Research that Advances Justice

The American Bar Foundation’s mission is to serve the legal profession, the public, and the academy through empirical research, publications, and programs that advance justice and the understanding of law and its impact on society. Created by the American Bar Association more than sixty years ago, and supported by annual grants from the American Bar Endowment, the ABF is an independent, non-profit organization that conducts large-scale research projects on the most pressing issues facing the legal system in the United States and the world.

Research at the ABF is conducted by a residential research faculty and over 50 affiliated scholars from across the nation and the world. The ABF is a major recipient of grants from the Law and Social Science Program of the National Science Foundation (NSF), where the ABF has a 72% success rate in applications compared to an overall success rate of 23.5% in the social, behavioral and economic sciences.

In the following areas and more, the ABF is a thought leader and a source of research that is shaping policy.
Access to Justice and Public Interest Lawyering

ABF Faculty Fellow Rebecca Sandefur, with funding from the Legal Services Corporation and Friends of Legal Services, produced the first comprehensive mapping of civil legal assistance across all 50 states. Her findings show that

• Diversity and fragmentation combine to create an access to civil justice infrastructure characterized by large inequalities both between states and within them.

With support from the National Science Foundation, Sandefur is continuing her research by conducting the Community Needs and Services Study, an in-depth study of civil legal needs and services in a mid-size American community. Early results show that

• 70% of households report at least one “justiciable” legal problem.
• Only 4% of those households consult a lawyer about the problem.
• The main reason for not consulting a lawyer in such cases is lack of recognition that the issue is a legal one; cost is not the main barrier.

In addition, in a project funded by the Public Welfare Foundation, Sandefur is collaborating with the National Center for State Courts in research that is evaluating whether experiments in Washington and New York states, where non-lawyers are handling some aspects of cases traditionally handled by lawyers, are effective in helping to close the “justice gap.”

Civil Justice and Dispute Resolution

ABF Research Professor Shari Seidman Diamond’s research on video tapes of deliberations of jurors in 50 real civil trials in the State of Arizona has yielded a wealth of findings indicating that

• Jurors who are allowed to discuss the case as the trial progresses show better accuracy of recall, and report greater comprehension of expert testimony.

• Questions submitted by jurors during trials reveal that jurors are intensely aware of the adversarial nature of the trial process, and are attempting to check and gather information to clarify competing claims, rather than advocating for one side or another.
• When jury instructions fail, they do so primarily in ways that are ignored in debates about juries and law.

As a member of the American Bar Association’s American Jury Project, Professor Diamond helped draft the Principles for Juries and Jury Trials, which were adopted in 2005. Diamond’s research has been incorporated into the evaluation and training programs of the Federal Judicial Center.

Criminal Justice

Research is being carried out at the ABF examining the effects of mass incarceration on individuals, families and communities. With funding from the National Science Foundation, ABF Research Professor John Hagan is engaged in a multi-phase research project examining the social effects of mass incarceration. A recently concluded phase of the project has revealed that

• More than 3 million American children have an incarcerated parent.
• The overall U.S. college graduation rate of 40% drops to 1-2% among children of mothers who are imprisoned and to about 15% for children of imprisoned fathers.
• Even if their own parents are not imprisoned, when children go to schools where 10-20% of other parents are imprisoned, the college graduation rate drops by half.

ABF was awarded a National Science Foundation grant to fund a conference on the policy implications of parental incarceration, which was held at the Executive Office Building in Washington, D.C. in August, 2013, and which brought together leading researchers in the field. In part based on research such as Hagan’s, new policy developments have come about in this area, as Attorney General Holder announced changes in Justice Department policy on seeking incarceration for non-violent drug offenders. Recently, the U.S. Sentencing Commission reduced its mandatory sentencing guidelines for certain non-violent drug offenses.
Law, Diversity, and Equal Justice

ABF Research Professor Traci Burch, a member of ABF's Research Group on Legal Diversity, has studied the relationship of skin color and disparities in criminal sentencing in Georgia, a state that classifies inmates by skin color as well as race. Early unpublished findings indicate that

- “Colorism”—prejudice based on lightness/darkness of skin—plays a role in sentence length.
- Overall, in Georgia, in the years 1995-2002 in a sample of 67,379 convicts, criminal sentences of blacks were 4.25% longer than those of whites, even when controlling for criminal history and other relevant factors.
- In the same sample, sentences of blacks with “light” complexion were the same length as those for whites.
- Sentences for blacks with “medium” and “dark” complexions were 4.8% longer than those for whites and “light” complexioned blacks.

Recent research conducted by ABF Research Professors Laura Beth Nielsen and Robert L. Nelson, with Amy Myrick, considers how race may play a role in plaintiffs’ ability to find a lawyer. Examining racial patterns of lawyer use in employment discrimination cases, the investigators find that

- African Americans are 2.5 times more likely than white plaintiffs to file employment discrimination cases pro se, or without a lawyer. Other racial minorities, including Hispanics and Asians, are 1.9 times more likely to file pro se than their white counterparts.
- Lack of information about the legal system, lack of trust in lawyers and their motives, and lack of time and resources to go through the arduous process of searching for a lawyer are all “bottom up” factors that contribute to the disparity in representation.

Law, Health, and Human Development

ABF Research Professor and Nobel Laureate economist James J. Heckman is engaged in a multi-year study of the economics of human potential. His research has shown that investment in early education and healthcare for disadvantaged children from birth to age 5 helps increase the likelihood of healthier lifestyles. Heckman has shown that

- Disadvantaged children who receive quality early healthcare and education are more likely to demonstrate self-control, follow doctors' instructions and lead healthier lives as adults.
- Heckman has also demonstrated that early childhood education helps
  - Reduce the achievement gap
  - Reduce the need for special education
  - Lower the crime rate
  - Every dollar invested in high-quality early childhood education produces a 7 to 10 percent per annum return on investment.

In his State of the Union address on February 12, 2013, President Obama alluded to Heckman’s research on early childhood education by saying “Every dollar we invest in high-quality early education can save more than seven dollars later on—by boosting graduation rates, reducing teen pregnancy, even reducing violent crime.” Obama again referenced Heckman’s research in the 2014 State of the Union address.

In December 2014, Heckman participated in a White House summit on the importance of early childhood education for later success in school and adulthood. Heckman presented research that identifies the immense value of early childhood education, as well as the finding that the development of social skills and character are just as important as IQ for a child to succeed in adulthood. President Obama also addressed the summit, as well as Secretary of Education Arne Duncan.

ABF Research Professor Susan Shapiro, using unprecedented data from two years of observation in two intensive care units at a major urban teaching hospital, is examining how surrogate decision makers make medical—often end of life—decisions for patients unable to speak for themselves. Thus far, Shapiro’s real-time observations of medical decision making offer a very different perspective on the effectiveness of advance medical directives than that suggested in previous research based on retrospective accounts. In particular

- Medical advance directives are of limited value as few people have them, and those that exist are often ignored by decision makers and physicians.
- Advanced directives are not followed for a variety of reasons, including
  - the directive not being in the patient’s chart
  - the directive not accurately reflecting the patient’s wishes
  - the directive being too abstract to provide meaningful guidance
  - the surrogate decision makers not following the directive
- At present, given the limitations of advance directives, the best protection for potential patients is to have a family member who is designated to be aware of the patient’s wishes and to honor them.
Legal Education

ABF Research Professor Stephen Daniels, with Martin Katz and William Sullivan of the University of Denver Sturm College of Law, has recently surveyed a representative sample of law schools about new curricular initiatives, finding that

- All responding schools started at least one major curricular initiative since 2001. Most prominent were initiatives involving lawyering skills (96%) and new clinics (81%).
- Only 24% of responding schools reported a new initiative related to hiring criteria supporting innovation.
- Just 19% of schools reported an initiative related to the criteria for tenure.
- The schools active in the area of faculty incentive structures are more likely to also invest in faculty development supporting the integration of legal analysis, skills, and professionalism (as recommended in the influential 2007 Carnegie Foundation report, *Educating Lawyers: Preparation for the Profession of Law*), and to implement curricular initiatives involving the second and third years along with professionalism.
- The beginnings of these innovations predated the economic downturn, suggesting that law schools were not simply responding to the decline in the law market, though the economic downturn of 2008 did appear to hasten innovation in some instances.

Legal Profession

The ABF long has been recognized as the leading source of research on the legal profession. Among current projects is After the JD (AJD), the first national study of legal careers. AJD is following a large national sample of lawyers admitted to the bar in 2000 over the first 12 years of their careers. AJD is a unique source of information on the changing nature of lawyers’ careers. Recent findings include

- The gender gap in pay persists. In 2012, female respondents working full time earned 80% of the pay reported by male respondents.
- In 2012, 52.3% of female respondents working in law firms were partners, compared with 68.8% of male respondents. In the same sample, 65.5% of male respondents were equity partners compared with 53% of female respondents.
- 76% of respondents indicated they were “moderately” or “extremely” satisfied with their decision to become a lawyer. When asked whether law school was a “good career investment,” on a 1 to 7 scale, with 4 meaning “neither agree nor disagree,” the mean score was 5.46, indicating a relatively positive assessment.

ABF Research Professor Stephen Daniels and collaborator Joanne Martin have studied the impact of tort reform in Texas, and find deleterious effects both on the Texas bar and on ordinary citizens’ access to the civil legal system. Among other findings, Daniels and Martin report that

- Tort reform has a differential impact across the hierarchy of Texas plaintiffs’ lawyers. With less compensation for lawyer-to-lawyer referrals, cases are less likely to move to the lawyers—often specialists—best able to handle them.
- Caps on non-economic damages in medical malpractice cases, another feature of tort reform in Texas, create a disincentive to lawyers taking cases from elderly clients or others who may experience minimal economic damages—the “hidden victims” of tort reform.

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