

**Research on Access to Justice:
The Promise. The Challenges. The Recommendations.**

Research matters, whether the field is commerce, science, education, sports, or . . . law. In the field of access to justice, research holds great promise: increased access is needed, only a small number of studies have been scientifically rigorous, and research can lead to insights about how best to allocate limited resources. However, research may present certain challenges in light of researchers’ and subjects’ differing cultures and goals. This memo explores the promise and the challenges of research in this field, and then offers some recommendations for going forward. Its focus is on research in which the subjects are legal services providers, however it may be relevant in other contexts too.

**I.
The Promise of Research on Access to Justice**

Research can help to illuminate:

- the categories of clients for whom legal assistance is most effective;
- the categories of legal matters in which legal assistance is most effective;
- the levels of legal assistance – brief advice, ghost writing, pro se classes, completion of court forms – that are most effective to meet clients’ particular needs;
- the categories of advocates – including staff attorneys, paralegals, law students, and pro bono attorneys – who can be effective at particular legal tasks;
- the degree to which expansion of a civil right to counsel – to new categories of cases and clients – is needed;
- the degree to which individuals, families, and society consider the provision of legal assistance is important;
- the most efficient ways to assure access to justice in an environment in which resources are limited; and
- the scenarios in which the provision of legal assistance saves more than it costs.

II. Challenges in Carrying out Research on Access to Justice

1. **Research on human interventions is difficult and poses significant and well recognized methodological challenges** – Legal representation is a form of human activity that is more akin to a surgical procedure than to administration of a pill. Its efficacy may depend on the skill level of the lawyers who are part of the study, the characteristics of the judges who issue rulings during the study, or other aspects of the legal environment in which the service is provided. “Potential clients” who are denied legal representation during a randomized study may secure legal services elsewhere, from different lawyers, in front of different judges, or in a different legal environment, with one or more of these factors influencing outcomes. Research can run into difficulty sorting out these challenges, but can also succeed in spite of them.
2. **Sometimes researchers are from Mars and legal services programs are from Venus** – Researchers and legal services providers are trained in different disciplines, driven by different motivations, and susceptible to different external pressures. These factors may influence planning, research, analysis, and presentation. Of course no one is perfect. Researchers may favor certain outcomes, pursue knowledge with a zeal that trumps other concerns, or yield to pressures in the academy that reward controversy. Likewise, legal services providers may favor certain outcomes, resist inquiry with reflexive concerns about their clients’ privacy or programs’ vulnerability, or adhere unreasonably to the view that researchers are unable to understand their circumstances.
3. **Initial research findings can be erroneous or indeterminate** – It is possible for research to produce initial findings that are erroneous, indeterminate, or subject to misinterpretation. Erroneous findings can raise doubts that can lead to bad policy, and indeterminate findings can cast a cloud. But, over time, as more studies are done, research produces findings that are better understood and more reliable. Indeed, all progress is achieved in this way.
4. **Lay and legal audiences may be scientifically naive** – Lawyers, lawmakers, funders, reporters, and lay people are not trained in research terminology and may misunderstand research methodology, statistical analysis, and the findings, themselves. Papers written for scholarly audiences may be clear to intended readers, but not to other audiences. But, with dedication and expertise, complex subjects can be presented in clear fashion.
5. **The import of early findings on access to justice may be magnified** – While research on access to justice is not inherently newsworthy, findings about civil legal aid and related subjects may attract media attention because little empirical research has been done on these subjects to date. As a result, researchers may have only limited control over how their work is received, and their explanations of complicated findings and of various caveats limiting the implications of those findings may not attract as much attention as the findings themselves. Still, steps

can be taken to shape the presentation of findings responsibly. Part of the solution to the problem is more, rather than less, research.

6. **Legal services programs may have limited time and money** – Legal services programs may be overworked and underfunded, and reluctant to take on roles in projects that are perceived as requiring a great time commitment or drawing on funding that might otherwise be available to finance direct services to clients. We are not aware of actual instances in which conflicts of this nature have prevented projects from going forward. Moreover, limitations on resources are among the arguments in support of research that can help to establish the importance of legal services and help to ensure the effective use of resources.
7. **Legal services providers may consider their programs to be politically vulnerable** – Legal services providers may be concerned that critics will rely on research findings to undermine their programs. They may feel vulnerable because they are thinly funded, represent clients who are unpopular, and face well-organized opponents. Nor is the political environment well-adapted to considering nuances of scientific studies. On the other hand, it would be unfortunate if the perception of risk were to stifle research, especially since research can produce evidence to combat critics and to support funding requests. Indeed, some funders are now asking that proposals be supported by research.

III.

Recommendations for Going Forward

In light of the potential importance of research, and these preceding challenges, it is worthwhile for researchers and legal services providers to take certain proactive steps.

1. **Communicate at the front end of projects** – Dialogue between researchers and legal services providers should occur as part of planning. The focus should include methods, goals, and presentation of findings. Communication can reduce misunderstanding, reduce the risk of misinterpretation of findings, and minimize the chance of producing findings that are indeterminate or erroneous.
2. **Identify concerns & manage them** – Concerns about vulnerability to attack, time obligations, competition for funds, and more, should be addressed through dialogue not only at the front end of the project, but throughout the course of the study, and especially during presentation of findings. Providers should select the research team based in part on its demonstrated ability to understand and respect the providers' legitimate concerns and those of the providers' clients. Researchers who wish to collaborate with providers on projects should inquire about providers' concerns, seek to understand them, and respect them.
3. **Agree on roll-out** – The communications strategy should be planned at the beginning of the project, and ownership of the eventual results and timing of their disclosure should be clarified at the outset. Providers should select a research

team based in part on its demonstrated ability to make data understandable. Researchers should provide information and examples about how they will present their findings to diverse audiences. Clarity of presentation – particularly of statistical analyses and their implications – is essential in the final product.

4. **Draw more researchers into the field** – Legal services providers may wish to request assistance from social scientists to vet proposed research plans for utility and viability, and to obtain a second opinion on the significance and reliability of the findings. More fundamentally, the field needs more researchers, who will then be able to support one another, check one another's work, and accelerate progress toward deeper understanding and better policies.
5. **Conduct more research** – The promise of research is that it cuts through debate that is otherwise governed by partisan politics and by demands for austerity. Reliable findings can make it easier for providers and courts to make the case for funding access to justice. Research can convert skeptics. Research is more important than ever in this era of performance measurement.

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