

Cambridge University Press

978-1-107-07010-3 - Beyond Elite Law: Access to Civil Justice in America

Edited by Samuel Estreicher and Joy Radice

Excerpt

[More information](#)

---

**PART I**

Current State of Access to Legal Services

Cambridge University Press

978-1-107-07010-3 - Beyond Elite Law: Access to Civil Justice in America

Edited by Samuel Estreicher and Joy Radice

Excerpt

[More information](#)

---

Cambridge University Press

978-1-107-07010-3 - Beyond Elite Law: Access to Civil Justice in America

Edited by Samuel Estreicher and Joy Radice

Excerpt

[More information](#)

## 1

## Access to Civil Justice in America: What Do We Know?

*Ian Weinstein*

*Ian Weinstein reviews the body of research that describes what we know about access to civil justice for Americans of modest means. He looks at the problem from two perspectives: the demand side of those who present unmet civil legal needs and the supply side of providers that offer legal assistance to this population. Weinstein evaluates surveys that attempt to quantify the civil legal needs for this population and studies of how Americans fare when they represent themselves. The chapter closes with an inventory of the different civil legal service providers assisting Americans of limited means, from pro bono lawyers to government-funded legal aid organizations.*

The crisis in access to justice for low- and moderate-income Americans has been the subject of renewed attention by the federal government,<sup>1</sup> states,<sup>2</sup> and private groups<sup>3</sup> in recent years. There is also a renaissance of access to justice

<sup>1</sup> In 2010, the United States Department of Justice created the Access to Justice Initiative “to address the access-to-justice crisis in the criminal and civil justice system.” *The Access to Justice Initiative*, U.S. DEP’T OF JUSTICE, available at [www.justice.gov/atj/](http://www.justice.gov/atj/) (last visited Aug. 5, 2014).

<sup>2</sup> More than thirty states have established Access to Justice Commissions or other groups focused on facilitating access to civil justice. See *State ATJ Directory*, AM. BAR ASS’N, available at [www.americanbar.org/groups/legal\\_aid\\_indigent\\_defendants/initiatives/resource\\_center\\_for\\_access\\_to\\_justice/state\\_atj\\_commissions.html](http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/resource_center_for_access_to_justice/state_atj_commissions.html) (last visited Aug. 7, 2014). For a discussion of access to justice issues across the nation, see ABA RESOURCE CTR. FOR ACCESS TO JUSTICE INITIATIVES, *ACCESS TO CIVIL JUSTICE FOR LOW-INCOME PEOPLE: RECENT DEVELOPMENTS* (2012), available at [www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_atj\\_ccj\\_report\\_jan2012.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_atj_ccj_report_jan2012.authcheckdam.pdf). One of the most active state groups in recent years has been the New York Task Force. The Task Force’s reports are available at *Task Force to Expand Access to Civil Legal Services in NY*, N.Y. STATE UNIFIED COURT SYSTEM, available at [www.nycourts.gov/ip/access-civil-legal-services/index.shtml](http://www.nycourts.gov/ip/access-civil-legal-services/index.shtml) (last visited Aug. 5, 2014); for a fuller discussion of developments in New York, see Barnett, Chapter 23, and Graffeo, Chapter 24, in this volume.

<sup>3</sup> See, e.g., Peter L. Markowitz et al., *Accessing Justice: The Availability and Adequacy of Counsel in Immigration Proceedings*, New York Immigrant Representation Study (2011), available at [www.cardozola.wreview.com/content/denovo/NYIRS\\_Report.pdf](http://www.cardozola.wreview.com/content/denovo/NYIRS_Report.pdf) (hereinafter N.Y. Immigrant Representation Study); Nabanita Pal, *Facing Foreclosure Alone: The Continuing Crisis in Legal Representation* (Brennan Center for Justice 2011), available at [www.brennancenter.org/publication/facing-foreclosure-alone-continuing-crisis-legal-representation](http://www.brennancenter.org/publication/facing-foreclosure-alone-continuing-crisis-legal-representation); Joy Moses, Ctr. for Am. Progress, *Grounds for Objection: Causes and Consequences of America’s Pro Se Crisis and How to Solve the Problem of Unrepresented Litigants*

Cambridge University Press

978-1-107-07010-3 - Beyond Elite Law: Access to Civil Justice in America

Edited by Samuel Estreicher and Joy Radice

Excerpt

[More information](#)

research,<sup>4</sup> a body of work that illuminates many dark corners of our system of civil justice. While people of means have ready access to lawyers, the courts, and the burgeoning system of private dispute resolution, most low- and moderate-income Americans with legal problems either do not use the civil justice system at all attempt to navigate it on their own without counsel.

Since the mid-1970s, surveys conducted by the American Bar Association (ABA) and the Legal Services Corporation (LSC) have shown that 80% of the legal needs of low-income Americans<sup>5</sup> and more than 50% of the legal needs of moderate-income Americans<sup>6</sup> remain unmet.<sup>7</sup> Data also confirm that underfunded civil legal aid providers must turn away many Americans who seek representation for their civil legal problems.<sup>8</sup>

But even as we learn more, there remain many gaps in our understanding of how the market, regulatory policy, legal rules, and social forces shape the supply of legal services. The first part of this chapter will present what we know about the need or demand for legal services among low- and moderate-income Americans, and the second part will describe the sectors of the legal profession that provide these services. Viewed from both demand and supply perspectives, the crisis in access to civil justice in America presents a clear challenge to our commitment to justice.

(2011), available at [www.americanprogress.org/issues/open-government/report/2011/06/22/9721/grounds-for-objection/](http://www.americanprogress.org/issues/open-government/report/2011/06/22/9721/grounds-for-objection/) (reporting on the pro se crisis); *Resource Center for Access to Justice Initiatives*, Am. Bar Ass'n, available at [www.americanbar.org/groups/legal\\_aid\\_indigent\\_defendants/initiatives/resource\\_center\\_for\\_access\\_to\\_justice.html](http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/resource_center_for_access_to_justice.html) (last visited Aug. 5, 2014).

<sup>4</sup> See Catherine R. Albiston & Rebecca L. Sandefur, *Expanding the Empirical Study of Access to Justice*, 2013 WIS. L. REV. 101, 101 (2013).

<sup>5</sup> The federal test for eligibility for representation by an LSC-funded program is a household income at or below 125% of the federal poverty level. In 2009, 56.8 million Americans lived in eligible households. Additionally, more than 55 million Americans who were over 60 years of age in 2009 also qualified for some LSC-funded programs. See REBECCA L. SANDEFUR & AARON C. SMYTH, *ACCESS ACROSS AMERICA: FIRST REPORT OF THE CIVIL JUSTICE INFRASTRUCTURE MAPPING PROJECT* 10 (2011).

<sup>6</sup> There were 122,459,000 households in America in 2012, and their median income was \$51,017. Sixty percent of households had incomes of \$64,582 or less. Eighty percent of households had incomes below \$104,096, and only 5% of households had incomes of \$191,157 or greater. CARMEN DENAVAS-WALT et al., U.S. DEP'T OF COMMERCE, U.S. CENSUS BUREAU, *INCOME, POVERTY, AND HEALTH INSURANCE COVERAGE IN THE UNITED STATES: 2012* 6, 9 (2013), available at [www.census.gov/prod/2013pubs/p60-245.pdf](http://www.census.gov/prod/2013pubs/p60-245.pdf).

<sup>7</sup> Deborah L. Rhode, *Access to Justice: An Agenda for Legal Education and Research*, 62 J. LEGAL EDUC. 531, 531 (2013) (noting that more than four-fifths of the legal needs of the poor remain unmet, and citing literature reviews on that data). See generally Rebecca L. Sandefur, *The Impact of Counsel: An Analysis of Empirical Evidence*, 9 SEATTLE J. FOR SOC. JUST. 51 (2010) (hereinafter Sandefur *The Impact of Counsel*); Russell Engler, *Connecting Self-Representation to Civil Gideon: What Existing Data Reveal about When Counsel Is Most Needed*, 37 FORDHAM URB. L.J. 37 (2010).

<sup>8</sup> See Rhode, *supra* note 7, at 535–42; LEGAL SERVS. CORP., *DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS (LSC) LOW-INCOME AMERICANS 9–12 (2009)* (hereinafter LSC 2009 REPORT).

Cambridge University Press

978-1-107-07010-3 - Beyond Elite Law: Access to Civil Justice in America

Edited by Samuel Estreicher and Joy Radice

Excerpt

[More information](#)

## THE DEMAND FOR CIVIL LEGAL SERVICES

*Assessing Legal Needs*

Barbara Curran's 1977 study, *The Legal Needs of the Public: The Final Report of a National Survey*,<sup>9</sup> launched the modern era<sup>10</sup> of empirical work on of access to civil justice in America. Published by the ABA, the study sought "to determine the circumstances under which the public seeks the advice or help of lawyers and to identify factors that appear to influence decisions to consult or not to consult lawyers."<sup>11</sup>

Curran asked two sets of questions – how often do Americans need legal services, and what do they do when they have that need. The study relied upon data collected from 2,064 survey respondents, each of whom was presented with twenty-nine different "problem situations." Each situation described a scenario in which consulting a lawyer would have been a reasonable response, such as an incident causing damage to one's home, a dispute with a landlord, or a car accident involving an injury.<sup>12</sup> Each time a respondent replied that he or she had encountered the situation presented, the respondent was counted as having experienced an incident of legal need, regardless of whether the respondent had understood that the situation raised a legal issue or sought legal assistance.

Curran found that Americans experience an average of 4.8 legal problems in their lifetimes for which consulting a lawyer would be reasonable.<sup>13</sup> The most common kinds of legal problems involved acquisition of real property, damage to property, wills, divorce, and disputes about major purchases. The incidence of legal problems was higher among white people, those with more discretionary income, and those with more education.<sup>14</sup>

What did people do when confronting situations calling for consultation with an attorney? Curran found that the use of legal services and the "nature, quality and effectiveness of legal services received, as perceived by the recipients, vary substantially . . . by type of legal problem."<sup>15</sup> For example, only 29% of people who reported job discrimination also reported that they had taken any action in response.<sup>16</sup> By contrast, more than 80% of those who faced a problem involving property damage took action, and more than 80% of those who took action did so, in part, by seeking

<sup>9</sup> Barbara Curran, *The Legal Needs of the Public: The Final Report of a National Survey* (1977).

<sup>10</sup> *Id.* at 1–9 (reviewing the legacy of prior research).

<sup>11</sup> *Id.* at 9.

<sup>12</sup> The problem situations covered a broad range of legal subject-matter including real property, employment, consumer, estate planning, marital and domestic, tort, criminal, and constitutional law.

<sup>13</sup> Curran, *supra* note 9, at 100. As the study looked at cumulative experience, incidence predictably increased with the age of the respondent.

<sup>14</sup> *Id.* at 100–102.

<sup>15</sup> *Id.* at 260–61.

<sup>16</sup> *Id.* at 137.

Cambridge University Press

978-1-107-07010-3 - Beyond Elite Law: Access to Civil Justice in America

Edited by Samuel Estreicher and Joy Radice

Excerpt

[More information](#)

the assistance of a lawyer.<sup>17</sup> The study also found “small but important differences in opinions and perceptions about lawyers, the courts and the legal system among different demographic subgroups.”<sup>18</sup> Relatively disadvantaged groups were more likely to have high regard for lawyers and at the same time, to feel more “pessimism about how well the system would serve them.”<sup>19</sup>

More than fifteen years would pass before the next national survey of access to justice in America. *Legal Needs and Civil Justice: A Survey of Americans* was published by the ABA in 1994.<sup>20</sup> This study presented respondents with sixty-seven factual scenarios, raising a broader array of legal issues than the Curran study.<sup>21</sup> More than 3,000 households were contacted, and respondents were asked if anyone in the household had experienced any of the situations in the prior year.<sup>22</sup> As in the earlier study, each affirmative response was counted as an incident of legal need, and respondents were not required to conceive of their own situation as one entailing a legal issue or requiring legal representation. The larger sample size of the 1994 study, as compared to the 1977 study, permitted comparison between the legal needs of low-income people and those with moderate incomes.<sup>23</sup>

About half of all households surveyed — 47% of low-income households and 52% of moderate-income households — experienced at least one legal need as defined by the survey in the prior year.<sup>24</sup> Both the 1977 and the 1994 studies offer evidence that Americans regularly experience civil legal problems. Curran’s shorter list of scenarios, omission of public benefits as a category, and decision to ask respondents to recollect a lifetime’s worth of problems are all reasons to think that the 1977 study undercounted legal need. Subsequent

<sup>17</sup> *Id.* at 137–38.

<sup>18</sup> *Id.* at 264.

<sup>19</sup> *Id.*

<sup>20</sup> Comprehensive Legal Needs Study Advisory Grp., Am. Bar Ass’n, *Legal Needs and Civil Justice: A Survey of Americans*, Major Findings from the Comprehensive Legal Needs Study (1994), available at [www.americanbar.org/content/dam/aba/migrated/legalservices/downloads/sclaid/legalneedstudy\\_authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/legalservices/downloads/sclaid/legalneedstudy_authcheckdam.pdf) (hereinafter ABA 1994 Study). For the data upon which the ABA 1994 Study relied, see Roy W. Reese & Carolyn A. Eldred, Inst. for Survey Research at Temple Univ., *Legal Needs Among Low-Income Households: Findings from the Comprehensive Legal Needs Study* 52 tbl.5–8, 56 tbl.5–12 (A B A. 1994); and Roy W. Reese & Carolyn A. Eldred, Inst. for Survey Research at Temple Univ., *Legal Needs Among Moderate-Income Households: Findings from the Comprehensive Legal Needs Study* (ABA 1994) (hereinafter Reese & Eldred).

<sup>21</sup> *Id.* at 7.

<sup>22</sup> While the 1977 study collected data on the respondents’ experiences over the course of their entire lives, the 1994 study inquired about respondents’ experiences limited to the previous year. See *id.* at 7–8.

<sup>23</sup> Over 40% of those surveyed in the 1994 study were from moderate-income households. See *id.* at 9. The study defined “low-income” households to include those whose occupants’ combined annual incomes were below 125% of the poverty level, while “moderate-income” households included occupants whose combined annual incomes exceeded 125% of the poverty level but were less than \$60,000. See *id.* at 7. That line demarcating low- from moderate-income marks the threshold for eligibility for most publicly financed legal aid services.

<sup>24</sup> *Id.* at 9. Of the households that experienced legal need, about half experienced multiple legal needs.

Cambridge University Press

978-1-107-07010-3 - Beyond Elite Law: Access to Civil Justice in America

Edited by Samuel Estreicher and Joy Radice

Excerpt

[More information](#)

researchers have followed the ABA in seeking data on household experiences over a single year. Rebecca Sandefur used the ABA's data as a baseline to extrapolate the incidence of legal need from census data. She concluded that 100 million Americans, living in more than 44 million households, experience a non-trivial civil legal issue every year.<sup>25</sup>

The 1994 ABA study also found that the kinds of legal problems people experienced varies with income.<sup>26</sup> Although both low- and moderate-income people most frequently reported legal needs in the areas of personal finance and consumer issues, the two groups had little else in common.<sup>27</sup> Low-income households reported higher need than moderate-income households in the areas of housing and property, family and domestic issues, and public benefits. Moderate-income households were twice as likely to face legal issues related to estate planning, wills, and advanced directives, and they were also significantly more likely to deal with legal issues related to employment and economic or personal injury.<sup>28</sup>

Respondents in the 1994 study were also asked how they addressed their legal needs, if they sought and received legal help, and, if not, why not. About 40% of the respondents managed their legal affairs on their own, regardless of income.<sup>29</sup> Among the 60% who did not handle their legal matters on their own, respondents from low-income households were more likely to do nothing while those from moderate-income households were more likely to access the civil justice system. While 39% of the moderate-income households went to court, only 29% of the low-income households used the legal system. Moderate-income households were also more likely to address their legal needs by consulting a non-lawyer third party for help – 22% of the moderate-income households took that approach, in comparison to 13% of the low-income households.<sup>30</sup>

When the researcher compared the two groups to determine what the most “formal” action a certain household was likely to take to address its legal needs, they found that nearly 40% of low-income households took no action (the most common response for such households) while nearly the same number of moderate-income households accessed the legal system (the most common response for moderate-income households). Only 29% of low-income households used the civil legal system.<sup>31</sup> People in low-income households were less likely to perceive

<sup>25</sup> Sandefur, *The Impact of Counsel*, supra note 7, at 56.

<sup>26</sup> See ABA 1994 STUDY, supra note 20, at 10–12.

<sup>27</sup> *Id.* at 11.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 17 (reporting that 41% of low-income and 42% of moderate-income respondents handled any legal issues on their own).

<sup>30</sup> See *id.* See also, Reese & Eldred, supra note 20, at 22 (noting that accountants and insurance companies were the most frequently consulted non-legal professionals and that other third party assistance was provided by community groups, regulatory agencies, and union or professional groups).

<sup>31</sup> See *id.*

Cambridge University Press

978-1-107-07010-3 - Beyond Elite Law: Access to Civil Justice in America

Edited by Samuel Estreicher and Joy Radice

Excerpt

[More information](#)

themselves as having a legal problem, less likely to address it themselves, less likely to seek legal assistance, and less likely to access the civil justice system than those in homes with greater financial resources.<sup>32</sup> Conversely, members of low-income households were more likely to think that legal assistance would not help address their problem than those in moderate-income homes.<sup>33</sup>

In 2005,<sup>34</sup> more than ten years after the second ABA study, and again in 2009,<sup>35</sup> the LSC published national data on the frequency with which low-income Americans sought legal assistance from its programs but were turned away without representation.<sup>36</sup> Researchers surveyed 137 LSC grantee programs to determine how many low-income individuals contacted LSC programs in person, by phone, or online, and how many people who would have otherwise qualified for legal assistance were turned away for lack of available services.<sup>37</sup>

The LSC found that its grantee programs in 2004 served 901,067 clients and turned away 1,085,838 potential clients.<sup>38</sup> In 2009, 889,155 clients were served, and 944,376 potential clients were turned away.<sup>39</sup> The LSC concluded that for every low-income American served by one of its legal aid programs, another low-income American was turned away because the program lacked funding to represent that person.<sup>40</sup> In total, nearly 1 million people who seek legal assistance from LSC go unserved each year.<sup>41</sup>

The 2009 LSC study also presented a compilation of state-level data showing that family law and housing problems are the most common legal issues for low-income people.<sup>42</sup> For example, a 2010 New York Task Force report noted that housing problems are common, along with issues presented by health insurance and employment law.<sup>43</sup> Illinois reports establish that the most common legal

<sup>32</sup> See *id.* at 21.

<sup>33</sup> People in moderate-income households were half as likely as those in low-income households to cite cost as an impediment to receiving legal services (8%), but they were almost twice as likely as those in low-income households to believe that the legal issue was not a problem that required legal services (18%). See *id.*

<sup>34</sup> See Legal Servs. Corp. (LSC), *Documenting the Justice Gap in America* (2005) (hereinafter LSC 2005 Report).

<sup>35</sup> See LSC 2009 REPORT, *supra* note 8.

<sup>36</sup> The LSC called this the “justice gap.” See *id.* at 1.

<sup>37</sup> See *id.* at 2, 9–12; see also LSC 2005 REPORT, *supra* note 34, at 3, 5–8.

<sup>38</sup> See *id.* at 7.

<sup>39</sup> See LSC 2009 REPORT, *supra* note 8, at 11.

<sup>40</sup> See *id.* at 12; LSC 2005 REPORT, *supra* note 34, at 7.

<sup>41</sup> See LSC 2009 REPORT, *supra* note 8, at 9; LSC 2005 REPORT, *supra* note 34, at 5.

<sup>42</sup> See *id.*, at 11; LSC 2005 REPORT, *supra* note 34, at 7.

<sup>43</sup> See TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK: REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK (2010), available at [www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT.pdf](http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT.pdf) (hereinafter TASK FORCE 2010 REPORT TO THE CHIEF JUDGE). For details concerning issues presented by health insurance and employment law, see *id.* at app. 17, at 30, available at [www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-Appendices.pdf](http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-Appendices.pdf).



Cambridge University Press

978-1-107-07010-3 - Beyond Elite Law: Access to Civil Justice in America

Edited by Samuel Estreicher and Joy Radice

Excerpt

[More information](#)

problems are in consumer law followed by housing, family law, and public benefits.<sup>44</sup> New Jersey data also highlight the prevalence of housing issues among low-income residents.<sup>45</sup>

#### *Limitations of the National Data*

The overall picture is clear: Americans have many civil legal problems, few of which are resolved in court with the assistance of counsel, and poor people face more housing and family law problems than others. It is difficult, however, to say more with precision. The national legal-needs survey is dated, and methods used in the survey are widely acknowledged to undercount need.<sup>46</sup> The compilation of state data in the 2009 LSC study shows significant local variations<sup>47</sup> raising a question about the usefulness of generalizing at the national level.

Recent work also highlights the key insight that legal need is not static, and the decision to seek legal counsel, or engage with the civil legal system without counsel, is influenced by multiple factors. Albiston,<sup>48</sup> Hadfield,<sup>49</sup> Kritzer,<sup>50</sup> and Sandefur<sup>51</sup> each note that availability of counsel is not the only factor — perhaps not even the most significant factor — influencing whether or not a person presented with a legal problem recognizes it as such and seeks assistance. Instead, many Americans either ignore their legal problems or do not seek a lawyer.<sup>52</sup> While cost and availability play a role, many say that they ultimately decide not to seek a legal resolution because they do not think it will change the outcome; some express a preference for self-help. The literature emphasizes the importance of deepening our understanding of how and why Americans often ignore their legal problems, seek answers outside the legal system, or engage the civil legal system without representation.

<sup>44</sup> LAWYERS TRUST FUND OF ILL., *THE LEGAL AID SAFETY NET: A REPORT ON THE LEGAL NEEDS OF LOW-INCOME ILLINOISANS* 18 (2005), available at [www.ltf.org/wp-content/uploads/2013/02/legalneeds.pdf](http://www.ltf.org/wp-content/uploads/2013/02/legalneeds.pdf) (hereinafter *THE LEGAL AID SAFETY NET*).

<sup>45</sup> LEGAL SERVS. OF N.J., *UNEQUAL ACCESS TO JUSTICE: MANY LEGAL NEEDS, TOO LITTLE LEGAL ASSISTANCE* 28 (2009), available at [www.lsnj.org/pdfs/povertyresearchinstitute/legalneeds2009.pdf](http://www.lsnj.org/pdfs/povertyresearchinstitute/legalneeds2009.pdf).

<sup>46</sup> *Id.* (citing Pascoe Pleasence et al., *Failure to Recall: Indications from the English and Welsh Civil and Social Justice Survey of the Relative Severity and Incidence of Civil Justice Problems*, in *ACCESS TO JUSTICE* 43, 60 (Rebecca L. Sandefur ed., Emerald Group, 2009)); Rhode, *supra* note 7, at 534–36 (noting multiple reasons to think surveys undercount need); On the necessity of a new national survey of legal need, see Eisenberg, Chapter 3 in this volume.

<sup>47</sup> See LSC 2009 REPORT, *supra* note 8.

<sup>48</sup> See Albiston & Sandefur, *supra* note 4, at 104.

<sup>49</sup> See Hadfield & Heine, Chapter 2 in this volume.

<sup>50</sup> See Herbert M. Kritzer, *Examining the Real Demand for Legal Services*, 37 *FORDHAM URB. L.J.* 255, 256–57 (2010).

<sup>51</sup> See Rebecca Sandefur, *The Importance of Doing Nothing*, in *TRANSFORMING LIVES: LAW AND SOCIAL PROCESS* 112, 115–16 (Pascoe Pleasence et al. eds., 2007).

<sup>52</sup> For a comparative perspective, see Hadfield & Heine, Chapter 2 in this volume.

Cambridge University Press

978-1-107-07010-3 - Beyond Elite Law: Access to Civil Justice in America

Edited by Samuel Estreicher and Joy Radice

Excerpt

[More information](#)

## Self-representation

While it is widely acknowledged that many Americans represent themselves in civil litigation, there is no national data on the frequency of self-representation.<sup>53</sup> There are, however, state<sup>54</sup> and local studies and reports<sup>55</sup> that note the large and growing numbers of self-represented litigants, particularly in landlord–tenant, family law, immigration, and other areas of law in which low- and moderate-income people often litigate.<sup>56</sup>

Compared to represented parties, pro se litigants tend to be poor, less educated, and, in recent years, more often women. In Maricopa County, Arizona, in 1997, 55% of pro se litigants in court actions had annual incomes below \$25,000, and 83% had annual incomes below \$40,000. In 1999, Florida found that 69% of the pro se litigants in family law cases earned less than \$20,000 each year, and 56% of them were women. Data from Idaho, Minnesota, and Maryland paint a similar picture of the pro se litigant as disproportionately poor, young, less educated, and female.<sup>57</sup>

State-level reports offer details about the number of pro se litigants and the kinds of cases in which people represent themselves. In New York, for example, the Task Force on Access to Justice's 2010 report surveyed low-income New Yorkers on their legal needs, reviewed data generated by the New York Office of Court Administration (OCA), and queried judges across the state and legal service organizations.<sup>58</sup> Each year, more than 2.3 million people were unrepresented in civil legal proceedings in the New York State courts, not counting actions in town and village courts.<sup>59</sup> The crushing number of pro se litigants is particularly acute in the New York City housing and family courts. According to the 2010 report, 98% of tenants did not have representation in eviction cases in recent years. In New York City family courts in more than 611,000 proceedings, 74% of litigants were

<sup>53</sup> See generally John M. Greacen, *Self-Represented Litigants and Court and Legal Services Responses to Their Needs: What We Know*, CTR. FOR FAMILIES, CHILDREN & THE COURTS CAL. ADMIN. OFFICE OF THE COURTS (2003), available at [www.courts.ca.gov/partners/documents/SRLwhatweknow.pdf](http://www.courts.ca.gov/partners/documents/SRLwhatweknow.pdf).

<sup>54</sup> See *infra* notes 57–65 and accompanying text.

<sup>55</sup> See generally *Self-Representation Resource Guide*, NAT'L CTR. FOR STATE COURTS, available at [www.ncsc.org/Topics/Access-and-Fairness/Self-Representation/Resource-Guide.aspx](http://www.ncsc.org/Topics/Access-and-Fairness/Self-Representation/Resource-Guide.aspx) (last visited Aug. 6, 2014) (linking to reports from several localities); KIRA KRENICHYN & NICOLE SCHAEFER-MCDANIEL, CTR. FOR HUMAN ENV'T, GRADUATE CTR. OF CITY UNIV. N.Y., *RESULTS FROM THREE SURVEYS IN NEW YORK CITY HOUSING COURTS* (2007), available at [www.brennancenter.org/publications](http://www.brennancenter.org/publications); TASK FORCE ON UNREPRESENTED LITIGANTS, BOSTON BAR ASS'N, *REPORT ON PRO SE LITIGATION* (1998), available at [www.bostonbar.org/prs/reports/unrepresented0808.pdf](http://www.bostonbar.org/prs/reports/unrepresented0808.pdf); see also Greacen, *supra* note 53 (discussing local data).

<sup>56</sup> Virtually every study highlights the very high percentage of pro se litigants in family law and housing court cases. By contrast, a survey of Washington State Courts showed that only 3% of litigants in cases involving torts and commercial law were pro se, as were 20% of those in cases involving property rights. See Greacen, *supra* note 53, at 5–6.

<sup>57</sup> See *id.* at 4–5.

<sup>58</sup> See TASK FORCE 2010 REPORT TO THE CHIEF JUDGE, *supra* note 43, at 3.

<sup>59</sup> See *id.* at 12.