



12 Tips for Launching a Statewide Study of Access to Justice

By Hon. Richard J. Sankovitz, Milwaukee County Circuit Court Chair, State Bar of Wisconsin Access to Justice Study Committee,¹ and Jeffery Brown, State Bar of Wisconsin Pro Bono Coordinator²

Introduction

Confronted with the enormous, urgent and obvious need to provide legal services to those who cannot afford them, it seems like a step backwards, or at least



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sideways, to call for a study. Calling for a study is a classic delaying tactic.

Our experience in Wisconsin, however, demonstrates

that studying the issue before embarking on the campaign is a very useful first step. Here are twelve things we learned that might be helpful.

Tip No. 1: Do It — It Works

The best rejoinder to those who suggest that a study is just a delaying tactic is that a well-researched and well-written study can make the difference between success and failure. In at least three states — Washington, Illinois and Wisconsin — thorough, well-documented, handsome study reports seem to have been crucial in persuading state legislatures and other political leaders that access to justice is a problem that needs fixing and deserves state funds.

When we embarked on our campaign in Wisconsin, we were encouraged by the work done in other states, especially Washington and Illinois, where statewide studies were followed by substantial increases in state funding for civil legal services.³ Wisconsin's study,⁴ published in March 2007, was placed immediately in the hands of the Supreme Court, the Governor and the Legislature. It arrived in time to support a proposal in the Governor's biennial budget proposal that

\$1 million be allocated to support civil legal services. The Legislature approved and the measure was enacted as part of the final budget in October 2007. Before Wisconsin's report was published and Governor Doyle initiated this measure, Wisconsin provided no funds at all to pay for lawyers for poor residents confronted with civil legal problems. The report was cited over and over by advocates of the budget measure.

Tip No. 2: Politicians Expect It

A study is a key tool in building a campaign for increased access to justice because a study can ground lofty principles in hard numbers.

Those who seek improved access to justice depend on elected officials to approve the necessary funding. They can make their case on the principles on which our republic was founded, such as equal justice for all. But in this day and age, lofty principles do not seem as

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persuasive to elected officials as reliable statistics about those who are affected by the problem. No matter how noble, a noble cause without empirical data is just another noble cause. Quantifying the problem helps the elected officials prioritize it. The more constituents who are affected, the more widespread the problem, the greater the dollar effect on those constituents, etc., the higher priority a given issue might be given.

Therefore, one of the aims of a study of access to justice should be to help elected officials judge the size

of the problem, the number of people who are affected, where they live (in which elected official's district, for example), the cost-benefit to the state's economy, how much money a typical constituent stands to lose when forced to represent oneself, etc.

We took pains in our report to quantify the number of people in Wisconsin who need legal services every year but who go without. The number turned out to be more than half a million.⁵ Quantifying the problem yielded a powerful talking point ("more than half a million Wisconsinites face a serious legal problem without legal assistance") that has become the lance point in the campaign to expand civil legal services in Wisconsin.

Of course, while it is important to keep elected officials in mind as the work is being done, elected officials are not the only audience for your report. The report is a key tool in drawing others into the coalition of support for change that must be built to carry the report and its recommendations to the elected officials. These others include bar members, legal service providers, agencies that support legal services to those who cannot afford them, judges, benefit program administrators and others. While the report must be written to appeal to elected officials, it must avoid alienating others who also need to be enrolled in the movement.

Tip No. 3: Talk to a Pro

Those who sign up to work on statewide access to justice studies tend to be passionate about solving the problem. Many are accomplished advocates. Some have experience in developing or administering legal aid or government legal assistance programs. But there is an art to surveying and compiling reliable statistics, to shaping a message in a report that will appeal both to the legal community and to the legislature, and to managing all the inputs to a comprehensive report. Practicing this well requires uncommon skills.

Accordingly, we recommend that access to justice committees retain or at least consult professionals in the fields of statistics, surveying and governmental relations. Consider also consulting those who have managed studies and organized reports in other states. Our work was heavily influenced by and encouraged by input we received from Jim Bamberger, Director of the Washington Supreme Court Office of Civil Legal Aid and Mark Marquardt, Deputy Director of the Lawyers Trust Fund of Illinois. Likewise, supporters of civil legal services in Nevada recently hired the survey firm we relied on in Wisconsin, Gene Kroupa & Associates of Madison. When you consult with the experts, ask

the question that we and the Nevada committee asked of our predecessors: Having finished the report, what do you wish you had done? What would you do to change the survey? What would you study or report that you did not? What worked and what did not? Each state that has been down this road has much to offer states that follow to help them achieve an even better result.

Tip No. 4: Spend the Money

When we began thinking about a study that might support a request to the legislature to fund civil legal services for the poor, we thought that we could take what we needed off the shelf, and spare the State Bar and others the cost of performing a study unique to Wisconsin. Our study was projected to cost the State Bar more than \$70,000 (in the end, the cost exceeded \$100,000).

We often joked that we could avoid the expense if we just republished the Washington study. Our states are roughly equal in population. Wisconsin, like Washington, is a mostly rural state anchored by one particularly large urban area. Our states are divided along similar political lines. We considered taking Washington's report, replacing all but the first and last letter in the state's name wherever it appeared in the report, and publishing it as our own.

We are happy that we did not. Although the results of our study resemble those of Washington and other states — because the dimensions of our lack-of-access problem rivals theirs — the results we report are so much more compelling to Wisconsin policy makers because they can see the immediate impact of the lack of access on their very own constituents. If our report did not target Wisconsin constituents, it might be too easy for elected officials here to agree with the report without being persuaded to act.

Furthermore, we learned things about our state, about the challenges we face and about promising programs that already exist. We did not know these things before we began, and would not have learned simply by reading, endorsing and extrapolating from the reports of other states.

Finally, in the very act of reaching out to others in Wisconsin to learn about Wisconsin's needs and collect information for the report, we began the process of building the kind of coalition for change that is necessary to sustain long-term improvement.

In urging you to spend the money, of course, we do not urge fiscal profligacy. We invited bids for the services we needed, particularly for the telephone survey.

© 12 TIPS FOR LAUNCHING A STATEWIDE STUDY
Continued from page 29

The bids varied dramatically, and the highest bid was double the bid we accepted. We also contained expenses by relying on public resources and talented volunteers. For example, we wanted to study the costs and benefits of legal representation to domestic violence victims. We invited graduate students at the LaFollette School of Public Affairs at the University of Wisconsin to study the issue. Our assignment aligned neatly with their class work, and the resulting study was a bonus for both.

Tip No. 5: Do One Better

The keystone of Wisconsin's report was a comprehensive telephone study of more than 1100 Wisconsin households to determine actual legal problems encountered by Wisconsin residents in the year preceding the report. Other state reports have featured such surveys.

When we designed our telephone survey, our ambition was to make it at least as reliable and thorough as the surveys which preceded it, if not more so. As it turned out, we were able to reach even more households and ask even more in-depth questions than our predecessors. We were able to establish a depth of data that was robust no matter how deeply we mined it. The larger the survey sample, the more those who study the data can focus on individual subsets of the data — for example, on the legal problems of children, members of tribal nations, the rural poor, the urban poor, etc.

We encourage you to do even better. If you can make the claim in your state that your report is the most comprehensive report that has been ever done, your pitch to elected officials might be buoyed even more by state pride, and make your case for civil legal services all the more persuasive.

Tip No. 6: Make No Apologies; It Is Not an Intellectual Exercise

The difference that legal counsel might make to a given client confronted with a given legal problem is a bit imponderable. One probably cannot conclude to a reasonable degree of scientific certainty that the outcome of a legal proceeding for an unrepresented person will always be materially worse, or to what degree, expressed in dollars and cents, a lack of access to justice will probably cost a given litigant, a group of litigants or society as a whole. However, if a study is approached with too much scientific indifference, the results probably will be inconclusive, because precise answers to

social problems have so many dimensions.

Our attitude about our work was not strictly scientific. Going into our work, we took for granted that lack of access to justice was a problem and that our task was to define its contours and measure its size. Our group included two judges who preside in high-volume courts, where many litigants go unrepresented, five lawyers who worked with a variety of agencies serving the poor, particularly the elderly and members of tribal nations, and two lawyers with considerable *pro bono* experience, plus the State Bar's *pro bono* coordinator. Our bias was plain.

Yet we do not believe that a study committee should apologize in advance for assuming that a problem exists before sitting down to learn more about it. It is written into our creed as a profession that people with a serious legal problem deserve legal assistance. Anecdotal evidence of the injustice suffered by those without legal assistance is rife. In our view, the question presented to a committee studying lack of access to justice is not about whether justice demands fair play and an even footing on both sides, but instead to what extent (or not) we are achieving the fundamental promise of equal justice that we as a republic have made to ourselves.

Tip No. 7: Personalize the Problem

If you look at reports like Washington's and Illinois' and Wisconsin's, you will see that the margins are wide and full of compelling pictures and anecdotes. We used them to exemplify the broader conclusions stated in the report. While a disciplined report must go beyond anecdotal evidence, these individual stories supply the emotional appeal that completes your pitch for support. Individual stories of disaster, relief, despair and hope give the media fodder for more extensive coverage of your efforts.

Tip No. 8: Make it Really Thick, but Make the Frosting Really Tasty

This is a suggestion basic to any government or corporate report, but a brief reminder may be helpful: A report that has some heft — a thorough discussion combined with appendices chockfull of pertinent data — will impress readers with the seriousness of your purpose and the depth of your commitment to, and command of, the subject. More importantly, a substantial report may reinforce subconsciously how substantial the problem is.

Of course, not all of your targeted readers will have time to digest the entire report, in particular the busy

elected officials to whom you must appeal for support. Thus, a snappy, concise, well-illustrated executive summary is needed to catch their eyes and deliver the main points. You might consult publicists, publishers or public relations professionals for advice on how to lay out the executive summary and sharpen its message.

Tip No. 9: Dress it Up

While packaging seems superficial, the experience of those who have published such reports has been that the more attractive the package, the more support it builds. A polished report will impress and energize those whom you hope to enlist in the statewide coalition you must build to achieve long-term change — bar leaders, lawyers, judges, elected officials, community leaders, service providers, clients, and others. Plain text just is not as persuasive.

Tip No. 10: Publicize It

While it might seem obvious, it helps to remember as you are designing the timeline for your project to build in steps for publicizing the report once it is published. The experts at the State Bar of Wisconsin helped our committee by arranging an official release to the media, press conferences, press interviews and distribution of the report to influential bar, community and government leaders.

Tip No. 11: Keep the Study Committee Small

It seems that the standard protocol for tackling a major social problem is to convene a blue ribbon panel of impressive size and broad experience. We see the advantages in calling together such a group to lead a campaign for change, but we recommend against assigning the task of conducting a study and writing a report to such a large group.

Our study committee consisted of only nine very committed people who already knew a good deal of the subject matter that was being studied. All of us had experience working on large, unwieldy committees. We found that, as a smaller group, we were able to meet more frequently, that each member was able to have proportionately greater input, and that the work effort needed at each step along the way (articulating the goals of the study, designing the telephone survey and the survey instrument, gathering and studying data, gathering and reviewing anecdotal evidence, and, of course, writing the final report) was streamlined.

Tip No. 12: Supplement It

Supplementing the report, and taking advantage of opportunities to pull it off the shelf and discuss it again, can extend the life of the report and its influence over those whose support you need. Extending the life of the report may be crucial in campaigns that necessarily take time to build, for example, when government funding must be sought or maintained through several budget cycles.

Consider publishing a sequel to report. Sequels sometimes are letdowns, but not always, and they do keep the brand alive. Report on progress on the recommendations made in the initial report. Take on unfinished business from the initial report. In Wisconsin, one piece that we wish we could study in more detail is comparing the cost of providing legal assistance against the potential savings to local and state government if legal assistance would help unrepresented people avoid housing, health care, education and other dislocations. Our report specifically recommends that the State Bar conduct another telephone survey in five years (in 2011) to measure the progress being made to close what we called “the Justice Gap.”

Consider also convening public hearings to discuss the report and its recommendations. Make the report and its recommendations a topic for continuing legal education presentations or bar conventions.

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- 2 Jeffery Brown is the *Pro bono* Coordinator for the State Bar of Wisconsin. He provided staff support for the bar's Access to Justice Study Committee which produced Wisconsin's first statewide legal needs study.
- 3 See “The Washington State Civil Legal Needs Study,” September 2003, available at www.courts.wa.gov/newsinfo/content/taskforce/CivilLegalNeeds.pdf; “The Legal Aid Safety Net: A Report on the Legal Needs of Low-Income Illinoisans,” February 2005, available at www.chicagobar-foundation.org/access_to_justice_chicago.html.
- 4 “Bridging the Justice Gap,” March, 2007, available at www.wisbar.org/am/template.cfm?section=bridging_the_justice_gap.
- 5 See *id.* at 1, 3, 6–7.



Methodologies for Documenting Legal Needs

By Robert Echols, State Support Consultant¹
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Most recent state legal needs studies have used a methodology based on the one employed in the American Bar Association’s Comprehensive Legal Needs Study, conducted by the Institute for Survey Research at Temple University in 1993 (released in 1994), the most recent national study of the legal needs of low-income Americans. The ABA study was based on a random telephone survey, in which respondents were asked about a set of circumstances that anyone in their household might have experienced during the preceding year. A panel of attorneys ensured that the situations described to the respondents contained a legal issue and met a threshold of seriousness. When respondents reported having experienced such circumstances, follow-up questions were asked about what the household did (or did not do) about the situation and what contacts, if any, it had with the civil justice system.²



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In the past decade and a half, many states have adapted the ABA questionnaire for use in their own studies. The “Justice Gap” report issued by the Legal Services Corporation in 2005, summarized the findings of nine such studies issued between 2000 and 2005.³ All these studies confirmed the continuing validity of the

findings of the ABA study — indeed, they suggest that, if anything, the ABA study may have underestimated the degree of unmet need.

While ABA-type surveys have proven to be very effective, they are expensive and time-consuming. States that do not wish to conduct their own survey can cite the continuing validity of the ABA survey study, as confirmed by the recent state studies and the LSC “Justice Gap” report.

A variety of other methodologies for documenting legal needs are available. These can be used as alternatives to an ABA-type survey or to flesh out the findings of a survey.⁴ They include:

- **Provider data on “rejected” cases.** Providers should be able to document the number of people requesting services who either cannot be served or who receive a level of service that is less than they need (e.g., people who receive advice about representing themselves in court *pro se* when they really need an attorney). It is well-recognized that this approach undercounts the true extent of legal needs — because many potential clients do not understand that their problem calls for legal assistance, or that legal assistance is available to them, and because potential clients often do not request assistance when they are aware of the inability of programs to meet the full level of need. Nevertheless, this data provides compelling evidence concerning people who are actually seeking legal help and are unable to obtain it.
- **Information from court and agency dockets.** Legal Services of New Jersey (LSNJ) has developed a prototype matrix for collecting data from court and agency dockets about the numbers of cases involving particular types of legal problems facing low-income people. LSNJ uses this data to prepare regular updates of its 2002 legal needs study.⁵
- **Focus groups of low-income people.** Focus groups

provide an opportunity for in-depth exploration of the issues facing client-eligible people, including members of hard-to-reach populations.

- **Mail surveys.** Questionnaires can be mailed to current and past clients. Alternatively, commercial research firms can provide mailing lists of low-income people in the state. Although mail surveys are less reliable than random telephone surveys, they are much less expensive.⁶
 - **Stakeholder surveys and interviews.** Interviews with judges, court clerks, legal aid advocates, private attorneys representing low-income people, social services agencies, and others who deal on a regular basis with the legal problems of low-income people can provide valuable perspectives on legal needs. In addition, states that have conducted such surveys have found that they are effective in generating buy-in for the study and support for its conclusions.
 - **Mapping.** Geographic Information Systems (GIS) technology can compare client populations, legal aid cases, *pro bono* attorneys, and other relevant data to identify need and highlight underserved areas.
 - **Descriptions and data about client populations and problems they face.** A compelling picture of the potential legal problems that low-income people face can be developed from data available from the census, state agencies, and other sources. Examples include statistics on jobs and wages, health care, education, housing, public benefits, consumer issues, utilities, domestic violence, child abuse and neglect, support and the like. Reports by experts (advocates, academics, government) may already be available on specific problem areas, or could be prepared especially for the study.
 - **“Stories” — description of individual people and problems.** Many readers of the report will not be familiar with the legal problems of low-income people and the problems they face. Above all, it is important to put a human face on the data with individual client stories and photographs.
 - **Descriptions of civil legal aid delivery system.** A description of the civil legal aid delivery system in the state, broadly defined, can be an important component of a state legal needs study or assessment. This could include information on how the system is funded, the role of private attorneys in
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- providing *pro bono* services and supporting legal aid programs, coordination of services to increase efficiency, support for self-represented litigants, and whatever else is necessary to give a complete picture. Many readers of the study will be unfamiliar with this information.
- **Recommendations and action plans.** A number of states have found it effective to include recommendations for addressing needs along with the results of the study.
- 1 Robert Echols is State Support Consultant of the ABA Resource Center for Access to Justice Initiatives. He has been a consultant to the legal services community, a staff attorney and managing attorney at the New Haven Legal Assistance Association, senior legislative assistant to U.S. Rep. Bruce A. Morrison, and special assistant to LSC President Alexander D. Forger. Bob can be contacted at echols@suscom-maine.net.
 - 2 A link to the ABA study is available at www.ATJsupport.org; go to “Documents and Resources” and scroll down to “Public Awareness and Communications,” then click on “State legal needs studies.” The LSC “Justice Gap” report and all state legal needs studies since 2000 are also available here.
 - 3 Several states used a “cluster sampling” methodology involving in-person interviews as an alternative to random telephone interviews. For a further discussion of these methodologies, see the LSC “Justice Gap” report, Appendix B.
 - 4 Examples of studies that do not include an ABA-type survey include Hawaii (2007) and the District of Columbia (2008, forthcoming).
 - 5 Available at www.ATJsupport.org; see note 1, above.
 - 6 The results of a mail survey could be compared to data from the ABA study or other states to test its reliability.