

A conversation with Professor D. James Greiner on December 12, 2014

Participants

- Professor D. James Greiner – Professor of Law, Harvard Law School
- Alexander Berger – Senior Research Analyst, GiveWell
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Note: These notes were compiled by the Open Philanthropy Project and give an overview of the major points made by Professor Greiner.

Summary

The Open Philanthropy Project spoke with Professor Greiner as part of its investigation into civil legal services reform. Conversation topics included the use of evidence and rigorous evaluation in civil legal services, Professor Greiner's work with randomized controlled trials, and the ways in which a foundation could support similar reform work.

Civil legal services reform

Legal services providers (LSPs) generally provide traditional (lawyer-client) individual representation or limited advice via telephone or "lawyer for the day" initiatives. However, individual representation is expensive to deliver, and this mode of addressing civil legal problems is feasible for only a small portion of the individuals eligible for their services. As a result, many LSPs continue to request larger budgets to hire more lawyers.

It may be more effective to invest in innovations in the legal services field, such as supporting non-lawyer representation and developing high quality self-help materials. High quality self-help materials address clients' psychological states and provide them with the necessary information to solve their problems. Currently, unauthorized-practice-of-law regulations prevent non-lawyers from representing anyone, so there is no legal equivalent of a nurse practitioner. It is also illegal to have the equivalent of a pharmacy health clinic for legal advice. Changing these regulations would allow for more flexibility and efficiency in the delivery of legal services.

LSPs generally operate within the traditional lawyer-client or limited (especially telephone) services models and have dedicated as fewer resources to self-help or to pushing the envelope toward non-lawyer representation.

Randomized controlled trials on civil legal services

Professor Greiner is the only person he knows of running randomized controlled trials (RCTs) in the law. LSPs have very limited research capacity, and they have not focused on producing rigorous evidence about their impact or about different modes of service delivery. Professor Greiner and other researchers are trying to create a field that focuses on the use of rigorous evidence in civil legal services.

There is no consensus in the legal world on the use of RCTs. Professor Greiner's work has received attention from LSPs and pro bono assistance agencies, but many practitioners and legal scholars are now wondering whether RCTs are a curiosity or if they will become a standard part of legal research in the future.

Greiner's research has been met with both hostility and enthusiasm. There has been some pushback from academics and LSPs who believe that RCTs are a tool to defund legal services, and some discussion of a "research imperative." The case of law school clinics (in which students overseen by practicing lawyers provide legal services) provides an example. Law school clinics were the first LSPs to agree to work with Greiner to run RCTs. But a 2012 RCT published by Professor Greiner in the Yale Law Journal found that clients who received representation from the Harvard Legal Aid Bureau (HLAB) in one of its smaller practices, representation in unemployment benefits, did not have significantly greater success in their cases than those who were not offered representation. Despite Professor Greiner's highlighting that he was unable to conduct follow-up research, that the study was not a comment on the quality of HLAB's legal work, and that it was possible that the presence of HLAB was important in ways the study did not measure, this paper received considerable backlash.

Supporters of RCTs believe they will generate evidence to allow more effective programmatic decision-making. Because there are a limited number of lawyers, it is worthwhile to use RCTs to identify the areas where lawyers add value and those where legal representation does not significantly change outcomes.

Professor Greiner's research

Professor Greiner has eight RCTs on civil legal services that are currently at different stages of completion. They are evaluating a number of different aspects of civil legal services:

- **Delivery of legal services** – three RCTs (two of which are published, one is in the revise & resubmit stage) compare the effectiveness of traditional legal services (individual representation) versus self-help assistance materials and 'lawyer for a day' programs. Professor Greiner has been working to improve the self-help materials that are available.
- **Pro bono referral services** – one RCT (which has finished recruitment of participants) is studying the effectiveness of pro bono referrals for divorce cases.

- **Mediation** – one RCT (which has also finished recruitment of participants) is measuring the effectiveness of mediation vis-à-vis unmediated party settlement negotiations.
- **Debt collection** – one RCT is evaluating interventions to improve the rate at which people attend court to contest debt collection cases. The default rate in debt collection lawsuits is so high in these cases that the entire debt collection industry is premised on people not showing up. Plaintiffs often come to court without any evidence. Professor Greiner is measuring whether an effective mailing would encourage people to attend their debt collection cases. Higher attendance rates could be the impetus to restructuring and reforming the debt collection industry. Preliminary results show a doubling in attendance (from 8% to 17%).
- **Financial distress** – one RCT (two years into the planning stage) is asking how to most effectively empower people in financial distress. This study compares innovative (cartoon-based) self-help materials to professional assistance in the form of lawyers and financial counseling. It will be the first RCT in the law to measure socioeconomic outcomes, meaning those beyond the courtroom, over the medium and long terms.
- **Legal triage** – one RCT (six months into a three year planning period) is comparing human triage decisions with randomized triaging for cases of civil protection orders for survivors of domestic violence. Previous research has shown that without guidance, humans make poor triage decisions. Professor Greiner will use machine learning to identify factors that predict how well certain people will do without a lawyer.

Funding for Professor Greiner's RCTs

Professor Greiner has received little funding for his RCTs. Harvard provides him with a \$5,000 yearly research budget. He was able to obtain a \$10,000 grant from the American Bar Association (ABA) for his first RCT, but the ABA is no longer providing grants). His coauthors and he have received a \$285,000 grant from the Law & Social Sciences division of the National Science Foundation that supports one third of the cost of the financial distress project. He has completed the rest of his projects by relying on the work of graduate and law students, who work for little or no pay.

Professor Greiner hopes to find foundations interested in access to justice issues. He also hopes to find foundations interested in subjects that may have some legal component (even if the foundation itself is not especially interested in the legal arena). For example, a foundation interested in preventing domestic violence might be interested in a study to make legal services in the DV context more effective. There are currently no funders he knows of that are focused on the broader access to justice issues or specific attempts to reform the legal services system (*i.e.*, there are no funders trying to help people who are unable to hire lawyers).

Challenges of working with RCTs

Most of Professor Greiner's RCTs have taken about three years of planning. There are complex logistics to sort out because a researcher must work with a court system. For example, before the debt collection RCT could be implemented, Professor Greiner (and his graduate students) had to:

- Convince the court to compile a list of its defendants and share it electronically at set intervals.
- Randomize defendants into those who received no letter, those who received a letter with a small informational packet and those that received a letter with a maximal informational packet.
- Design the informational packets, using past research on behavioral economics interventions to increase voting rates and colonoscopy attendance rates, as well as the principles of adult education.

For another RCT, Professor Greiner is working with the courts in eight different counties in Ohio, each of which has two different court systems. Each court must be willing to transfer records; researchers need to design a protocol to ensure information security.

Researchers also need to find ways to access the data they need to measure outcomes for their trial. This might involve getting access to credit reporting agency documents, or finding a legal services provider or financial counselor who will agree to the study protocol. Depending on the intervention, researchers may have to convince the judiciary to amend its rules. For example, in the financial distress RCT, Professor Greiner's team persuaded a court system to add a small box to the bottom of a court form that included a hotline to call if unable to afford a lawyer. Eligible persons who called the number were asked to participate in the study. Professor Greiner's team also had to convince the judiciary to change its scheduling protocols to ensure that there would be time to enroll participants before their hearings. These preparations take a lot of time. Professor Greiner's fastest RCT took 18 months of planning prior to starting enrollment.

Other legal academics are often hesitant to work on RCTs because they think they do not have enough statistical knowledge to run them or they do not want to take the time to set the studies up. The field operations aspect of RCTs is also difficult for some academics. Often, solving the logistical problems of running RCTs and getting the first few meetings and phone calls requires researchers to have experience practicing law, but many legal academics have very limited experience as practicing lawyers. It is possible that as more RCTs are implemented, this will no longer be the case.

The impact of RCTs and future reform goals

As yet, there have been few programmatic changes on the ground in response to Professor Greiner's work. The use of RCTs is still a novel concept in the legal world. To date, there have been a total of six RCTs published on civil legal services in the United States (two in quasi-criminal settings in the 1970s, one in the mid 1990s in a New York housing court, and three of Greiner's). The medical profession debated the use of rigorous, experimental work and evidence-based-thinking in the 1940s. The legal profession is having that debate now. It will take the publication of a lot of successful RCTs that present strong evidence challenging the assumptions of the legal civil services world before this research is translated into practical change on the ground.

The available evidence indicates that RCTs are returning powerful and counter-intuitive findings. For example, preliminary evidence in Professor Greiner's divorce study found that having a lawyer in a no-fault, no-asset divorce significantly increases the rate at which clients obtain divorces. This should be a very simple legal proceeding, but the study shows legal representation makes a big difference. More RCTs are needed to get a better sense of what the magnitude of benefit is for certain legal services and to provide more information about when and how lawyers can add the most value.

A center could be set up to run many legal services RCTs, based on the model of ideas42 and the Abdul Latif Jameel Poverty Action Lab.

Opportunities for philanthropic engagement

Well-placed funding could help to reform the institution of legal services by significantly expanding research capacity and further encouraging the use of rigorous evidence. A foundation that prioritized evaluation could create a model for existing funders and encourage others to demand evidence and evaluation for the programs they are funding.

Several types of projects could use additional funding:

- Projects with a strong research design that measure client outcomes beyond a win or a loss in the courtroom. The client often cares more about whether the underlying problem has been addressed, and that does not always map onto a win or a loss in the courtroom.
- Projects that assess the effectiveness of self-help centers located inside courts.
- Projects that study how to produce better court forms (*e.g.* how to get a divorce).
- Projects that evaluate programs using non-lawyer professional guides in high volume cases (*e.g.* summary evictions) to help people navigate the legal process.

Specific potential funding opportunities

The Chief Judge of the New York Court of Appeals, Jonathan Lippman, has proposed a program that uses the non-lawyer guides to help clients navigate the legal system. The program was in part the brainchild of Richard Zorza, an attorney who runs the Access to Justice blog, and David Udell, the Executive Director of the National Center for Access to Justice. This program seems like a great idea but it is not clear how cost-effective it is. A foundation might be able to support an evaluation of this program.

A foundation could also sponsor a project to consolidate the information that is available in the court system and make it more accessible for researchers. There is a some information in the court systems, but this information is not available in an organized fashion. There is also a massive amount of information that should be collected, but is not. For example, despite the housing crisis that brought the United States economy to its knees in 2008, no jurisdiction collects, data on the volume of summary eviction cases broken down by category: foreclosures vs. non-payment of rent vs. misconduct. For this reason, it is hard to find answers to even simple questions such as how many cases of a certain type are processed each year. In another example, Professor Greiner is working to expand his how-to-get-debt-collection-defendants-to-attend-court study to multiple states, but he has encountered difficulties in figuring out the default baseline rates in the court systems. The data simply are not collected in a way that facilitates studies to improve the system. A foundation could provide the infrastructure and funding to make this sort of information more readily available.

Dr. Rebecca Sandefur, an associate professor at the University of Illinois College of Law, does research to understand what clients actually hope to achieve. She has found that people would often prefer to solve their problems without a lawyer. This research is critical to solving access to justice problems and to helping people achieve the legal outcomes they desire (such as getting a divorce or receiving governmental benefits). This research does not involve RCTs. It involves talking to people, asking the right questions, and gathering qualitative data from surveys. High-quality qualitative research like Professor Sandefur's work could be also supported.

Other People To Talk To

- **Dr. Rebecca Sandefur** – Associate Professor of Sociology and Law, University of Illinois College of Law
- **David Udell** – Executive Director of the National Center for Access to Justice and Visiting Professor, Cardozo Law School
- **Deborah Rhode** – Professor of Law, Stanford Law School
- **Richard Zorza** – attorney and consultant, runs Access to Justice Blog

All Open Philanthropy Project conversations are available at
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