

# QUESTIONS FOR RESEARCH

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The list of research questions that follows reflects an attempt to cull all the research ideas found in the original transcript. Hence some of these ideas may be missing from the edited version of the transcript reproduced above. In this list each research idea is phrased in the form of a question, which at least one of the conference participants would like to see answered. Other than that, no editing was attempted. Some research questions should have a high priority for investigation while others should have a low priority or might not be worth the cost at all. Answering this group of questions would require the gamut of available research techniques: survey research, experimentation, quasi-experimentation, participant observation, and pure conceptual thinking. Readers will have to make their own judgments about which questions are worth answering and how one might proceed to do so.

I would like to suggest one research priority. Government legal services are being reorganized by the Legal Services Corporation and private group legal service plans are proliferating. We should develop some means of systematically collecting comparable data from these legal service delivery organizations (LSDOs). I would suggest the creation of a research organization that would develop protocols to insure that comparable data were routinely collected by different LSDOs. The organization itself might collect additional information relating to questions of interest. Ideally this research organization would be funded in part by the LSDOs, for it would perform valuable services for them. It might act as a clearing-house so that information and techniques acquired in one LSDO would be available to all LSDOs. It might operate a central computer facility to process information collected by the different LSDOs and to report results back to them. It might maintain a staff of experts to help nascent LSDOs determine the market for their services and to help established LSDOs institute quality evaluation systems. One hopes that it could instruct the LSDOs in the ways that research is relevant to their concerns and that it would be trusted with relatively free access to the LSDOs' attorneys and clients. The cost of research administered by such an organization should be substantially less than the cost of the same research funded by ad hoc grants to different investigators, and the results, in the long run, should be of higher quality. If such an organization were created, it might in a

relatively short time generate a body of data bearing on many of the questions that follow.

**I. Research on ways to minimize or eliminate the need for legal services**

- A. Are there areas where the law may be changed so that certain problems no longer require legal services? [E.g., decriminalization of “crimes without victims” would eliminate what is currently a considerable need for legal services at the trial and appellate level. The institution of “no-fault” insurance may lead to a similar reduction in the need for legal services in the personal injury area.]
1. Are there areas where disputes that were once settled privately or not at all have now been legalized? Are these good candidates for delegalization?
  2. Are there areas where disputes are nominally governed by law, but in fact legal representation is not very helpful in achieving desired outcomes? Are these good candidates for delegalization?
- B. Can procedures be simplified so that people can handle certain legal problems without the need for lawyers’ services? [E.g., simplifying the changing of one’s name or getting a divorce.]
1. Can we create informal adjudicatory bodies which will be accessible without a need for law-trained intermediaries? [E.g., small claims courts, neighborhood mediation or arbitration tribunals.]
  2. Can we simplify procedures in formal tribunals to make them more accessible to unrepresented individuals?
  3. Are there areas of the law which are currently so simple that access to the legal system need not be through lawyers?
- C. What would promote self-help remedies?
1. What determines the capability of parties to deal with the problems they face?
    - a. What organizational features promote problem solving competence?
    - b. What individual characteristics promote problem solving competence?
    - c. What characteristics of a forum contribute to problem solving competence?
      - (1) By individuals?
      - (2) By organizations?

2. What outcomes do people want when they deal with "legal" problems?
  - a. How does the desired outcome affect the ability of people to solve their problems without using the law?
  - b. How do desired outcomes affect the capacity of parties to represent themselves if they choose legal actions?
  - c. Do the desired outcomes require that certain types of tribunals be made available?
  - d. If different tribunals or other ways of securing remedies were made available how would the desired outcomes affect the choice among tribunals or remedies?
3. What may be done to make people more competent to litigate or to solve their problems without litigation?
  - a. Is problem solving competence a generalized trait? [E.g., is a person who is good at dealing with his medical problems also good at dealing with his legal problems?]
  - b. How is problem solving competence linked to social class and other features of the social structure?
- D. What are the costs and benefits of providing alternative paths to "legality"? ["Legality" is used here to refer to the array of benefits which may be potentially derived from legal action.]
  1. What are the problems and difficulties people experience?
  2. What is the social location of trouble?
  3. How do people shop around for remedies?
  4. To what extent do people currently have access to nonlawyer groups who can furnish adequate substitutes for lawyers' services?

## II. Research on access to legal services

- A. How do people come to define their problems as legal?
  1. What barriers prevent the conversion of amorphous individual needs into socially organized responses?
  2. Are there certain potential uses for legal services which are not currently perceived?
  3. Do intermediaries [e.g., friends, social workers] play a part in defining problems as legal or not legal?
  4. Can advertising influence people to define their problems as legal?
  5. What role do factors such as age, sex, race, occupation,

prior experience with the law, etc., play in causing people to define problems as legal?

- B. Assuming that people are aware they could use legal services, what can be done to increase the probability that legal services will be sought?
1. What structural features encourage or retard the utilization of legal services?
    - a. How is the word spread about neighborhood law offices, private law firms, solo practitioners, Judicare programs, etc.?
      - (1) What kinds of informal referral networks are in operation?
      - (2) What role do intermediaries play in directing people to sources of legal services?
      - (3) How might advertising direct people to sources of legal services? [As advertising restrictions are gradually eliminated by bar associations, researchers should monitor the effects.]
    - b. How do characteristics of legal offices affect people's willingness to take their problems to them?
      - (1) Does locating a law office in a particular neighborhood increase the likelihood that people will take their legal problems there? [E.g., among the population that knows it is eligible for legal aid, will utilization of legal aid be greater if offices are dispersed throughout the neighborhoods served rather than concentrated in a central location?]
      - (2) If legal services are provided through a group organized primarily for some other purpose, will members be more likely to seek legal aid than they would be if the providers of legal aid did not overlap with some preexisting group?
      - (3) Does the physical attractiveness of the offices, the attitude of receptionists, the time lawyers have to spend with clients, etc., affect the willingness of people to take their problems to attorneys?
    - c. How do community power structures affect the willingness of people to seek out legal services? How do they affect the selection of problems for which services are sought?
    - d. What do providers of legal services currently do to build their clientele? How effective are those efforts?

2. How do different financial mechanisms affect the willingness of people to seek out legal services?
    - a. What would people do if everyone had free access to legal services?
    - b. How do group prepayment plans affect the utilization of legal services?
      - (1) What are utilization rates for existing group service plans and what factors affect these rates?
      - (2) How do different ways of organizing prepayment plans affect who gets served?
      - (3) Is there a market for group legal services?
    - c. How do statutes awarding attorneys fees affect utilization rates?
  3. How does the cost of legal services relate to utilization?
    - a. At what price will people stop buying legal services?
      - (1) How does this relationship differ for different types of services?
      - (2) What actions are not brought because their potential benefits are not sufficiently great to justify the purchase of legal services?
    - b. Is the price the people are willing to pay for legal services related to the type of unit which delivers those services?
    - c. How will advertising and specialization affect the cost and quality of legal services?
  4. What are people's beliefs, expectations, and attitudes about the legal system? [We may be able to learn a lot simply by reanalyzing existing survey data.]
- C. Who is currently getting what types of legal services?
1. What is the quality of the legal services being delivered to different segments of the population?
  2. Why do attempts to supply legal services sometimes fail to mesh with demand for legal services?
    - a. Can changes in delivery mechanisms improve this fit?
    - b. How does one make legal services relevant to those who have not used legal services before?
    - c. How would clients choose to receive their legal services?
- D. What impact will expanded access to legal services have on individuals and society?
1. How will increased access to legal services affect the way in which legal problems are resolved?
  2. How will increased access affect the tendency of people to view their problems as legal?

3. Can we pinpoint different effects of increased access to the legal system in different areas?
  - a. What will be the impact of the intrusion of lawyers into new settings [e.g., school disciplinary proceedings]?
  - b. What can the industrial relations system [e.g., the availability of "union" attorneys in workers compensation cases] tell us about changes which result from the provision of legal services?
4. How does the actual or potential use of a lawyer change the way in which people relate to the legal system? To their problems? To each other?
5. If resources are devoted to increasing the access of the poor to legal services, will their adversaries increase their spending and, if so, will this lead simply to a more expensive *status quo ante*?
6. What effects will the legal victories which might stem from an expansion of legal services have on the recipients' lives? [E.g., how does reform of the garnishment laws affect the credit system?]
7. What effect will increased access to legal services have on the judicial system?
8. Does increasing access to legal services increase (or decrease) the amount of contentiousness and violence in a culture?

### III. Research on the different ways in which the delivery of legal services can be organized

[A method or unit for delivering legal services will be abbreviated LSDM. LSDMs common today include: private practice on a firm or individual basis, open panel group programs, closed panel group programs, staff legal aid programs and Judicare programs. Variations in both method and unit should be explored. There was some feeling that a priority should be put on research comparing open and closed panel group payments plans, and staff attorney and Judicare legal aid programs.]

- A. Are there significant cost differences between different LSDMs which are not reflected in the quality of the services delivered?
  1. Are some LSDMs more efficient in managing high caseloads than others?
  2. Are paralegals better suited to some LSDMs than others?
    - a. What jobs do paralegals currently do?

- b. How much work is currently being done by paralegals?
      - c. Can law students function effectively as paralegals?
      - d. What jobs can paralegals do—to what extent can they replace lawyers?
    - 3. In what ways may new management systems reduce costs?
  - B. What are the alternative methods of financing different LSDMs?
    - 1. How does third-party financing affect the use of legal services?
    - 2. How do group methods of financing affect the use of legal services?
  - C. How do the structures of different LSDMs affect the attorneys who work in them?
    - 1. Do professional styles of dealing with clients differ in the LSDMs?
    - 2. What features account for the different abilities of LSDMs to attract high quality attorneys and to minimize turnover?
    - 3. Do attorneys with certain characteristics perform better in one LSDM than another?
    - 4. To what extent do attorneys linked in group practice function as a group?
    - 5. What do attorneys working in different LSDMs think of them and think of the jobs they are doing within them?
  - D. What do clients think of the different LSDMs?
    - 1. How satisfied are clients with the output of different LSDMs?
    - 2. Are some problems more satisfactorily handled by one LSDM than another?
  - E. Do different LSDMs engage in different mixes of activities or attract different kinds of cases?
  - F. Are there special problems in governing certain LSDMs?
    - 1. What were the consequences of client involvement on OEO policy boards?
    - 2. How may lay people who are to have some say in how a LSDM is run be educated so that they may perform their role well?
  - G. How is society affected by different LSDMs?
- IV. Research on the lawyer-client relationship**
- A. How is the lawyer-client relationship currently structured?

1. How are power and authority used to structure the relations between experts and nonexperts?
  2. To what extent do clients challenge attorneys' claims to expertise?
- B. To what extent do clients get out of the lawyer-client relationship what they are seeking?
1. What services do clients want and need?
  2. What services do lawyers think clients want and need?
  3. Why do some people find it easier than others to use the legal system in novel or creative ways?
- C. How may the lawyer-client relationship be restructured so that clients are better served?
1. Can (should) we restructure the lawyer-client relationship so that the client shares more in the decision making process?
    - a. How may we educate the client so he/she can participate effectively?
      - (1) Can (should) a means for educating clients be built into the legal services delivery system?
      - (2) Does the idea of a client's "Bill of Rights" make sense?
      - (3) If clients can be educated to insist upon greater participation in decision making when represented by counsel, will they thereby gain competence to deal with problems by themselves?
    - b. What will be the costs of restructuring the attorney-client relationship? Will they be worth the benefits?
  2. Should the attorney's role be expanded? [e.g., by an increased emphasis on interpersonal counseling].

#### V. **Research on the quality of legal services**

[One may talk about the quality of legal services in terms of the performance of the legal system generally, of particular delivery units, or of individual attorneys. There was some dispute among the conference participants about which of the latter two levels of research should have the higher priority. It was generally agreed that they should both be of higher priority than research at the first level.]

- A. In what ways can we measure the quality of the work done by individual attorneys?
1. What are appropriate criteria for measuring the competence of attorneys?
    - a. Client satisfaction?
    - b. Ability to spot problems?
    - c. Promptness in filing papers and meeting other deadlines?



- d. History of malpractice actions?
  - e. Research done?
  - f. Quality of brief writing?
  - g. Organization?
  - h. Won-lost record?
  - i. Proportion of cases settled?
  - j. Other?
- 2. Can we utilize peer review to evaluate attorneys?
    - a. Will there be so much resistance to formal peer review that it cannot be implemented?
    - b. Can we utilize the informal judgments that attorneys make about each other all the time?
- B. How may the competence of attorneys be improved?**
- 1. What factors affect the competence of attorneys?
    - a. Courses taken in law school?
    - b. Continuing legal education programs?
    - c. The threat of malpractice actions?
    - d. Bar association regulations?
    - e. Self-regulation?
    - f. Law school performance?
    - g. The competence of clients?
      - (1) Do organizational clients get better legal services? Active clients? Wealthy clients?
      - (2) How do consumers make judgments about the quality of legal services they are receiving?
  - 2. Can we build feedback mechanisms into the system so that lawyers learn how they are performing?
  - 3. What incentives will increase the quality of attorney performance?
  - 4. What administrative changes will increase the quality of attorney performance [e.g., delegating routine work to paralegals, developing canned briefs, decreasing caseload]?
- C. What is the general quality of the product produced by legal service delivery units?**
- 1. Is this question more important than questions relating to the competence of individual attorneys?
  - 2. What problems are currently being solved and what are not being solved?
  - 3. Can feedback mechanisms be devised to increase the quality of work done by legal service delivery units?
- D. To what extent do "good" outcomes at the individual level aggregate to "good" outcomes for society?**

## **VI. Research on the legal system generally**

- A. What different mechanisms or institutions for settling disputes are available?**

1. What clientele do the different mechanisms or institutions serve?
  2. What are the staff characteristics of these different mechanisms or institutions and how do they affect what goes on?
  3. What assumptions do these mechanisms or institutions make about professional-client interaction?
  4. Who brings cases to these mechanisms or institutions?
  5. How are these mechanisms or institutions perceived by parties bringing cases to them?
- B. What role should lawyers, the legal system, and the government play in ordering peoples lives?
- C. What aspects of the legal system interfere with the delivery of "legality"?
- VII. Conceptual thinking to facilitate research and miscellaneous ideas**
- A. Which of the above problems are most pressing? Can goals be specified in concrete terms?
- B. What would an optimal system for the delivery of legal services look like?
- C. What can be learned from exploring the extensive literature on medical services and their delivery?
- D. What research would have the greatest short-term payoff?
1. Which ideas for improving the system will be politically attractive?
  2. What research is likely to receive the cooperation of bar associations, attorneys, or legal service delivery organizations?
- E. How might one implement the ideas that researchers are likely to develop?
- F. Can we specify methodologies appropriate to exploring specific problems?
1. What problems might be explored through formal systems models?
  2. What problems require some form of cost-benefit analysis?
  3. What measurement problems can be expected in different areas? How might they be resolved?
  4. How much is there to be learned by looking at the methodology and problems of ongoing and completed research in this area?
- G. What can be learned by comparative research into the experience of other countries with the delivery of legal services?

- H. How can we build research components into ongoing legal service delivery programs?
1. How can researchers and legal personnel work together?
  2. Would an organization which functioned as a clearing-house for disseminating research results prove helpful?