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**INTRODUCTION: WHAT WE KNOW AND NEED TO KNOW ABOUT
THE STATE OF “ACCESS TO JUSTICE” RESEARCH**

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Ongoing, systematic research on civil legal needs and services is an essential component of improving the quality and availability of such services. Currently, however, we know little about the legal resource landscape—especially services for “ordinary Americans”¹—and our research infrastructure is underdeveloped compared to professions such as medicine. As Gillian Hadfield has written:

We don’t have a national federally-funded research agency like the National Institute of Health, which distributes over \$30 billion in 50,000 grants annually to medical researchers who collect, analyze, and are often required to share, data on disease, medical procedures and the impact of interventions. We don’t have the legal equivalent of public health departments, tracking the legal health of communities. We don’t have the legal analogs of specialists in epidemiology, studying the causes and patterns of legal problems in communities. While legal academia produces thousands of articles published in law reviews each year, such research typically focuses on law itself, not the public or markets the law serves. The major well-funded and regularly conducted studies on the legal system that do exist focus on the market for corporate legal services. As a result, systematic efforts to collect data about the health of legal systems for ordinary individuals are few and far between.²

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1. Gillian K. Hadfield, *Higher Demand, Lower Supply? A Comparative Assessment of the Legal Resource Landscape for Ordinary Americans*, 37 *FORDHAM URB. L.J.* 129, 132–33 (2010) (decrying the lack of legal resources available to low- and middle-income Americans).

2. Gillian K. Hadfield & Jaime Heine, *Life in the Law-Thick World: The Legal Resource Landscape for Ordinary Americans*, in *BEYOND ELITE LAW: ACCESS TO CIVIL JUSTICE IN*

Happily, there are signs of a renaissance in “Access to Justice” (A2J) research and the development of research communities capable of organizing and assessing such research.³ In 2010, the Obama administration established an Access to Justice Initiative within the Department of Justice (DOJ), charged in part with expanding research on civil legal services delivery.⁴ The Legal Services Corporation (LSC), likewise, emphasized the importance of evidence-based assessment in its 2012 strategic plan, calling for the development of “robust assessment tools” to ensure that LSC identifies and replicates the best practices among its grantees.⁵ In 2015, President Obama established the White House Legal Aid Interagency Roundtable (LAIR), to encourage federal agencies to collaborate to “advance relevant evidence-based research, data collection, and analysis . . . and promulgate best practices” to improve meaningful access to justice.⁶

Research foundations, too, have recently invigorated efforts to promote systematic research on civil legal needs and services. In 2011, the American Bar Foundation (ABF) established an A2J research initiative to support research as a resource for policymakers and service providers.⁷ In 2012, the ABF, with the sponsorship of the National Science Foundation (NSF), convened researchers and field professionals to develop an A2J research agenda,⁸ and several of the organizers contributed to a colloquium on A2J research questions and methods.⁹ In 2015, A2J researchers, field providers, and NSF executives met with DOJ and LAIR representatives at the 2015 Civil Legal Aid Research Workshop to “identify a civil legal aid research agenda in anticipation of dedicated funding of this work.”¹⁰

AMERICA 1–2 (Sam Estreicher & J. Radice eds., forthcoming 2016), <http://ssrn.com/abstract=2547664> (citations omitted).

3. Catherine R. Albiston & Rebecca L. Sandefur, *Expanding the Empirical Study of Access to Justice*, 2013 WIS. L. REV. 101 (2013) (observing that “Access to Justice (A2J) research is in the midst of a renaissance”).

4. *Id.* at 102 (citing *Access to Justice Home*, U.S. DEP’T OF JUST., <http://www.justice.gov/atj/> (last visited Mar. 22, 2016)).

5. Legal Servs. Corp., *Strategic Plan 2012-2016*, at 3 (2012), http://www.lsc.gov/sites/default/files/LSC/lscgov4/LSC_Strategic_Plan_2012-2016--Adopted_Oct_2012.pdf (discussing the need for and increasing interest in empirical assessment of legal service delivery); see also Albiston & Sandefur, *supra* note 3, at 102.

6. *Presidential Memorandum—Establishment of the White House Legal Aid Interagency Roundtable*, Section 4(v), WHITE HOUSE (Sept. 24, 2015), <https://www.whitehouse.gov/the-press-office/2015/09/24/presidential-memorandum-establishment-white-house-legal-aid-interagency>.

7. *Access to Justice*, A.B.A., <http://www.americanbarfoundation.org/research/A2J.html> (last visited Mar. 22, 2016); see also Albiston & Sandefur, *supra* note 3, at 102.

8. Albiston & Sandefur, *supra* note 3, at 102.

9. See Meredith J. Ross, *Colloquium: Introduction: Measuring Value*, 2013 WIS. L. REV. 67 (2013) (“The colloquium Essays address the role of empirical research in identifying, measuring, and clarifying crucial issues of service delivery, resource allocation, and access to justice.”).

10. See U.S. DEP’T OF JUSTICE’S NAT’L INST. OF JUSTICE & OFFICE FOR ACCESS TO JUSTICE WITH THE NAT’L SCI. FOUND., WHITE HOUSE LEGAL AID INTERAGENCY ROUNDTABLE: CIVIL

With this volume, the American Bar Association Commission on the Future of Legal Services aims to contribute to this momentum. The volume brings together experts on a range of challenges and innovations in civil legal services delivery, and asks them to distill “what we know and need to know” to improve access to high-quality legal information and services. The resulting collection of sixteen White Papers offers rich and timely data on legal services in a variety of contexts, as well as a range of perspectives and prescriptions for the future.

The collection has two primary goals. The first is to inform the Commission and its audience about the facts on the ground, insofar as we know them, by presenting the most recent research on issues of relevance to the Commission. Some of the findings are troublingly familiar, confirming the lack of legal resources in areas of desperate, demonstrable need, such as immigration.¹¹ Elinor R. Jordan reports that roughly half of individuals in removal proceedings are unrepresented.¹² As Deborah L. Rhode observes, the United States ranks 67th—tied with Uganda—in the World Justice Project’s country rankings of access to justice and affordable legal services.¹³ Tonya L. Brito and her coauthors discuss efforts to expand the civil right to counsel in matters of basic human need.¹⁴

Other findings may be surprising, challenging conventional wisdom about the nature of individuals’ demand for lawyers and the impact of legal representation when other variables are controlled. For instance, Rebecca L. Sandefur finds that, although civil justice problems are “common and widespread,”¹⁵ most people who experience justiciable problems never consider using a lawyer, or think of their problems as “legal,” but rather rely on their own understanding and support networks to deal with the problem.¹⁶ The cost of

LEGAL AID RESEARCH WORKSHOP REPORT 3 (2016), <https://www.justice.gov/lair/file/828316/download> (last visited Mar. 17, 2016) [hereinafter LAIR RESEARCH WORKSHOP REPORT] (“The workshop brought together an Expert Working Group (EWG) of approximately 40 domestic and international researchers and practitioners to discuss the existing literature and research gaps concerning civil legal aid and its intersection with public safety and criminal justice.”).

11. Deborah L. Rhode, *What We Know and Need to Know About the Delivery of Legal Services by Nonlawyers*, 67 S.C. L. REV. 429, 438 (2016) (noting that immigration is “a field characterized by both pervasive fraud and pervasive unmet needs”).

12. Elinor R. Jordan, *What We Know and Need to Know About Immigrant Access to Justice*, 67 S.C. L. REV. 295, 296 (2016) (reviewing research and case law on immigrant access to legal services).

13. Rhode, *supra* note 11, at 429.

14. See Tonya L. Brito et al., *What We Know and Need to Know About Civil Gideon*, 67 S.C. L. REV. 223, 224 (2016) (distinguishing the “Civil Gideon” movement from efforts to facilitate self-representation).

15. Rebecca L. Sandefur, *What We Know and Need to Know About the Legal Needs of the Public*, 67 S.C. L. REV. 443, 444 (2016).

16. *Id.* at 449 (stating “researchers consistently find that problems that look legal to lawyers do not seem particularly legal to the people who experience them”).

legal services plays a surprisingly modest role in such decisions.¹⁷ Moreover, as Sandefur notes: “[o]ur current knowledge about which justice situations actually require live lawyers to provide the necessary legal expertise is thin.”¹⁸ A growing body of research, including a series of randomized trials by D. James Greiner and others,¹⁹ suggests the need to think critically about whether—and how—lawyer involvement affects case outcomes or other outcomes that we might care about.²⁰

A number of the Papers assess new strategies for educating people with civil justice problems about what resources are available and engaging them in seeking legal information and assistance. For instance, Stephanie Kimbro reviews the psychology of online engagement and explains how lawyers can improve access to justice through more effective engagement online.²¹ Bharath Krishnamurthy and her coauthors examine the benefits of medical-legal

17. *Id.* at 449–50 (“Perhaps among the most surprising findings of contemporary research in the U.S. context is that people do not highlight the cost of legal services as a reason for not turning to law.”).

18. *Id.* at 453.

19. See D. James Greiner & Cassandra Wolos Pattanayak, *Randomized Evaluation in Legal Assistance: What Difference Does Representation (Offer and Actual Use) Make?*, 121 YALE L.J. 2118, 2124 (2012) (randomized study finding that an offer of legal representation had “no significant effect on the probability that a claimant would prevail” in unemployment cases); D. James Greiner et al., *How Effective Are Limited Legal Assistance Programs?: A Randomized Experiment in a Massachusetts Housing Court* 5–6 (Univ. of Chi. Sch. of Law, Working Paper, 2012), <http://www.law.uchicago.edu/files/files/Greiner%20Paper.pdf> (finding that legal representation had no significant effect on whether people facing eviction would retain possession); Dalíé Jiménez, D. James Greiner, Lois R. Lupica & Rebecca L. Sandefur, *Improving the Lives of Individuals in Financial Distress Using a Randomized Control Trial: A Research and Clinical Approach*, 20 GEO. J. ON POVERTY L. & POL’Y 449, 450 (2013) (testing the effectiveness of financial counseling versus a lawyer’s assistance in helping people escape from financial distress); see also D. James Greiner, *What We Know and Need to Know About Outreach and Intake by Legal Services Providers*, 67 S.C. L. REV. 287, 293 (2016) (calling for randomized evaluation of civil legal services providers’ outreach and intake programs); D. James Greiner & Andrea Matthews, *Randomized Control Trials in the United States Legal Profession* (Harvard Public Law Working Paper No. 16-06, Feb. 2, 2016), <http://ssrn.com/abstract=2726614> (comprehensive review of the use of “randomized control trials” (RCTs) in the U.S. legal profession).

20. See Sandefur, *supra* note 15, at 454; Brito et al., *supra* note 14, at 237–38 (discussing Greiner’s work); April Faith-Slaker, *What We Know and Need to Know About Pro Bono Service Delivery*, 67 S.C. L. REV. 267, 282 (2016) (noting that “we know very little” about the impact of pro bono services on clients); Rebecca L. Sandefur, *Elements of Professional Expertise: Understanding Relational and Substantive Expertise Through Lawyers’ Impact*, 80 AM. SOC. REV. 909, 910 (2015) (meta-analysis of extant research on lawyers’ effect on case outcomes, finding that “lawyers affect case outcomes less by knowing substantive law than by being familiar with basic procedures”).

21. See Stephanie Kimbro, *What We Know and Need to Know About Gamification and Online Engagement*, 67 S.C. L. REV. 345, 345 (2016) (“Understanding online engagement in terms of connecting the public with legal services is the primary way the legal profession can ensure that access to justice solutions—from legal aid created self-help resources to private practitioners and law firms offering unbundled services—are actually discovered and taken advantage of by the public.”).

partnerships in which medical staff at hospitals and clinics, working in tandem with legal professionals, screen for health-harming legal needs and make legal referrals.²² John Christian Waites and Fred Rooney examine the role of law school incubators in community education and outreach as well as in the direct provision of pro bono and low bono service.²³

Other Papers focus on strategies for expanding available resources through lawyers' pro bono service, service by alternative providers, and online service delivery. April Faith-Slaker calls for a reorientation of pro bono research from its focus on lawyers' motivations to a focus on the impact of pro bono services on clients and communities.²⁴ Rhode and Sandefur highlight the actual and potential effectiveness of nonlawyer specialists in delivering basic legal information and services,²⁵ and call for expanded roles for—and research on—alternative providers.²⁶ Deborah Thompson Eisenberg calls for a “second generation” of research on alternative dispute resolution (ADR), focusing “not on *whether* courts should use ADR but on *how* mediation and other ADR processes should be conducted.”²⁷ Ethan Katsh and Colin Rule examine the rapid evolution and expansion of online dispute resolution (ODR), and predict that, “[i]n time, most dispute resolution processes will likely migrate online.”²⁸

Although most of the Papers focus on civil legal services for “ordinary Americans”²⁹—that is, individuals and families of limited or moderate means—

22. See Bharath Krishnamurthy et al., *What We Know and Need to Know About Medical Legal Partnership*, 67 S.C. L. REV. 377, 381 (2016) (discussing the financial benefits of on-site legal services for both patients and hospitals, measured by health care recovery dollars).

23. See John Christian Waites & Fred Rooney, *What We Know and Need to Know About Law Firm Incubators*, 67 S.C. L. REV. 503, 506–07 (2016) (discussing the role of incubators in raising community awareness of legal issues).

24. Faith-Slaker, *supra* note 20, at 267.

25. See Rhode, *supra* note 11, at 433–34 (reviewing research on nonlawyer service provision in the United States and United Kingdom and finding little evidence of consumer harm outside the immigration context); Sandefur, *supra* note 15, at 454 (reviewing research comparing case outcomes achieved by lawyers, laypeople, and nonlawyer advocates); see also Leslie C. Levin, *The Monopoly Myth and Other Tales About the Superiority of Lawyers*, 82 FORDHAM. L. REV. 2611 (2014) (reviewing research and finding “little evidence that lawyers are more effective . . . or more ethical than qualified nonlawyers”).

26. See Rhode, *supra* note 11, at 429 (stating that “the civil justice system is unduly lawyer-centric” and calling for expanded roles for nonlawyers); Sandefur, *supra* note 15, at 452–53 (calling for a system of “coordinated providers and institutions” in which people could be connected to “the least expensive and intrusive service necessary to meet their actual legal needs”); see also Rebecca L. Sandefur & Thomas M. Clarke, *Increasing Access to Justice Through Expanded “Roles Beyond Lawyers”*: Preliminary Evaluation and Classification Frameworks, AM. BAR FOUND. (Apr. 2015), http://www.americanbarfoundation.org/uploads/cms/documents/rbl_evaluation_and_program_design_frameworks_4_12_15.pdf (last visited Jan. 31, 2016).

27. Deborah Thompson Eisenberg, *What We Know and Need to Know About Court-Annexed Dispute Resolution*, 67 S.C. L. REV. 245, 247 (2016).

28. See Ethan Katsh & Colin Rule, *What We Know and Need to Know About Online Dispute Resolution*, 67 S.C. L. REV. 329, 339 (2016).

29. Hadfield, *supra* note 1.

the collection also covers developments in the corporate legal market. Paul Lippe examines how machine learning is affecting the way that corporations aggregate data and manage the complexity of their regulatory environments, and how these changes, in turn, will force changes in information management by legal departments and law firms.³⁰ Silvia Hodges Silverstein explains how such changes already are playing out in legal procurement, as procurement professionals increasingly scrutinize law firms' project management and process improvement capabilities.³¹ Carole Silver examines the regulatory and research challenges posed by cross-border legal services and law firm mergers, and the emerging responses of national and cross-national regulatory bodies.³²

Finally, two Papers examine patterns of disruption and innovation in the legal industry as a whole, and consider the implications of market disruption for both lawyers and clients. Raymond H. Brescia explains how the digitalization of information, machine learning, and the Internet have led to the increasing commoditization of legal services, and discusses the possible benefits of commoditization for underserved communities.³³ Daniel W. Linna Jr. tracks the emergence of legal startups in a variety of markets and considers how we might leverage investment in startups to increase the availability of legal services more broadly.³⁴

Taken together, these sixteen White Papers offer a rich, empirically-grounded survey of "what we know and need to know" about the future of legal services. Though our list of topics is necessarily partial, omitting many

30. Paul Lippe, *What We Know and Need to Know About Watson, Esq.*, 67 S.C. L. REV. 419, 426-27 (2016) ("Watson will catalyze better organization of legal information and legal data, forcing legal departments and law firms to better manage their current information/data and delivering substantial returns from this information management step alone.").

31. Silvia Hodges Silverstein, *What We Know and Need to Know About Legal Procurement*, 67 S.C. L. REV. 485, 499 (2016) (reporting that 48% of surveyed procurement professionals rate law firms' project management and process improvement capabilities "very important").

32. Carole Silver, *What We Know and Need to Know About Global Lawyer Regulation*, 67 S.C. L. REV. 461, 483 (2016) (emphasizing "the need for distance between regulatory and research roles").

33. Raymond H. Brescia, *What We Know and Need to Know About Disruptive Innovation*, 67 S.C. L. REV. 203, 214 (2016) ("Commoditization can help close the justice gap by making legal guidance available to those individuals who fit easy-to-serve profiles and whose legal situation is such that straightforward guidance and assistance can satisfy their legal needs.").

34. Daniel W. Linna Jr., *What We Know and Need to Know About Legal Startups*, 67 S.C. L. REV. 389, 415 (2016) ("Additional data and rigorous studies are needed to show how legal startups can contribute to increasing access to legal services across the legal industry. Relatedly, the possibility that legal startups will fulfill some of the unmet need for legal services will impact other innovations and programs. For example, if the legal market functioned well and legal startups filled some of the need for access to legal services, how would that impact the need for new legal service professional (LSP) regimes, including the need for limited license legal technicians (LLLTs) and lay navigators? If legal startups can provide standardized, routine services, does this augment the scope of services that LLLTs and lay navigators can provide?").

important areas that would benefit from systematic research, we hope that our template will prove useful to others and motivate efforts to fill the gaps.

The second goal of the volume is to promote the development of shared conversations among academic researchers, legal services providers, and legal services regulators. Researchers have much to gain from sustained collaboration with providers, who can facilitate field access and help define issues and priorities for research. For instance, Eisenberg describes a collaboration between the Maryland judiciary and an interdisciplinary research team to design a statewide evaluation of alternative dispute resolution.³⁵ Greiner describes the design and testing of “an outreach strategy intended to persuade debt collection defendants to attend court,” at the request of the legal service provider staffing a program at the court to assist them.³⁶ Such collaborations are essential for the production of rigorous, grounded research.

Providers and regulators, likewise, have much to gain from independent researchers, who can help define input and outcome measures, identify blind spots, and guide innovation. Incumbent providers—many of whom have spent their careers leveraging scarce legal resources in the service of disadvantaged communities—tend to focus on supply-side strategies for addressing the needs they confront; that is, increasing access to lawyers and other resources for individual legal assistance. Yet, as Sandefur reminds us, individual legal needs are partly the product of procedural and systemic demands:

Existing legal services, even when they do meet apparent legal needs, may not be the simplest, cheapest, most lawful, or most effective way to meet legal need. Simply because lawyers appear impactful under the current state of affairs does not mean that they are the best solution to problems we observe. Sometimes, the right route is systemic reform; a narrow focus on existing solutions and their effectiveness can blind us to that.³⁷

Thus, while increasing access to lawyers remains a critically important goal in some contexts, a number of contributors also emphasize the need for procedural and systemic reform, such as the adoption of plain language forms for

35. Eisenberg, *supra* note 27, at 256 (“Unique among ADR research, the Maryland study isolated the impact of simply going through an ADR process, separate from any effect of reaching an agreement.”); *see also* ADMIN. OFFICE OF THE COURTS, STATE JUSTICE INST., IMPACT OF ALTERNATIVE DISPUTE RESOLUTION ON RESPONSIBILITY, EMPOWERMENT, RESOLUTION AND SATISFACTION WITH THE JUDICIARY: COMPARISON OF SELF-REPORTED OUTCOMES IN DISTRICT COURT CIVIL CASES (2014), <http://www.courts.state.md.us/macro/pdfs/reports/impactadron-districtcivilcases2014report.pdf>.

36. Greiner, *supra* note 19, at 293.

37. Sandefur, *supra* note 15, at 455.

court actions,³⁸ and the simplification of procedures in high-need areas such as family law,³⁹ immigration,⁴⁰ and consumer debt.⁴¹ Research also points to the need to improve courts' treatment of pro se litigants and adherence to statutory burdens of proof even in the absence of lawyers.⁴² Research suggests that lawyers' impact on case outcomes may be largest in high-volume settings in which cases are typically "treated perfunctorily or in an ad hoc fashion by judges, hearing officers and clerks."⁴³ In such contexts, the presence of lawyers may improve case outcomes simply by encouraging court personnel to follow the rules.⁴⁴

Collaboration among researchers, providers, and regulators will only become more important as innovations in the delivery of legal services progress. The ABA's February 2016 adoption of Model Regulatory Objectives for the Provision of Legal Services⁴⁵ is a critically important first step in providing guidance to states as they assess their existing regulatory frameworks and examine new forms of service delivery and alternative service providers. Rigorous research will be essential to ensure that new—and existing—forms of service meet these regulatory objectives; and professional (independent, trained) researchers will be essential contributors to this work.

38. *Id.* at 455–56 (“[C]ourts around the country are moving to simplify legal actions through the use of plain language forms. If a court action requires a pleading, the litigant has to figure out what law applies, what that law says, what counts as evidence and how to present her case in legal terms that court staff understand. When courts replace pleadings with plain language forms with fixed choice options, much of the legal expertise necessary to draft the pleading becomes commodified in the form.”).

39. *See* Rhode, *supra* note 11, at 431 (citing Rebecca Aviel, *Why Civil Gideon Won't Fix Family Law*, 122 YALE L.J. 2106, 2117–18 (2013)) (noting that “research finds that divorcing parties prefer simpler, less adversarial procedures”).

40. *See* Jordan, *supra* note 12, at 325–26 (“In Immigration Court, highly mechanistic procedures may be unnecessarily burdensome for pro se litigants. A rejected filing, even for a trivial reason, could cause a remedy to be forfeited if the respondent cannot re-file in time. Such rules confound pro se litigants and improperly elevate form over function.”).

41. *See* Rhode, *supra* note 11, at 430 (noting that parties in bankruptcy, housing, and family courts “confront procedures of excessive and bewildering complexity, and forms with archaic jargon”).

42. *See* Sandefur, *supra* note 15, at 456 (“Some courts are, frankly, lawless: judges and other court staff behave in ways that are inconsistent with the law’s requirements.”).

43. Sandefur, *Elements of Professional Expertise*, *supra* note 20, at 17.

44. *Id.*

45. *See* ABA Model Regulatory Objectives for the Provision of Legal Services, ABA (Feb. 2016), <http://www.americanbar.org/content/dam/aba/images/abanews/2016mymres/105.pdf>; Susan Beck, *Divided ABA Adopts Resolution on Nonlawyer Legal Services*, AM. LAW. DAILY, Feb. 8, 2016.

Fortunately, shared conversations about research questions,⁴⁶ methods,⁴⁷ and priorities⁴⁸ have begun. We offer this collection in hopes of contributing to the development of those conversations.

46. See Ross, *supra* note 9, at 69 (introduction to a 2013 Wisconsin Law Review symposium on access to justice research, stating that “the most fundamental question addressed by the symposium essays is, ‘What should we measure?’”); Albiston & Sandefur, *supra* note 3, at 103 (calling 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”).

47. See Greiner & Pattanayak, *supra* note 19, at 2122 (describing randomized trials as the “gold standard” of empirical research); Greiner & Matthews, *supra* note 19, at 1 (arguing that the U.S. legal profession has resisted the use of randomized control trials); Ross, *supra* note 9, at 68 (stating that Griener and Pattanayak’s study of the effect of randomized offers of representation in unemployment appeals “exploded on the academic and practice landscape like a bombshell”); Albiston & Sandefur, *supra* note 3, at 106 (discussing the contributions and limitations of randomized trials); Sandefur, *Elements of Professional Expertise*, *supra* note 20, at 916 (discussing statistical techniques such as meta-analysis and nonparametric bounding that allow the calculation of causal effects from observational data); see also Pascoe Pleasance et al., *Apples and Oranges: An International Comparison of the Public’s Experience of Justiciable Problems and the Methodological Issues Affecting Comparative Study*, 13 J. EMP. L. STUDIES 50, 54 (2016) (examining methodological differences in national legal surveys since the mid-1990s and explaining their potential effects on survey findings).

⁴⁸ See, e.g., LAIR RESEARCH WORKSHOP REPORT, *supra* note 10 (discussing research priorities related to reentry, human trafficking, consumer protection, elder abuse, and domestic violence).

