

# CIVIL LEGAL NEEDS AND PUBLIC LEGAL UNDERSTANDING

---

Prepared by Rebecca L. Sandefur

American Bar Foundation and University of Illinois at Urbana-Champaign

## 1. Civil justice problems are widespread and frequently experienced by the public.<sup>1</sup>

By conservative estimate, each year as many as half of American households confront a special group of commonly experienced problems with potentially wide-ranging and powerful impacts on core areas of life such as livelihood, shelter, the care and custody of minor children and dependent adults, neighborhood safety, and environmental conditions.<sup>2</sup> These are civil justice problems: they raise civil legal issues, are potentially actionable under civil law, and have consequences shaped by civil law. These incidence rates imply that well over 100 million people are living with civil justice problems, many involving basic human needs. As a result of these problems, people can lose their homes, their jobs, custody of their children, or access to insurance, benefits or pensions.

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

Americans usually do not take their civil justice problems to attorneys nor pursue them in any court. According to the most recent national survey of the American public, “only 14% of civil justice problems were taken to a court or hearing body.”<sup>3</sup> Despite the fact that most of these problems never reach the formal justice system, courts are often overwhelmed by the numbers of civil litigants appearing without attorneys or other representatives.<sup>4</sup> Indeed, in the most recent national survey, less than a quarter (24%) of civil justice problems were taken to a lawyer for advice or representation.<sup>5</sup> In this survey, people were least likely to consult attorneys about problems with personal finances, with housing, with health care, with employment, and with community needs.

Among poor Americans, one of the most common responses to civil justice problems is to do nothing at all to try to resolve them.<sup>6</sup> 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.<sup>7</sup> Research from Britain suggests that civil justice problems that go unresolved can create additional social, economic and health problems that become costly burdens both for those who experience them and for society at large.<sup>8</sup>

---

<sup>1</sup> 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.

<sup>2</sup> Rebecca L. Sandefur, 2010, “The Impact of Counsel: An Analysis of Empirical Evidence.” *Seattle Journal for Social Justice* 9(1):56-59.

<sup>3</sup> Sandefur, “Impact of Counsel,” p. 60.

<sup>4</sup> John M. Greacen, n.d., “Self Represented Litigants and Court and Legal Services Responses to Their Needs: What We Know,” Prepared for the Center for Families, Children and the Courts, California Administrative Office of the Courts, <http://www.courts.ca.gov/partners/documents/SRLwhatwewknow.pdf>

<sup>5</sup> Sandefur, “Impact of Counsel,” p. 60.

<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> Pascoe Pleasence, Nigel J. Balmer, Alexy Buck, Marisol Smith, and Ash Patel, 2007, “Mounting Problems: Further Evidence of the Social, Economic and Health Consequences of Civil Justice Problems,” pp. 67-92 in *Transforming Lives: Law and Social Process*, edited by Pascoe Pleasence, Alexy Buck and Nigel Balmer, London, TSO.

# CIVIL LEGAL NEEDS AND PUBLIC LEGAL UNDERSTANDING

---

Prepared by Rebecca L. Sandefur

American Bar Foundation and University of Illinois at Urbana-Champaign

### 3. Among the most important reasons that people do not take their civil justice problems to lawyers or pursue them in courts is that people do not understand these problems to be legal problems.

Research reveals that when Americans are asked about their experiences with problems or situations that happen to be justiciable, “they often do not think of their justice problems in legal terms.”<sup>9</sup> Studies demonstrate this failure to connect civil justice problems with law or rights in people’s experiences with a wide variety of justice problems, including those involving family relationships, property damage, personal injury, insurance, and employment and working conditions.<sup>10</sup> Americans express a wish for assistance with these problems, but it is not usually legal assistance that they wish for.<sup>11</sup>

When Americans do not take their justice problems to lawyers or courts, the most common reason is that the use of lawyers or the justice system is simply not considered at all.<sup>12</sup> 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 problem, rather than, for example, a social problem, a moral problem, a private problem, or bad luck.<sup>13</sup>

### 4. When Americans do decide to seek legal assistance with their civil justice problems, where they happen to live rather than the kind of help they need is what determines the legal assistance available to them.<sup>14</sup>

In the United States, the existing infrastructure of civil legal assistance is the output of many public-private partnerships, most of them on a small scale. Around the country, different states and communities differ substantially in the resources available to support civil legal assistance for eligible populations, in the kinds of services that are available, and in the groups served by existing programs. 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.

The context is one of both diversity and fragmentation, with large inequalities both between states and within them in what services are available to which populations. In this context, geography is destiny: the services available to people from eligible populations are determined not by what their civil justice problems are or the kinds of services they may need, but rather by where they happen to live.

---

<sup>9</sup> 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, Univeristy of Toronto Press, p. 233.

<sup>10</sup> See, for example: Robert C. Ellickson, 1991, *Order without Law: How Neighbors Settle Disputes*. Cambridge, MA, Harvard University Press; David M. Engel, 1988, “The Oven Bird’s Song: Insiders, Outsiders and Personal Injuries in an American Community,” *Law and Society Review* 18:551-82; John Gilliom, 2001, *Overseers of the Poor: Surveillance, Resistance and the Limits of Privacy*, Chicago, IL, University of Chicago Press; Carol J. Greenhouse, 1986, *Praying for Justice: Faith, Order and Community in an American Town*, Ithaca, NY, Cornell University Press.

<sup>11</sup> Sandefur, “Money Isn’t Everything,” p. 235.

<sup>12</sup> Sandefur, “Money Isn’t Everything,” pp. 232-239; see also Sandefur, “The Importance of Doing Nothing.”

<sup>13</sup> 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.

<sup>14</sup> 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.