



Courts can achieve the promise of access to justice for all by embracing human-centered design. A research agenda built on legal-design principles will enable courts to ground future investments in scientifically rigorous, user-driven innovation and evaluation.

Developing a Research Agenda for Access to Justice

Pamela Cardullo Ortiz, Director, Access to Justice Department, Maryland Administrative Office of the Courts

How will we know when we have achieved the promise of “justice for all”? In 2015 the Conference of Chief Justices and the Conference of State Court Administrators unanimously endorsed Resolution 5, “Reaffirming the Commitment to Meaningful Access to Justice for All.” The resolution supports the “aspirational goal of 100 percent access to effective assistance for essential civil legal needs.” To achieve the goal of “justice for all,” courts will need to incorporate innovation and research as the twin poles of an ongoing reform cycle.

“To achieve the goal of “justice for all,” courts will need to incorporate innovation and research as the twin poles of an ongoing reform cycle.”

As they seek to enhance access to justice, courts are asking a range of questions. In which case types, or under which circumstances, is it critical that individuals have full representation? How much legal help is “enough”? What factors affect the quality of judicial decisions? How can we evaluate online tools, forms, and resources to ensure readability and usefulness? Are access-to-justice innovations cost-effective for the courts, for the parties, and for society as a whole?

By developing a well-thought-out research agenda to answer these questions, courts have an opportunity to set the stage for the future. This research agenda should incorporate a range of views. As public institutions, courts have a mandate to serve all effectively, efficiently, and fairly. Courts also serve many types of constituents: litigants, attorneys, agencies, and members of the public. A research agenda to help courts evaluate their ability to provide access to justice will need to incorporate the points of view of all participants.

The legal profession has been slow to embrace evidence-based practices. After all, it is difficult to say what success looks like. A trial court win is a success for the prevailing

party, but was it the right outcome? What about justice or fairness? What about the perceptions of the parties or society as a whole? The creation of new entities, like the Access to Justice Lab at Harvard Law School and other university-based centers, and the research undertaken by the Self-Represented Litigant Network and others suggest the legal profession is starting to recognize the importance of research.

New developments in research design and management can help courts develop an effective access-to-justice research agenda. Design thinking is a technique borrowed from the technology sector that can help courts ground their research in the needs of court users and promote innovation. This article will address how courts can take advantage of the principles of design thinking by building court-innovation teams, by focusing on good research design, and by being strategic when making data-collection decisions. The article will also address how courts can align the goals of their research with their aspirations for access to justice; the importance of grounding that research in social context and user experience; and, finally, on the importance of this type of research for the future of the courts.

The tools are in place to move forward with meaningful, tested applications that can enhance justice for all, and an access-to-justice research agenda will be an important first step.

Creating the Mechanism for Court Research

Design Thinking for Courts

For courts, research is not an academic endeavor. Courts must manage thousands of cases while evaluating best practices, advocating for resources, and playing a critical role as part of the larger justice system. Courts can balance assessment and practice by adopting research methods that build on design thinking. Design thinking is associated with engineering and tech startups. It was

popularized in the 1980s by Stanford University's Rolf Faste as a method for the creative resolution of problems to improve future results (Cohen, 2014). Margaret Hagan, director of the Legal Design Lab at Stanford Law School, has a blog, Open Law Lab (www.openlawlab.com), through which she explores the application of design thinking to the law. Her project documents initiatives that increase access to justice through technology and design. She promotes "legal design," a concept she defines as "the application of human-centered design to the world of law, to make legal systems and services more human-centered, usable, and satisfying."



"Design thinking permits high-volume production environments like the courts to experiment with new practices while continuing to serve the public."

Courts are primed to serve as centers for design thinking. Design thinking emphasizes collaborative decision making. Courts are hubs for multiple stakeholder groups, each of which plays a defined role in the justice process. Design thinking focuses on empathy and human-centered values. The design-thinking process engages program developers and decision makers with the individuals directly affected by the system. Courts have direct access to large numbers of individuals from whom the court can directly learn: What does it feel like to go through this process? What would help you most? How would that improvement work for you? What would keep you from using it? Design thinking always begins with the user, in a bottom-up approach. Design thinking also prioritizes action by moving quickly from preliminary research to prototype. Those "prototypes," or pilot projects, would then go through user testing and be

refined and adjusted based on user feedback. This model works well for courts. Courts cannot stop what they are doing to conduct extensive research before trying a new idea, yet some preliminary research is critical. Design thinking permits high-volume production environments like the courts to experiment with new practices while continuing to serve the public. It provides a balance between the theoretical and the practical.

It is difficult to imagine how a court can incorporate design thinking into its research agenda without building some in-house capability for managing these types of projects. A court committed to design-thinking principles will want to build an in-house innovation team that is on hand and nimble enough to glean new ideas from court users; design new practices and programs; and implement, test, and refine them in a continuous feedback loop that can inform project design.

Stakeholders in British Columbia came together in 2013 and established what eventually became the British Columbia Family Justice Innovation Lab. They originally convened in response to a report of the Action Committee on Access to Justice in Civil and Family Matters, chaired by Supreme Court of Canada Justice Thomas Cromwell. The group paid close attention to the process by which they would do their work, consulting first with Adam Kahane, author of *Solving Tough Problems* (2004) and an expert in scenario planning and conflict resolution. Over time they shifted from a social lab—with a focus on inclusivity and process, but less focused on results—to an innovation lab built on the principles of design thinking. They have educated themselves about human-centered design and have embraced an experimental and innovative approach, which engages users in the design process. Their attention to process has allowed the group to ensure they are adaptive—able to focus on the process



Source: M. Hagan (2017). "User Testing for Courts." Blog, Open Law Lab, November 14, 2017. Used with permission. Online at <https://tinyurl.com/yd9gg6bs>.

and the product, on the families engaged in the justice system, and on the impact on the system itself. The group has launched several on-the-ground projects, including the Northern Navigator project, a collaborative law roster for family cases, and a project to provide mediation on a sliding scale for individuals over-income for legal aid (Morley and Boyle, 2017).

Thus, one important step courts can take to ready themselves to implement a research agenda is to create an in-house innovation team. This includes educating a cross-section of court stakeholders in the principles of design thinking and then giving them the opportunity to canvas users, generate new ideas, and put those ideas to the test.

Research Design

Another step courts can take is to engage individuals or organizations that are experienced in research design, so the work done by the innovation team is grounded in good science. Professor James Greiner and his team at the Harvard Access to Justice Lab have done much to draw the attention of the legal profession to the importance of using scientifically proven methods in research. They have championed the use of randomized control trials in the legal profession (Greiner and Pattanak, 2012).

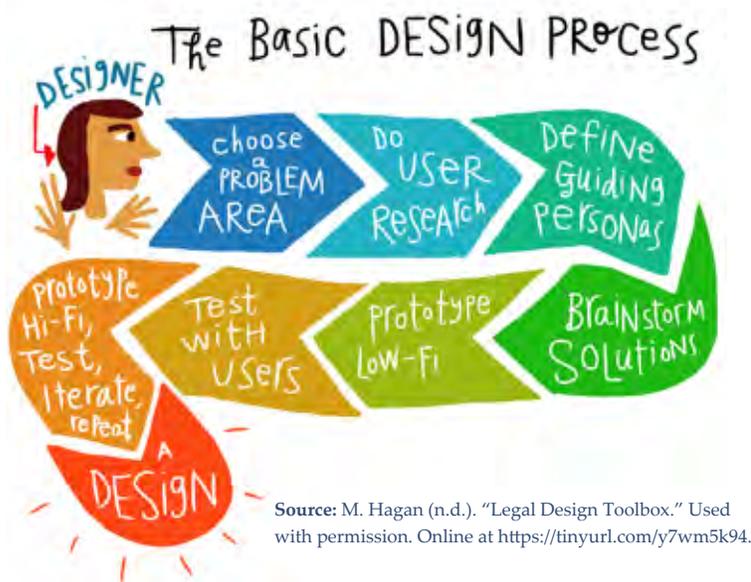
In addition, the Lab recently announced the creation of the “Evaluation Feedback Project.” Programs can submit an evaluation tool for feedback. If the submission falls within the scope of their project, they will match the submission with one to three volunteer evaluators from across the country. Volunteers will review the tool and provide feedback. Their hope is to develop a national resource for collaboration on data and evaluation among the access-to-justice community (Faith-Slaker, 2018).

Other tools can aid courts and their research and innovation teams. For example, the Self-Represented Litigant Network provides a library of tools for evaluating self-help programs and services (<https://tinyurl.com/y9aus5c5>). The Stanford d.school provides tools and materials for organizations that want to learn design-thinking principles. For example, their “Design Thinking Bootleg” (<https://tinyurl.com/ycrgbkhs>) is a toolkit to help organizations learn and use design-thinking practices to innovate, implement, test, and refine new projects.

Data

Finally, courts can plan for future data collection by being liberal in the design of case management systems and technology. Courts may only have the opportunity to alter the architecture of information-technology systems once a generation. It is essential, therefore, to think as far ahead as possible when identifying the types of data to be captured, and reports to be generated, to anticipate future data needs. In their 2014 Draft Research Agenda, the Self-Represented Litigant Network identified several types of data that will be critical for future research about the self-represented. The Network calls for the collection of basic demographic data about court users, basic attitudes and perceptions of the self-represented, and case outcomes and post-judgment activity disaggregated by representational status.

In some instances, preliminary research and collaboration will be needed before courts can know what should be captured. For example, the Self-Represented Litigant Network has



called for the development of standards to identify case complexity and the capability of litigants to proceed without counsel, and methods for capturing representational status, including the ability to identify those receiving limited-scope representation. They also urge courts to evaluate representational status at different stages in litigation as that can change throughout the history of a case.

Defining the Goal

Once courts have the capability to implement a research agenda, what will courts need to know to improve their ability to provide access to justice? What should an access-to-justice research agenda look like? A research agenda must first articulate the goal of research and then identify what research is needed to understand the court today, and what courts will need to know to prepare for the court of the future.

Resolution 5 articulates a clear goal—access to justice for all, with appropriate services and resources targeted to meet the needs of court users. It envisions a nuanced, user-driven system. An access-to-justice research agenda must begin by helping courts truly know the needs and experiences of all court users.

Building a Human-Centered Research Agenda

What Do Court Users Need?

Using legal-design principles, an access-to-justice research agenda should begin with court users themselves—engaging a range of court users to elicit their help to design the agenda itself. Research should explore the types of problems faced by the public, when court involvement is most effective, and how courts can communicate most effectively with court users. If research begins with the question, “How to be a better court,” courts may miss the opportunity to adapt to a world in which people solve their problems in a very different way. Many individuals do not recognize their problems as legal problems. When they finally engage with the court, the problem may have progressed. A human-centered research agenda will take a broader perspective, examining first the

social context before fully defining the terms of research. In their article, “Expanding the Empirical Study of Access to Justice,” Catherine R. Albiston and Rebecca L. Sandefur (2013) call for “a research agenda that steps back from lawyers and legal institutions to explore not only whether existing policies are effective, but also how current definitions and understandings of access to justice may blind policy makers to more radical, but potentially more effective, solutions.”

“Using legal-design principles, an access-to-justice research agenda should begin with court users themselves—engaging a range of court users to elicit their help to design the agenda itself.”

Research grounded in the social context from which legal problems emerge can answer a range of questions:

- Who are court users and potential court users? Where do they turn first when they have a problem? How do they use technology? How do they want to be able to solve their problems?
- When can problems be handled effectively outside of court?
- When is it most effective for individuals to engage with the court?
- What are the most effective methods to communicate with the public, litigants, attorneys, agencies, and other stakeholders?
- How much support do individuals need when engaging with the court, and at what stage?
- What do court users (broadly defined) expect from the courts?

How Do Court Users Experience Courts Today?

Evaluative studies are important but, when conducted as part of a human-centered agenda, will answer more than simply, “Is this program or policy effective?” They should expand beyond case outcomes to consider the program’s impact on the whole system. Researchers need to engage with all system users to identify what is meant by “effective.” Policies designed to protect victims, for example, by limiting the information available to the public, may make it more difficult for legal-services providers to assist those same victims. Policies that increase access to representation may lead to higher trial rates or scheduling delays. Unless all stakeholders participate in defining the goals of evaluation research, the broader impact of court practices and programs may be missed. The opportunity to craft user-oriented solutions to secondary impacts may be missed as well. A court committed to an access-to-justice research agenda will incorporate evaluative research into all aspects of the user experience. The results of that research will then be fed back into the program’s design.



"Unless all stakeholders participate in defining the goals of evaluation research, the broader impact of court practices and programs may be missed."

Every aspect of the user experience can impact access to justice and can be evaluated and refined. How effective is court signage? What practices improve the ability of the courts to identify language needs or the need for an accommodation? How effective is the court at managing the flow of litigants and attorneys for high-volume dockets? What form or document templates, language, or layout are most effective? Which website design gets

users to the page they need quickly? What terms are most effective in conveying meaning to the self-represented at the clerk’s counter? Which judicial behaviors and communication techniques achieve the desired results in the courtroom?

Prepare for the Court of the Future

Finally, a human-centered access-to-justice agenda can help courts prepare for the future. A court that gathers data today about staffing levels, user tech-readiness, and the impact of representation will be able to plan for the impact of online dispute resolution, paperless case files, legal-practice innovations, machine translation, and remote participation. Research can help courts devise transition plans so they are ready to adapt to change while continuing to advance access to justice. What will court users need if the court shifts to online dispute resolution for small-claims or traffic cases? How will the needs of those without access to the Internet, for example, be accommodated if the court shifts to e-filing? What standards will be required for technology to ensure that persons with sensory impairments can participate as business practices shift to an online model?

Courts can achieve the promise of access to justice for all—not by creating new programs to meet what the court perceives as user needs, but by grounding future investments in scientifically rigorous, user-driven innovation, evaluation, and adaptation.

Legal Design
Principals

References

Albiston, C. R., and R. L. Sandefur (2013). "Expanding the Empirical Study of Access to Justice." *Wisconsin Law Review* 101.

Cohen, R. (2014). "Design Thinking: A Unified Framework for Innovation." *Forbes*, March 31.

Faith-Slaker, A. (2018). "The Evaluation Feedback Project Has Launched." Blog, Access to Justice Lab, Harvard Law School, January 4. Online at <https://tinyurl.com/yadh13y2>.

Greiner, D. J., and C. W. Pattanayak (2012). "Randomized Evaluation in Legal Assistance: What Difference Does Represented (Offer and Actual Use) Make?" 121 *Yale Law Journal* 2118.

Kahane, A. (2004). *Solving Tough Problems: An Open Way of Talking, Listening, and Creating New Realities*. San Francisco: Berrett-Koehler Publishers, Inc.

Morley, J., and K. D. Boyle (2017). "The Story of the BC Family Justice Innovation Lab." 34 *Windsor Yearbook of Access to Justice* 1.

Effective Stakeholder
Communication

Research Question
Social Context