

## Introduction to Symposium in New Directions in the Empirical Study of Access to Justice

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This symposium focuses on the empirical investigation of access to civil justice. It is the outgrowth of a project that began with two A2J Empirical Methods Workshops I hosted in April 2014 and April 2015 at the University of Wisconsin Law School, with the support of the law school's Institute for Legal Studies. The goal of these workshops was to bring together tenure-track and clinical faculty conducting research in the access to justice field and create a welcoming and supportive academic community where we could share and receive constructive feedback on our work. The A2J Empirical Methods Workshops have been intentionally intimate and informal small-group events, designed to promote the development of supportive and enduring professional bonds. The heart of these events has been the opportunity they provide attendees to workshop their works in progress in a setting where everyone has expertise in the field, reads all the drafts in advance, and provides detailed written critique of their work.

At the 2014 workshop, we hosted participants working in the fields of law, sociology, social welfare, education, criminology, and political science. The theme of the 2014 workshop, "What Is Effectiveness? Building Theory and Exploring Measurement," was influenced by an article in the *Wisconsin Law Review*, "Expanding the Empirical Study of Access to Justice," by Catherine Albiston and Rebecca Sandefur (2013), who joined the workshop as special guests. Many of the participants in the inaugural workshop returned for the 2015 workshop, "From the Field: New Directions in the Empirical Study of Access to Justice," which again brought together scholars from a wide range of academic disciplines. A third A2J Empirical Methods Research Workshop will take place at the University of Wisconsin Law School in October 2017.

The published work generated by the workshops has been impressive. In addition to this symposium issue, other workshop achievements include a successful grant application with the National Science Foundation's Law and Social Science

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**Tonya L. Brito** is Burrus-Bascom Professor of Law, University of Wisconsin Law School, Madison, WI. Thank you to the University of Wisconsin Law School and Dean Margaret Raymond for their continued support of the A2J Empirical Methods Workshops and this scholarly community. Thank you also to Professor Rebecca Sandefur, the American Bar Foundation, and the National Science Foundation's Law and Social Sciences Program, all of whom have undertaken significant efforts to catalyze and support a new nationwide access to justice research agenda through their sponsorship of the December 2012 workshop Access to Civil Justice: Re-Envisioning and Reinvigorating Research, the November 2013 NSF Grant Proposal Writing Workshop, and similar initiatives. Our work has benefited greatly from their encouragement, leadership, and investments.

Program, the development of an ambitious new research collaboration among several workshop participants, and nurturing early-stage projects undertaken by clinical faculty members who are developing their empirical research agendas.

The articles in this symposium issue draw from original empirical data to shed new light on the delivery of legal services and the public's experience in the civil justice system. Utilizing a broad range of empirical methodologies, the authors have generated findings that speak to both the scholarly and policy communities. Approaching questions of access to justice from multiple dimensions, their work opens the door to new research pathways and informs the vibrant ongoing policy debate about how best to construct interventions.

Several of the articles analyze the underexamined "supply side" of the access to justice question. Drawing on her six-month ethnographic study of an appellate self-help legal clinic in Los Angeles, Alyse Bertenthal investigates how clinic attorneys define and deliver legal services. Her close study of the everyday practice of the clinic and its lawyers' interactions with the pro se litigants they serve reveals how people are made to understand the law and learn legal literacy. As Bertenthal points out, a large part of self-representation involves filling out required court forms and submitting other paperwork to the courts. Despite the best efforts of court personnel and advocates for self-represented litigants to construct plain language, user-friendly documents, legal forms often remain confusing to litigants, who then turn to self-help clinics for assistance in handling their paperwork correctly. Bertenthal applies multimodal discourse analysis to video-recorded accounts of lawyer-litigant interactions to reveal how legal documents (and the underlying knowledge and understanding they represent) are articulated and developed in the space of a self-help clinic. Empirically examining self-help clinics and other legal services organizations is critical to enhancing our understanding of access to justice because of the important role they play in shepherding unrepresented individuals through the legal system.

Catherine Albiston, Su Li, and Laura Beth Nielsen also examine the delivery of legal services in their article. Their lens, however, zooms out from an individual service provider to look at the nationwide geographic distribution of public interest law organizations (PILOs). Their innovative methodological approach combines original data from a national representative survey of 221 PILOs in the United States with geographical information system (GIS) data to better understand the relationships among PILOs, geographic location, poverty, and population. Perhaps the most surprising finding of this article is the discovery of a two-tiered system of access to justice. Individuals who live in large cities and affluent counties are more likely to have access to PILOs, and these PILOs are more likely to be national organizations that engage in social reform and impact litigation and have relatively secure sources of funding. Individuals who live in rural and poor counties are much less likely to have a PILO, and the PILOs they do have tend to be government-funded local and regional institutions that primarily provide direct services to individual clients. People in relatively poor counties are underserved both with respect to the existence and type of PILO they can access and the types of legal and advocacy efforts undertaken on their behalf.

Anna E. Carpenter, Alyx Mark, and Colleen F. Shanahan raise a similar justice concern—specifically about the lack of systemic advocacy by nonlawyer advocates—in their expansive, mixed-methods study of unemployment insurance appeal

cases in a District of Columbia administrative court. In addition to undertaking a statistical analysis of the quantitative data they collected on 5,150 cases filed in the court over a two-and-a-half-year period, they also interviewed both lawyers and nonlawyers who practice in the court. Their quantitative findings on case outcomes demonstrate that experienced nonlawyer advocates can be effective at providing representation to their clients. Their qualitative data, however, reveal a worrisome downside to nonlawyer representation. Nonlawyer advocates report that they gain their legal expertise on the job and primarily from the judges they appear before. As a consequence, they tend to “color within the lines drawn by judges” and are unlikely to press judges with new legal or procedural claims or argue for systemic law reform. These findings provide a much needed contribution to our understanding of the understudied but growing area of nonlawyer practice.

Jessica Steinberg’s theory-building article provides an empirical understanding of a promising access to justice design model. Her qualitative study investigates a unique, and seemingly very effective, experimental Housing Conditions Court (HCC) in Washington, DC. Eschewing a traditional adversarial model, the HCC purports instead to embrace an informal “problem-solving” approach when adjudicating pro se litigants’ substandard-housing claims. Drawing from her in-court observations of 327 hearings over a two-year period and a longitudinal review of nearly seventy-five cases, Steinberg makes evident the hidden formalism that undergirds the court’s functioning. Perhaps the most significant finding of the study is its conclusion that the HCC’s inquisitorial procedures are strongly correlated with its success in achieving substantive justice in meritorious cases.

Finally, Victor Quintanilla, Rachel Allen, and Edward Hirt break new ground in their study drawing on social psychology to better understand why pro se civil litigants are so unsuccessful in court. The researchers use experimental methods to test their thesis—that pro se litigants’ status itself sends a signal that biases decision making against them and their claims—with three different populations: the lay public, law students, and practicing attorneys. Their findings reveal that the existence of a signaling effect of pro se status among law-trained individuals but not among members of the public. Law students and lawyers assigned a lower value to the litigant’s claim because of her pro se status, suggesting that socialization within the legal profession exacerbates negative stereotypes about pro se claimants. By empirically confirming the negative psychological consequences of a party’s lack of representation, they lay the groundwork for additional studies that take up the many remaining questions in this area and demonstrate the need for interventions designed to reduce bias against unrepresented parties.

I thank the authors for their contributions to this symposium and the impressive and creative body of work they are generating in the access to justice field.

## REFERENCE

- Albiston, Catherine R., and Rebecca L. Sandefur. 2013. “Expanding the Empirical Study of Access to Justice.” *Wisconsin Law Review* 2013(1):101–20.