency%20of%20US%20Healthcare%20Delivery.pdf>.

²³ <http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=2340&context=jclc>.

²⁴ http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2726614.

²⁵ [http://www.mayoclinicproceedings.org/article/S0025-6196\(13\)00405-9/abstract](http://www.mayoclinicproceedings.org/article/S0025-6196(13)00405-9/abstract).

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Civil Society Consultation with WH-LAIR on Goal 16 Access to Justice Indicators and Data
September 15, 2016

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I. National indicators to integrate and reference human rights recommendations on access to justice

As the White House Legal Aid Inter-Agency Roundtable (WH LAIR) undertakes the important task of developing national indicators for Goal 16 and access to justice, it can and should track U.S. progress towards addressing access to justice concerns articulated in recent years by international and regional human rights experts. These recommendations relate primarily to access to justice in the context of discrimination in the criminal justice system, immigration, gender-based violence, trafficking, and housing.

Human rights are highly relevant to U.S. implementation of the Sustainable Development Goals (SDGs). The Preamble to the 2030 Sustainable Agenda explains that the SDGs seek “to realize the human rights of all,”² and the Declaration accompanying the Agenda grounds the Goals explicitly in human rights, including the Universal Declaration of Human Rights and international human rights treaties.³ As such, international human rights principles and obligations should form a basis for the government’s understanding of each Goal, and guide overall implementation, follow up, and review.

In developing national indicators for measuring progress on Goal 16, the U.S. should take into consideration and explicitly reference the numerous recommendations related to access to justice that it received through the U.S.’ second Universal Periodic Review (UPR), which took place in 2015, and recommendations it has received in recent years from UN human rights treaty bodies and other experts, and from the Inter-American Commission on Human Rights.

During its second UPR, the U.S. received and accepted (at least in part) recommendations related to access to justice. These recommendations relate to the rights of migrants;⁴ non-discrimination in the criminal justice system;⁵ juvenile justice;⁶ and civil access to justice for victims of gender-based violence, sexual violence, and trafficking.⁷

These UPR recommendations complement recommendations on access to justice that the U.S. has received over the past two years from several UN human rights treaty bodies, as well as from UN special procedures and the Inter-American Commission on Human Rights.

In its 2014 review of the United States’ compliance with the UN Convention on the Elimination of All Forms of Racial Discrimination (CERD), the CERD Committee urged the U.S. to provide sufficient resources to “ensure effective access to legal representation for indigent persons belonging to racial and ethnic minorities in civil proceedings, particularly with regard to proceedings that have serious consequences for their security and stability, such as evictions...”⁸ The CERD

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² *Transforming our world: the 2030 Agenda for Sustainable Development*, Preamble, A/RES/70/1 (Sept. 25, 2015).

³ *Id.*, ¶ 10.

⁴ Report of the Working Group on the Universal Periodic Review, United States of America, ¶¶ 254, 339, A/HRC/30/12 (July 20, 2015).

⁵ *Id.*, ¶¶ 130, 137, 140, 276, 277.

⁶ *Id.* at 291.

⁷ *Id.* ¶¶ 256, 271, 289.

⁸ Comm. on the Elimination of Racial Discrimination, *Concluding Observations—United States of America*, ¶ 23, U.N. Doc. CERD/C/USA/CO/7-9 (Sept. 25, 2014).

Committee also recommended guaranteeing access to justice for indigenous women who are victims of violence,⁹ and guaranteeing access to legal representation in all immigration-related matters.¹⁰

In its 2014 review of U.S. compliance with its commitments under the International Covenant on Civil and Political Rights (ICCPR), the UN Human Rights Committee also raised concerns about access to justice in the United States, and in particular access to legal representation in civil cases, including in immigration proceedings,¹¹ and for victims of domestic violence.¹²

And in 2014, in reviewing the U.S.' compliance with the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the UN Committee Against Torture specifically recommended that the United States guarantee access to counsel for asylum seekers at the Southwestern Border of the United States.¹³

At the conclusion of its 2015 U.S. visit, the UN Working Group on Discrimination Against Women recommended the U.S. ensure access to justice for all, including adequate legal representation at public expense where necessary.¹⁴

The Inter-American Commission on Human Rights has also made recommendations related to access to justice. Following its 2015 visit to the southern border of the U.S. to monitor the human rights situation of unaccompanied minors and families, the Commission issued a report specifically calling for the provision of free legal aid.¹⁵

As the WH LAIR develops national indicators for measuring access to justice, it can and should take into consideration and explicitly reference these recommendations where appropriate. For example, responsive to recommendations made to the U.S. by each of the human rights treaty bodies, the IACHR, and in the course of the UPR, the U.S. should adopt an indicator measuring the percentage of children in immigration removal proceedings who have legal representation, and the effectiveness of such representation, and state explicitly that addressing gaps in such legal representation is responsive to UPR Recommendation 339, as well as recommendations made to the U.S. by the CERD Committee, Human Rights Committee, the CAT, and the IACHR.

Doing so will serve a dual purpose. First, government agencies and civil society stakeholders will be able to assess and report on the United States' progress towards achieving Goal 16 in a way that is both consistent with, and supportive of, the government's human rights commitments and obligations. Relatedly, government agencies, civil society, and other stakeholders will be able to draw upon data collected for implementation of Goal 16 when reporting to the human rights treaty bodies and during the course of the Universal Periodic Review, to assess U.S. compliance with human rights commitments and recommendations related to access to justice. Thus both government agencies and civil society will be able to more effectively monitor and regularly assess improvements, gaps, and setbacks on issues related to access to justice, by drawing on SDG data in human rights reporting and review. This will serve as an important model for other countries, as well, as they seek to implement the SDGs.

II. National indicators to call for disaggregation of data

In addition to integrating human rights recommendations, national level indicators should ensure a human rights focus on equality and non-discrimination, consistent with the SDG's mandate to "leave no one behind." The U.S. government has acknowledged the SDGs' critical focus on inequality as a means of addressing poverty in all countries, including the United States.¹⁶

To adhere to this mandate and to assess gaps in outcomes between different social or economic groups or other sectors with respect to Goal 16 and access to justice, the WH LAIR should ensure that national indicators for Goal 16 call for the collection of disaggregated data. National indicators should call for data to be disaggregated according to gender, race, income, ethnicity, national origin, disability, age, and by urban, rural, and metro areas, as well as other factors linked to inequality and rights violations.

⁹ Id., ¶ 19.

¹⁰ Id., ¶ 18.

¹¹ Human Rights Comm., *Concluding observations on the fourth periodic report of the United States of America*, ¶ 15, U. N. Doc. CCPR/C/USA/CO/4 (Apr. 23, 2014).

¹² Id., ¶ 16.

¹³ Comm. Against Torture, *Concluding observations on the combined third to fifth periodic reports of the United States of America*, ¶ 18, CAT/C/USA/CO/3-5 (Dec. 19, 2014).

¹⁴ Report of the Working Group on the issue of discrimination against women in law and in practice, on its mission to the United States, ¶ 90 (xvii), A/HRC/32/44/Add.2 (advanced unedited version) (June 7, 2016).

¹⁵ Inter-Am. Comm'n H.R., *Refugees and Migrants in the United States: Families and Unaccompanied Children*, ¶ 85 & n.95, OAS/Ser.L/V/II.155, doc. 16 (July 24, 2015).

¹⁶ The White House, Office of the Press Secretary, Remarks by the President on Sustainable Development Goals, General Assembly Hall, United Nations, Sept. 27, 2015, available at <https://www.whitehouse.gov/the-press-office/2015/09/27/remarks-president-sustainable-development-goals>.



Civil Society Consultation with WH-LAIR on Goal 16 Access to Justice Indicators and Data:
The importance of outcome and impact indicators disaggregated by place, gender, and race & ethnicity

The Sustainable Development Goals (SDGs) have replaced the Millennium Development Goals (MDGs) as the global blueprint for a just and sustainable future. This set of seventeen mutually reinforcing goals offers a way to understand and address critical barriers to well-being, economic growth and prosperity, and environmental sustainability in the United States and puts American challenges and opportunities within a global context. Goal 16 of the SDGs calls for **access to justice for all**, a valuable end in and of itself as well as a means to other ends essential to people's ability to live freely chosen, rewarding lives, particularly in an America characterized by worsening inequality.

Poor people's unequal access to the protections of the law can strip them of their rights to education, housing, equal protection, equal pay, security, and more. It can also threaten social cohesion and community stability, as recent events across the country have clearly shown. It thus thwarts the overarching goals of many if not most of the agencies taking part in this consultation. Promoting homeownership for first-time buyers, protecting elderly consumers from fraud and domestic workers from wage theft, ensuring that children with disabilities get the quality education that is their right: fulfilling the mandates of your organizations requires that all people—particularly vulnerable groups—have access to justice. By supporting the implementation of Goal 16, the agencies present today will also be supporting implementation of a range of SDGs central to their missions, from ending extreme poverty (Goal 1) to making the right to safe and affordable housing a reality (Goal 11) to ensuring equality in education (Goal 4).

During this consultation and in their written submissions, participants have made a convincing case that meaningful, effective indicators for understanding, measuring, promoting, and tracking access to justice exist. My colleagues and I would urge you to pay particular attention to **two types of indicators: disaggregated indicators and outcome indicators**. These indicators provide critical information—namely, are your programs targeting the right people, are your programs doing the right things, and are your programs doing those right things well enough that at the end of the day people's lives are better? They also are the only way to determine if the SDGs are truly met, and for which groups in society.

The country could easily achieve the lion's share of the SDG targets with little or no progress for the poorest Americans if the measure of achievement is aggregate figures at the national level. **Disaggregation of the population by race and ethnicity, gender, nativity, age, disability status, and place** matters because averages and aggregates hide tremendous variation. Take, for example, foreclosure, which works against, among other things, HUD's objective of expanding homeownership. Foreclosure is a process that can often be halted by skilled legal assistance, so it is an indicator at least in part influenced by variations in access to justice. The foreclosure rate in New York City in 2014 was 16.8 per 1,000 1-4 family properties. But the rate in Bronx Community District 4, home to the **Concourse, Mount Eden, and Highbridge** neighborhoods, where roughly two-thirds of residents are Latino and one-third are black, is more than three times as high, 58 per 1,000 properties. In contrast, the rate in Manhattan Community District 2, **Greenwich Village and Soho**, where seven in ten residents are white, is just 2 per 1,000 properties.¹ The foreclosure rate in Bronx District 4 is *twenty-nine times* the rate in Manhattan District 2. Looking again at differences within New York City, we see a sentinel indicator of access to justice, the **incarceration rate**, spanning an enormous range by neighborhood: 371 per

¹ Measure of America, Social Science Research Council. 2015. DATA2GO.NYC. <http://www.data2go.nyc>. Original source: NYU Furman Center 2014.

100,000 people aged 16 and older from largely Latino and black Bronx Community District 3, **Crotona Park East & Morrisania**, were being held in local jails in 2014, compared to just 12 per 100,000 from **Forest Hills and Rego Park**, where 55 percent of residents are white and 24 percent are Asian American²—a thirty-fold difference. Disaggregated indicators like these spotlight the ways in which race and place shape people’s effective freedoms.

Using **outcome and impact indicators** matters because they tell us not just what an organization put into an effort (inputs) or what its short-term effects were (outputs), but rather how these first steps at least in part brought about observable changes (outcomes) that in turn contributed to sustainable improvements in people’s lives (impacts).³ Indicators for inputs and outputs as well as demographic indicators related directly to program activities and participants are, of course, very important. They are often the only indicators that can be tracked within the lifetime of a project, they allow organizations to be fairly precise about their own role in bringing about an end result, they allow for financial accountability, and they capture who participates in different initiatives. But while the information they provide is necessary, it is not sufficient.

If an organization gets a \$10,000 grant to provide legal assistance to 50 recently incarcerated men who fell behind on child support payments while in prison and, as a result, have had their professional licenses suspended, it can reliably report on how it spent that money (salaries, facilities, court fees, etc.), how many offenders received council, and, ideally, what was the immediate result (were their licenses reinstated, or not?). These indicators are all important to collect and track to assess the effectiveness of the services; for a one- or two-year grant, they are the only indicators a program can reasonably track. But what input and output indicators can’t tell us is what happened next. Did regaining one’s license lead to employment, or was the stigma of previous incarceration so strong that even those who regained their licenses were unable to find work? Were participants in the program more or less likely to reoffend in the coming years, or was there no difference? Overall, what did the legal services mean in terms of a person’s employment, income, housing stability, and relationship with their children two, three, or four years later? For an endeavor that has a fifteen-year timeline like the SDGs, using outcome and impact indicators along side input and output indicators is not only possible but imperative.

The goal of the SDGs is to spur progress not just at the national level but also in states, cities, towns, and communities; the spirit of meeting them requires meeting them **everywhere** and **for everyone**. Only with disaggregated outcome and impact indicators can we know for sure in fifteen years’ time if we’ve met the SDG challenge.

Contact: Kristen Lewis, Co-Director, Measure of America, Social Science Research Council, Kristen@measureofamerica.org

² Measure of America, Social Science Research Council. 2015. DATA2GO.NYC. <http://www.data2go.nyc>. The original source: NYC Department of Corrections and Department of Health and Mental Hygiene 2014

³ **Burd-Sharps, Sarah**, Patrick Guyer, and Kristen Lewis. “[Metrics Matter: A Human Development Approach to Measuring Social Impact](#).” [Community Development Investments Review](#). (Federal Reserve Bank of San Francisco, 2012).



Statement of the National Coalition for a Civil Right to Counsel on Goal 16 Indicators for Access to Justice in the United States

The National Coalition for a Civil Right to Counsel (NCCRC), an association of nearly 300 participants in 38 states, works to advance a right to counsel for low-income people in basic human needs civil cases. Such cases include matters such as housing, employment, public benefits, health, intimate partner violence, and child custody. Our [interactive website](#) tracks the status of all federal and state rights to counsel, current developments across the country, and related research on the importance and impact of providing counsel. And as a result of a collaboration with the National Center on Access to Justice, the latest [Justice Index](#) includes some civil right to counsel metrics.

A right to counsel in basic human needs civil cases is already recognized by most of our European nations.¹ Research has also repeatedly demonstrated that access to counsel dramatically improves the ability of low-income individuals to access and protect their rights in these cases.² Additionally, the U.N. Committee on the Elimination of Racial Discrimination (CERD) has recognized that providing counsel in basic human needs cases can do much to reduce racial discrimination. This led the CERD Committee to recommend that the United States provide legal representation in cases with “serious consequences for [] security and stability”, such as evictions, foreclosures, domestic violence, discrimination in employment, and termination of subsistence income or medical assistance.³ For all of these reasons, a right to counsel in basic human needs cases is essential to meeting U.N. Goal 16’s call for “access to justice for all.”

We urge the White House Legal Aid Inter-Agency Roundtable to utilize the following indicators for basic human needs civil cases:

- Does the state require the provision of counsel at government expense for indigent litigants, and if so, is it a matter of right or is it a matter of judicial discretion?

¹ Earl Johnson, *Lifting the "American Exceptionalism" Curtain: Options and Lessons from Abroad*, 67 *Hastings L.J.* 1225 (June 2016), available at <http://www.hastingslawjournal.org/wp-content/uploads/Johnson-67.5.pdf>. This situation has led in part to the United States being ranked 65th out of 102 countries on access to civil justice by the World Justice Project.

² Rebecca Sandefur, *The Impact of Counsel: An Analysis of Empirical Evidence*, Seattle J. for Soc. Just. (Fall/Winter 2010), available at <http://digitalcommons.law.seattleu.edu/sjsj/vol9/iss1/3/>; Rebecca Sandefur, *Elements of Professional Expertise: Understanding Relational and Substantive Expertise through Lawyers' Impact*, *American Sociological Review*, vol. 80, 5: pp. 909-933 (Oct. 2015), available for purchase at <http://asr.sagepub.com/content/80/5/909.abstract>; Laura Abel and Susan Vignola, *Economic and Other Benefits Associated with the Provision of Civil Legal Aid*, 9 Seattle J. for Soc. Just. 139 (Fall/Winter 2010) available at <http://www.law.seattleu.edu/Documents/sjsj/2010fall/Abel.pdf>.

³ United Nations Committee on the Elimination of Racial Discrimination, *Concluding Observations on the Combined Seventh to Ninth Periodic Reports of United States of America* (2014), available at http://www.ushrnetwork.org/sites/ushrnetwork.org/files/cerd_concluding_observations2014.pdf.

- If counsel is provided by law as a matter of right, does it apply to all indigent parties, or is it qualified in some way (such as only applying to plaintiffs or defendants, or only children over a certain age)?
- Does the right to counsel depend upon a request?
- How frequently is counsel actually provided?
- How frequently do litigants waive or fail to invoke their right to counsel?
- Does the law provides for compensation for counsel? If so, at what rate and/or amount, and are there caps on compensation?
- What effect does the appointment of counsel have on case outcomes as compared to cases where the litigants receive either limited assistance (such as a help desk, hotline, or easy-to-use forms) or no assistance at all?
- How frequently and/or quickly do represented litigants achieving successful case outcomes return to court on the same matter when compared to litigants without representation?
- Does the state explicitly authorize appointment of counsel in civil cases as a reasonable accommodation pursuant to the Americans with Disabilities Act?

These indicators complement those sought by other civil legal aid advocates, such as the number of unrepresented litigants, the actual legal needs of low-income people, and the economic and other benefits generated when legal aid is provided.

The need to measure the right to counsel in basic human needs cases is buttressed by the combination of the needs at stake with the current lamentable state of the law. To give some examples:

Shelter: It is undeniable that housing is a basic human need, and that the loss of housing can cause a cascade of negative life effects, such as homelessness and incarceration, loss of child custody, unemployment, and school access issues.⁴ Yet no state or jurisdiction in the country currently provides a right to counsel for any type of housing case. In absence of such a right, housing cases in most of the United States suffer from a dramatic representational imbalance, with landlords/banks routinely represented and low-income tenants/homeowners rarely appearing with counsel.⁵ Additionally, housing dockets in some locations have hundreds of cases per day,⁶ making it virtually impossible that tenants and homeowners will receive due process without representation.

⁴ Rachel Kleinman, *Housing Gideon: The Right to Counsel in Eviction Cases*, 31 Fordham Urb. L. J. 1507, 1512-1515 (2004), available at <http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2123&context=ulj>.

⁵ See e.g. Jeffery Leon, *No Access, No Justice*, Washington Lawyer (May 2016), available at <http://goo.gl/IXPGtm> (D.C. Access to Justice Commission estimates that “over 90 percent of landlords in the Landlord and Tenant Branch of the D.C. Superior Court have attorneys, while only 5 percent to 10 percent of tenants are represented”); Russell Engler, *Connecting Self-Representation to Civil Gideon: What Existing Data Reveal About When Counsel is Most Needed*, 37 Fordham Urb. L. J. 37, 47 (2010) (“Tenants rarely are represented by counsel, while the representation rate of landlords varies from low rates in some courts, to highs of 85-90% in others.”)

⁶ See e.g. Rachel M. Cohen, *Welcome to the Courtroom That Is every Renter’s Nightmare*, Next City (Sept. 14, 2015), available at <https://nextcity.org/features/view/rent-court-baltimore-tenant-rights-cities> (“On a typical day in rent court, the average number of scheduled cases ranges from 800 to 1,000.”)

Safety: Victims of intimate partner violence stand to lose much if denied a necessary protective order: their lives are literally at stake, and also access to their homes and children.⁷ At the same time, there is compelling evidence that the provision of legal aid reduces partner violence.⁸ Yet at present only one state guarantees counsel for such cases, while a few others provide it in limited circumstances.⁹

Sustenance: Whether produced through employment, alimony, child support, or government benefits such as SSI, SSDI, or veterans benefits, income is crucial to sustaining life and supporting other basic human needs such as housing and health. At present, however, no state recognizes a right to counsel for these types of proceedings except in the most limited situations.¹⁰

The NCCRC appreciate the seriousness with which the United States takes these matters. The needs of our most vulnerable populations depend on making justice more than just a word on the outside of our courthouses.

Sincerely,
John Pollock
Coordinator, National Coalition for a Civil Right to Counsel

⁷ Beverly Balos, *Domestic Violence Matters: The Case for Appointed Counsel in Protective Order Proceedings*, 15 Temp. Pol. & Civ. Rts. L. Rev. 557 (2006), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=927076.

⁸ Amy Farmer and Jill Tiefenthaler, *Explaining the Recent Decline in Domestic Violence*, 21 Contemporary Economic Policy 158 (2003); Jane Murphy, *Engaging with the State: The Growing Reliance on Lawyers and Judges to Protect Battered Women*, 11 Am. U. J. Gender Soc. Pol'y & L. 499, 511-512 (2003), available at <http://goo.gl/uoXXB1> (“In the small sample of women who had an attorney, most (83%) were successful in getting the protective order while only 32% of women without an attorney got the order.”)

⁹ See the NCCRC's interactive map, <http://civilrighttocounsel.org/map>.

¹⁰ See the NCCRC's interactive map, <http://civilrighttocounsel.org/map>.

Civil Society Consultation
on
Goal 16 Indicators for Access to Justice in the United States

Proposed Access to Justice Indicators
By

Paul Prettitore
Senior Public Sector Specialist
The World Bank

I come at this exercise from a rather different standpoint. I am a US-educated lawyer working on development issues, namely the intersections of justice and poverty, at the World Bank. As such I work with larger amounts of data to perform diagnostics and provide recommendations to governments on reforms. I also work considerably with indicators, particularly those around good governance. I also perform pro bono in the DC Superior Court via a civil society organization, so I am very much familiar with access to justice issues in the US context.

Since my work and experience is primarily outside of the US, I will leave the discussion of specific indicators to my US-focused colleagues who are much better placed to make recommendations. However, I would like to provide the following four points on the role of data and indicators in assessing access to justice, primarily to the poor and vulnerable, for your consideration:

Disaggregate data. One of the major constraints in working with data is the inability to disaggregate it in a meaningful manner. Most data collection methods will preclude comprehensive determinations of poverty levels of individuals/households behind the data. But agencies collecting data should consider using poverty placeholders as part of the data. Possible placeholders include whether a person/household is beneficiary of social safety nets (ie. welfare), income levels, employment status, types of profession and levels of education. Such information will allow the comparisons among the poor, near poor and non-poor necessary to measure access. Data should also be aggregated by different types of vulnerabilities, such as race and mental/physical health, to the extent possible.

Make raw data publicly and easily available. Disaggregation of data is important, but government agencies will never be able to foresee every possible use of data. Therefore, raw data collected to inform indicators should be made easily available to the public so that additional disaggregation and regressions can be performed. This data is incredibly beneficial in assessing the quality of services linked with access to justice, as well as in informing policy development.

Utilize existing data. Existing administrative and survey data should be mined for information relevant to access to justice. Often household surveys, such as those covering health and

employment, contain data on legal problems and justice needs. Responsible government officials could also add a small number of access to justice-related questions to routine household surveys.

Go beyond the limitations of indicators. The value of indicators will always be limited in one way or another by the methodologies attached to them. They tell a story, but one with limitations that need to be recognized. While indicators are themselves important the US Government should not limit this exercise to producing and monitoring them. Tracking indicators should be used as an opportunity to expand data collection. Useful data could be collected through justice needs/gaps surveys, such as those more recently administered in [Canada](#) and [Australia](#). More recently such surveys have begun to collect data on the social (health, family relationships, housing) and economic (income, employment) impacts of unresolved legal problems. (see below) This type of data is particularly useful to link gaps in access to justice with human and economic development, and thus links with other SDGs.

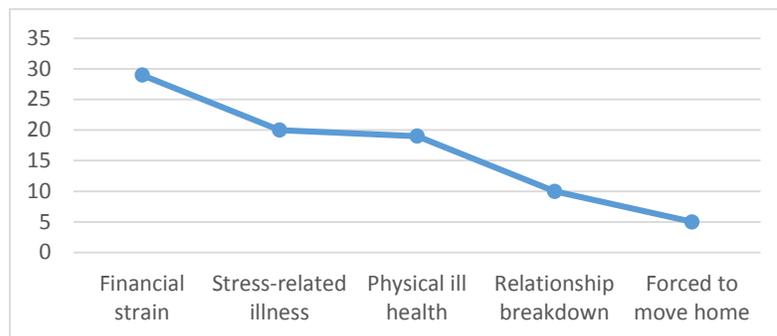
Adverse impacts on persons reporting legal problems

Source: Legal Australia-Wide Survey: Legal Need in Australia (2012)

Impact	Original data sources
Stress-related ill health 22-39%	<ul style="list-style-type: none"> • <i>The legal problems of everyday life: the nature, extent and consequences of justiciable problems experienced by Canadians</i> (Currie, A 2007) • <i>Northern Ireland Legal Needs Survey</i> (Dignan, T 2006) • <i>Report on the 2006 National Survey of Unmet Legal Needs and Access to Services</i> (Ignite Research 2006) • <i>Causes of action: civil law and social justice</i> (Pleasence, P 2006) • <i>Civil justice in England and Wales 2009</i> (Pleasence, P. et al 2010)
Loss of confidence 12-32%	
Loss of income 13-26%	
Physical ill health 10-24%	
Relationship breakdown 4-16%	
Loss of employment 4-14%	
Moving home 4-10%	
Violence 4-6%	

% of respondents with legal problems reporting impacts

Source: Legal Australia-Wide Survey: Legal Need in Australia (2012) (Coumarelos et. al)



Civil Society Consultation with WH-LAIR on Goal 16 Access to Justice Indicators and Data

Proposed Access to Justice Indicators

by

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Recommendation #1: Broadening Understanding of Barriers to Access

Much of the existing data and research on access to civil justice focuses on structural and systemic resource constraints to access such as long waitlists for free legal service lawyers, unrealistic income ceilings for free legal services, and reductions in pro bono requirements in big law firms.¹ There is no doubt that these barriers are important and further data indicators are needed to better understand them. However, a group that is often neglected in data collection are the roughly three-quarters of the poor who do not seek help when they experience civil legal problems (inaction is even more pronounced among poor blacks).²

Some existing research suggests that one of the primary reasons for inaction is that people do not consider certain problems legal in nature, even if they could be resolved in court.³ My research suggests that even when low-income people *do* understand problems as legal in nature, many of them still avoid the legal system. For many of the respondents in my study, negative past experiences with the criminal justice system resulted in a generalized feeling of distrust of the law, including the civil justice system. For most respondents, the criminal justice system and the civil justice system were one and the same. Further, negative past experiences with a variety of government institutions, not just legal institutions, contributed to feelings of shame and guilt that contributed to a desire to avoid government institutions and asking for help at all costs.⁴ Finally, particularly among poor black respondents, a generalized lack of trust (whether or not they had personally experienced negative past interactions with institutions) resulted in resistance to seeking help for legal problems.⁵ This is consistent with a long line of research that finds that trust levels (across a variety of indices, including institutions) among blacks is significantly lower than among whites and other racial groups.⁶ These findings suggest that in order to truly expand access to justice for those that do not seek help, simply increasing structural access will not be enough. However, much more data collection (on a national level) and analysis is needed to further confirm and refine these findings. Survey data could be collected by a variety of agencies across several different legal needs that help increase our understanding of the intersection of race, trust, and past negative experiences with institutions with the decision to seek help for civil legal problems.

Recommendation #2: Outcome Data Collection with a Focus on Level of Service Provided by Legal Aid Organizations

The resource constraints of legal services organizations means that they can offer full representation to few of the clients who seek their help, and most offer some form of limited aid, mainly in the form of an hour or two of education on the issues. In North Carolina, for example, Legal Assistance of North Carolina (LANC) offers “advice and brief services” to roughly three-quarters of the cases they accept. In other state legal aid agencies with whom we have communicated, the percentage of service in brief is even higher.⁷

This brief advice sometimes, but does not always, come from a lawyer, and the nature of the help varies depending on the problem. For example, a client who has been harassed by a debt collection agency may be advised on his rights under the Fair Debt Collection Practices Act, provided a sample letter to send to the debt collector, and provided a link to the website of the Consumer Financial Protection Bureau.

When legal aid organizations make decisions about how to allocate resources by providing some clients full legal services and some clients limited services, they are primarily basing their decisions on anecdotal beliefs or *very* limited organizational data about what may result in the best outcomes. Or, they are making decisions on short-run considerations, which may be suboptimal when viewed over the full set of cases they get in the course of a fiscal year.

At present, legal aid organizations collect limited outcome data (often only for cases that received full service) and it is usually collected only at the time the case is closed. Thus, I propose that LSC and other interested agencies work with legal aid organizations to collect short-term and long-term outcome data for clients who receive full assistance and clients who received limited assistance.

Long-term and short-term outcomes are a critical area of inquiry to aid in better understanding access to justice. It is only when we understand outcomes can we help legal aid organizations decide how to most efficiently and effectively allocate their limited resources. In order to collect this data LSC and other interested agencies would have to work together to design a survey that legal aid organizations could give to clients directly after their case is close, 3 months after their case was closed, 1 year after their case was closed, 3 years after the case was closed, and 5 years after the case was closed (or some variation on these time intervals). The survey would include questions about how the original legal problem resolved (for example, in an eviction case, whether the eviction was avoided in that instance). However, follow-up surveys would collect data about how the problem resolved over time (for example, again in an eviction case, whether the tenant continued to live in that situation, and if not, why not), as well as questions about financial outcomes, psychological outcomes, health outcomes, wealth indicators, job trajectories, changes in perceptions of the legal system, and other such information. While more ambitious, ideally potential clients would be matched on legal problem and other demographic characteristics, and then randomly assigned different levels of legal service, and then assessed for outcomes, which could be compared.

Ultimately, outcome data will be useful in understanding the role access to justice plays in the lives and outcomes of the poor, and it will also provide legal aid organizations with data to help them understand how to best allocate their limited resources.

¹ See, e.g., DEBORAH L. RHODE, ACCESS TO JUSTICE 185-93 (2004).

² CONSORTIUM ON LEGAL SERV. & THE PUB., AM. BAR. ASS'N LEGAL NEEDS AND CIVIL JUSTICE: A SURVEY OF AMERICANS: MAJOR FINDINGS FROM THE COMPREHENSIVE LEGAL NEEDS STUDY (1994); Rebecca L. Sandefur, *Access to Civil Justice and Race, Class, and Gender Inequality*, 34 ANN. REV. SOC. 339, 341-42 (2008).

³ Rebecca L. Sandefur, Am. Bar Found., *Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study* (2014), http://www.americanbarfoundation.org/uploads/cms/documents/sandefur_accessing_justice_in_the_contemporary_usa._aug._2014.pdf.

⁴ Sara Sternberg Greene, *Race, Class, and Access to Civil Justice*, 101 IOWA L. REV. 12 63, 1288-1301

⁵ *Id.* at 1301-1309

⁶ See, e.g., Sandra Susan Smith, *Race and Trust*, 36 ANN. REV. SOC. 453, 454, 456 (2010); ERIC M. USLANDER, *THE MORAL FOUNDATIONS OF TRUST* 91, 107 n.26 (2002).

⁷ Sara Sternberg Greene & Mathew McCubbins, *Civil Legal Aid Effectiveness Project* (2016).



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Civil Society Consultation with WH-LAIR on Goal 16 Access to Justice Indicators and Data

Individual and Institutional Capacity Building as a Broader Measure of Access to Justice and Proposed Global Alternative Indicator for Goal 16.3

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I. National-Level Proposed Indicators

Many programs of the American Bar Association Rule of Law Initiative (ABA ROLI) around the world focus on improving the capacity¹ of justice sector actors to better understand and apply relevant legal frameworks and procedures. For more than 25 years, ABA ROLI has implemented numerous individual training programs and capacity-building activities to develop the skills of justice sector actors on subjects ranging from professional codes of conduct to oral argument and forensic investigation. This strategy rests on the assumptions that training and development of these individual actors will equip them to carry out their mandate effectively and function more efficiently, and lead to the creation of a core group, or agents of change, who can then catalyze learning within the institutions in which they work, thereby enhancing both access to justice and public confidence in the justice system.²

Data on the efficacy of capacity building exercises is often collected at the output level—tracking immediate results (outputs) through pre- and post-training evaluations, standardized knowledge tests and expert observation. ABA ROLI believes the specific indicators suggested below demonstrate an increase in a justice institution’s effectiveness and efficiency as well as sustainability.

- Number of services offered to beneficiaries by recipients of capacity building activities, who have received targeted training in the last 12 months.
- Number of beneficiaries served by recipients of capacity building activities, who have received targeted training in the last 12 months.
- Percentage of recipients of capacity-building activities who report using the skills/knowledge gained from the trainings at least 6 months after training completion.
- Increases in annual revenue/budget of the institution receiving capacity strengthening/organizational strengthening support



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However, scholars agree that, while critically important for establishing contribution, output-level data does not demonstrate how the outputs of capacity-strengthening activities impact the broader changes in institutional capacity or impact on ultimate beneficiaries.³ In other words, while change can be observed at the institutional level following an investment in individual capacity building, attribution or causality may be a challenge practically and methodologically, given changing contextual factors. With that in mind, output-level data has to be supplemented by data that captures user satisfaction, and measures institutional capacity and sustainability. A combination of models, including an objectives-based approach⁴ to trace outputs and immediate outcomes and systems-based approach⁵ to examine long-term or institutional changes, may also be an effective strategy to establish a plausible contribution to observed change. Utilizing findings from such a hybrid model would require flexibility and readiness to accept that, at times, desired outcomes can only be achieved through a holistic approach, for example, training paired with other technical assistance such as organizational development, rather than a standalone capacity building program.

II. Global Proposed Alternative Indicators to Goal 16.3

The current global indicators for access to justice⁶ are insufficient. Alone, these global indicators cannot adequately monitor progress towards addressing most people's justice problems. By focusing exclusively on criminal justice systems, they overlook the most frequent justice and development needs people face around the world and how these issues are effectively addressed. They also fail to address important civil justice access and capacity issues that are critical to other development goals generally.

Together with numerous NSOs, UN agencies, the World Bank, and a diverse coalition of civil society groups, ABA ROLI has recommended the following survey-based indicators focused on strengthening public access to fair dispute resolution, and on access to effective legal counsel.

- Proportion of those who have experienced a dispute in the past 12 months who have accessed a formal, informal, alternative or traditional dispute resolution mechanism and who feel the process was just.
- Proportion of citizens who can access effective and independent legal assistance
- Percentage of people who voice confidence in the judicial system

These indicators are relevant for the target's focus on rule of law and access to justice, capture outcomes as experienced and perceived by people, are simple to understand, are currently gathered through household surveys, and are available for more than 100 countries,



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for example, the World Gallup Poll. Disaggregating the prevalence of accessing dispute resolution mechanisms, where possible, according to income, gender, age, and location, from satisfaction with them will be important for identifying needed reform. Doing so allows stakeholders to see whether some groups are experiencing access to justice differently—either for better or worse—than the general population, and to adjust their efforts accordingly.

ABA ROLI believes that indicators gain strength when used as part of a basket of indicators (a grouping of indicators that are all related to the same outcome). Such approach allows multiple indicators to be considered together, from a range of different perspectives and data sources, which results in richer evaluation.⁷ We further believe that data for measuring the Goal 16 targets should draw on a wide range of data sources, including: official and third-party data; data from national and international authorities; data representing *de jure* and *de facto* indicators; top-down and bottom-up data; structure, input, process or outcome indicators; objective and subjective data; and qualitative and quantitative data. It should be noted that none of the sources should be considered inferior or superior to others, but instead we should focus on how the different sources complement one another.

¹ The United Nations has defined capacity building for sustainable development “as building abilities, relationships and values that will enable organizations, groups and individuals to improve their performance and achieve their development objectives. Capacity building was also described as initiating and sustaining a process of individual and organizational change that can equally refer to change within a state, civil society or the private sector, as well as a change in processes that enhance cooperation between different groups of society. This definition puts emphasis on three aspects: (a) capacity building as the catalyst and constant fuel for a process of change, (b) the importance of building institutional capacity, and the (c) involvement of a wide range of different groups in society.” United Nations Environment Programme, Division of Technology, Industry and Economics, Economics and Trade Branch, *Ways to Increase the Effectiveness of Capacity Building for Sustainable Development* (May 2006), p. 2.

² ABA ROLI has also supported capacity building for other actors outside the government, such as civil society groups, bar associations and universities, with the aim that these actors will push and redirect government efforts or catalyze processes of change outside the government. Capacity building for these groups is as important as government officials but beyond the scope of this note.

³ Kirkpatrick, D. L. (1976). Evaluation of training. In R. L. Craig (Ed.), *Training and development handbook: A guide to human resource development*. New York: McGraw Hill; Kirkpatrick, D. L. (1994). *Evaluating training programs: the four levels*. San Francisco: Berrett-Koehler; Holton, E. F., III (1996). The flawed four level evaluation model. *Human Resource Development Quarterly*, 7(1); Holton, E. F., III, Bates, R. A., & Ruona, W. E. A. (2000). Development and validation of a generalized learning transfer system inventory. *Human Resource Development Quarterly*, 11(4).

⁴ See, e.g., Bradley, K. and Connors, E., *Training Evaluation Model: Evaluating and Improving Criminal Justice Training* (December 2013) (describing 4-level model for evaluating training programs).

⁵ See, e.g., Holton, E. III, *Holton's Evaluation Model: New Evidence and Construct Elaborations* (2005) (using three outcome levels, ability, motivation and environmental influences).

⁶ The UN body responsible for the development of indicators, the Inter-Agency and Expert Group (IAEG), identified two global indicators on access to justice. The two selected focus on elements of the criminal justice system: (1) the percentage of detainees in pretrial detention; and (2) the percentage of victims of violent crime who report their victimization to competent authorities.

⁷ Administrative indicators can document government effort and inputs; 'Objective' situation indicators can impartially identify broad trends over time; Experience and perception indicators, typically gathered through surveys, can ensure that the real experiences of people inform overall assessments of progress. Different sources of data will appeal to different audiences.

Civil Society Consultation with WH-LAIR on Goal 16 Access to Justice Indicators and Data

The Justice Index Indicators, Submitted by David Udell, Executive Director

In the United States and around the world, people’s lives are compromised in civil and criminal legal matters when they do not understand their rights, cannot assert their rights, cannot rely on a neutral and unbiased decision-maker, cannot count on the rule of law and cannot enforce the law. When access to justice is denied in these ways, people risk losing their children, their homes, their physical security, their savings, even their freedom. The Justice Index, www.justiceindex.org, created by the National Center for Access to Justice at Fordham Law School, is an on-line resource that uses data and indicators to rank states on their adoption of best policies for assuring access to justice. The Justice Index has been helping to improve access to justice in the states since 2014. It offers indicators that WH-LAIR agencies can easily replicate. It offers data sets that WH-LAIR agencies can immediately use.

I. Introduction to the Justice Index

The Justice Index is a website that uses data, indicators and indexing to rank the 50 states, Puerto Rico, and Washington, D.C., on their adoption of selected best policies and practices for assuring access to justice. Its driving idea is that a responsible comparison of the access to justice policies established in the states will promote a conversation and debate about those policies both within and between the states, which will in turn promote policy reforms that expand access to justice in each state. By making selected policy models highly visible, the Justice Index also facilitates their easy replication.

II. The four sub-index categories in the Justice Index

The Justice Index contains four sub-index categories (each comprised of multiple indicators) as follows:

- Attorney Access Index – ratio of civil legal aid attorneys per 10,000 poor.
- Self-Represented Index – policies to assist self-represented litigants
- Language Access Index – policies to assist people with limited English proficiency
- Disability Access Index – policies to assist people with disabilities

The Justice Index also contains a Composite Index, which combines the scores from the four sub-index categories by according each category 25% of the composite score.

III. The indicators and data in the Justice Index

The Justice Index contains approximately 112 indicators in four sub-index categories. Operating under NCAJ’s direction, teams of volunteer attorneys gathered data and also conducted a quality assurance review of data provided by courts, legal aid programs and other stakeholders. Complete indicators, and all data and rankings, are at www.justiceindex.org. Short titles and explanations of indicators are below.

A. Attorney Access – This sub-index offers a count of civil legal aid lawyers in each state, and a total for the country. The underlying data is available to WH-LAIR agencies just as it is to the Justice Index. The Legal Services Corporation possesses a count of the civil legal aid lawyers in organizations that have LSC funds. To obtain a count civil legal aid lawyers in organizations that do not have LSC funds, NCAJ relied on diverse sources, including State Bar Associations, State Court Systems, State Access to Justice Commissions and State Interest on Lawyers Trust Account foundations. NCAJ also reached out to civil legal aid leaders to obtain information from their programs. Justice Index indicators include: 1) number of civil legal aid lawyers, by state; 2) number of civil legal aid lawyers per 10,000 residents at or below 200% of federal poverty line, by state (This “ratio indicator” is indexed); 3) number and names of civil legal aid programs, by state; 4) number of attorneys in general population, by state.

B. Self-Represented Access – This sub-index relies on 56 indicators that track the presence or absence of selected best policies for assuring access to justice for people who are self-represented:

- | | |
|---|--|
| 1. Dedicate a Court Employee (34 states) | 22. Fund a Recent Initiative on Court Forms (29) |
| 2. Authorize Specific Steps by Judges (23) | 23. Maintain Single Web Page with Court Forms (48) |
| 3. Train Judges on SRLs (31) | 24–30. List on Court Web Page Forms for Seven Case Types |
| 4. Authorize Court Staff on Specific Steps (32) | 31–37. List on Court Web Page Materials for Seven Case Types |
| 5. Train Court Staff on SRLs (27) | 38–43. Require Courts to Accept Common Form for Seven Case Types |
| 6. Authorize Unbundling (44) | 44–50. Maintain Document Assembly Program for Seven Case Types |
| 7. Train Judges on Unbundling (9) | 51. Maintain Access to Justice Commission (41) |
| 8. Fund a Self-Help Center (20) | 52. Collect Data on Frequency of Right to Counsel Appointments (7) |
| 9. Count Self-Represented Cases (9) | 53. Collect Data on Quality of Right to Counsel Representation (7) |
| 10. Require Plain English Written Materials (7) | 54. Collect Data on Frequency of Discretionary Appointments of Counsel (0) |
| 11. Encourage Plain English in the Courtroom (20) | 55. Recognize a Right to Counsel in Housing Cases (0) |
| 12. Designate Responsibility for Plain English in Courtroom (1) | 56. Recognize a Right to Counsel in Abuse/Neglect Cases (41) |
| 13. Publish a Plain English Style Guide (8) | |
| 14. Train Judges on Plain English (17) | |
| 15. Train Court Staff on Plain English (12) | |
| 16. Make Electronic Filing Accessible (16) | |
| 17. Waive Civil Filing Fees (52) | |
| 18. Simplify Waiver of Civil Filing Fees (26) | |
| 19. Require Court Staff to Explain Waiver (12) | |
| 20. Describe Filing Fee Waiver on Website (34) | |
| 21. Conduct Recent Initiative on Court Forms (43) | |

C. Language Access – This sub-index relies on 39 indicators that track the presence or absence of selected best policies for assuring access to justice for people with limited English proficiency:

- | | |
|--|--|
| 1. Certify Court Interpreters (43 states) | 11. Translate Website Instructions for Self-Represented Parties (26) |
| 2. Require Use of Certified Interpreters (33) | 12. Translate on Website when Interpreters are Provided (17) |
| 3. Train Judges on Working with Interpreters (32) | 13. Translate on Website How to File Interpreter Complaint (10) |
| 4. Train Court Staff on Working with Interpreters (28) | 14–25. Require Certified Interpreters for 12 Case Types |
| 5. Offer Free Interpreter on Website (21) | 26–37. Require Interpreters be Free-Of-Charge for 12 Case Types |
| 6. Use Other Languages to Offer Free Interpreter on Website (13) | 38. Translate on Website Availability of Court Forms (23) |
| 7. Require Interpreters at Clerks’ Counters (7) | 39. Post Translated Court Forms on Website (30) |
| 8. Include Clerk Counter Interpreters in Language Access Plan (31) | |
| 9. Requires Interpreters at Self-Help Centers (3) | |
| 10. Include Self-Help Centers in Language Access Plan (13) | |

D. Disability Access – This sub-index relies on 13 indicators that track the presence or absence of selected best policies for assuring access to justice for people with disabilities:

- | | |
|---|---|
| 1. Require Sign Language Interpreters be Free-Of-Charge (46 states) | 3. Prefer Interpreters with Courtroom Training (27) |
| 2. Require Sign Language Interpreters be Certified (28) | 4. Say on Website How To Request Accommodation (30) |

- | | |
|---|--|
| <ul style="list-style-type: none"> 5. Name on Website the Person for Accommodations (32) 6. Say on Website How To File Disability Access Complaint (27) 7. Name on Website the Person for Disability Access Complaints (29) 8. Require Access for Service Animals (45) 9. Refer to Mental Disability on Website (15) | <ul style="list-style-type: none"> 10. Dedicate Court Employee with Mental Health Training (7) 11. Provide for Appointment of Counsel as Accommodation (3) 12. Recognize a Right to Counsel in Involuntary Commitment (51) 13. Recognize a Right to Counsel in Guardianship (42) |
|---|--|

IV. Impacts – Whether the focus is family, housing, safety, debt, families, veterans, or other areas of direct concern to WH-LAIR agencies, data on presence and absence of best policies for access to justice (including the number of civil legal aid attorneys) allows agencies to track and encourage progress toward better policies over time, creates a platform for social science research on the outcomes of the policies, and introduces policy models to reformers and government officials for replication. Media coverage, prompted by the Justice Index, deepens public understanding of the cases, problems and solutions, and generates incentives for state officials and other stakeholders to expand access to justice. For Justice Index media clips, see <http://ncforaj.org/2016/05/15/coverage-of-the-justice-index-2016-launch/>.

V. Next Steps – We encourage WH-LAIR agencies to use Justice Index indicators to inform the agencies’ selection of Goal 16 access to justice indicators. We are exploring next indicators for the Justice Index, some of potential interest and value to WH-LAIR agencies, including i) civil right to counsel policies, ii) fees and fines policies in state justice systems, and iii) pro bono services donated by professionals and students. We are considering ways to strengthen the Justice Index indicators including by posting data on the degree to which new models for assisting litigants are distributed on geographical and per capita bases within states. We are engaging with social scientists to examine correlations between the Justice Index findings and other data sets (including input, output, and outcome data that can connect policies to impacts). We are expanding the data analytics and visualization functionalities that make the Justice Index a clear and compelling destination for all at www.justiceindex.org.

[Contact David Udell, dudell@fordham.edu; September 11, 2016]

Using Existing Data As The Foundation for a Combined Access to Justice Measure That Shows How Much Access Barriers Undercut Federal Expenditures
Richard Zorza, richard@zorza.net

FRIENDS -- I hope to convince all of you coming to our meeting on the Sept 15 that the agencies that are attending have already gathered data that will be very helpful in building the overall access to justice indicators that are called for. We are far from writing on an empty slate as we try to count the real impact on people of the problems we see. The process highlights the dramatic extent to which the accumulation of access to justice barriers undercuts the value and impact of Federal investments in economic mobility and other social goals.

In order to help start the process of possibly integrating this data, and identifying what needs to be added, I have developed the first draft of a suggested list of “access to justice steps,” that every grievance or problem goes through, and the kind of data we need to “score” the accessibility of that step.

As you will see below, the full list is meant to go all the way back to the what potential legal problems families have that a system might address, and all the way through to whether any ordered remedy is actually complied with. All the scores can then be combined for an overall access score for the issue reflecting what percentage of those with a grievance get appropriate relief. Shockingly, a complete guesstimate of housing discrimination access to justice barriers suggests that less than 2% of violations are pursued all the way through to compliance. (This is not a criticism of the Federal agency, rather a reflection of how many barriers lurk in the full list of steps.) Think how much the impact of the still massive Federal investments is being reduced, particularly for those facing economic mobility barriers. Thus this process offers the opportunity to show how access to justice investments can provide a multiplier on Federal expenditures. Every agency can now take a look at the list, compare it what data they already collect, and see if any of it will be helpful.¹

The approach as a whole also takes an even more tentative stab at a couple of approaches for combining access scores with analysis of potential impact on economic mobility (such as getting people out of poverty.² With this, we might be able to move towards comparing the full impact of different interventions. At a minimum, by finding ways to combine the work of all the agencies in the room, we end up with something much more powerful than what we now have.

I have also tried, in somewhat longer paper³, to suggest a how the scores for each step get combined, to work through an example (with “guesstimate” data),⁴ and to suggest ways of approaching the overall economic mobility issue.⁵

As a first cut, I have grouped the data needs for the access score into four groups each of which can be collected together:

- I. **Use of experts** to establish a) a list of grievances for which there should be a remedy, and b) whether there in fact is a remedy available.
- II. **A community survey** to estimate a) what percentage suffer this grievance, b) what percentage of those know that they suffer a grievance, c) what percentage of these

have made an informed decision to seek a remedy, d) what percentage of those who made a decision not to try were because of knowledge of failures in the system.

III. **Using court and agency data** to determine, a) what percentage of those who intend to see a remedy actually take the first step, b) what percentage of decisions reach a decision of some kind.

IV. **Looking at court and agency data and talking to litigants** to assess, a) in what percentage of these cases the facts and law were adequately presented to the decider, b) in what percentage of those cases the decision was “just,” i.e. within the discretion of the decision-maker, and not based on bias, on randomness, or on inappropriate prohibitions on the process, c) in what percentage of cases was a decision enforced and, d) the impact of successful access on economic mobility.

Step I will require expert analysis. For Step II, some of the “legal needs studies” conducted by state access to justice commissions might be very useful in providing much of the needed data. Comparison of those results with court and agency files should make most of step III relatively easy. Step IV will require more detailed review of hearing records and litigant interviews on underlying facts, compliance, and impact. Interviews with litigants would seek to find out if everything that could have made a difference was presented, including whether it was excluded as a result of inappropriate prohibitions, bias and randomness would be found through statistical analysis, and compliance is a relatively simple litigant interview matter. More detailed methodology is proposed in the longer paper,⁶ and the “fact and law” definition and process is discussed in a recent blog post.⁷

I imagine a chart in which we then try, for each potential grievance, to determine where we may actually already have some relevant data, and put them in one column. Data from each grievance and area of law would then be placed in a large chart in parallel columns to build a more complete picture – or at least a picture of what we know and do not know. Immediate comparisons would be fascinating, and would suggest the most promising areas for research.

Once we start to inventory the potential contributions of this data, we may learn that data collected in one process for one agency may be useful for another. We may find that we can generalize across areas of grievance, for example that sufficiency of knowledge about grievances holds pretty constant across subject areas. It may be that measures and instruments already tested and used could be more broadly applied. For example, tools for finding bias may work in many contexts.

Since I am semi-retired, it would be easy for me to talk informally with any of you about your data, how to integrate it into such an approach, and how to build it into an overall chart.

End Notes

¹ The overall starting point is White House Legal Aid Interagency Roundtable, *Civil Legal Aid Research Workshop Report* (2016), <https://www.ncjrs.gov/pdffiles1/nij/249776.pdf>.

² Richard Zorza, *Towards a Proposed Universal Measure For Access to Justice and Economic Mobility* (2016), <https://accesstojustice.net/using-existing-data-as-the-foundation-for-a-combined-access-to-justice-measure-that-shows-how-much-access-barriers-undercut-federal-expenditures/>.

³ *Id* at Part V.

⁴ Below is the “guesstimate” table taken from the longer paper. I invented the figures for housing discrimination. I hope that people in the room can correct these numbers. The explanation is in *id* at Part IV.

Table I: Access Score Components Example for Housing Discrimination

	Name	Step Score	Cumulative Score
I.A	Right	1.0	100
I.B	Remedy	1.0	100
II.A	Grievance	0.1	30
II.B	Knowledge	0.3	30
II.C	Information	0.5	15
II.D	Informed and Non-Deterred Decision	0.45	6.75
III.A	Initialization	0.6	4.0
III.B	Decision	0.7	2.8
IV.A	Presentation	0.8	2.2
IV.B	Justness	0.75	1.7
IV.C	Compliance	0.8	1.3
IV.D	For those below or near poverty economic mobility achieved	0.25	
	ATJ Impact -- increase in percentage of those with grievance who would get a just enforced result in 100% system		98.6
	Poverty Impact --Percentage of those in poverty raised from or prevented from going into poverty if this single access denial were reversed ⁴		2.46%

⁵ See, e.g., Chetty, Raj, Nathaniel Hendren, and Lawrence Katz. 2016. “The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Project.” *American Economic Review* 106 (4), <http://scholar.harvard.edu/hendren/publications/effects-exposure-better-neighborhoods-children-new-evidence-moving-opportunity>, Mathew Desmond, *Evicted: Poverty and Profit in the American City* (2016).

⁶ *Id.* at Part II-III.

⁷ Richard Zorza’s Access to Justice Blog, *More on the Proposed Single Measure for Access to Justice*, <https://accesstojustice.net/2016/08/09/more-on-the-proposed-single-measure-for-access-to-justice/>.

Appendix

A. Sustainable Development Goals

- Goal 1. End poverty in all its forms everywhere
- Goal 2. End hunger, achieve food security and improved nutrition and promote sustainable agriculture
- Goal 3. Ensure healthy lives and promote well-being for all at all ages
- Goal 4. Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all
- Goal 5. Achieve gender equality and empower all women and girls
- Goal 6. Ensure availability and sustainable management of water and sanitation for all
- Goal 7. Ensure access to affordable, reliable, sustainable and modern energy for all
- Goal 8. Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all
- Goal 9. Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation
- Goal 10. Reduce inequality within and among countries
- Goal 11. Make cities and human settlements inclusive, safe, resilient and sustainable
- Goal 12. Ensure sustainable consumption and production patterns
- Goal 13. Take urgent action to combat climate change and its impacts
- Goal 14. Conserve and sustainably use the oceans, seas and marine resources for sustainable development
- Goal 15. Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss
- Goal 16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels
- Goal 17. Strengthen the means of implementation and revitalize the Global Partnership for Sustainable Development

B. Presidential Memorandum

The White House
Office of the Press Secretary
For Immediate Release

September 24, 2015

Presidential Memorandum -- Establishment of the White House Legal Aid Interagency Roundtable

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND
AGENCIES

SUBJECT: Establishment of the White House Legal Aid Interagency Roundtable

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to increase the availability of meaningful access to justice for individuals and families and thereby improve the outcomes of an array of Federal programs, it is hereby ordered as follows:

Section 1. Policy. This Nation was founded in part on the promise of justice for all. Equal access to justice helps individuals and families receive health services, housing, education, and employment; enhances family stability and public safety; and secures the public's faith in the American justice system. Equal access to justice also advances the missions of an array of Federal programs, particularly those designed to lift Americans out of poverty or to keep them securely in the middle class. But gaps in the availability of legal aid -- including legal representation, advice, community education, and self-help and technology tools -- for America's poor and middle class threaten to undermine the promise of justice for all and constitute a crisis worthy of action by the Federal Government.

The majority of Americans who come to court do so without legal aid. They may be left by their economic circumstances to face life-altering events -- such as losing a home or custody of children, or escaping domestic violence or elder abuse -- on their own. More than 50 million Americans qualify for federally funded civil legal aid, but over half

of those who seek assistance are turned away from legal aid organizations, which lack the funds and staff to meet the demand.

When people come into contact with or leave the criminal justice system, they are likely to face a range of legal issues. A victim of abuse may need a protective order, or a formerly incarcerated individual may need a driver's license reinstated in order to get a job. Access to legal aid can help put people on a path to self-sufficiency, lead to better outcomes in the civil and criminal justice systems, and enhance the safety and strength of our communities. Increased legal resources in a community can also help courts process cases more effectively and more efficiently, saving time and money.

Federal programs that are designed to help the most vulnerable and underserved among us may more readily achieve their goals if they include legal aid among the range of services they provide.

By encouraging Federal departments and agencies to collaborate, share best practices, and consider the impact of legal services on the success of their programs, the Federal Government can enhance access to justice in our communities.

Sec. 2. Establishment. There is established the White House Legal Aid Interagency Roundtable (LAIR).

Sec. 3. Membership. (a) The Attorney General and the Director of the Domestic Policy Council, or their designees, shall serve as the Co-Chairs of LAIR, which shall also include a representative from each of the following executive departments, agencies, and offices:

- (i) the Department of State;
- (ii) the Department of the Treasury;
- (iii) the Department of Justice;
- (iv) the Department of the Interior;
- (v) the Department of Agriculture;
- (vi) the Department of Labor;
- (vii) the Department of Health and Human Services;
- (viii) the Department of Housing and Urban Development;
- (ix) the Department of Education;
- (x) the Department of Veterans Affairs;
- (xi) the Department of Homeland Security;

- (xii) the Equal Employment Opportunity Commission;
- (xiii) the Corporation for National and Community Service;
- (xiv) the Office of Management and Budget;
- (xv) the United States Agency for International Development;
- (xvi) the Administrative Conference of the United States;
- (xvii) the National Science Foundation; and
- (xviii) such other executive departments, agencies, and offices as the Co-Chairs may, from time to time, designate.

(b) The Co-Chairs shall invite the participation of the Consumer Financial Protection Bureau, Federal Trade Commission, Legal Services Corporation, and Social Security Administration, to the extent consistent with their respective statutory authorities and legal obligations.

Sec. 4. Mission and Function. (a) The LAIR shall work across executive departments, agencies, and offices to:

- (i) improve coordination among Federal programs that help the vulnerable and underserved, so that those programs are more efficient and produce better outcomes by including, where appropriate, legal services among the range of supportive services provided;
- (ii) increase the availability of meaningful access to justice for individuals and families, regardless of wealth or status;
- (iii) develop policy recommendations that improve access to justice in Federal, State, local, tribal, and international jurisdictions;
- (iv) assist the United States with implementation of Goal 16 of the United Nation's 2030 Agenda for Sustainable Development; and
- (v) advance relevant evidence-based research, data collection, and analysis of civil legal aid and indigent defense, and promulgate best practices to support the activities detailed in section 4(a)(i)-(iv).

(b) The LAIR shall report annually to the President on its success in achieving its mission, consistent with the United Nation's 2030 Agenda for Sustainable Development. The report shall include data from participating members on the deployment of Federal resources that foster LAIR's mission.

Sec. 5. Administration. (a) The LAIR shall hold meetings at least three times a year and engage with Federal, State, local, tribal, and international officials, technical

advisors, and nongovernmental organizations, among others, as necessary to carry out its mission.

(b) The Director of the Office for Access to Justice in the Department of Justice, or his or her designee, shall serve as Executive Director of LAIR and shall, as directed by the Co-Chairs, convene regular meetings of LAIR and supervise its work. The Office for Access to Justice staff shall serve as the staff of LAIR.

(c) The Department of Justice shall, to the extent permitted by law and subject to the availability of appropriations, provide administrative services, funds, facilities, staff, equipment, and other support services as may be necessary for LAIR to carry out its mission.

(d) The LAIR members are encouraged to provide support, including by detailing personnel, to LAIR.

(e) Members of LAIR shall serve without any additional compensation for their work.

Sec. 6. General Provisions. (a) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(b) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA

C. List of Participating Agencies in White House – Legal Aid Interagency Roundtable

1. Administrative Conference of the United States (ACUS)
2. Consumer Financial Protection Bureau (CFPB)
3. Corporation for National and Community Service (CNCS)
4. Equal Employment Opportunity Commission (EEOC)
5. Federal Communications Commission (FCC)
6. Federal Trade Commission (FTC)
7. Legal Services Corporation (LSC)
8. National Science Foundation (NSF)
9. Office of Management and Budget (OMB)
10. Social Security Administration (SSA)
11. U.S. Agency for International Development (USAID)
12. U.S. Department of Agriculture (USDA)
13. U.S. Department of Education (ED)
14. U.S. Department of Health and Human Services (HHS)
15. U.S. Department of Homeland Security (DHS)
16. U.S. Department of Housing and Urban Development (HUD)
17. U.S. Department of the Interior (DOI)
18. U.S. Department of Justice (DOJ)
19. U.S. Department of Labor (DOL)
20. U.S. Department of State (State)
21. U.S. Department of the Treasury (Treasury)
22. U.S. Department of Veterans Affairs (VA)

D. Justice Blog: The White House Legal Aid Interagency Roundtable and Goal 16 – One Year On

THE WHITE HOUSE LEGAL AID INTERAGENCY ROUND TABLE AND GOAL 16 – ONE YEAR ON

September 21, 2016

Courtesy of Principal Deputy Associate Attorney General Bill Baer

“Here in this country, the wealthiest nation on Earth, we’re still working every day to perfect our union, and to be more equal and more just, and to treat the most vulnerable members of our society with value and concern. That’s why, today, I am committing the United States to achieving the Sustainable Development Goals.”

– President Obama, Remarks on Sustainable Development Goals, United Nations, Sept. 27, 2015

On Sunday evening, I had the honor of representing the United States at a gala reception on *Leveraging the Sustainable Development Goals for Inclusive Growth: Delivering Access to Justice for All*, held to celebrate the first anniversary of the United Nations Summit for Sustainable Development (UN Summit). This event, hosted by the Organisation for Economic Cooperation and Development (OECD) and the Open Society Foundations (OSF), included a panel discussion on access to justice and inclusive growth in which I participated with the Ministers of Justice from Austria, Ireland, Sierra Leone, South Africa and Ukraine, and the Director of Justice, Security and Governance from Colombia.

As co-chair of the [White House Legal Aid Interagency Roundtable](#) (WH-LAIR), I was proud to share the work of this interagency collaboration with leaders from across the globe and explain how it demonstrates the United States’ commitment to ensuring access to justice for our citizens. Almost a year ago, on the eve of the UN Summit, Samantha Power, U.S. Ambassador to the United Nations, and Roy Austin, Director of the Office of Urban Affairs, Justice and Opportunity of the White House Domestic Policy Council and my WH-LAIR co-chair, [announced](#) that President Obama had signed a [Presidential Memorandum](#) establishing this interagency effort. Among other things, the Presidential Memorandum charged WH-LAIR with helping the United States implement Goal 16, the access to justice goal, of the UN’s [2030 Agenda for Sustainable Development](#)[\[external link\]](#) (UN Agenda).

Since the adoption of the UN Agenda last year, the international access to justice community has been breathing life into Goal 16 through international gatherings, working groups and meetings. The OECD has been at the forefront, including by [hosting](#) two roundtables on access to justice last fall. And OSF, through the work of the Open Society Justice Initiative, has been supporting advocates across the globe – including here in the United States – to connect Goal 16 to domestic access to justice reform movements. The U.S. government is both participating in this international activity and working through WH-LAIR to fulfill the aspirations of Goal 16 domestically.

Comprised of 21 federal partners, WH-LAIR works to identify how and when legal aid can improve federal programs that serve our nation’s vulnerable and underserved populations. By integrating civil legal aid into a wide array of federal programs designed to improve access to housing, health care services, employment and education, and enhance family stability and public safety, the programs are strengthened and objectives better met. Similarly, Goal 16 and its call for *equal access to justice for all* might be viewed as a necessary component to fulfilling the other Sustainable Development Goals. WH-LAIR, like the UN Agenda, reflects an understanding that access to justice is both a worthy goal in and of itself and necessary for the success of other societal objectives, including inclusive growth.

This fall, WH-LAIR will issue its first annual report to the president. This report will detail the history of this interagency effort and provide concrete examples of how civil legal aid has been integrated into federal programs across the executive branch. It helps fulfill WH-LAIR’s annual reporting obligation to the president, but it will not be our only effort to track the progress toward fulfilling Goal 16 – and specifically Target 16.3, which calls on countries to “promote the rule of law at the national and international levels and ensure equal access to justice for all.”

That’s why at this week’s event, I announced the United States’ commitment to identifying national indicators for Target 16.3. This activity, co-led by the department’s Office for Access to Justice and Bureau of Justice Statistics, and which includes federal agency experts from across the WH-LAIR agencies, is working to identify national criminal and civil access to justice indicators and related data for this target. But we know that we can’t do it alone. Just last week, the working group participated in a civil society consultation organized by Columbia Law School’s Human Rights Institute and Fordham Law School’s National Center for Access to Justice and hosted by OSF in Washington, D.C. The consultation allowed members of the working group to hear from over 30 experts on access to justice from across the country as we undertake the difficult and necessary task of measuring justice.

All of the countries participating in Sunday’s event agreed that measuring justice is difficult, but essential, because access to justice is the foundation for more inclusive societies. As OECD Secretary-General Angel Gurría aptly observed, fulfilling the goal of ensuring access to justice requires not only effective planning, but also effective implementation. And one key to effective implementation is for all nations to rigorously measure justice within their borders. The WH-LAIR working group looks forward to doing just that. I am excited about what we will produce and the ongoing exchange of lessons learned and best practices gleaned.

Topic(s):

Access to Justice

Posted in:

[Access to Justice](#)

[Office of the Associate Attorney General](#)

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