

Access to Justice Research as a Tool for Advancing Federal Priorities

WORKSHOP REPORT

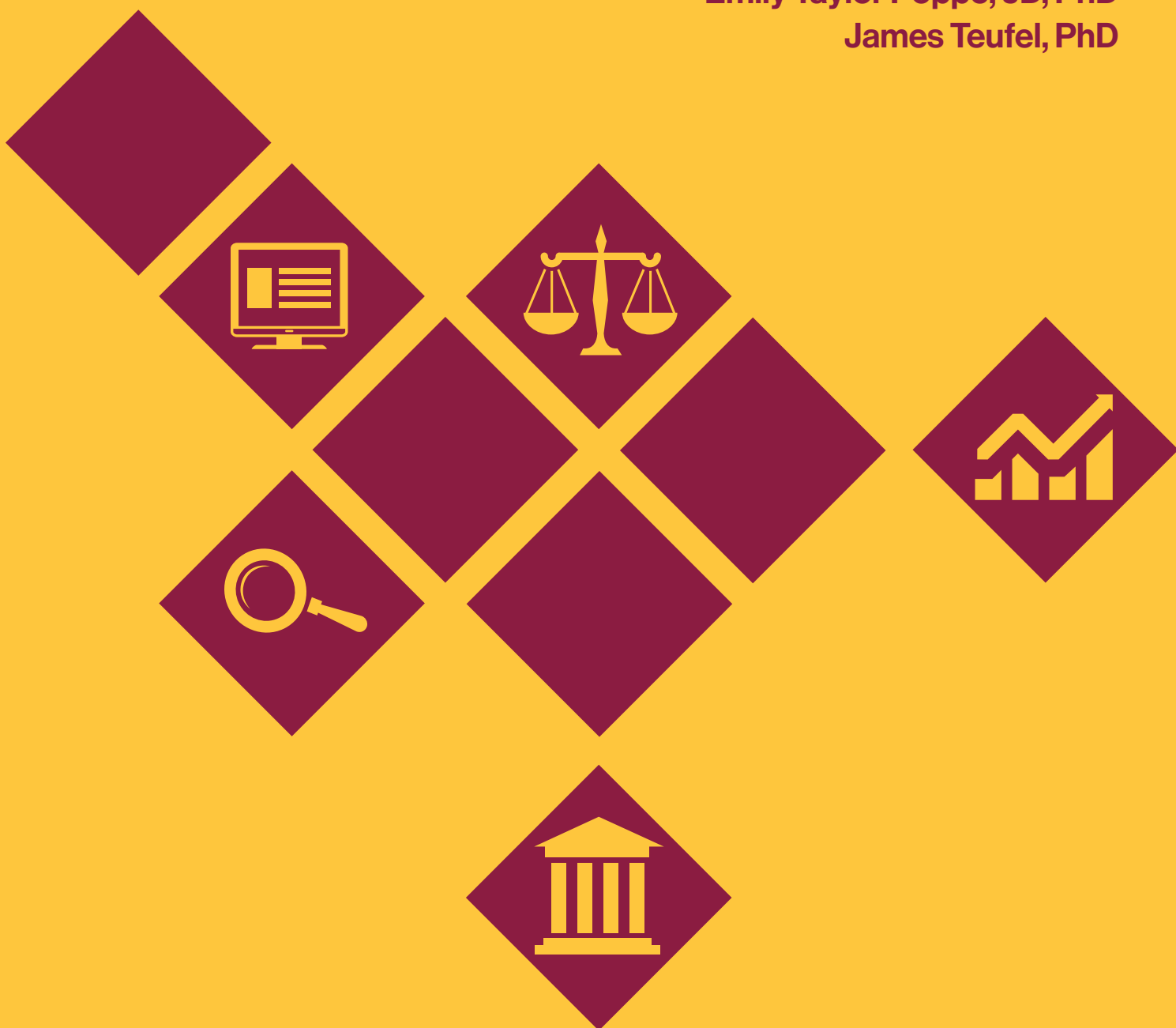
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Acknowledgements

This Access to Justice Research and Federal Agencies Workshop was funded by the National Science Foundation (Award # 2341716, Access to Justice Research as a Tool for Advancing Federal Priorities) and the Justice Futures Project at Arizona State University. This report was produced by Principal Investigator Rebecca L. Sandefur, PhD and Co-Principal Investigators Matthew Burnett, JD, Lauren Sudeall, JD, and Emily Taylor Poppe, JD, PhD. Substantial contributions to this report were also made by James Teufel, PhD, consultant to the project. We are grateful to the DOJ Office for Access to Justice and the Legal Aid Interagency Roundtable (LAIR), and particularly to DOJ Office for Access to Justice Director, Rachel Rossi, and staff Qudsiya Naqui, Allie Yang-Green, Charlie Gillig and Jesse Bernstein for their collaboration and insights. We would also like to thank Georgetown University Law Center for providing space and support to host the workshop. Any errors in this report remain the responsibility of the authors.

Executive Summary

The following report shares insights from a National Science Foundation-funded workshop on “Access to Justice Research and Federal Agencies” that convened over 50 researchers and federal agency staff, representing more than 30 agencies and academic institutions, to engage in structured discussions regarding opportunities to collaborate across eight critical areas of law and policy (housing, employment, health, education, consumer debt/finance, the nexus of civil and criminal justice, public benefits, and global issues in access to justice). In-depth discussions focused on increasing access to civil justice through evidence-based policymaking and using federal government data in access to justice research. The workshop aligned with existing and emerging interests and efforts of the US Department of Justice Office of Access to Justice, the National Science Foundation (NSF), the White House Legal Aid Interagency Roundtable (LAIR), and the broader access to justice research community.

Access to justice crosses disciplines and often occurs outside of courts and without the assistance of lawyers; these critical facts were repeated touchpoints in conversations at the workshop. Participants identified opportunities for research and data to support more effective, evidence-based access to justice solutions, including better targeting interventions, reducing common barriers, identifying alternative forms of assistance, increasing understanding of people’s experience of legal problems, and aligning agencies’ missions with action. They also identified data challenges, including privacy, institutional design, and balancing accuracy with access. Participants also identified opportunities around government data sharing, including the need to increase collaboration across agencies and between agencies and academic researchers, streamline data sharing through more robust data linkages, improve data matching and shared meaning, enhance accountability and oversight, expand data storytelling, and more.

Just as important, the convening established connections among diverse stakeholders to support an emerging community of practice with the aim to better integrate academic researchers and federal data to build evidence into policy-making and related services and benefits. While just the first step in what we hope will be a sustained dialogue between researchers and federal agencies, we are heartened by the shared commitment to evidence-based access to justice policy and practice and look forward to supporting ongoing collaborations in this area.

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I. Background and Goals

The United States faces an access to justice crisis of extraordinary scale. Each year, Americans experience 150 million to 250 million new civil justice problems, many involving basic human needs like having a safe place to live, making a dignified living, and caring for those who depend on them.¹ As many as 120 million of those problems go unresolved, with consequences like eviction, homelessness, lost wages and benefits, separated families, and impaired health.² The crisis affects every group in society and entrenches both poverty and inequality. While all groups in America face civil justice problems, these problems disproportionately impact people with low incomes and people of color.³ The issue areas implicated in civil justice problems not only affect core areas of people's daily lives, they are also critical targets and necessary predicates to the successful implementation of federal policies.

This workshop, which took place in January 2024 in Washington, DC, was funded by the National Science Foundation and the Justice Futures Project at Arizona State University. It convened access to justice researchers and principals from federal agencies across eight thematic areas of civil legal need impacting core federal policy priorities: housing, employment, health, education, consumer debt/finance, the nexus of civil and criminal justice, public benefits, and global issues in access to justice. (See Appendix A for full a list of institutional participants.) The primary goals of the workshop were:

1. Connecting academic researchers and federal agencies to inform effective, evidence-based policy planning and implementation;
2. Building awareness and increased availability of existing relevant federal government data;
3. Increasing utilization of administrative data by academic researchers; and
4. Building a community of practice and shared interest by developing robust and collaborative research agendas shared by researchers, policymakers, practitioners, and administrators.

¹ Institute for the Advancement of the American Legal System (IAALS) and Hague Institute of Innovation of Law (HILL), Justice Needs and Satisfaction in the United States of American (2021). Available at: <https://iaals.du.edu/sites/default/files/documents/publications/justice-needs-and-satisfaction-us.pdf>.

² *Id.*

³ Rebecca L. Sandefur. 2008. Access to Civil Justice and Race, Class, and Gender Inequality. *Annual Review of Sociology*. 34-339.

II. Aim and Organization of the Workshop

A key aim of the workshop was to explore access to justice research as a tool for advancing federal policy priorities. It was organized in partnership with the US Department of Justice Office for Access to Justice and the Legal Aid Interagency Roundtable (LAIR), which convenes 28 federal agencies to improve coordination on access to justice. LAIR's mandate includes advancing "relevant evidence-based research, data collection, and analysis of civil legal aid and indigent defense, and promulgating best practices."⁴ Federal agencies joined interdisciplinary access to justice researchers to discuss and develop linkages across research, data, and state and federal policy. The workshop prioritized collaboration across both disciplines and sectors, connecting diverse, nationally recognized researchers and policy experts around evidence-based policymaking and improved awareness of federal data sources.

The workshop included two expert panels and three interactive breakout sessions. As described below, the first expert panel focused on the potential for increasing access to justice through evidence-based policymaking; the second examined opportunities to use federal government data in access to justice research. In the breakout sessions, the thematic working groups 1) identified policy priorities that needed research support; 2) identified sources of federal data for research; and 3) designed research questions and pathways to expand research and knowledge to inform policy priorities and implementation.

⁴ Restoring the Department of Justice's Access-to- Justice Function and Reinvigorating the White House Legal Aid Interagency Roundtable, 86 F.R. 27793 (May 21, 2021), <https://www.govinfo.gov/app/details/FR-2021-05-21/2021-10973>

III. Increasing Access to Civil Justice through Evidence-Based Policy Making

The first panel of the workshop featured access to justice researchers and federal policy principals who discussed the relevance of access to justice for federal policymaking across critical policy areas, including housing, consumer finance, employment, and healthcare. Scholars described key questions that motivate their work, shared policy-relevant findings from the growing body of access to justice research, and identified cutting-edge research efforts that are shaping our understanding of access to justice. The discussion emphasized the importance of integrating empirical insights into access to justice policy and practice to enhance uptake, improve outcomes, and deliver equal protection under the law. Key themes included:

A. Why Does Access to Justice Matter?

Historically, access to justice research has focused on courts, lawyers, and litigants involved in court cases.⁵ More recently, surveys of justiciable events – issues with civil legal implications regardless of whether the people affected by them recognize those implications – among people in community settings have become a prominent means of researching justice.⁶ During the workshop, participants highlighted the recently awarded US Department of Justice Bureau of Justice Statistics' Access to Justice Design and Testing Program, which will develop and pilot a prototype for the first federally-funded and nationally representative civil legal needs survey.⁷ This survey will provide additional insights regarding the millions of new civil justice issues that affect Americans each year and involve basic needs. Examples of such issues include the approximately 3.6 million landlord-tenant (“eviction”) case filings each year, the 2.3 million instances of wage garnishment, the approximately 9 million student loan borrowers in default, the 2.3 million grandparents raising their grandchildren, and the 11 million people caring for someone with dementia. These issues have important consequences for people’s lives and are key areas targeted by federal policy.

Legal issues and the need for legal assistance cut across LAIR members’ areas of policy focus. More broadly, when people cannot access justice – for example, when government benefits are wrongly denied – these experiences have a negative impact on the health of our democracy and trust in government.⁸ Estrangement from the law, fueled by poor experiences in interactions with law and government, can further erode trust in government and reduce democratic engagement.

B. How Does Access to Justice Research Matter?

Research focusing on administrative sites and administrative data often misses the majority of people’s experiences with civil justice problems, as most people never seek services from lawyers nor are involved in court cases. Because of this, agencies that provide government benefits may not fully understand the situations and perspectives of people who never even try to access those benefits. Nonetheless, understanding these currently “under the radar” experiences is critical to helping practitioners and policymakers create and deliver services in ways that connect effectively with their intended service populations. Some federal benefits, for example, are widely available across the population and relatively easy for people to access (e.g., Social Security

⁵ Sandefur, Rebecca L. 2009. Fulcrum point of equal access to justice: legal and nonlegal institutions of remedy. *Loyola of Los Angeles Law Review*, Vol. 42: 949.

⁶ OECD/Open Society Foundations. 2019. *Legal Needs Surveys and Access to Justice*, OECD Publishing, Paris.

⁷ US Department of Justice Bureau of Justice Statistics, Access to Justice Design and Testing Program. <https://bjs.ojp.gov/funding/awards/15pbjs-23-gk-05687-mumu>

⁸ See Michener, Jamila. 2022. Civil Justice, Local Organizations, and Democracy. *Columbia Law Review* 122 (5): 1389-1422.

benefits).⁹ By contrast, other benefits are accessible via processes that are more onerous or under eligibility criteria that are more restricted, more complicated to demonstrate, or both (e.g., SNAP benefits or voting rights). These aspects of public experience that are built into the design and implementation of social programs constitute a significant “administrative burden.”¹⁰ Such barriers can be purely bureaucratic; they are also sometimes political. Incorporating a deeper understanding of the effects of these burdens into planning, implementing, and evaluating solutions that enable people to connect to the programs and services they need enables greater understanding and ability to act on people’s widespread experiences of disconnections between what government and social programs seem to promise and what they actually deliver, or the difference between formal access to a program or benefit and actual utilization of it.

Different people in the groups targeted by a specific program can face distinct barriers in discovering it and accessing it. Research reveals that a range of demographic characteristics and identities shape how people experience and respond to the same kinds of justice problems, whether and how those justice problems get resolved, and their impacts. For example, a recent study found that a range of personal characteristics, including race, disability, gender, sexual orientation, income, criminal justice system contact, being a survivor of domestic violence or sexual assault, and parental status, interact to shape people’s exposure to civil justice problems.¹¹ Across people with different combinations of characteristics, the prevalence of justiciable events ranged from 6% of people experiencing such events to 45% doing so.¹² Research that provides information about who experiences what kinds of issues can be valuable for targeting programs and interventions more effectively. Past research has often overlooked important predictors of experiencing civil justiciable events like arrest or certain kinds of victimization. In general, less research has explored the justice experiences of middle-income households and small businesses than those of low-income households and corporations.

Participants also discussed the need to elevate global access to justice-related research and data initiatives, both because a comparative view will illuminate promising practices in other contexts, and because advancing access to justice is not often viewed as a foreign policy priority compared to other more established U.S. global priorities, such as corruption, democracy, or national security.

⁹ See Herd, P., & Moynihan, D. P. (2018). *Administrative Burden: Policymaking by Other Means*. New York, NY: Russell Sage.

¹⁰ See *id.*

¹¹ Kathryn M. Young and Katie R. Billings, *An Intersectional Examination of U.S. Civil Justice Problems*, 2023 *Utah Law Review*, 487 (2023). DOI: <https://doi.org/10.26054/0d-zv1c-rh2z>

¹² *Id.*

C. Designing Evidence-Based Solutions

An increasing focus of access to justice research has been on using evidence from empirical social science research to inform the design of more effective and impactful policies and programs.¹³

1. Targeting interventions

An important first step in designing policies and programs that are effective in achieving their goals is developing a solid understanding of how the people targeted by those policies and programs experience them and the issues that trigger need for them. For example, although Americans of color experience more and more severe civil justice issues than do white Americans, race does not bear a straightforward relationship to whether or how people seek help for civil justice problems.¹⁴ At the same time, political affiliation influences help-seeking behavior, with people who identify themselves as more “conservative” being less likely to seek help if the resources available are perceived to be controlled by “liberal” interests.¹⁵ Insights like these could help to design targeted interventions that are sensitive to the needs, interests, and understandings of the different groups that constitute the American public.

2. Reducing burdens

While agencies have a duty to withhold benefits from people who are not entitled to them, redesigning systems can help reduce burdens and improve accuracy without harming the people agencies are intending to help. Research shows that when potential recipients of a benefit or service face less complexity and fewer steps to verify eligibility and apply, access increases.¹⁶ For example, although Social Security retirement benefit amounts are not necessarily easily calculated, the agency providing the benefit, rather than the individual receiving it, bears the burden of that complex calculation. This burden allocation, combined with straightforward eligibility criteria and application processes, increases uptake of the benefit. When individuals are burdened with many and/or complex administrative steps in order to use a benefit or program, interventions can be less effective. For example, “nudging” people to apply via text reminders helps little when access is otherwise complex. Thus, reducing burdens can make a significant difference. Medicaid eligibility assessments requirements provide an illuminating example. After several years of not requiring recertification for eligibility for Medicaid during the pandemic, states began recertification processes that resulted in many people being deemed ineligible. Most of the loss in eligibility was because people were unable to comply with the new recertification process requirements, rather than actual ineligibility. In this context, automated recertification was more effective than manual recertification. Innovative methods for assisting in recertification have focused on developing automated certification-based data that state agencies already hold, rather than sending individuals reminders to recertify and forms to complete. Compared to the use of campaigns to raise awareness of new requirements, automatic recertification processes significantly increased Medicaid enrollment. Research also finds that benefit denials impact not only material receipt of benefits, but also people’s perceptions of government: denials encourage negative attitudes toward government.

¹³ See, e.g. Burnett, Matthew, and Rebecca L. Sandefur. “Designing Just Solutions at Scale: Lawyerless Legal Services and Evidence-Based Regulation.” *Direito Público* 19, no. 102 (2022). Sandefur, Rebecca L., and Matthew Burnett. 2022. “All together now: Building a shared access to justice research framework for theoretical insight and actionable intelligence.” *Oñati Socio-legal Series*, 13(4), pp. 1330–1350.

¹⁴ Katheryne M. Young. Forthcoming. *Getting Help*. *Wisconsin Law Review*.

¹⁵ *Id.*

¹⁶ Herd & Moynahan, *supra* note 9.

Research and data can be tools to improve equity, effectiveness, and efficiency in the justice system. At the same time, data collection as part of service design can also act as a burden or barrier. When a government agency engages in a data-driven initiative, researchers should measure what happens in practice to understand whether and how the new model reduces or increases mistakes in implementation and access and how it improves or impairs processes and outcomes.

3. Exploring alternative forms of assistance

Simplifying administrative and other processes is one route to increasing access to benefits and services. Another means of increasing access is expanding the range of people who can serve as helpers. For example, England and Wales allow legal assistance from a wide range of justice workers, including those without law licenses. These justice workers offer legal services on a fee for service basis or as part of the work of community organizations. A marquee study, led by Richard Moorhead, compared the quality of these services to those provided by traditional attorneys.¹⁷ Blind peer review of the work product of both types of providers found that both groups of justice workers were equally likely to perform competent work, doing so about 80% of the time. Moreover, when comparing the legal services work of attorneys and non-attorneys, non-attorneys were much more likely to have their work rated excellent than were attorneys. Enabling a greater diversity of authorized legal service providers can expand the supply of competent or excellent quality help, improving access to justice and the uptake and accuracy of government programs. In the United States, the state of Utah has launched a “legal services regulatory sandbox,” which permits innovative legal services to be produced and monitored through a scheme focused on empirical evidence of actual consumer experience. To date, there have been fewer than 10 complaints from over 70,000 legal services delivered through alternative business structures and by alternative legal providers.¹⁸ In Alaska, Community Justice Workers (people trained to address specific aspects of targeted legal issues) have successfully assisted Alaskans in attaining a range of improved outcomes, including attaching to over \$5.5 million in Supplemental Nutrition Assistance (SNAP) benefits.¹⁹

4. Contextualizing problems

Effectively targeting access and assistance requires understanding how and where potential inequities arise. They reflect the way that peoples’ lives, including their priorities, needs, and stressors, interact with the ways that program access is designed. For example, if the social experience of aging is associated with increasing isolation, older people may have less access to moral, emotional, and practical support in dealing with difficult bureaucracies, thus leading older Americans to be less likely to seek and use benefits from federal and other government programs. Meeting the needs and dealing with the stressors of daily life – such as those that reflect situations like disability or poverty, or socio-spatial contexts like rural residence – may displace accessing government and its programs on their priority lists. People’s experiences with legal service providers and government officials also impact their engagement with justice systems into the future. Not only negative, but also positive experiences (e.g., experiences of empathy, grace, caring, etc.) shape engagement. Research suggests that effective services and programs that people actually access and use have four qualities, sometimes termed “the four T’s”: they are available when needed (timely), appropriate,

¹⁷ Moorhead, R., Sherr, A., Webley, L., Rogers, S., Sherr, L., Patterson, A. and Domberger, S. 2001. Quality and cost: final report on the contracting of Civil, Non-Family Advice and Assistance Pilot. London, UK The Stationary Office.

¹⁸ Office of Legal Services Innovation, Utah Supreme Court. Innovation Office Activity Report: 2023. Available at: <https://utahinnovationoffice.org/wp-content/uploads/2024/02/December-Activity-Report.pdf>

¹⁹ “Nonattorney advocates to represent Alaskans in court under new waiver,” Alaska Beacon (July, 13, 2023). Available at: <https://alaskabeacon.com/briefs/nonattorney-advocates-can-represent-alaskans-in-court-under-a-new-waiver/>.

responsive, and proportionate to people's actual needs (targeted), accessed through sources people believe in (trustworthy), and clear about options, choices, costs, and possible next steps (transparent).²⁰

5. Matching mission and action

Participants described their shared interests in using research to support agencies' attempts to more effectively achieve their missions. For example, the Department of Veterans Affairs (VA) illustrates how active collaboration can improve service delivery in ways aligned with agency mission. In contrast with past practice, where service delivery typically occurred in siloed domains, the VA created customer service experience teams that had the authority to make agency-wide changes to work processes and other aspects of service delivery. VA staff can now work across domains to improve clients' experiences with service delivery.

D. Ongoing challenges in expanding Access to Justice

1. Privacy

Data privacy and fears of privacy violations in a surveillance state were a theme of interest, and discussion revealed diverse concerns by different actors. As one researcher observed, the privacy concerns of ordinary people are strikingly different from those of research and policy observers. People's interest is typically not in data privacy, but rather in personal privacy (for example, they do not want their neighbors or friends to know about their civil justice problems). People are becoming more comfortable with their lack of data privacy, perhaps due to norms set by their interactions with commercial activity; however, they remain protective of their personal and community or social privacy. Another researcher used interactions with government agencies to illustrate the privacy concerns of different actors. People interacting with government agencies are often puzzled and frustrated that they must provide the same information repeatedly to different actors within one agency or to different offices of what appears to them to be the same government. These frustrations are heightened when people believe that the government already has their data because of a perceived pre-existing and systemic lack of data privacy. People's frustrations and mistrust arise because data are siloed across various government functions. For example, state courts do not have access to Medicaid or Social Security data, which could support claims of hardship with respect to court fees (e.g., in forma pauperis petitions) or have relevance to judgments or their enforcement (e.g., ability to pay child support arrears or other debts). For interventions to enhance equal access to justice and accurate access to benefits and remedies, their designers must consider both the benefits and pitfalls of expanding data collection and sharing.

2. Institutional design

Participants also observed that the design of institutional solutions is often poorly matched to people's needs and experiences, because they do not reflect what is known from research about those factors. For example, institutional actors often perceive the sole source of justice interventions to be civil courts or lawyers. However, because people often do not understand their justice problems as legal, they do not see these explicitly legal sources of help as relevant. Indeed, when people seek help for their justiciable issues, they typically go to their immediate social network and rarely reach outside of it to institutional actors. As institutions, courts are reactive, responding to events that have occurred and are presented to them, rather than proactive,

²⁰ Burnett, Matthew, and Rebecca L. Sandefur. "Designing Just Solutions at Scale: Lawyerless Legal Services and Evidence-Based Regulation." *Direito Público* 19, no. 102 (2022).

working to intervene early or prevent the escalation of adverse events. Courts' orientation means that the current justice system focuses on intervening in a small subset of presenting issues rather than preventing the issues more broadly. In the context of these widespread mismatches between what people need and what the justice system offers, change is challenging because issues of "Who owns the problem?" and "Who owns the solution?" are both unsettled and acutely important.²¹

3. Balancing accuracy and access concerns

Another issue animating discussion was competing concerns of access and accuracy. Complexity can sometimes (though not always) facilitate more accurate and deliberative decision making. At the same time, complexity can also create barriers to participation and to people providing the information that decision makers need to arrive at accurate decisions. Participants discussed the utility of "complexity" as a counterpoint to using simplification as a solution. A question that was live for participants was, "When and how does complexity serve a useful purpose, and when and how does it not?" Complexity can aid in avoiding wrong decisions, when the specific form of complexity adds additional checkpoints for accurate decision making that are not also obstacles to people's ability to appropriately act. However, panelists agreed that complexity more often serves as a barrier than a benefit.

System design choices reflect the relative emphasis that designers place on the relative importance of "false positives" and "false negatives." An accurate assessment for receipt of a public benefit will identify people as eligible people who are in fact eligible (correct acceptances) as well as exclude as ineligible people who are in fact ineligible (correct rejections). For each such judgment, process designers must decide whether the greater concern is errors that result in a person receiving benefits for which they are in fact not eligible, or an eligible person being denied a benefit wrongly.

Other disciplines, such as medicine, epidemiology, and psychology, have tried objectively to estimate accuracy in these determinations. Workshop participants recognized that complexity, uncertainty, and the political aims of actors involved in these processes interact to shape public experience. With more conservative criteria, incorrect delivery of benefits to ineligible people decreases, but incorrect denials increase, and vice versa for liberal criteria in which incorrect denials decrease but incorrect awards increase. One panelist noted that, for political reasons, contemporary program design primarily focuses on preventing incorrect delivery of benefits (e.g., preventing giving benefits to people who are not eligible for them). However, emphasis on this type of error may be misguided. Taking Social Security retirement benefits as an example, this benefit is characterized by low burdens (greater engagement with the benefit and fewer incorrect denials) and low fraud (fewer deliveries of benefits to people who are in fact ineligible for them). Empirical research reveals insights into complexity from the perspective of people's lived experience: inflexible programs are less likely to fit into people's lives in comparison with adaptable or tailored programs, in part because the costs of engaging with inflexible programs can outweigh the benefits. When programs do not fit into people's lives, federal policies fundamentally miss their targets.

²¹ Emily S. Taylor Poppe, Institutional Design for Access to Justice, 11 U.C. Irvine L. Rev. 781 (2021).

Available at: <https://scholarship.law.uci.edu/uclir/vol11/iss3/8>.

IV. Using Federal Government Data in Access to Justice Research

A second panel focused on using federal data to bolster access to justice research. This panel also produced a range of important insights:

A. Landscape of justice data and expertise

One insight from the discussion was a pervasive lack of information about what data and expertise already exist. Panel participants suggested a landscaping study of the type and quality of available federal data within and between agencies as an important first step. Federal administrative data informs operations and management of agencies and enables communication with policy decisionmakers. Panel participants noted challenges of expertise capacity. For example, in the justice sector it is often easier to hire an attorney than a data expert, and it is uncommon for lawyers to have quantitative expertise. It will be important to cultivate and add data expertise, particularly civil justice data expertise, to agencies.

B. Collaborations between agencies and researchers

Successful collaborations between state and federal agencies and researchers are possible and have been realized. For example, in New York, agency-researcher partnerships improved the linkages between landlord-tenant (eviction) data and housing subsidy data to improve delivery of emergency rental assistance. In another example, the Veterans Affairs Administration is involved in a project linking health outcomes data from the Veterans Health Administration with data on medical-legal partnerships.

C. Justice data sharing barriers and opportunities

Among the factors that restrict access to data about justice and the work of administrative agencies are lawyers. Lawyers often approach data sharing from a risk-averse perspective. At the same time, workshop participants identified working with lawyers as data stewards and building trust in data sharing as an important change opportunity. Data sharing relationships should be reciprocal, involving good communication and an understanding of both shared and distinct goals on the part of data distributors and users; this communication will improve data usability, which is in the interest of both parties. Some data clearinghouses or archives, like data.gov, include substantial amounts of data, but the quality of data can vary widely within and between datasets. Many agencies collect many different types of information about their work, processes, and clients, but they do not necessarily consider that information to be “data,” especially from the perspective of researchers wanting to use information descriptively or analytically.

D. Data linkages and matching

Linking existing data sources collected by different agencies is currently difficult. Indeed, researchers both inside and outside of federal agencies agreed that data matching across agencies is a constant challenge. Although low data matching is typical, it is not inevitable. Building trust between researchers and agencies and developing interdisciplinary teams of experts inside and outside agencies could help to improve data ecosystems within and between agencies. It will be important in the future to make data linkages across areas or sectors that do not currently exist, especially where at least one entity has incentives to collect and share data. Researchers noted that another challenge was that some of the most interesting data is low quality or only sporadically collected.

E. Making meaning of data

Sometimes researchers making connections across administrative or descriptive data from agencies can discover findings that may impact the public reputation of agencies. Moreover, academics and agencies can have different goals for using and sharing data. For example, a 2023 study found that the Internal Revenue Service (IRS) audited Black taxpayers at a disproportionate rate compared with white taxpayers. This discovery not only raises questions about discrimination, but also creates distortions in the available data, creating a ripple effect with respect to future empirical analysis. At the same time, some agencies have used data or findings to improve processes or policies, and some agencies use information more actively for process improvement than others. Federal agencies and state agencies have different practices and histories in these regards and can learn from each other.

F. Accountability and oversight

Agencies vary in their capacity to engage in data sharing relationships. Experts at the workshop observed that agencies with greater constituent accountability or more external oversight are more likely to have better processes and data than those agencies with less accountability or oversight. Agencies' sensitivity to criticism and their risk tolerance can also influence their engagement or response to uncertainty, with some agencies finding ways to accommodate risk and others avoiding risk.

G. Relationship building and data documentation

From the perspective of data holders, researchers and others who request data from agencies sometimes simply “want the data” without attending to relationships or trust building. Relationships and trust are particularly important when formal mechanisms or other agreements are not already in place to share data. From data holders' perspective, data requestors often underestimate the effort required for the data sender and/or receiver to make administrative data usable for research purposes. Panelists noted the importance of being thoughtful in developing data sharing agreements that include clear criteria and guidelines for data sharing and use. For example, adequate data dictionaries are critical resources for data users and can also be resource intensive – in time, money, and expertise – for data holders to produce.

H. Data as storytelling

Panelists highlighted the importance of using data in storytelling to support policy change. Sometimes, stories are more salient to policymakers or administrators than extensive reports or peer-reviewed publications. Strategic communications free of technical language and jargon can sometimes be more useful than formal academic work, as decision makers can quickly read and understand them. At the same time, participants recognized that data may not support a simple linear story, especially when understanding requires accounting for nuance.

I. Improving data sharing through rules and orders

In the short-term, it may be more practical to improve federal data sharing by interagency rule changes or executive orders than by seeking changes to statutes.²² Participants cited lagging change in the Freedom of Information Act (FOIA) as an example: the last notable changes to FOIA occurred in 2016. Another idea offered was for the LAIR or the Administrative Conference of the United States (ACUS) to convene agencies to discuss rules related to interagency data sharing and ways to use data more productively. Agencies could also require common data standards across organizations that engage with them, as the Legal Services Corporation (LSC) has done. Another concern raised was “vendor data capture,” where the agreements under which data processing vendors hold agency data limit data transfer or reporting and prevent useful and important changes in data structuring (e.g., changing, deleting, or adding data fields). Open-source and so-called “white-labeled” data projects are, however, emerging and could enable more “bottom-up” direct control over data (e.g., agency or organizational control over data).

J. Data deciders and doers

In the actual, practical arrangements through which agencies manage data access, the people who make decisions about data access and those who implement those decisions are typically not the same roles in a given agency or organization. People who decide how (or if) data can be shared are often known by titles or positions of authority. However, the doers, or the people who are functionally collecting, entering, cleaning, and transferring data are less visible outside the organization. In order to effectively ensure good data governance and quality, it will be important to better define the roles and functions of people involved with data from collection to archiving.

²² See, e.g. Executive Office of the President, Office of Science and Technology Policy, Ensuring Free, Immediate, and Equitable Access to Federally Funded Research. (August 25, 2022). Available at: <https://www.whitehouse.gov/wp-content/uploads/2022/08/08-2022-OSTP-Public-Access-Memo.pdf>

VI. Interactive Workshops

The group also engaged in a series of three thematically- focused interactive workshops conducted in breakout sessions organized around substantive policy areas, such as debt and consumer finance or housing.

A. First Breakout Session

Representatives from federal agencies and researchers were organized into eight areas of federal policy action: education, housing, public benefits, healthcare, consumer debt and finance, employment and worker rights, the nexus of civil and criminal justice, and global access to justice.

In the first workshop, each group began by introducing those present – researchers, policy experts, and agency representatives – and describing their interests in access to justice and empirical research. Next, federal agencies shared their research needs and priorities in moving research forward. This part of the conversation surfaced a number of themes. Federal agencies observed that research moving federal interests forward could achieve a range of desired effects, including motivating people to initiate action regarding an issue or challenge, improving understanding of processes or events, and understanding more effective or efficient methods to attain a goal or outcome. After agencies shared their priorities and interests, researchers shared relevant existing data and research that could help address the priority interests that agencies identified. In each group, research and agency representatives then worked together to prioritize two common themes related to agency interests. The groups brainstormed research questions related to the two themes and identified data sources that could inform those research questions.

Example 1: Consumer debt and finance working group

This group identified two questions and related data sources. The first question asked, “What upstream market and regulatory/ policy forces currently lead to debt-related legal entanglement?” Data to answer this question could be found in credit bureaus, criminal enforcement and supervision agencies, student loan companies, and agencies or companies that have related data for people who are not entangled in debt-related legal issues. The second question asked, “What works to get people to engage around their own consumer financial problems?” Answering this would require data about financial and life circumstances and data to evaluate interventions, and connections between criminal and civil law.

Example 2: Civil and criminal justice nexus working group

The first research question developed by this group was, “How might we compile a full and accurate record for each individual of information: a) related to their criminal interactions (fines, fees, expungement, parole) and b) their broader interactions with systems and agencies?” Data to address this research question could be found in state and county courts, federal courts, probation offices, state and local agencies (e.g., the Department of Motor Vehicles), franchise tax board (to gather data on garnished wages), and state departments of corrections. The second research question was, “How might an agency understand how locally imposed regulations and decisions impact or undermine policy administration?” Applicable data could be gathered from state and local agencies and possibly federal data (if there is federal oversight over the local agency).

B. Second Breakout Session

In the second phase of the interactive workshops, each group reflected on the two research questions that were identified in the first phase. The groups then chose one of the two research questions to focus on. Based on that selected question, agency representatives and researchers in each group completed worksheets that identified opportunities and barriers to developing answers to that research question. In these worksheets, agencies answered questions related to actions and understanding of their selected research question: “Where are you with respect to answering this research question?,” “What stops you?,” and “Where do you want to be?” Researchers responded to questions about the knowledge base, including “What do we already know?,” “What do we need to know?,” and “Why don’t we know it?”

Example 1: Consumer debt and finance working group

Participants in the consumer debt and finance working group noted that the primary logistical challenge to deepening our understanding of the upstream causes of consumer problems is merging data held by different sources. Because of the difficulties involved in creating collaborations across different units, this requires dedicated time and effort, which in turn requires high amounts of agency buy-in. It also requires a willingness to frame agencies’ mandates broadly—to provide them with authority to explore beyond the efficacy of narrow policy interventions or enforcement of singular statutory provisions to see a bigger picture of how Americans’ financial lives unfold.

Example 2: Civil and criminal justice nexus working group

The criminal and civil nexus working group identified the research question, “How can an accurate record of criminal legal system involvement be created, which includes information beneficial to individuals and accessible to those individuals?” There were two supporting interests driving this question: 1) improving accuracy related to criminal justice interactions (e.g., fines and fees paid and expungement of records) and 2) understanding individuals’ broader interaction with the justice system and related agencies and courts. In answering “What do we know?,” this group noted that criminal records often lack payment of debt or completion of sentences (or community supervision) information; data is collected in part, not whole, by various courts or agencies; the lack of accurate records prevents reintegration into community and civil/civic engagement; relevant information may be housed across state, federal, local levels; beyond not being comprehensive, record systems are often not readily accessible or include inaccuracies; aggregated records tend to focus on defendants but not plaintiffs. Regarding “Why don’t we know?,” there were perceived limits of data/research capacity and capability within agencies; further, agencies lack incentives to address research questions of interest. In addressing “What do we need to know?,” the group highlighted needs to better describe people who would benefit from a changed justice environment, identify places to hold data, and develop policies that would support accurate collection and use of data.

C. Third Breakout Session

After the second phase concluded, each of the eight working groups reported out to the broader group of workshop participants. The report outs of each working group raised questions and key points for action or follow-up.

Example 1: Consumer debt and finance working group

Related to the question of “What are the upstream market forces and regulations or policies that lead to debt-related legal entanglement?,” there was interest in 1) exploring association among individuals’ credit scores, criminal enforcement and supervision, and student debt data; and 2) studying debt issues linked to well-being and variation in outcomes across groups. Some workshop participants thought that survey data could be used to complement administrative data.

Example 2: Civil and criminal justice nexus working group

The civil and criminal nexus working group raised several additional research questions that would inform their focus on holistic system involvement: “How do agency-issued civil fines and fees influence policy goals?,” “Who is imposing civil fines and fees at the state and local levels, and what are the broader impacts on federal policy implementation?,” “How do civil fraud investigations lead to criminal charges?,” “How does agency behavior result in cross-system involvement (e.g., civil to criminal)?,” and “How can federal agencies manage or control state/local administration of fraud and civil fines/fees to address re-entry?” It was noted that more information on expungement was needed to achieve policy goals, and some data could be found within agencies; but connections would also need to be made across agencies (e.g., moving beyond silos). Questions were also raised related to how criminal records are compiled. For example, “What is included/omitted in criminal records in agencies/courts across jurisdictions, and how accurate are specific components of criminal records and more holistic criminal records across issues or jurisdictions?”

VI. Conclusion

The workshop convened over 50 researchers and federal agency staff, representing more than 30 agencies or offices within agencies and academic institutions, to engage in structured discussions regarding opportunities to collaborate across eight thematic areas of law and policy. In-depth discussions focused on increasing access to civil justice through evidence-based policymaking and using federal government data in access to justice research. The workshop aligned with existing and emerging interests and efforts of the US Department of Justice Office of Access to Justice, the NSF, LAIR, and the broader access to justice research community. There is growing recognition that access to justice crosses disciplines and often occurs outside of courts and without the assistance of lawyers.

Among the new active efforts related to the workshop's priorities, the Department of Justice highlighted the recently funded (2023-2026) Access to Justice Design and Testing Program, which will produce a national civil legal needs survey and two feasibility studies—all with a consideration of the intersection of criminal and civil justice. LAIR also shared its recent report titled "Access to Justice in Federal Administrative Proceedings: Nonlawyer Assistance and Other Strategies," published in 2023.²³ And the NSF highlighted its interest in cultivating and supporting intersections between empirical research and federal agency collaboration. Finally, the convening established connections among diverse stakeholders to support an emerging community of practice with the aim to better integrate academic researchers and federal data to build evidence into policy-making and related services and benefits.

²³ Legal Aid Interagency Roundtable. 2023. Access to Justice in Federal Administrative Proceedings: Nonlawyer Assistance and Other Strategies. Available at: <https://www.justice.gov/d9/2023-12/2023%20Legal%20Aid%20Interagency%20Roundtable%20Report-508.pdf>

Appendix A: Institutional Participants

Civil and Criminal Justice Nexus

Fines and Fees Justice Center
Daniel J. Evans School of Public Policy & Governance
The George Washington University Law School
Vanderbilt Law School
Department of the Interior Bureau of Indian Affairs
Department of Justice National Institute of Justice

Consumer Debt and Finance

Department of Justice, United States Trustee Program
University of Illinois Chicago School of Law
University of Illinois College of Law
Consumer Financial Protection Bureau, Office of Markets
Federal Trade Commission, Bureau of Consumer Protection
The Pew Charitable Trusts, Courts & Communities
University of California, Irvine School of Law

Education

Department of Education, National Center for Education
Evaluation and Regional Assistance
Georgetown University McCourt School of Public Policy
Department of Justice, Office for Access to Justice
Legal Services Corporation, Office of Data Governance and
Analysis

Employment and Workers Rights

Department of Justice, Office for Access to Justice
Cornell University School of Industrial and Labor Relations
Department of Justice, Employment Litigation Section, Civil
Rights Division
Department of Labor, Wage and Hour Division
Equal Employment Opportunity Commission, Office of
Enterprise Data and Analytics

Global Access to Justice

World Justice Project
Department of Justice, Office of Access to Justice
United States Agency for International Development
Department of State, Office of Knowledge Management,
Bureau of International Narcotics and Law Enforcement
Arizona State University, Sanford School of Social and Family
Dynamics

Health

Department of Health and Human Services, Immediate
Office of the Assistant Secretary, Administration for Children
and Families
Pontifical Catholic University of Puerto Rico School of Law
Arizona State University, Justice Futures
Office of Management and Budget (OMB)

Housing

Department of Housing and Urban Development, Office of
Policy Development and Research
Veterans Affairs, Center for Healthcare Organization and
Implementation Research
Georgetown University Law Center
George Washington University Law School

Public Benefits

Office of Management and Budget, Office of Information and
Regulatory Affairs
Administrative Conference of the United States (ACUS)
Georgetown University, McCourt School of Public Policy
Veterans Affairs, Center for Healthcare Organization and
Implementation Research
Rutgers Law School
Department of Justice, Legal Aid Interagency Roundtable,
Office of Access to Justice

