



Civil Justice Problems are Common, Widespread, and Rarely Taken to a Lawyer

FINDINGS FROM ABF FACULTY FELLOW REBECCA L. SANDEFUR'S RESEARCH ON ACCESS TO JUSTICE

A CLOSER LOOK

Civil justice situations affect all segments of the U.S. population.¹

- Each year, as many as half of American households confront a special group of commonly experienced problems that affect their livelihood, shelter, neighborhood safety, the care and custody of minor children, and environmental conditions.² These are civil justice problems: they raise civil legal issues and are potentially actionable under civil law.
- As a result of these problems, people can lose their homes, jobs, custody of their children, or access to insurance, benefits or pensions. Vulnerable and disadvantaged populations report higher rates of contact with civil justice situations, and more negative consequences of them.³

Most civil justice situations will never involve contact with an attorney or a court.

- People are least likely to consult attorneys about problems involving personal finances, housing, healthcare, employment, and community needs.⁴
- Among poor Americans, one of the most common responses to civil justice problems is to do nothing at all to resolve them.⁵ In a study of poor and moderate-income Americans' experiences with civil justice problems involving money and housing, poor households were twice as likely to do nothing about such problems as were moderate-income households.⁶

People often do not think of civil justice problems in terms of law or rights, nor consider law as a solution.

- Research reveals that when Americans are asked about their experiences with problems that happen to be justiciable, "they often do not think of their justice problems in legal terms."⁷
- Americans express a wish for assistance with these problems, but it is not usually legal assistance that they wish for.⁸
- How people understand their problems plays a large role in how they respond to them. A recent study in Britain found that a significant predictor of whether people would take a problem to a legal advisor was whether or not they understood the problem as a legal one, rather than, for example, a social problem, a moral problem, or bad luck.⁹

Different states and communities differ substantially in the resources available to support civil legal assistance for eligible populations.

- In the U.S., the existing infrastructure of civil legal assistance is the output of many public-private partnerships, most of them on a small scale. Little coordination of services exists among service providers, meaning that people in need are less likely to make contact with providers who can help them.¹⁰
- Diversity and fragmentation combine to create an access to civil justice infrastructure characterized by large inequalities between states and within them. Geography is destiny: the services available to people from eligible populations are determined by where they happen to live, not by what their civil justice problems.¹⁰



Civil justice problems are widespread and frequently experienced by the public.

Over 100 million people in the United States are living with civil justice problems, many involving basic human needs.

Americans do not take their civil justice problems to lawyers or pursue them in courts because they do not understand these problems to be legal.

Most civil justice problems are never taken to lawyers or to courts.

Only 14% of civil justice problems are taken to a court or hearing body. Less than a quarter are taken to a lawyer for advice or representation.

When Americans do decide to seek legal assistance, where they live determines the legal assistance available to them.

REAL WORLD IMPACT

Professor Sandefur interviewed a woman facing foreclosure proceedings on her home who felt completely overwhelmed by the experience. "Mary" had quit her job in order to manage her son's recently diagnosed developmental disorder, and had stopped making her mortgage payments. She soon became overwhelmed by the foreclosure proceedings. Mary told Professor Sandefur that the person who gave her the most helpful advice she had received throughout the entire ordeal was the process server who served her eviction papers. The process server had simply assured Mary that she had her rights, and urged her not to let the bank intimidate her.

This encounter, and others like it, illustrates the disconnection from access to basic legal assistance that many Americans experience every day, and shines a light on the value of fundamental and sound advice given at the moment when it is most needed. "These kinds of stories," said Professor Sandefur, "give researchers important insights into the areas where legal assistance programs can intervene, and how we can design programs that can assist people at the moment when they need it most."

Citations

1. This is true not only in the United States, but in market democracies generally. See, for example: Albert W. Currie, 2009, "The Legal Problems of Everyday Life," in *Access to Justice*, edited by Rebecca L. Sandefur, Bingley, UK, Emerald, Table 1; Gillian K. Hadfield, 2009, "Higher Demand, Lower Supply? A Comparative Assessment of the Legal Landscape for Ordinary Americans," *Fordham Urban Law Journal* 37(1):134–138.
2. Rebecca L. Sandefur, 2010, "The Impact of Counsel: An Analysis of Empirical Evidence." *Seattle Journal for Social Justice* 9(1):56–59.
3. L. Sandefur, *Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study* 5 (2014).
4. Sandefur, "Impact of Counsel," p. 60.
5. Rebecca L. Sandefur, 2007, "The Importance of Doing Nothing: Everyday Problems and Responses of Inaction," pp. 112–132 in *Transforming Lives: Law and Social Process*, edited by Pascoe Pleasence, Alexy Buck and Nigel Balmer, London, TSO.
6. Rebecca L. Sandefur, 2009, "The Fulcrum Point of Equal Access to Justice: Legal and Non-Legal Institutions of Remedy," *Loyola of Los Angeles Law Review* 42(4):973; See also Rebecca L. Sandefur, 2008, "Access to Civil Justice and Race, Class and Gender Inequality," *Annual Review of Sociology* 34:346–349.
7. Rebecca L. Sandefur, 2012, "Money Isn't Everything: Understanding Moderate Income Households' Use of Lawyers' Services," in *Middle-Income Access to Justice*, edited by Michael Trebilcock, Anthony Duggan, and Lorne Sossin, Toronto, University of Toronto Press, p. 233.
8. Sandefur, "Money Isn't Everything," p. 235.
9. Pascoe Pleasence, Nigel J. Balmer, and Stian Reimers, 2011, "What Really Drives Advice Seeking Behavior? Looking Beyond the Subject of Legal Disputes," *Oñati Socio-Legal Series* 1(6):1-21.
10. Rebecca L. Sandefur and Aaron C. Smyth, 2011, *Access Across America: First Report of the Civil Justice Infrastructure Mapping Project*, Chicago, IL: American Bar Foundation.

Sources

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Support

Primary funding for the American Bar Foundation is provided by

