

THE ROLE OF DATA IN ORGANIZING AN ACCESS TO JUSTICE MOVEMENT

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I. PERSONAL STORIES AND COMPLETE PICTURE

In her essay in this volume, Martha Bergmark of “Voices for Civil Justice” reminds us that civil justice reform has to start with compelling human stories. She’s right. Building a movement requires drawing in the care and effort of those who previously had not seen the problem.

A story of a mother and her family unjustly evicted from their home, of an older gentleman whose life savings are unjustly taken, or of a father fighting for visitation rights unjustly denied: each of these personal stories is an outrage and will often generate anger in the listener. Stories lead those who do not live the injustices of our civil justice system every day to ask: How can this be? Broad outrage, the “how can it be?” question, and the demand for answers and action, are the fuel of any social justice movement.

But in a social justice movement, personal stories rarely allow us to see the complete picture. To change the system, we as advocates also need the wider communities in which we live to see that the personal stories are representative of thousands more that are the product of the same and related systemic failures. Individual acts of compassion for those whose stories we hear will not help the thousands whose stories we never hear. The “complete picture” of the lack of access to civil justice is that the problem is systemic and that fixing it will require big changes and concerted action.

To get from the personal story to the complete picture requires more data than we currently have. Alongside the stories of individual families who have lost their homes, we need to be able to share with people that in the United States last year “x” thousand families were evicted without having had access to a lawyer to learn if the eviction was legal. And “x” thousand were ejected in foreclosure in states where landlords don’t even need to go to court to kick them out—just ask the sheriff to padlock the door. After we tell the story of the individuals who have lost whatever savings they had to debt collectors, we need to show people that “x” thousands of debt collection actions target the wrong people, are run by collection firms that don’t have the documents to prove the debts are even owed, and use terror tactics to extract money from people who are already poor. After we tell the story of parents whose children are removed by the state without the provision of counsel, we need to let people know that there are “x” children and “x” parents whose lives are forever altered in this way.

Bringing people on board the access to justice movement requires the outrage and the demand for answers generated by personal stories. Keeping people committed requires that they see the scope of the problems, that they believe the source of the problems can be understood, and that they trust that the people driving the movement have strategies to make the system better. Keeping people committed requires personal stories and expanded stories. It requires the complete picture.

II. WHAT DATA?

It is, of course, an overstatement to say we can understand or communicate the “complete picture” of our access to justice crisis in America. The system is large and varied and absolute knowledge will always elude us. But we can and must know much more than we currently do.

Some of the work should be systematized and consistent across many jurisdictions and courts. Common standards are needed for counting cases, determining when a person has had adequate access to counsel or self-help services, access to language assistance, and proper provisions for those whose mental health makes the courts difficult to navigate. And courts need funding to build the infrastructure to track the common standards on data that is core to their function.

Other work will be specific to areas of the law. Consider, for example, evictions. We need to know, among other things: (a) the number of tenants with eviction cases; (b) the percentage represented by counsel; (c) the percentages, as disaggregated by race, ethnicity, age, location; (d) the percentages, as disaggregated by cause of the action (such as amounts of rent owed); (e) the range and frequency of claimed defenses; (f) the lengths of time to resolution; (g) the number and nature of resolutions (in court, out of court, eviction, extension of time until eviction, retention, modifications of amounts owed).¹ Basic data of this nature will lead to systemic insights, which in turn can help to draw support for a more comprehensive movement.

And some work will require deep thinking about questions that are critical to answer but hard to measure. Perhaps the most powerful and difficult example is the question of how we can learn not only if the outcome of a case is correct, but also if the outcomes of multiple cases are correct. We have to grapple with these questions and experiment in different places with different approaches because the follow-on questions are so important to building a better system: (a) How often does the civil justice system make mistakes in outcomes?; (b) What is the influence of racial bias on accuracy of civil justice system outcomes?; (c) What is the full set of potential causes of unjust outcomes?; (d) What are the costs for individuals and for society that are

1. EVICTION LAB, <https://evictionlab.org/map/#/2016?geography=states> [<https://perma.cc/YSN3-CBGQ>] (tracking numbers of filings and numbers of evictions, per state) (last visited Apr. 1, 2019).

associated with each unjust outcome?; (e) What happens to parties who lose, for example, tenants who are unjustly evicted?

Collecting the data that becomes available, indexing it, and making it comprehensible to advocates and to the wider community—filling out for everyone the more complete picture—is another key task in building the data architecture needed to build the movement.

III. THE WORK IS UNDER WAY

In an array of current projects, experts are identifying types of data that are needed,² growing the social science research field that is studying access to justice,³ expanding the role of computational science in tracking and evaluating court data,⁴ evaluating the empirical support for access to justice as a strategy for reducing global poverty,⁵ and tracking progress on access to justice around the world.⁶

A few examples:

The World Justice Project through its Rule of Law Index relies on survey answers to rank countries on a broad range of criteria, including the performance of their civil justice systems. If anyone doubts that America has an access to justice crisis, the latest update of the Rule of Law Index ranks the United States 99th out of 126 countries on its access to justice measure, tied with Mozambique, Uzbekistan, and Zambia.⁷

2. *Access to What*, Rebecca Sandefur, Daedalus, Winter 2019; AM. ACAD. OF ARTS & SCI., <https://www.amacad.org> (last visited Apr. 1, 2019); *The New Empiricism & Its Application to Access-to-Justice Inquiries*, D. James Greiner, Daedalus, Winter 2019; see also EVICTION LAB, *supra* note 1.

3. *National Science Foundation Access to Civil Justice; June 2019 in Chicago, IL*, U.S. NAT'L SCI. FOUND., https://nsf.gov/awardsearch/showAward?AWD_ID=1823791&HistoricalAwards [<https://perma.cc/MU4B-887R>] (describing National Science Foundation grant for a workshop gathering social scientists from across disciplines at the American Bar Foundation) (last visited Apr. 1, 2019).

4. See *FY 2018 Performance and Financial Highlights*, U.S. NAT'L SCI. FOUND., https://www.nsf.gov/pubs/2019/nsf19003/nsf19003.pdf?WT.mc_id=USNSF_179 [<https://perma.cc/PQ4Z-5EPZ>] (describing National Science Foundation grant for a workshop gathering computational researchers and technicians at Georgetown Law School) (last visited Apr. 1, 2019).

5. See *Access to Justice*, OECD, <http://www.oecd.org/gov/access-to-justice.htm> [<https://perma.cc/H2XJ-FHGK>] (last visited Apr. 1, 2019).

6. *Sustainable Development goals*, SUSTAINABLE DEV. GOALS KNOWLEDGE PLATFORM, <https://sustainabledevelopment.un.org/?menu=1300> [<https://perma.cc/XH9K-AU5N>] (last visited Apr. 1, 2019).

7. WORLD JUST. PROJECT, RULE OF LAW INDEX (2019), at 13, 27, https://worldjusticeproject.org/sites/default/files/documents/WJP_TUAK [<https://perma.cc/626P-TUAK>] (setting forth definitions); WORLD JUST. PROJECT, RULE OF LAW INDEX_2019 (2019), https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2019-Single%20Page%20View-Reduced_0.pdf [<https://perma.cc/9TYU-V9DX>] Scores are compiled by manual comparison of each country's individual score on Factor 7.1. *Id.*

National Center for Access to Justice's (NCAJ) Justice Index⁸ ranks the 50 states, Washington, D.C., and Puerto Rico, on policies and practices that are essential to assuring access to justice. The organization relies on a count of civil legal aid lawyers, and an examination of the presence (or absence) of selected best policies and practices in the states. We have consulted with many state Access to Justice Commissions, as well as court administrators and advocates around the country on how to use the Justice Index to support positive changes that increase access. We know from experience that making data available, clear, and easy to use helps those who want to improve the system.

The United Nations, through its Sustainable Development Goals (SDGs),⁹ has created a global indexing system that is intended to compare the performance of all the countries of the world in accomplishing a set of seventeen global goals. Built into many of the goals, and made explicit in Goal 16, is a call to expand access to justice and the rule of law. Since adoption of the SDGs in 2015, there has been a debate about how best to track civil justice, and whether to build explicit civil access to justice data points into the targets and objectives that have been established by the United Nations to give effect to Goal 16. That debate is ongoing. Reformers focused on civil justice continue to work to incorporate civil justice criteria into the Goal.

IV. COMBINING THE ELEMENTS

The question posed in this Collection is whether there is an access to justice movement in America. If there is not, there needs to be. If there is, it needs to grow. Either way, personal stories and the complete picture are both foundational. To tell all the stories that matter, we need to collect them from those affected by the justice system and we need to work together to understand them and bring them to the wider community. Ultimately, the question will not be about whether there is a movement. It will be whether the movement succeeded. That will happen only when the movement captures the complete picture.

8. *The Justice Index 2016*, Nat'l Ctr. for Access to Just., <https://justiceindex.org> [<https://perma.cc/H7BB-7F7S>] (last visited Apr. 1, 2019).

9. *Supra* note 6.