



DEBUNKING FIVE MYTHS LINKED TO THE NARROW PERSPECTIVE OF ACCESS TO JUSTICE

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Evidence-based law is an emerging concept in the United States. Using contemporary research and plain language, the authors debunk five myths of civil



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justice issues related to low-income Americans. The myths of the litigious society, civil justice availability, procedural justice's lack of impact on case outcomes, unquantifiable impact of civil justice, and justice for justice's sake alone are addressed using and extending existing legal research.

Myth 1: Litigious Society

It is widely supported that civil justice needs (i.e., perceived socio-legal issues with potentially justiciable solutions) in the United States are highly prevalent and that most people do not seek help from attorneys or the courts to address these needs. Most low-income households in the United States reported at least one civil justice need during the last 12 to 18 months; only a minority of people recognize these needs as having potentially justiciable solutions. Based on a recent study of a typical American city, <10% of people with civil legal needs sought out attorneys for help and <10% pursued court-based solutions. In her Middle City Study, Rebecca Sandefur found that <10% of people with civil justice issues perceive them as being "legal" problems while most people perceive them as personal, social, or random chance problems. The majority of Americans, especially lower income Americans, are in fact non-litigious, contrary to popular belief.

The narrow view of civil justice gaps focuses on experiences of accessing and interacting with the justice system or related services. More often than not, when low-income individuals approach legal aid organizations for free or low-cost civil legal assistance,

they are turned away due to lack of supply of legal aid resources. A recent study of legal aid in Pennsylvania found that 42.6% of applicants for services were not accepted (due to ineligibility), and of those accepted, only 59.6% of applicants received full representation for at least one case.⁴ This means that only 25.4% of those who sought out legal aid services received full representation for at least one case. Considering that only one fifth (or less, potentially as low as 8-14%) of low-income individuals reach out to attorneys for help, it is relatively uncommon for low-income Americans to receive full representation for their perceived civil justice problems. Approximately 2% to 5% of perceived civil justice needs of low income Americans are resolved with the assistance of an attorney.

This is similar to the Middle City Study that found that only 8% of study participants contacted an attorney for help with civil legal issues. Previous research has shown that approximately half of the people who reach out to an attorney for help are turned away, meaning that only approximately 4% of the study participants would have ever ended up receiving legal aid services. Low-income households and individuals are not a litigious population; even if low-income Americans made the conscious decision to be a litigious population, most would not have the chance to engage in the civil justice system with representation.

The myths of the litigious society, civil justice availability, procedural justice's lack of impact on case outcomes, unquantifiable impact of civil justice, and justice for justice's sake alone are addressed using and extending existing legal research.



Myth 2: Civil Justice Availability

The dimension of justice for which the United States performs worst is access and affordability of civil justice.⁵ Based on the World Justice Project Rule of Law Index, which measures rule of law across 113 countries, the United States ranked 94th out of 113 in access to and affordability of civil justice. Directly below the United States in terms of ranking in this dimension were Afghanistan, Pakistan, and Nicaragua; directly above the United States were Bangladesh, Egypt, Kenya, and Liberia. Between 2016 and 2018, the United States was one of 38 countries that saw an overall decrease in rule of law. The United States invests significantly less funding towards the provision of legal aid services than other comparable high-income democratic nations.⁶ Johnson reference The United States' expenditures on civil legal aid comprises approximately .0007% of its Gross Domestic Product (\$1.39 billion of a GDP that was \$18.57 trillion).⁷ Relative to respective country GDP, the United States spends less than one-tenth compared to that of the United Kingdom on funding civil legal aid, one-sixth compared to that of Norway, less than one-quarter compared to that of Canada, and less than one-half compared to that of Germany

Low civil justice access and affordability has detrimental consequences. Experimental studies of legal aid in court proceedings support that representation status in legal cases is largely attributable (49–76%) to receiving, or not receiving, an offer for legal aid service.⁸ Half to three-quarters of cases where there is a lack of legal representation could be resolved if universal offers for legal services were made to low-income individuals engaged in civil court cases. Not receiving an offer for legal services has a remarkable impact on the utilization of legal services. From a narrow perspective on justice, civil justice is diminished in the United States by poor access and affordability of civil justice, in turn causing poor civil justice availability, in turn leading to lower legal representation for people engaging with the civil justice system.

Myth 3: Inequities in Procedural Justice Have Minimal Impact on Case Outcomes

Legal representation is consistently associated with better legal outcomes.⁹ A recent review of studies that evaluated the impact of civil legal services in adult or family law cases supported that accessing civil justice services resulted in more positive legal outcomes in 89% of 56 studies reviewed and that the positive impacts of civil justice services were found across

housing, public benefit, employment, family, small claims, taxes, bankruptcy, and tort case types. Another systematic review of the impact of representation found that in all twelve studies, individuals represented by an attorney had better civil justice outcomes than unrepresented individuals.¹⁰ Additionally, the impact of legal representation increased as case complexity increased.

The typical impact of representation, (which was estimated using random assignment to representation in housing court cases), on outcomes supports that represented individuals are almost three and a half times more likely to have positive case outcomes than unrepresented individuals. Based on the increased risk for negative case outcomes when unrepresented (e.g., in housing court) and the high prevalence of unrepresented individuals (e.g., 70% to 90%),¹¹ the population attributable fraction indicates that seven out of ten housing court evictions are due to a lack of representation. Based on Eviction Lab (evictionlab.org) estimates, in Delaware, there were 5468 evictions during the year 2016. If universal defendant representation were available, 3827 of these evictions could have been avoided. Note that universal defendant representation would not prevent all evictions since some are justifiable under rule of law regardless of representation status. However, universal defendant representation would significantly improve case outcomes; in this case, resulting in fewer low-income families being evicted.

Moreover, based on prospective observational studies, in domestic violence cases, the majority of people who are unrepresented are denied an order of protection (68%), while relatively few people (17%) pursuing an order of protection with legal representation are denied protection.¹² This translates to seven out of ten plaintiff order of protection requests being denied as a result of lacking representation. A more recent 2018 study in Delaware Family Court found that legal aid representation relative to not being represented by legal aid (self-care without legal aid but not necessarily unrepresented) supported that 40% to 50% of successful order of protection case outcomes were attributable to legal aid representation as opposed to the court experience without legal aid representation. Similarly, victims of domestic violence (DV) who have legal representation achieve more successful divorce, child support, and child custody outcomes than those without representation.¹³ Legal aid representation significantly improves case outcomes across various case types; representation impacts distributive, restorative, and retributive justice.

Myth 4: The Population Impact of Legal Representation is Not Quantifiable

Using interdisciplinary methods (from medicine and epidemiology), the number needed to treat with legal representation to prevent harm of access to justice gaps in the United States can be estimated.¹⁴ For example, the number needed to treat (or prevent) with legal representation in housing court to prevent one person from being evicted or in family court to avoid an order of protection denial is between 2 and 3. Note that the number needed to treat for the perfect treatment (or prevention strategy) is 1 meaning that everyone who receives the treatment would have a benefit relative to not receiving the treatment. From a social impact perspective, there were 1,404,205 orders of protection approved in the United States during the year 2014 (National Crime Information Center's Protection Order File); with universal plaintiff legal representation in family law cases, the number of orders of protection could increase significantly to well over two million.

To place these housing and family civil justice numbers needed to treat magnitudes (or number needed to prevent) in context, three highly effective healthcare treatments for high risk populations for specific health conditions can be used as comparative examples. The number needed to treat in civil legal representation is significantly less than nebulized ipratropium, an effective drug used to treat acute asthma and to prevent asthma-related hospitalizations, which has a number needed to treat of 11.

Among severe asthmatics with a focus on hospitalization prevention, the use of intravenous magnesium sulfate results in a number needed to treat of 3. Taking aspirin to prevent a subsequent cardiovascular event after a heart attack or stroke has a number needed to treat of 50 among high risk patients. Emerging experimental and prospective observational designs in legal research and the use of interdisciplinary methods (e.g., epidemiology) enable estimates and contextualization of the population impacts of legal aid.

Myth 5: Justice for Justice's Sake Alone

Civil legal aid has proposed antipoverty effects of its work. However, longitudinal research supporting this anti-poverty effect has been limited.¹⁵ A recent longitudinal study of women experiencing intimate partner violence, who received family law legal aid services, supported that the odds of being out of

poverty were higher at twelve-month follow-up after civil legal assistance than at baseline, prior to receiving legal aid services.¹⁶ Civil legal aid helps to increase the absolute income of women who have experienced violence and decreases absolute deprivation (i.e., poverty). Civil legal aid participation is linked to increased subjective and objective economic self-sufficiency of women experiencing intimate partner violence. Additionally, various evaluations have supported a positive social return on investment of civil legal aid.¹⁷ A positive social return on investment occurs when the economic or social benefit exceeds the original investment toward the production of the benefit.

Beyond the economic benefits, previous research supported that health decrements were the most common problem for people experiencing unresolved or ongoing civil legal issues. Additionally, research on medical-legal partnerships supports the utility of aligning organizational interests in civil justice and health justice as well as attorneys impact on health.¹⁸ Civil legal aid attorneys are an emerging type of *health* provider, though they are not *medical* providers. Ecological associations have also supported a link between civil justice access and population health. The availability of legal aid attorneys at a state level significantly predicted population health outcomes, including life expectancy.¹⁹

Conclusion

Low-income Americans have difficulty accessing the formal civil justice systems and when they do, their experiences and outcomes are often inequitable due to a lack of legal representation availability. Legal representation acts as one of the top, if not the best predictor, of legal case outcomes. When studying the effect of legal representation, the effects are large and comparable to effective treatments in other disciplines. Legal aid attorneys impact not only civil but also economic and health justice. Additional research is necessary to better understand and promote equitable processes and outcomes in civil justice thereby decreasing the gaps in the narrow perspective on access to justice. The narrow view on civil justice explores processes and outcomes of the minority of people who attempt to formally engage the civil justice system in an attempt to resolve a perceived civil justice need. Inequities in accessing and receiving professional legal help among lower income Americans negatively impact individuals, communities, and society. Rule of law is a key organizing force in society that can either help or do harm. However, to extend the thought of Vicente Navarro in clarifying root causes, as a social system, it is not the rule of law that helps or harms but the people

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