

To: National Center for State Courts

From: GBA Strategies

Date: December 12, 2016

Annual National Tracking Survey Analysis

Our latest national survey of registered voters, conducted on behalf of the National Center for State Courts, provides some good news for court officials, particularly in terms of overall confidence in the courts and their critical role in protecting individual rights. But calls for more innovation and a greater use of technology remain central to public perceptions of state courts, underscoring persistent concerns about state courts' ability to meet the demands of their 'customers' within an environment of limited budgets.

This survey also demonstrates very clearly how little most Americans understand government funding at the federal and state levels, and especially funding of the court systems upon which they rely. These misperceptions, which assume a much higher level of funding than the courts actually receive, could be interpreted as a call for more civic education in the long term, but we feel it is more important that court leaders understand the disconnect between perception and reality so that they can better anticipate and meet the expectations of their customers. This challenge is not unique to the courts, as studies consistently show greater disconnects between objective facts and public perceptions when it comes to the performance of government at every level, presenting the court system with an opportunity to provide leadership for other areas of government.

Beyond continuing to explore public perceptions of court performance and funding challenges, this survey focused on two timely issues. On the question of fines and fees, we found that while voters would not volunteer the issue as a major concern, they strongly oppose 'debtors prison' policies that imprison indigent defendants for an inability to pay court fines and fees and support a number of policy options, particularly those that rely on alternative requirements such as community service or court-mandated training that reduce the likelihood of recidivism and better prepare a defendant to succeed after leaving the court system.

Finally, the 2016 presidential campaign brought into focus questions about whether a judge's ethnicity influences fairness in the court system. In the abstract, we see that most voters do believe there is an influence, albeit a minor one. But when we move to more specific hypothetical examples, we see a clear racial disparity, with non-white voters in particular suggesting that a minority defendant is less likely to receive equal justice from a white judge but few concerns in the opposite scenario for a white defendant with a minority judge. This is clearly another issue that undermines public confidence in the courts and should inform court policies and communications efforts at the state level.

The following are key findings and recommendations based on a survey of 1,000 registered voters conducted November 14-17, 2016, with more than 30 percent of interviews completed via cell phone. The poll is subject to a margin of error of +/- 3.1 percentage points at the 95 percent confidence level.

- **Overall confidence in state courts at highest level yet.** Over the course of four surveys dating back to April 2012, we have seen small but consistent gains in confidence in voters’ respective state courts. State courts have consistently inspired more confidence than the executive or legislative branches in each state, and today, nearly 3-in-4 say they have a great deal or some confidence in their state courts.

Confidence in State Court System		
	% Agree	
	% Confidence	% No Confidence
November 2016	74	24
October 2015	71	27
November 2014	68	28
April 2012	67	29

These gains in confidence in state courts have been relatively consistent across age, gender, and partisan identification, but we do see a racial gap, with white voters expressing more confidence while non-white voters express less confidence overall and have shown no movement on this measure since 2014.

In addition to overall confidence in the state courts, we see the highest number yet who agree that courts in their state are committed to protecting individual and civil rights (71 percent) and serve as an appropriate check on other branches of government (65 percent). We also see solid numbers on measures such as treating people with dignity and respect (71 percent) and taking the needs of people into account (63 percent).

- **Voters continue to express concerns about customer service, particularly when it comes to innovation and use of technology.** Despite stronger marks on overall confidence in state courts, voters continue to give state courts negative marks on overall job performance (46 percent excellent/good, 52 percent just fair/poor). This is a measure that gets more at day-to-day performance than the confidence measure explored above, and we see several areas where voters voice concerns, none of which are new in this research. Only 51 percent say state courts ‘provide good customer service to people in the court system,’ down from 55 percent in 2014 and 53 percent in 2015. Half of voters see state courts as ‘inefficient,’ and only 53 percent see them as ‘a good investment of taxpayer dollars.’

The concerns that drive these ratings are familiar. More than 6-in-10 voters view state courts as ‘political’ (61 percent, unchanged from a year ago), contributing to concerns about bias that we explored in greater detail last year. In this survey, we also see a new high in the

number of voters who call state courts ‘intimidating’ (45 percent). But the worst attribute for state courts remains ‘innovative’ – just 39 percent say this describes state courts well, while 54 percent say it does not; these numbers represent a 6-point net drop from a year ago, with the losses relatively consistent across demographics. Reflecting these concerns, a plurality continue to say ‘state courts are not effectively using technology to improve their own operations or how they interact with the people they serve.’ Previous research has consistently identified this failure to keep up with the technological advances that customers have now come to rely on as a primary driver of low customer service ratings and questions about the courts’ efficiency and value to taxpayers.

- **Courts’ unique nature does not exempt them from demand for innovation.** With previous research identifying innovation as a consistent weakness for state courts, we sought to dig deeper on the need for innovation and whether courts should be held to a different standard. We found that while voters acknowledge the unique roles of courts, including protecting individual rights and serving as a check on other branches of government, they still have clear expectations that courts will adapt to new technologies to meet the needs of their customers. However, as the table below demonstrates, there are significant gender, age, and race-based differences on this measure.

Majority Say Courts Must Change with the Times							
	% Agree						
	Total	White	Non-White	Men	Women	Under 50	50+
Just like any business, (STATE) courts must change with the times to meet the needs of their customers and to keep up with new innovations.	52	49	61	49	56	55	49
(STATE) courts are not a bank or a department store -- the court system is the ultimate protector of our constitutional rights and shouldn't significantly change the way it does business.	43	47	34	46	40	41	45

- **Voters broadly uninformed on government spending, including courts funding.** It is not news that voters often hold incorrect views about basic civic information, and that these misconceptions can influence their opinions about a range of public policy issues. This survey sought to extend that broad lesson to the court system, asking voters about a series of economic facts. First, we asked voters to identify the official unemployment figure, with less than 1-in-3 correctly answering within one point of the correct answer while 42% responded with an answer that was higher than reality, just 2 percent responded lower, and 24 percent couldn’t even offer a guess. We also asked voters to identify where the federal government spends the most and the least money each year across five budget areas – foreign aid, interest on the federal debt, education, veterans’ benefits, and the federal court system – and found

that nearly 1-in-3 correctly identified interest on the federal debt as the greatest expenditure (although more incorrectly chose foreign aid) while only 12 percent identified the federal court system as the lowest expenditure (nearly 60 percent incorrectly chose veterans’ benefits or education).

Previous research has shown that greater knowledge of basic civics education correlates with stronger opinions of the courts, and this more detailed look at knowledge of broad national economic and budget facts confirms a similar correlation. However, we also asked voters what percentage of their state’s budget goes to funding the state court system, a figure that differs by state but stands at 3 percent or less in every state. Only 6 percent correctly chose 3 percent or less, compared to 24 percent who chose 3.1-10 percent and 41 percent who volunteered more than 10 percent. But those who knew how little most states spend on their court systems also gave state courts a lower job approval figure (44 percent excellent/good, 56 percent fair/poor) than other voters.

We believe that there are two important lessons from these economic and budget questions for advocates of the state courts. First, and most obviously, we see that most voters do not understand how tax dollars are allocated and overestimate the money available to state courts, as well as other budget priorities. Second, educating voters about these budget realities is not a surefire means of improving perceptions of the courts or ratings of their effectiveness. While advocates for the courts should take every opportunity to educate voters about the proper role of the courts in our democracy and the budget constraints courts face, they should not view these efforts as substitutes for concrete steps to address the customer service, technology, and innovation concerns explored above.

- **Marks for procedural fairness reach a new high.** This survey reinforces earlier research that Americans harbor significant concerns about bias and unequal justice in the court system, but those with recent direct experience in the court system continue to express confidence in the fairness of those proceedings. Across four surveys, we have asked the same question of those who have had direct recent experience in the court system, and the results have been consistent and positive, with satisfaction reaching a new high this year at 78 percent.

Procedural Fairness				
<i>Regardless of the outcome, were you satisfied with the fairness of the process in your dealings with the court system?</i>	2012	2014	2015	2016
Yes	68	72	70	78
No	25	26	25	21

In a counterintuitive but consistent finding, those with direct experience within the court system continue to give the courts lower marks for customer service and other core attributes tested in these surveys, while simultaneously vouching for the fundamental fairness of their own proceedings.

- **Americans overwhelmingly support code of judicial conduct, reject tying judges’ performance or courts’ financial health to fines and fees.** One of the primary areas of focus for this research was court fines and fees, as well as a related exploration of how to measure and govern judicial performance. We asked a series of questions related to these topics and found broad and intense agreement (and in one case, disagreement) on virtually every measure.

Judicial Conduct, Judicial Performance, Fines and Fees		
	%_Strong Agree	%_Total Agree
All judges, regardless of the type of cases they hear, should be subject to a code of judicial conduct that makes unethical behavior a basis for discipline or removal from the bench.	78	93
The performance of a judge should be evaluated by the judge's temperament and fairness.	60	87
Judicial salaries should not be paid from proceeds produced by fees levied against defendants.	50	74
Courts should not be expected to operate exclusively from proceeds produced by fees levied against defendants.	38	71
	%_Strong Disagree	%_Total Disagree
The performance of a judge should be evaluated by the judge's rate of collecting court fines and fees.	49	63

Given the large margins on each of these measures, we see very little demographic or even partisan differences. We feel it is important to note that we rarely see such strong intensity on issues such as these that are not a part of most voters’ daily lives.

- **Strong initial opposition to ‘debtors prison’ policies that imprison indigent defendants for an inability to pay court fines and fees.** Even before any messages or information about alternatives are presented, Americans strongly oppose ‘imprisoning a defendant who is poor due to an inability to pay court fines and fees’ (25 percent approve, 70 percent disapprove, including 47 percent strongly approve). While we do not see significant differences on this measure across demographic lines, we do see a partisan gap, with Democrats overwhelmingly opposed (16 to 84 percent) and Republicans still opposed, but by a much smaller margin (37 to 58 percent).

This survey presents ample evidence that voters feel imprisonment is inappropriate, or at least a last resort, for non-violent misdemeanors or those awaiting trial, but it can be an appropriate punishment for those who possess the means to pay court fines and fees but refuse to do so.

Conditions for Imprisonment		
	%_Strong Agree	%_Total Agree
For defendants accused of non-violent misdemeanors like shoplifting or traffic-related offenses, judges should always consider alternatives to imprisonment.	65	87
Only defendants who present a high risk to the safety of the community or who are considered flight risks should be held in custody before appearing for their trial.	55	83
Defendants with the financial means to pay court-imposed fines and fees but who willfully refuse to pay should be imprisoned.	31	57

- **Community service, court-mandated certification lead list of popular alternatives.** We tested a short series of potential alternatives to imprisonment. Once again, in keeping with the initial broad and intense feelings on this issue, we found strong support for all four policy alternatives, with two in particular emerging as near-universal choices.

Alternatives to Imprisonment – Policy Proposals		
	%_Strong Support	%_Total Support
Allow defendants to pay off their fines by working through local, court-designated non-profit organizations to provide community service at an hourly rate until all debts are paid through hours worked.	75	93
Allow defendants to pay off their fines by completing court-mandated steps - such as a degree or job training or drug treatment programs - to improve their ability to earn a living and stay out of trouble in the future.	66	93
Instead of mandatory court fines and fees for everyone, set fines and fees based on an individual's income and the gravity of the charges against them.	45	76
Eliminate mandatory fees and instead allow judges to modify or waive fees for those who are unable to pay despite their best efforts.	44	79

These responses demonstrate that Americans want to ensure that there is accountability for defendants, but it does not need to be punitive. They support more judicial flexibility in dealing with defendants who can't pay, because they believe the courts can serve a role not just in meting out penalties but in creating more constructive outcomes as well.

- **Americans believe a judge’s ethnicity impacts fairness, with bias most evident between white judge and minority defendant.** Donald Trump’s rhetoric during the 2016 campaign brought into focus the question of whether a judge’s ethnicity impacts their ability to provide justice to all of those who appear before them. We found that a majority of Americans (57 percent) believe that the race or ethnicity of a judge has some impact on how they decide cases, but only 22 percent believe it has a major impact. As anticipated, there is a racial gap on this question, with 51 percent of whites seeing some impact (just 14 percent major impact) compared to 76 percent of African Americans (51 percent major impact) and 67 percent of Hispanics (35 percent major impact).

We then moved this exercise from the abstract to a more concrete example. In a split sample exercise, half of the respondents were asked whether a young white male defendant would be likely to receive a fair trial from an African American judge, while the other half were asked whether a young African American defendant would be likely to receive a fair trial from a white judge. Only 11 percent felt the white defendant would be less likely to receive a fair trial, while 71 percent felt it would make no difference and 15 percent felt the judge’s ethnicity would actually work to his advantage. But 36 percent felt the young African American would be less likely to get a fair trial, compared to 56 percent who felt it would make no difference. There was little differentiation based on race on the split for the white defendant. But 56 percent of African Americans and 44 percent of Hispanics felt the African American defendant would suffer bias at the hands of a white judge; while ‘only’ 30 percent of whites agreed, this number was still more than three times higher than it was for the white defendant before the African American judge.