



Access to Evidence

How an Evidence-Based Delivery System Can Improve
Legal Aid for Low- and Moderate-Income Americans

Jeffrey Selbin, Josh Rosenthal, and Jeanne Charn June 2011

Introduction

Never before have more low-income Americans needed civil legal aid. About 57 million Americans, one-third of them children, qualify for free legal help when a foreclosure notice comes, a divorce looms, or debts mount after a job loss. But half or more who seek help are turned away because legal aid providers lack sufficient resources. Tens of millions more moderate-income Americans are ineligible for free legal aid, yet lack reliable access to an affordable lawyer.

Still, recent developments give us hope for improvement. State and local governments, nonprofit organizations, and law schools around the country are developing innovative approaches to addressing legal needs in their communities. The Obama administration can hasten these developments by promoting legal service delivery models that are backed by rigorous evidence of their effectiveness.

So-called “evidence-based” practices are taking hold across a wide range of fields. Research methods like randomized controlled trials, statistical mapping and analysis, and systematic qualitative studies allow providers and funders to determine which models deliver on their promised outcomes. By encouraging evidence-based approaches in civil legal assistance, the federal government can help service providers target resources more efficiently. Data on effectiveness will also bolster the case for new investments by Congress and other funders to increase access to justice.

With new leadership and initiative in key institutions, we recommend that the White House and Congress seize the opportunity to:

- Establish a “National Access to Justice Institute” in the Justice Department to coordinate legal aid research through a partnership with the American Bar Foundation and the Legal Services Corporation.
- Support state and regional centers for legal aid research to catalyze innovation and evaluation through collaboration between the new institute, state access-to-justice commissions, legal services providers, and law school clinics.

- Target federal funds to incentivize evidence-based legal aid delivery systems through competitive grants and market-based mechanisms.

By pursuing these steps, we can improve the legal services delivery system for millions of low- and moderate-income Americans, and enhance the likelihood of continued and strengthened public and private support.

Background: The state of legal services delivery

For more than four decades, the federally funded Legal Services Corporation has been the largest single provider of civil legal assistance to the poor. LSC's budget was slashed in the early 1980s and again in the mid-1990s. At the same time, Congress imposed significant program restrictions on LSC providers. With a current budget of \$420 million, LSC is once more on the chopping block as Congress looks to reduce the deficit by cutting social programs.

While LSC remains the largest single funder of legal services, local providers have responded to LSC funding shocks by identifying new financing and creating a more diverse service delivery system. Congressional curbs on LSC funding have further splintered the delivery system during the last 15 years. In particular, programs have spun off from LSC field offices to avoid the so-called “poison pill” restriction, which extends to all public and private funding the same limits imposed on LSC dollars within a single program.

Today, roughly two-thirds of legal aid funding comes from nonfederal sources. The private bar, the courts, and state and local governments are filling some of the void by establishing or funding their own efforts to increase civil legal assistance.¹ Law school clinics have also proliferated during the last four decades, and meet some of the civil legal needs in their communities. This decentralized, mixed-model environment can make case management and direct comparisons difficult, but it has simultaneously allowed for a wide range of innovative service delivery strategies.

Some models “unbundle” the services provided by lawyers, only representing clients during one stage of a case, or giving advice via hotlines.² Others enlist lay advocates, or help people find legal advice or file legal actions on their own (known as pro se representation). Some organizations pursue market-based approaches to legal assistance, like legal insurance and sliding fee scales. Still others use technology to lower costs of service or rely heavily on volunteer (or pro bono) contributions from attorneys in private practice.

These innovations are encouraging, but we don't know enough about where lawyers make the biggest difference for clients. With few exceptions, we don't have reliable data about which problems require the help of a lawyer, or which clients could benefit from a nonlawyer or some other form of limited legal assistance.

Regrettably, the federal government has made little effort to capture information about legal aid funding sources, service provision, and delivery outcomes. Insufficient data make it hard to know how and where to spend the limited money available to get the best results for low and moderate-income Americans. In an unfortunate feedback loop, this absence of data in turn deprives programs of evidence to make the case for more funding at a time when public and charitable dollars are increasingly scarce.

The promise of an evidence-based approach

Even in this constrained environment, there are some hopeful signs. Leaders in the legal services community are focused on the need for better legal service provision, and are beginning to turn toward evidence-based approaches. By “evidence-based,” we mean a hard-nosed commitment to rigorous evaluation of program effectiveness—that is, a commitment to discovering through established research methods what works best to address clients' varied legal problems.

The Obama administration has embraced evidence-based social policy in many areas. The Office of Management and Budget has called for greater investment in program evaluation and recommends prioritizing programs backed by strong evidence. Progressive voices, including the Center for American Progress's Doing What Works program, have likewise encouraged strategies to identify and scale up successful local innovations. The Government Accountability Office in 2009 examined a range of evaluation methods that can generate useful evidence about social interventions. Effective evaluation methods include random assignment of clients to treatment and control groups, quasi-experimental comparison groups, statistical analysis of observational data, and in-depth case studies.

In the legal services context, an evidence-based approach would allow funders and service providers to determine which problems most often require the help of a lawyer and, more broadly, what approaches to service provision are most effective. In 2010, the Justice Department launched its Access to Justice Initiative to address the “dramatically understated” crisis in legal services, and is actively pursuing

innovative responses to the so-called justice gap. The American Bar Foundation, the nation's leading organization devoted to the empirical study of pressing legal issues, subsequently established a research initiative focused on access to civil legal assistance.

Under new staff and board leadership, the Legal Services Corporation is committed to enhancing program effectiveness. More than half of all states have formed access-to-justice commissions to coordinate and improve the delivery of legal services, and many of these bodies increasingly are interested in evidence-based approaches to civil legal aid. In 2011, a group of leading law schools founded a Consortium on Access to Justice to promote research and teaching focused on the fairness and legitimacy of the American civil justice system.

These promising developments augur well for a cultural transformation of the civil legal aid community into one that embraces evidence-based approaches at every level. But for that to happen, the federal government will have to provide leadership.

Recommendations: Toward an evidence-based system

The federal government retains a key role in the legal services community. With a targeted investment of human and financial capital, Congress and the Obama administration can coordinate, catalyze, and incentivize evidence-based approaches to legal services. These efforts could help answer critical questions: Where are lawyers needed most? What types of services are most effective in different circumstances? Which clients benefit from what level of legal intervention? And what areas merit prioritization by funders? Moreover, a strategic approach to federal funding would encourage more legal assistance organizations to pursue evidence-based evaluation and spur further innovation in service provision.

To these ends, we recommend the White House take the following steps to drive evidence-based policymaking in the delivery of legal services:

1. Establish a National Access to Justice Institute to coordinate legal aid research

We need centralized coordination of legal aid research. The Justice Department already houses the National Institute of Justice, a research, development, and evaluation agency focused on using science to improve the criminal justice system and reduce crime, especially at the state and local levels.

The department should lead a partnership with the American Bar Foundation and the Legal Services Corporation to establish a National Access to Justice Institute. The institute should have a broad mandate, but need not have regulatory or grant-making authority at the outset. It would be an independent and objective entity focused on identifying and promoting evidence-based policies and practices.

The institute, in consultation with other legal service practitioners and academic researchers, should undertake the following interrelated activities:

Identify current funding streams

An effective civil legal assistance delivery system can only be designed more sensibly if we have a clearer picture of its constituent parts and how they fit together. The institute should identify current funding streams from federal, state, and local sources, and it should map the existing legal aid delivery system by programs and services. The American Bar Foundation has started gathering baseline data, and the institute should regularly update and refine such data collection.

Develop a research agenda

The institute should develop a research agenda to study substantive, comparative, and longitudinal case outcomes to inform individual providers and local, state, and regional planners. The Legal Services Corporation will be a key partner in identifying pressing knowledge deficits and research questions for the field.

Collect and share best practices for evidence collection

The institute should create and share research “best practices” and protocols to determine which evidence-based approaches yield the most useful information about what works in delivery of legal services. The new law school consortium can lend direct expertise and also serve as a portal to social scientists and other university researchers.

Publish results of evaluations and experiments

To enhance the impact of the research agenda, the institute should compile and publish the results of all evaluations and experiments (including so-called null findings, where there is no statistically discernible impact of the intervention). The institute should create and maintain an accessible resource database for programs and researchers to promote understanding of both the potential and the limits of empirical research.

2. Support state and regional centers for legal aid research to catalyze innovation and evaluation

While a National Access to Justice Institute can play a clearinghouse and coordinating role, a comprehensive research agenda requires a sustained commitment of time and resources at the state and local level. The federal government should provide seed funding for the establishment of state and regional “Centers for Legal Aid Research.” These centers would join the institute in partnership with state access-to-justice commissions and law schools to evaluate existing and new forms of service provision.

The legal services community needs a way to catalyze innovation and assess comparative delivery methods among providers, including those that target moderate-income clients and which are not subject to LSC restrictions. Building on the example of the National Institute of Justice’s recent direct funding of researcher-practitioner partnerships, the administration should seed such centers via a competitive grant program outside of the LSC appropriation process.

These centers could be based at a single law school or involve multiple schools. The new law school consortium would be an obvious collaborator in this effort. The centers would work closely with legal services providers such as court-based programs, not for profits, and even for-profit entities. To access center resources, service providers and funders would have to be engaged in significant service provision and commit to rigorous study of delivery methods and innovations.

Many law school clinics would be ideal research sites, especially those with deep subject matter expertise and decades of experience developing and deploying legal services delivery models. Law schools are increasingly involved in empirical research, and most law schools are situated within larger research universities whose faculty and graduate student involvement will be critical in this enterprise. In addition to their labor, such university partners possess the requisite independence, and substantive and methodological expertise to mount high-quality, cost-effective studies.

3. Use federal funds to incentivize development of evidence-based legal aid

The White House has recently deployed a number of tools to encourage organizations and local governments to innovate and increase accountability, such as the Race to the Top competitive grant program in education. As the admin-

istration seeks additional funding for the Legal Services Corporation, it should designate new investments for competitive grants based on outcomes, not inputs, with a clear preference for funding projects that employ the most rigorous and independent evaluation methods. Congress and the administration should also pilot market-based mechanisms to generate private-sector resources and reward evidence-based performance.

Authorized by Congress in 2000, LSC's successful Technology Initiative Grant is an example of the type of competitive effort we propose. The TIG program funds projects to develop, test, and replicate technological improvements in legal aid delivery. TIG grantees must implement meaningful evaluation plans, including clearly articulated program goals, activities designed to achieve such objectives, and methodologies to gather data and assess effectiveness. By all accounts, the program has been a success. The National Institute of Justice regularly administers competitive grants that favor applicants utilizing evidence-based practices and measuring outcomes, including a strong preference for random assignment to treatment (service) and control groups. Such a sustained approach over time builds progressively valuable knowledge regarding program effectiveness.

Beyond competitive grants, Congress and the administration should target a portion of proposed "pay for success" bonds (called social impact bonds in the United Kingdom) to encourage innovation and evaluation in legal services.³ The president's FY 2012 budget includes \$100 million in social impact bonds to spur private investment in social interventions with the potential to serve public purposes and save public resources. Investors are repaid with public funding, but only if providers achieve agreed-upon performance targets. With even a modest amount of social impact bond support, LSC and non-LSC programs alike could raise and target funds to specific areas in which legal aid can help clients and reduce their overall demand on public services. Examples might include community re-entry assistance to reduce recidivism for people with criminal records, and transactional assistance to reduce defaults for people dealing with mortgage, credit, and other financial needs.

Conclusion

The federal government can play a key leadership role in coordinating, catalyzing, and incentivizing innovation and evaluation in the legal services delivery system. But moving the legal services community toward an evidence-based delivery system will not be quick, easy, or risk-free. Resources for research will be in short supply, so public and private funders must either devote additional money for evaluation in every grant or establish dedicated funding streams for evaluation.

As we have learned from practitioners in other fields, it is challenging both to measure service delivery in complex settings, and to do so in a way that is consistent with professional obligations to clients. Studying disability hearings will not tell us much about eviction actions. Some clients may be more interested and successful in representing themselves, while for others, self-help may be impractical or impossible. The more detailed and precise the study, the less we can generalize about the findings, while broader studies may not provide a basis for targeting resources.

Researchers will also need to think carefully about how to engage client communities in design and implementation of studies, so as not to exploit vulnerable populations, impose added burdens on them, or raise unwarranted expectations. An objective assessment of almost any social intervention practice will confirm some deeply held beliefs and refute others. Early studies are likely to raise as many questions as they answer, but will help us to refine inquiries and to produce increasingly actionable results.

In a politically charged environment where funding for low-income programs is under pressure, proponents of legal aid may fear exposing the field to additional critique or attack. Our experience suggests these risks are worth taking. Better information ultimately will improve allocation of existing resources and help justify greater public and private investments in delivering legal services to low- and moderate-income Americans.

Endnotes

1 For a detailed look at the current state of legal services funding, please see Alan Houseman, "The Justice Gap: Civil Legal Assistance Today and Tomorrow" (Washington: Center for American Progress, 2011), available in this volume.

2 For more on bundling and unbundling, see Peter Edelman, "When Second Best is the Best We Can Do: Improving the Odds for Pro Se Civil Litigants" (Washington: Center for American Progress, 2011), available in this volume.

3 For background on social impact bonds, please see Jeffrey Liebman, "Social Impact Bonds" (Washington: Center for American Progress, 2011), available at http://www.americanprogress.org/issues/2011/02/social_impact_bonds.html.

About the authors

Jeffrey Selbin is a Visiting Clinical Professor of Law at Yale Law School and a Clinical Professor of Law at the University of California, Berkeley, School of Law, where he is Faculty Director of the East Bay Community Law Center, Berkeley's community-based poverty law clinic. He founded EBCLC's HIV/AIDS Law Project in 1990 as a Skadden Fellow, and served as the organization's Executive Director from 2002 through 2006. His research interests include clinical education, anti-poverty lawyering, and community lawyering, with an emphasis on evidence-based approaches. He is a graduate of the University of Michigan, L'Institut d'Etudes Politiques, and Harvard Law School.

Josh Rosenthal is a J.D. candidate at Yale Law School. Prior to attending Yale, Josh was a research associate at American Progress, focusing on LGBT issues and the Half in Ten anti-poverty campaign.

Jeanne Charn is a Senior Lecturer on Law at the Harvard Law School. She directs the Bellow-Sacks Access to Civil Legal Services Project, a research and policy effort aimed at making civil legal services more widely and effectively available. She teaches courses on the legal profession and delivery of legal services and the legal, housing and consumer needs of low and moderate income households. In 1979, Jeanne and Harvard Law Professor Gary Bellow founded a clinical practice center, now the WilmerHale Legal Services Center. She directed the center from 1979 to 2006, guiding its approach as a laboratory for experimentation in the delivery of high quality and cost effective legal services. Jeanne received her B.A. from the University of Michigan in 1967 and her J.D. from the Harvard Law School in 1970.

Acknowledgements

Our issue brief benefited from thoughtful comments from Donna Cooper, Gadi Dechter, Jitinder Kohli, Karen Lash, Joy Moses, Ann O’Leary, Daniel Olmos, Deborah Rhode, Rebecca Sandefur, and Sarah Wartell.

The Center for American Progress is a nonpartisan research and educational institute dedicated to promoting a strong, just and free America that ensures opportunity for all. We believe that Americans are bound together by a common commitment to these values and we aspire to ensure that our national policies reflect these values. We work to find progressive and pragmatic solutions to significant domestic and international problems and develop policy proposals that foster a government that is “of the people, by the people, and for the people.”

Center for American Progress

