

11-2017

Introduction: The Power of New Data and Technology

Laura E. Dolbow

Follow this and additional works at: <https://scholarship.law.vanderbilt.edu/vlr>

 Part of the [Judges Commons](#), and the [State and Local Government Law Commons](#)

Recommended Citation

Laura E. Dolbow, Introduction: The Power of New Data and Technology, *70 Vanderbilt Law Review* 1935 (2017)
Available at: <https://scholarship.law.vanderbilt.edu/vlr/vol70/iss6/12>

This Symposium is brought to you for free and open access by Scholarship@Vanderbilt Law. It has been accepted for inclusion in Vanderbilt Law Review by an authorized editor of Scholarship@Vanderbilt Law. For more information, please contact mark.j.williams@vanderbilt.edu.

Introduction: The Power of New Data and Technology

*Laura E. Dolbow**

Modern technology has revolutionized the law. Computers drastically expanded the scope and speed of access to legal information. Unlike the days when lawyers had to climb ladders in the stacks to find specific statutes or cases in printed reporters, Westlaw brings up thousands of resources at the touch of a fingertip. Beyond transforming legal research, new data and technology have transformed the law in two other powerful ways: they have made the law more accessible to nonlawyers, and they have made it possible for lawyers to gather information about how the law is being executed. The articles in this Section demonstrate how new data and technology can serve a navigation function for those seeking access to the justice system and a consulting function for those who administer justice.

Technology provides opportunities for innovation in how individuals interact with the legal system. As Professor J.J. Prescott describes, online platform technology programs make it possible to “go to court” online.¹ Online case resolution systems expand opportunities for individuals to participate in legal disputes by flexibly allowing citizens to access the platform anytime and anywhere without having to take time off work, find child care, access transportation, or face the emotional burdens that often accompany physically going to court.²

Moreover, data gathered through technology can help educate individuals about how to best advocate for themselves. For example, Professors Eric Helland and Daniel Klerman, along with Brendan Dowling and Alexander Kappner, compile information about average recoveries and settlements in contingent fee litigation, which can provide important information to parties deciding whether to file a

* Judicial Law Clerk on the U.S. Court of Appeals for the Federal Circuit. J.D., Vanderbilt Law School; B.A., Vanderbilt University. I thank the editors of *Vanderbilt Law Review* who provided feedback and edited this Introduction. Special thanks to Professor Tracey George for helping to make this Symposium a reality.

1. J.J. Prescott, *Improving Access to Justice in State Courts with Platform Technology*, 70 VAND. L. REV. 1993, 1999 (2017).

2. *Id.* at 2004–10.

lawsuit or whether to settle their case instead of continuing to trial.³ Professors Michael Heise and Nancy King, and Nicole Heise analyze factors that tend to accompany favorable outcomes in criminal conviction appeals, which may help guide criminal defendants in selecting the best claims to emphasize in appellate briefs.⁴ Overall, data and technology can open up the justice system through both actual access and useful information.

Beyond assisting those outside the legal system gain access, data and technology can also help those within the legal system analyze how the system is currently functioning.⁵ The data gathered by computers provides unprecedented opportunities to assess what is going on inside courthouses.

Empirical studies help policymakers evaluate the effectiveness of current systems and needs for reform. Studies like Prescott's and Helland, Klerman, Dowling, and Kappner's that measure outcomes from specific policies allow lawmakers to evaluate whether policies actually serve their intended purposes and to weigh benefits against the costs of implementation.⁶ Moreover, studies such as Heise, King, and Heise's that uncover changes in outcomes for criminal defendants over time and identify factors that correlate with certain outcomes provide guidance for potential new reform efforts.⁷ Studies that track individual responses to hypothetical situations through surveys help identify important influences in the legal system, like Professor Jeffrey Rachlinski, Judge Andrew Wistrich, and Professor Chris Guthrie's study on the influence of politics in judicial decisionmaking.⁸

Empirical studies can also allow judges and attorneys to reflect on how they are performing their jobs. For example, comparing responses to hypothetical scenarios helps judges understand their own decisionmaking processes in addition to providing information for others

3. Eric Helland et al., *Contingent Fee Litigation in New York City*, 70 VAND. L. REV. 1971, 1972 (2017).

4. Michael Heise et al., *State Criminal Appeals Revealed*, 70 VAND. L. REV. 1939, 1940–41 (2017).

5. Theodore Eisenberg, *Why Do Empirical Legal Scholarship?*, 41 SAN DIEGO L. REV. 1741, 1741 (2004) (describing how empirical legal scholarship can help inform policymakers and the public); Kathryn Zeiler, *The Future of Empirical Legal Scholarship: Where Might We Go from Here?*, 66 J. LEGAL EDUC. 78, 78 (2016):

Prior to the entrance of empirical work onto the scene, we were drowning in a sea of predictions derived from unvalidated theories. Journals were filled with guesses, and we blindly applied theory in policymaking, if at all, in the absence of evidence that the relevant theoretical insights were accurate and robust.

6. Helland et al., *supra* note 3, at 1972–77; Prescott, *supra* note 1, at 2000.

7. Heise et al., *supra* note 4, at 1940.

8. Jeffrey J. Rachlinski et al., *Judicial Politics and Decisionmaking: A New Approach*, 70 VAND. L. REV. 2051, 2056–57 (2017).

about influences on judicial decisions.⁹ Moreover, studies analyzing factors that correlate with certain outcomes can help attorneys plan litigation strategies.¹⁰ Information gathered through technology gives us important insights into whether laws are functioning as intended and how litigation is playing out in the courtroom.

The articles in this Symposium focus on state courts. Using new data and technology to study state courts is particularly important. Over 100 million cases come before state courts each year.¹¹ By making it possible to gather and organize unprecedented amounts of information, technology helps eliminate some of the structural barriers to researching the vast array of proceedings that happen in different state judicial systems. Moreover, over 95% of cases are filed in state courts.¹² This means access to justice for many individuals happens only through state court systems, and it suggests that many lawyers spend significant time in state courts. For all these reasons, leveraging data and technology to provide guidance for those seeking access to state courts and to help lawyers better understand state courts is more important than ever. The articles in this Symposium represent an important step forward in this endeavor.

The insights gained from the empirical studies in this Section can be used in many ways. This Introduction describes just two common themes throughout these articles—access to justice and information for lawyers and policymakers. Yet the value of empirical research reaches far broader. The insights gained from the empirical studies in this Section demonstrate the power of using new data and technology to both better understand and improve our justice system.

9. *Id.*

10. Heise et al., *supra* note 4, at 1940; Helland et al., *supra* note 3, at 1972.

11. ALICIA BANNON, BRENNAN CTR. FOR JUST., RETHINKING JUDICIAL SELECTION IN STATE COURTS 1 (2016), https://www.brennancenter.org/sites/default/files/publications/Rethinking_Judicial_Selection_State_Courts.pdf [<https://perma.cc/YZ9G-S7X8>].

12. *Id.*
