

# Researching

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## ACCESSING JUSTICE IN THE CONTEMPORARY USA:

Findings from the Community Needs and Services Study



# Accessing Justice in the Findings from the Community

by Rebecca L. Sandefur

## EXECUTIVE SUMMARY

A new study of the civil justice experiences of the American public, the Community Needs and Services Study, finds widespread incidence of events and situations that have civil legal aspects, raise civil legal issues and are potentially actionable under civil law. Most are handled outside the context of the formal justice system. These events are common and can be severe in their impacts. People experiencing these situations typically do not receive assistance from lawyers or other formal third parties.

In 2013, two-thirds (66%) of a random sample of adults in a middle-sized American city reported experiencing at least one of 12 different categories of civil justice situations in the previous 18 months. For the whole sample, the average number of situations was 2.1; for people who reported situations, the average number reported was 3.3. The most commonly reported kinds of situations involved bread and butter issues with far-reaching impacts: problems with employment, money (finances, government benefits, debts), insurance, and housing. Poor people were more likely to report civil justice situations than

were middle-income or high-income people. African Americans and Hispanics were more likely to report such situations than Whites.

People reported that almost half (47%) of the civil justice situations they experienced resulted in a significant negative consequence such as feelings of fear, a loss of income or confidence, damage to physical or mental health, or verbal or physical violence or threats of violence. Adverse impacts on health were the most common negative consequence, reported for 27% of situations.

Typically, people handled these situations on their own. For only

about a fifth (22%) of situations did they seek assistance from a third party outside their immediate social network, such as a lawyer, social worker, police officer, city agency, religious leader or elected official. When people who did not seek any assistance from third parties outside their social circles were asked if cost was one barrier to doing so, they reported that concerns about cost were a factor in 17% of cases. A more important reason that people do not seek assistance with these situations, in particular assistance from lawyers or courts, is that they do not understand these situations to be legal.

# Contemporary USA: Needs and Services Study

## Researching Civil Justice in the Contemporary USA: The Community Needs and Services Study

This report presents findings from a new study of public experience with civil justice situations, the Community Needs and Services Study (CNSS), funded by the National Science Foundation and the American Bar Foundation.

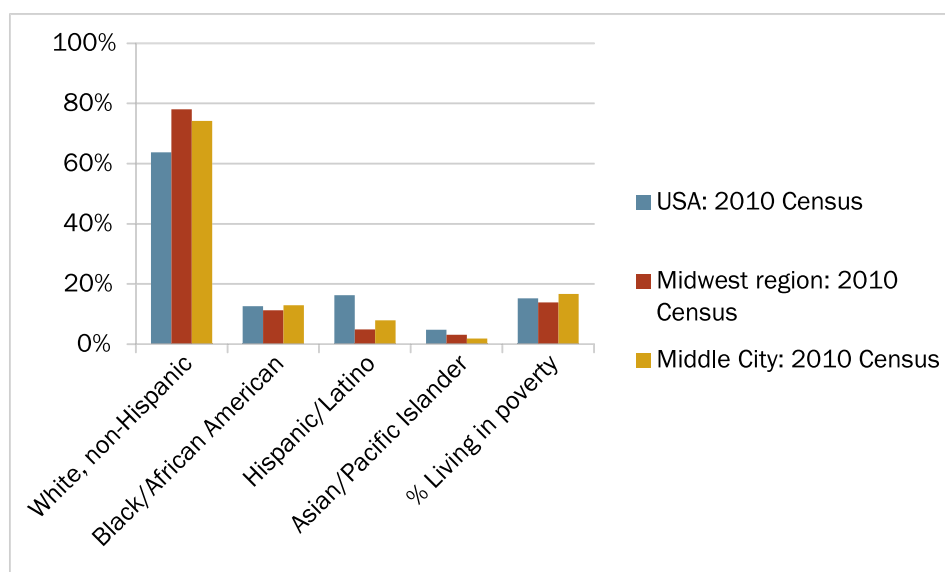
The study was conducted in a middle-sized city (approximately 350,000 to 450,000 residents)

located in the Midwestern region of the United States. Called here Middle City, the study city is typical of many US communities in terms of its size and socioeconomic and demographic composition; thus, its residents' experiences are expected to represent typical experiences in the US context. Middle City looks much like the Midwest, with a population that is less Hispanic or Latino than the nation at large and a poverty rate around 17%.

During the summer and fall of 2013, the CNSS surveyed randomly

selected adults living in a stratified random sample of residential addresses in Middle City. Surveys were conducted in person, in English, typically at respondents' homes. Interviews usually lasted 60–90 minutes. Along with demographic information, the survey includes an inventory of civil justice situations encountered in the 18 months prior to the survey contact. The result is a rich body of information about the experiences of a broadly representative sample of the adult residents of a typical middle-sized American city.

**Figure 1.** Race, Ethnicity and Poverty Status for the USA, the Midwest, and Middle City: 2010



Source: US Census.

People who participated in the survey were asked about a range of “situations you may have experienced,” all of which were carefully selected to be situations that have civil legal aspects, raise civil legal issues, and have consequences shaped by civil law. Thus, people did not need to be able to assess whether or not the events that they confronted had legal aspects in order to report them to the survey. Situations were presented in a randomized order to each respondent, to reduce the effect of questionnaire item ordering on estimates of the

**Table 1.** Design Characteristics and Selected Findings from Two Studies of Public Experience with Civil Justice Situations: USA (1992) and Middle City (2013)

	USA	Middle City
Number of situations queried	67	98 <sup>a</sup>
Reference period	12 months	18 months
Unit of analysis	Household	Person
Mode of administration	Telephone and face-to-face (for 303 households without telephones)	Face-to-face
Framing	“things that were happening”	“situations you may have experienced”
Cooperation rate <sup>b</sup>	74%	61%
Sample size	3087	668
Population	Low-income <sup>c</sup> and moderate-income <sup>d</sup> households	Entire residential population, all income levels
Average length of interview	45 minutes	60-90 minutes
Average number of situations reported	1	2.1
Median number of situations reported	1	1
Percent reporting situations within the reference period	49%	66%
N	3087	668

Notes: a These initial findings exclude situations involving consumer purchases, health care, and neighborhood and community issues, which will be presented in future reports.

b A cooperation rate is a measure of participation by targeted respondents for whom contact was completed. It represents completed interviews as a proportion of completed interviews, interviews that were terminated before completion, and final refusals to participate. It does not include attempts for which no contact was made or attempts which were not completed because the study left the field.

c The 1994 ABA report defined low income households as those eligible for federally funded civil legal assistance, or households at 125% of the poverty level or below. This report follows that convention.

d The 1994 ABA report defined moderate income households as those between 126% of poverty and the 80th percentile of the national household income distribution. This report follows that convention.

Sources: *Report on the Legal Needs of the Low- and Moderate-Income Public* (from the Comprehensive Legal Needs Study, American Bar Association, 1994) and author’s calculations from the Community Needs and Services Study.

prevalence of different kinds of situations.

For people who reported situations, one of those reported was randomly selected for a “life history” that collected details about

what actions, if any, people took to respond to civil justice situations and from where, if anywhere, they sought information or assistance. The life history questions inquired into actions people considered but

decided against, into the results of their attempts to seek information, advice, and other assistance, and into the costs and impacts of the problem they experienced. The survey also included measures of people’s knowledge about their legal rights.

The Community Needs and Services Study shares important similarities with the long tradition of research that includes the Comprehensive Legal Needs Study commissioned by the American Bar Association (see Table 1), but it also differs from the ABA study in key respects. In particular, the CNSS sample represents the entire population, rather than only those of low and moderate income, and it is a sample of individuals, rather than households. The CNSS also inquired in greater detail about experiences with a wider range of justice situations.

### How Common are Different Kinds of Civil Justice Situations, and Who Experiences Them?

Civil justice situations are common and widespread, affecting all groups in the population. When Americans were surveyed about their experience with situations involving money, debt, rented and owned housing, insurance, employment, government benefits, children’s education, clinical negligence, personal injury, and relationship breakdown and its aftermath, 66% reported experiencing one or more such situations in the 18 months

prior to the survey. As Table 1 reports, the average number of reported situations was 2.1, while the median was 1. Among people who reported any situation during the reference period, the average number of situations reported was 3.3 and the median was 2.

The situations people reported most commonly involved their livelihood and financial stability: 24% of respondents reported at least one situation involving employment (e.g., termination, wages, unemployment benefits, disciplinary procedures), 21% at least one situation involving money (e.g., mismanagement of pension funds, disputed bills), 25% at least one situation involving debt (e.g., being behind and unable to pay credit cards, student loans, taxes, or utility bills), and 22% at least

one situation involving insurance (e.g., disputes about payments and claims, confusion about policies and terms). Sixteen percent (16%) reported at least one situation involving government benefits such as social security, Medicare or food stamps, while 18% reported situations involving rental housing, such as eviction or problems with housing conditions.

In a nation of over 316 million people, these rates represent a tremendous amount of civil justice activity—tens of millions of civil justice situations.

While all groups in the population encounter civil justice situations, some are more likely to encounter them than others. As Figure 3 demonstrates, poor people were significantly more likely to

report civil justice situations than people in high or middle income households, and African Americans and Hispanics were more likely to report civil justice situations than were Whites.

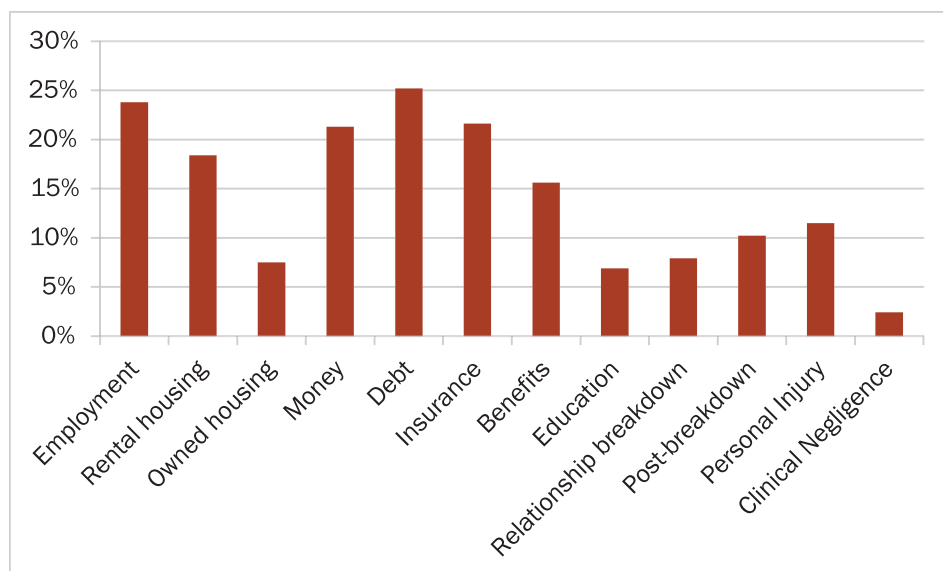
### What Are the Impacts of Civil Justice Situations?

Civil justice situations can affect people in many ways, some of them quite severe. One way to see this is by examining the consequences of civil justice situations for those who experience them.

For the situations explored in the life histories, people were asked whether they had experienced any of a list of consequences “as part of, or as a result of...” the situation. The list included negative impacts on physical and mental health, being harassed, assaulted or threatened, fear, loss of confidence, loss of income, and damage to relationships.

As Figure 4 shows, people attribute a wide range of negative impacts to their civil justice situations, including verbal and physical violence, lost confidence, loss of income, and negative impacts on physical or mental health. Almost half (47%) of situations resulted in at least one of the 6 consequences listed in Figure 4, and about a fifth (21%) of situations resulted in two or more. People in low income households were most likely to report one or more of these consequences from their civil justice situations (51% did so), while

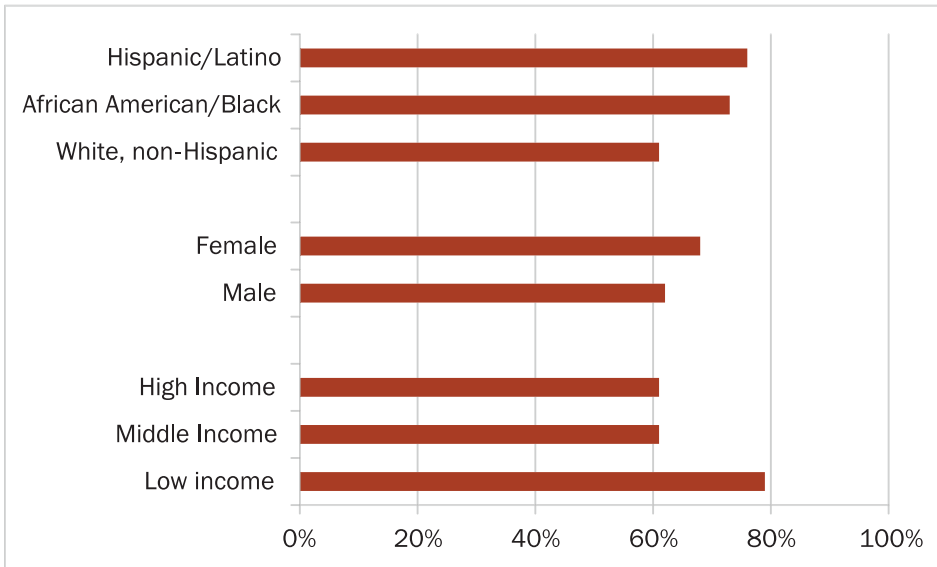
**Figure 2.** Percent Reporting at Least One Civil Justice Situation, by Type, Middle City: 2013



Notes: n=668 respondents.

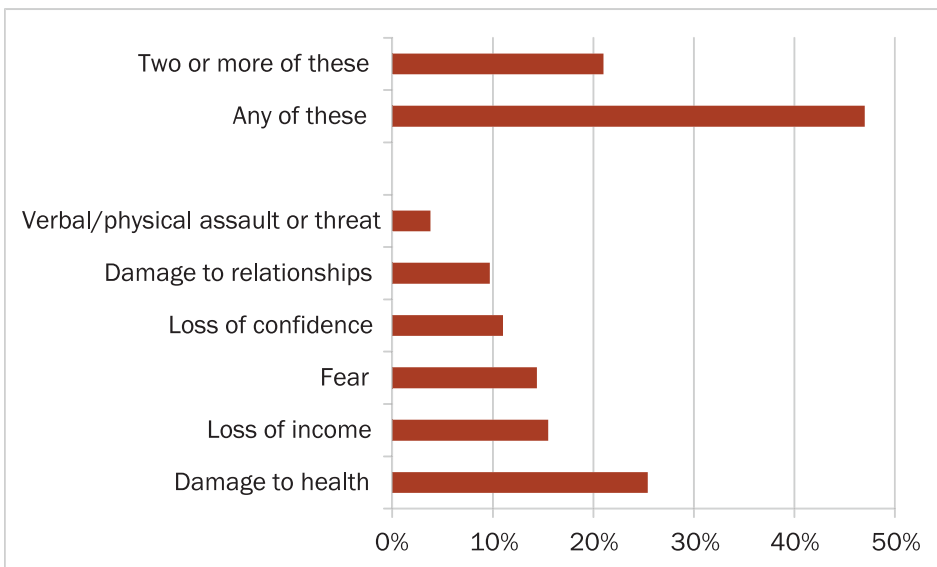
Source: Author's calculations from the Community Needs and Services Study.

**Figure 3.** Percent Reporting at Least One Civil Justice Situation, by Race/Ethnicity, Gender and Household Income: Middle City, 2013



Notes: Low income households are those eligible for federally funded civil legal assistance, or households at 125% of the poverty level or below. Middle income households are those between 126% of poverty and the 80th percentile of the national household income distribution. High income households are those with incomes in the top 20% nationally. Whites are significantly less likely than non-Whites to report civil justice situations ( $p < .01$ ). People in low income households are significantly more likely to report civil justice situations than people living in high or middle income households ( $p < .001$ ). The gender difference is not statistically significant at a conventional level of  $p < .05$  ( $p = .09$ ).  $N = 668$  respondents.  
Source: Author’s calculations from the Community Needs and Services Study.

**Figure 4.** Selected Consequences of Civil Justice Situations: Percent of Situations Resulting in Each Consequence, Middle City, 2013



Notes:  $n = 425$  reported civil justice situations randomly selected for the collection of situation “life histories”. Source: Author’s calculations from the Community Needs and Services Study.

people in high income households were least likely to (30% did so).<sup>1</sup> These are serious impacts that affect not only those who experience them but can ripple out to their families, their communities, and society at large.

**What Do People Do When They Face Civil Justice Situations?**

Americans respond to their civil justice situations in a wide variety of ways, but this variety masks a powerful consistency: rarely do they turn to lawyers or courts for assistance. In the CNSS, the most common source of assistance for people facing civil justice situations is actually themselves. That is, the most common way in which people report handling civil justice situations is by taking some action on their own without any assistance from a third party. Figure 5 terms this response “self-help,” and reports the distribution of sources of assistance across all of the situations reported in the study. People employed self-help for 46% of civil justice situations.

The second most common way in which people responded to civil justice situations involved turning to their immediate social network: 23% of situations were handled with the help of family or friends, either as the sole source of assistance (16%) or in conjunction with a third party advisor or representative of some kind (an additional 7%). Just over a fifth (22%) of situations were handled

with the assistance of a third party who was not a member of people's social network.

When people reached outside their immediate social circle for help, they were more likely to do so for some kinds of situations more than others. People were relatively likely to reach out to formal third parties for situations involving personal injury, doing so 32% of the time. They were also relatively likely to do so for situations involving the breakdown of romantic relationships (i.e., divorce, separation, or breakup from a live-in partner; reaching out 26% of the time), and disputes that emerged out of the breakdown of such relationships (e.g., child custody or visitation, division of joint property, or support payments; reaching out 44% of the time). They were least likely to turn to outside third parties for situations involving housing, whether owned or rented (16% and 17% of the time respectively), and debts (12% of the time).

People reported that they did nothing about 16% of the civil justice situations they experienced. People were most likely to do nothing about situations with employment (28% of the time), government benefits (21% of the time) and insurance (21% of the time). They were least likely to do nothing about relationship breakdown (2% of the time) and problems with children's education (2% of the time).

When third parties other than family and friends became involved, these seldom included lawyers or courts. Situations that were selected for detailed follow up in the life histories provide rich information about how people handle these kinds of events. In these life histories, very few situations involved courts or tribunals of any kind: 8% of the total situations selected for in-depth follow-up. Of the small number of situations with some kind of court involvement (n=36), people sought advice or other assistance from attorneys in just over two fifths (42%) of cases. In situations with no court involvement, they sought the assistance of attorneys in 5% of cases.

Why didn't people reach out further for assistance in handling civil justice situations? Interestingly, cost plays a modest role in people's accounts of why they do not do more to respond to the situations they face. Among people who had not gone to any kind of advisor outside of their own social network, the most common reason given was that they did not see the need (46% of the instances in which no advice was sought): either the problem had resolved or they expected it to resolve without

getting advice, or they simply felt that they did not need advice. Another important reason for not seeking advice was believing that it would make no difference (offered as a reason 24% of the time). In 9% of instances where people did not or were not planning to seek advice, they explained that they did not know where to go or how to do so. Concerns about cost played a role in 17% of cases in which people did not or were not planning to turn to third parties, including lawyers, for assistance in handling civil justice situations.

How Americans handle their civil justice situations is clearly not just



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about money. Often, they believe there is no need to seek assistance, or that there is nothing to be done about their situation. But, Americans do not take most of their justice situations to lawyers or courts for another very important reason: they do not understand these situations to be legal.

### How Do People Understand Civil Justice Situations?

Americans typically do not think of their civil justice situations as legal issues. In the situation histories collected by the CNSS, people were asked to describe what kind of situation they thought they were confronting. They were asked, “Which, if any, of the [following] descriptions... best indicates the character” of the situation, and allowed to choose as many as they felt applied:

- bad luck / part of life
- moral
- private (i.e. not something to involve others with)
- criminal
- part of God’s plan
- legal
- social
- bureaucratic
- family / community (i.e. something to be dealt with within the family/community)
- none of these

Middle City residents characterized 9% of their civil justice situations as legal and 4% as criminal. Much more commonly, they described situations in ways that suggested that they felt at least

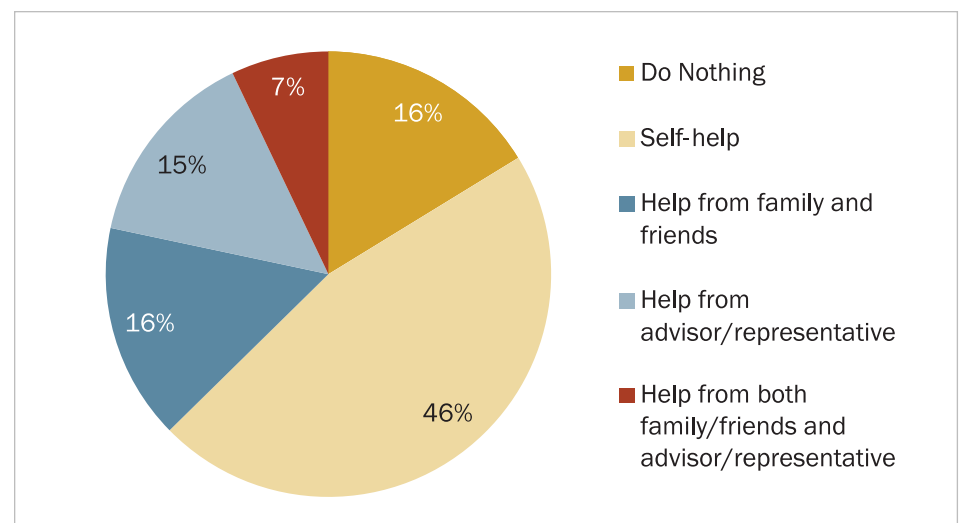
somewhat resigned to them: 56% of situations were described as “bad luck/ part of life” or as “part of God’s plan.” For a substantial minority of situations, people understood them in ways that could make involving outside third parties seem inappropriate: 21% were described as either private or as matters properly dealt with within the family or community.

How people think about these events matters for what they do about them. Overall, people went to lawyers for help or considered doing so with 16% of the situations explored in the life histories. However, they were significantly more likely to have used or considered using lawyers for the situations that they believed to be “legal” (39% of instances) than for those they did not (14% of instances).<sup>2</sup>

### What Do People Believe About Justice in the USA Today?

As this study reveals—and contrary to images of runaway litigiousness one sees in the media—Americans are not quick to turn to lawyers or courts to handle situations with legal aspects. The residents of Middle City believe that courts are fair and accessible, but many also believe that law is not always the appropriate source of resolution to their problems. Just over half (54%) of those surveyed agreed with the statement that “people should resolve their problems within their family, not using lawyers or courts.” At the same time, these Americans believe that law has an important role to play and is accessible to ordinary people: 85% agreed with the statement that “courts are an important way for ordinary people to enforce their

**Figure 5.** How People Handle Civil Justice Situations: Percent Handled by Each Means, Middle City, 2013



Notes: n=1440 situations reported in 12 different categories. Figure excludes two situations for which respondents reported that they did not know how they responded.

Source: Author’s calculations from the Community Needs and Services Study.



rights,” while four fifths (80%) agreed that “if you went to court with a problem, you would be confident of getting a fair hearing.”

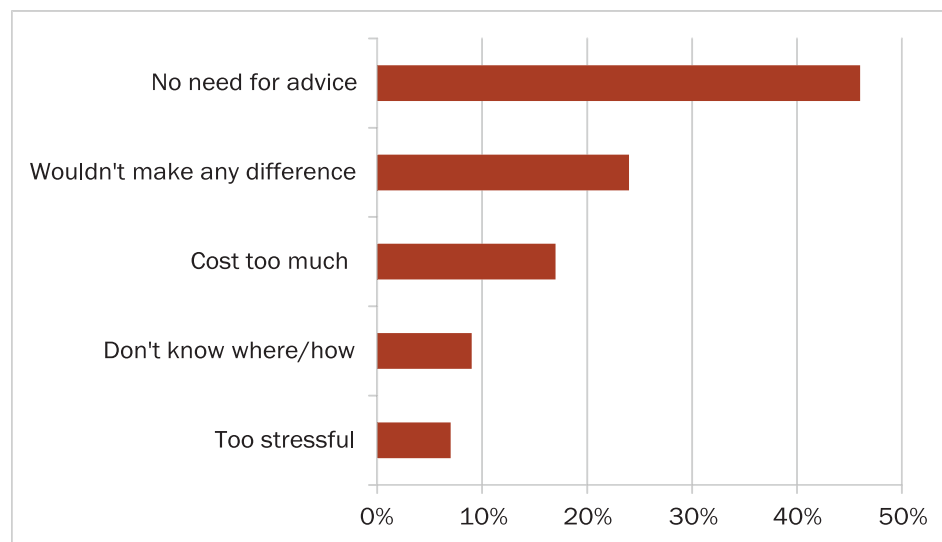
As we have seen, Americans do not typically perceive cost as a barrier to action when considering how to respond to their own civil justice situations. However, they do see cost as a barrier in the abstract for at least some people. A majority of respondents to the CNSS believe that lawyers’ fees are out of reach for poor people: 58% of those surveyed agreed with the statement that “lawyers are not affordable for people on low incomes.”

## Conclusion

In the United States today, civil justice situations are common and widespread. For many members of the American public, these are troubles that emerge “at the intersection of civil law and everyday adversity,”<sup>3</sup> involving work, finances, insurance, pensions, wages, benefits, shelter, and the care of young children and dependent adults, among other core matters. These problems affect not only the poor or other vulnerable groups, but occur across the population. Findings from the Community Needs and Services Study reveal that tens of thousands of people in Middle City are experiencing civil justice situations, and imply that tens of millions of people around the nation do so.

The consequences of these situations can be severe, and

**Figure 6.** Selected Reasons for Not Going to Any Formal Advisor for Assistance with a Civil Justice Situation: Middle City, 2013



Source: Author’s calculations from the Community Needs and Services Study.

they do not fall equally on all who experience them. People in low-income households are more likely than others to experience negative consequences from civil justice situations, including adverse impacts on health, confidence, and income.

While civil justice situations are frequent in the lives of Americans, turning to the legal system to handle them is not. The most common type of civil justice experiences are in fact those that do not involve contact with lawyers or the formal legal system. One predominant explanation for why more Americans do not turn to lawyers with such situations involves the cost of legal services. But the findings of the Community Needs and Services Study make clear that it is not so simple. When facing civil justice situations, people often

do not consider law at all. They frequently do not think of these situations as legal, nor do they think of courts or of attorneys as always appropriate providers of remedy.

The Community Needs and Services Study brings insights from key stakeholders into debates about access to civil justice—the public whose affairs are governed by civil laws, whose taxes support the civil justice system, and whose votes elect those who make its rules and set its funding. In our democracy, filling the “Justice Gap”<sup>4</sup> and addressing the “Access-to-Justice Crisis”<sup>5</sup> will require a broad conversation. To be fruitful, it must engage with more than just the costs of services and the lack of funds. It must explore the perspectives of the public.

## Acknowledgements

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A tremendous debt of gratitude is owed to the ordinary Americans who took the time to share their experiences and perspectives

through participating in the research.

1.  $L^2=5.92$ ,  $df=1$ ,  $p<.05$ .
2.  $\chi^2=16.6$ ,  $df=1$ ,  $p<.001$ .
3. Rebecca L. Sandefur, "The Importance of Doing Nothing: Everyday Problems and Responses of Inaction," in *Transforming Lives: Law and Social Process*, edited by Pascoe Pleasence, Alexy Buck and Nigel Balmer. London:TSO (2007), p.113.
4. Legal Services Corporation, *Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans. An Updated Report of the Legal Services Corporation*, Washington, DC: Legal Services Corporation (2009).
5. "Imbalanced Scales: Why There is an Access-to-Justice Crisis in a Nation of Too Many Lawyers," Panel Discussion, Aspen Institute, Washington, DC, January 29, 2014.

The next phase of the Community Needs and Services Study is the Provider Survey, which will provide a portrait of the community's network of available services. Offices, agencies and organizations that survey respondents reported turning to for assistance will be surveyed to ask about what they do, whom they serve, and their relationships to other sources of assistance. The Provider Survey will enter the field in November 2014.

# Survey Respondents in Their Own Words

**People reported they did nothing about 16% of the civil justice situations they experienced. People were most likely to do nothing about situations with employment (28% of the time), government benefits (21% of the time) and insurance (21% of the time).**

*"When I was pregnant with my oldest one, her natural father passed away. And when I went to Social Security and other agencies, Social Security told me I could not receive [death] benefits because it was not common knowledge that he was the father of my child, because he did not*

*tell anybody... So I got nothing... I had no help from his family, either, because the day he passed away he—his sister asked me to contact her, and whenever I tried she was never available.*

*So I just pretty much let it go and I had people telling me, well,*

*why don't you go get a blood test? Well, I can't, because he was cremated. Well, why don't you go to his parents? I can't, because he was adopted. So I was a single mother with no help with a \$8-an-hour, full-time job. And that's what I went through."*



**Rebecca L. Sandefur** joined the American Bar Foundation in 2010 to found and lead a new access to justice research initiative. She continues to head up this initiative as Faculty Fellow at the Foundation and also serves on the Sociology and Law faculty of the University of Illinois in Urbana-Champaign.

Professor Sandefur studies access to civil justice from every angle—from how legal services are delivered

and consumed, to how civil legal aid is organized around the nation, to the role of pro bono, to the relative efficacy of lawyers and non-lawyers as advocates and representatives, to how ordinary people think about their justice problems and try to resolve them. Her current research includes the Community Needs and Services Study (CNSS), a community-sited, multi-method study of ordinary people's experiences with civil justice problems and the resources available to assist them in handling those problems. The CNSS is funded by the National Science Foundation (SES-1123507) and the American Bar Foundation. She is also at work on a project drawing on the After the JD (AJD) surveys exploring how lawyers who take relatively low-paying jobs serving government, public interest causes, or ordinary people are able (or not) to manage high levels of educational debt. She

serves on the Executive Coordinating Committee of the AJD. Her work has been published in law reviews, edited volumes and peer-reviewed journals such as *American Sociological Review*, *Work and Occupations*, and *Law and Society Review*.

Her public service has included advising state access to justice commissions and service on the Right to Counsel Committee of the California Access to Justice Commission, the Research Advisory Board of the Civil Right to Counsel Leadership and Support Initiative, and the Sargent Shriver Civil Right to Counsel Evaluation Committee. Before joining the American Bar Foundation and the University of Illinois, Sandefur received her PhD in sociology from the University of Chicago in 2001 and served for 9 years on the sociology faculty of Stanford University.

### **Americans respond to their civil justice situations in a wide variety of ways, but this variety masks a powerful consistency: rarely do they turn to lawyers or courts for assistance.**

*"[My son has Asperger's syndrome and]...there were a lot of problems getting him...to straighten out in school. They had him in the wrong type of setting, you know...Because I had to be in two places at one time [dealing with the school and with my son], I had to stop working, and I couldn't, you know, keep up my bills and my house note. My aunt, she paid my mortgage for nine months of*

*the year that I couldn't pay. Then the house went in foreclosure the first time.*

*The guy that came to my house the first day of January 2003, and handed me my... foreclosure summons, he was the most important person that I met and talked to about this foreclosure information. He was like a father figure to me. He said, don't get nervous, don't get scared... He said, I've seen a lot of people*

*I've handed this out to, I walk past their houses a year later and they're in their house still. He said, ... every Tom, Dick and Harry is going to come at your door trying to talk to you about, Oh, I can do this, I can do that. He says, don't listen to them. They're snakes in the grass, and they're just going to steal the house from under you. That was the most important information he gave me."*

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