

A conversation with Professor Jeffrey Selbin on December 16, 2014

Participants

- Jeffrey Selbin – Clinical Professor of Law, UC Berkeley School of Law; Faculty Director, East Bay Community Law Center; Co-Faculty Director, Henderson Center
- Christine Tsang – Research Analyst, Open Philanthropy Project

Note: This set of notes was compiled by the Open Philanthropy Project and gives an overview of the major points made by Professor Selbin.

Summary

The Open Philanthropy Project spoke with Professor Selbin as part of its investigation of civil legal services reform. Conversation topics included the history of civil legal services in the U.S., attitudes of the field toward research, and room for more research funding.

Research in civil legal aid

Current opportunity

There may be a good opportunity for a new funder to get involved in civil legal aid. A generational shift is taking place as new funders and legal professionals join the field. Research on the effectiveness of civil legal aid is underfunded, and a modest investment could have a large effect on the ability of the field to use its scarce resources effectively.

Programs currently primarily base resource allocation on intuition and convention rather than on evidence. One intuition that could be tested is whether lawyers are more valuable in legally complex, adversarial hearings than in relatively straightforward, non-adversarial hearings. Examples of the former include landlord-tenant disputes, and examples of the latter include hearings related to unemployment insurance, veterans' benefits, and SSI/Social Security Disability Insurance.

Observational evaluations of civil legal aid struggle to overcome the risk of selection bias, since legal services providers may just pick relatively desirable cases to take on. As a result, randomized controlled trials (RCTs) may be particularly valuable for the field.

History of the field

Key moments in the history of civil legal services include:

- **1959** – Early Ford Foundation support for legal services and legal education began
- **1964** – Congress passed the Economic Opportunity Act of 1964, establishing the Office of Economic Opportunity; this led to the establishment of the Legal Services Corporation (LSC)
- **1974** – Congress passed the Legal Services Act of 1974, increasing federal funding and oversight of civil legal services

- **1981** – President Reagan’s opposition to civil legal aid resulted in a 25% reduction in legal services funding
- **1996** – Congress cut federal legal services funding by 33% and added new restrictions to the use of funding

In the early days of civil legal aid, the field debated whether to give aid recipients resources to pay private attorneys or to open staffed offices to provide civil legal services. They chose the latter approach. Increased federal funding and oversight, particularly after the Legal Services Act of 1974, forced the field to become less political by stressing process outcomes (“access to justice”) over substantive outcomes (e.g., redistribution).

Reduced Congressional interest

Congress prioritized measuring the impact of civil legal aid when it began funding the field in the 1960s. Today, the field is underfunded and relatively small, and Congress is less focused on evaluating it. Nevertheless, some legal aid practitioners and social scientists are reviving research on its effectiveness.

Attitude of the field to research

Some legal aid professionals view research on effectiveness as a potential threat to funding for the field. Scarce evidence, however, may be part of the reason for its vulnerability to criticism and can make it more difficult to raise additional funds. Opponents of civil legal services have largely succeeded in defunding and restricting it over the past few decades. Today, some members of government want to completely cut funding for civil legal services. Evidence of effectiveness could improve the field’s ability to address the claims of opponents.

Present research capacity

Legal aid providers don't have the resources to spend large amounts of funding on research. Most programs track the demographics of clients and the number served. Some record whether clients win or lose. Professor Selbin does not know of legal aid providers that track whether clients are better off in the long term for having received services.

Like prior “studies” dating back to the 1980s, a 2009 LSC report found that legal aid providers turn away half of requests for services and that 80% of the legal needs of the poor are unmet, though it is not clear exactly how reliable those figures are. If aid providers turn away half of requests, then the case for RCTs is easier to ethically defend – unmet demand is large enough to supply a control group.

Professor James Greiner’s findings

Harvard Law Professor James Greiner has mounted several RCTs to test the efficacy of various forms of civil legal aid representation (or in some instances, offers of representation). His published results have spurred both consternation and action in the field, including a study of unemployment cases and two housing studies in Boston. He may have additional studies forthcoming. Though open to critique for a number of methodological choices, these studies convincingly demonstrate that RCTs can be conducted and yield knowledge in the civil legal aid setting.

“Justiciable problems” research

Researchers in the United Kingdom have attempted to identify “justiciable problems”: problems where legal intervention can improve outcomes. Interestingly, it turns out that most people resolve such disputes without lawyers. Illinois Sociology Professor Rebecca Sandefur has found some support for this finding in one of the first justiciable problems studies in the U.S. It is not clear whether, in this situation, outcomes are better or worse than they would be if more issues were settled with the help of lawyers. Not all people and situations require lawyers. Providing lawyers in every civil case might be inefficient and perhaps counterproductive.

A recent workshop on civil legal aid research

The National Science Foundation (NSF) provided \$50,000 for a 2012 workshop to facilitate collaboration between legal aid professionals and social scientists. This type of gathering is rare. The workshop, appended to a civil legal aid trade group conference, consisted of a town hall meeting on reviving the research component of legal aid and a smaller meeting with 30-40 participants who formed groups to explore research opportunities. A few of these groups later successfully pursued NSF grants for research. Professor Rebecca Sandefur, Karen Lash of the Department of Justice, and Professor Selbin led the workshop.

Opportunities for a new philanthropist

It is unclear what a new philanthropist should fund in legal aid, because the most effective and underfunded aspects of the field have not been identified. A new philanthropist could fund research like Professor Greiner’s RCTs, with the goal of identifying the most promising areas for additional funding.

A new philanthropist could take a two-pronged approach:

- Fund legal aid practitioners to provide legal services
- Fund researchers to study the effectiveness of those services

Comparative studies could help uncover which services are most effective. They also might appeal to service providers fearful that research could threaten funding. Comparative studies would likely aim to determine the optimal allocation of funding, not whether funding should be provided. Coordinating multiple research sites would likely yield more widely applicable information than funding a single research site. In addition to funding comparative research, a new philanthropist could study specific forms of aid in depth.

Harvard Law Professor Jeanne Charn has studied the effects of legal aid in foreclosure cases. Her work (some of which is unpublished) highlights how a program’s choice of goals has implications for how it should be evaluated. For example, a program with the long-term goal of stable housing for foreclosed homeowners would need to be evaluated using longitudinal studies.

Research sites

A new philanthropist could consider funding community-based clinics affiliated with law schools. Possibilities include Harvard’s, Berkeley’s, and Stanford’s clinics among others.

Law school clinics tend to be willing to take risks and test innovative ideas. They have access to potential subjects on a large scale and connections to universities that could facilitate partnership with social scientists.

Other potential research sites include innovative legal services organizations, such as Legal Services for Northern California and Legal Services of Philadelphia.

Civil legal aid and criminal justice reform

The collateral consequences of criminal charges are often civil in nature. Therefore, the Open Philanthropy Project could consider funding civil legal aid as part of its criminal justice reform work.

Funding

Main sources

The federal government is the biggest funder of civil legal aid. Through the LSC, it provides between \$300 million and \$400 million annually – approximately 25% of the field's funding. The federal government also funds some legal aid with resources other than LSC funding and distributes some of these latter funds competitively. The federal government funds a smaller percentage of the field than it used to. In the past, it provided 80-90% of the field's funding.

Other major funding sources include:

- **Interest on Lawyer Trust Accounts (IOLTA)** – the field's second-biggest funding source, administered by state bar associations
- **State governments** – provide varying levels of funding
- **Foundations** – tend to provide funding according to specific focus areas such as immigration, housing, reentry, and health
- **Law firms** – provide unrestricted funding constituting perhaps 5-10% of funding for the field
- **Lawyers** – provide unrestricted funding constituting perhaps 5-10% of funding for the field

Unrestricted funds provide legal services organizations with budget flexibility.

Total funding for civil legal aid (U.S.)

To administer IOLTA funding, state bar associations solicit information on the budgets of all legal services organizations in their state. One could calculate the total funding for U.S. civil legal aid by adding up funding information for each state. According to most estimates, total funding for the field is about \$1.5 billion.

California-specific funding

California-specific funding includes:

- Direct state appropriations, through the Equal Access Fund, of between \$10 and \$15 million

- \$10-15 million from the Shriver Fund for access to justice pilot programs.

Other people to talk to

- **Alan Houseman** – Counsel of the National Legal Aid and Defender Association; used to run a legal services research institute
- **Mary McClymont** – President of the Public Welfare Foundation
- **Jeanne Charn** – Senior Lecturer on Law at Harvard Law School; ran Harvard’s community-based legal services clinic; is involved in the Bellow-Sacks Access to Legal Services Project
- **Professor James Greiner** – Harvard Law School Professor who has mounted several civil legal aid RCTs
- **Professor Rebecca Sandefur** – Associate Professor of Sociology and Law at the University of Illinois College of Law; is connected to international legal aid providers such as the International Legal Aid Group
- **Professor Catherine Albiston** – Professor of Law and Sociology at Berkeley Law; a member of the Executive Committee of the Henderson Center; co-author of a Wisconsin Law Review article responding to Professor Greiner’s RCT
- **David Grossman** – Clinical Professor of Law at Harvard Law School; used to work at Harvard’s community-based clinic; runs the Harvard Legal Aid Bureau
- **Karen Lash** – Deputy Director for the Access to Justice Initiative at the U.S. Department of Justice

*All Open Philanthropy Project conversations are available at
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