

4-2019

## Unfamiliar Justice: Indigent Criminal Defendants' Experiences with Civil Legal Needs

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### Recommended Citation

Lauren Sudeall and Ruth Richardson, *Unfamiliar Justice: Indigent Criminal Defendants' Experiences with Civil Legal Needs*, 52 U.C. Davis Law Review. 2105 (2019)

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Bluebook 21st ed.

Lauren Sudeall & Ruth Richardson, *Unfamiliar Justice: Indigent Criminal Defendants' Experiences with Civil Legal Needs*, 52 U.C. DAVIS L. REV. 2105 (2019).

ALWD 7th ed.

Lauren Sudeall & Ruth Richardson, *Unfamiliar Justice: Indigent Criminal Defendants' Experiences with Civil Legal Needs*, 52 U.C. Davis L. Rev. 2105 (2019).

APA 7th ed.

Sudeall, Lauren, & Richardson, Ruth. (2019). *Unfamiliar justice: indigent criminal defendants' experiences with civil legal needs*. U.C. Davis Law Review, 52(4), 2105-2164.

Chicago 17th ed.

Lauren Sudeall; Ruth Richardson, "Unfamiliar Justice: Indigent Criminal Defendants' Experiences with Civil Legal Needs," U.C. Davis Law Review 52, no. 4 (April 2019): 2105-2164

McGill Guide 9th ed.

Lauren Sudeall & Ruth Richardson, "Unfamiliar Justice: Indigent Criminal Defendants' Experiences with Civil Legal Needs" (2019) 52:4 UC Davis L Rev 2105.

AGLC 4th ed.

Lauren Sudeall and Ruth Richardson, 'Unfamiliar Justice: Indigent Criminal Defendants' Experiences with Civil Legal Needs' (2019) 52(4) U.C. Davis Law Review 2105

MLA 9th ed.

Sudeall, Lauren, and Ruth Richardson. "Unfamiliar Justice: Indigent Criminal Defendants' Experiences with Civil Legal Needs." U.C. Davis Law Review, vol. 52, no. 4, April 2019, pp. 2105-2164. HeinOnline.

OSCOLA 4th ed.

Lauren Sudeall & Ruth Richardson, 'Unfamiliar Justice: Indigent Criminal Defendants' Experiences with Civil Legal Needs' (2019) 52 UC Davis L Rev 2105

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# Unfamiliar Justice: Indigent Criminal Defendants' Experiences with Civil Legal Needs

Lauren Sudeall<sup>†</sup> & Ruth Richardson<sup>\*\*</sup>

*Our legal system — and much of the research conducted on that system — often separates people and issues into civil and criminal silos. However, those two worlds intersect and influence one another in important ways. The qualitative empirical study that forms the basis of this Article bridges the civil-criminal divide by exploring the life circumstances and events of public defender clients to determine how they experience and respond to civil legal problems.*

*To date, studies addressing civil legal needs more generally have not focused on those individuals enmeshed with the criminal justice system, even though that group offers a rich source of valuable information. Researchers interested in civil aspects of criminal defense have focused primarily on the collateral consequences of conviction and the effectiveness of holistic defense programs. This exploratory study is the first of its kind — focused on civil legal problems unrelated to clients' criminal cases, but instead those that arise in the course of their everyday lives.*

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The study reveals that for public defender clients, civil justice is unfamiliar territory. While not strangers to the legal system or to lawyers, the clients we interviewed had very little experience with — or awareness of — available civil legal resources. In addition, they face a number of cognitive, procedural, and structural obstacles that make it difficult to navigate the legal system, including a lack of access to information and tools that enable them to use the civil legal system to address relevant needs. Yet, their life circumstances and the situations they encounter suggest many opportunities for possible civil legal intervention, whether through an attorney or other self-help mechanism.

By providing a better understanding of how indigent criminal defendants understand, experience, and respond to civil legal problems, the barriers that prevent them from addressing those needs, and opportunities for intervention, this Article forces the access-to-justice conversation out of its siloed confines. In doing so, it aims to engage civil and criminal scholars, practitioners, and policymakers in a discussion of how to make the civil justice system more accessible to all.

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## INTRODUCTION

In America today, there is a vast gap between those who are able to access and use the legal system to address their needs, and those for whom that system is unfamiliar and inaccessible. Unsurprisingly, many of those in the latter category are of limited financial means. According to the Legal Services Corporation (“LSC”)’s 2017 report on the unmet civil legal needs of low-income Americans, seventy-one percent of low-income households experienced at least one civil legal problem in the past year.<sup>1</sup> Of those civil legal problems reported by low-income Americans, eighty-six percent reported receiving inadequate or no legal help.<sup>2</sup>

Although many scholars have documented the existence of this justice gap,<sup>3</sup> there is much to be learned about its causes and its depth.<sup>4</sup> This may be even more true when thinking about the legal needs of criminal defendants that do not relate to their criminal cases. Our legal system typically separates issues, institutions, and service providers into two distinct silos: civil and criminal. Academic and practitioner-driven research of the justice system largely tracks that same divide.<sup>5</sup> Thus, existing studies of civil legal needs have not

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<sup>1</sup> LEGAL SERVS. CORP., *THE JUSTICE GAP: MEASURING THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS* 6 (2017), <http://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf> [hereinafter *THE JUSTICE GAP*]. LSC serves the civil legal needs of families whose income falls below 125% of the Federal Poverty Level (“FPL”). *Id.* at 16. For a family of four, this amounts to \$30,750 per year or less. *Id.* Currently, more than sixty million Americans have family incomes at or below 125% of the FPL. *Id.* at 6.

<sup>2</sup> *Id.*

<sup>3</sup> In its report, LSC defines the justice gap as “the difference between the civil legal needs of low-income Americans and the resources available to meet those needs.” *Id.* Deborah Rhode’s work has been foundational in setting a framework for discussion of the gap between “principle and practice.” *See, e.g.*, DEBORAH L. RHODE, *ACCESS TO JUSTICE* 3-5 (2004) (describing the gap between legal principles and commitments and daily realities). Rhode’s work has highlighted many of the structural and systemic resource constraints that exist as backdrop to this Article. *See id.* at 185-93.

<sup>4</sup> Sara Sternberg Greene has noted, “While there is a renewed interest in designing policy to increase access to civil justice for the poor and racial minorities, the lack of research available to inform policy reforms is striking. Much of the access-to-justice scholarship that does exist focuses on structural and systemic resource constraints to access [including a lack of available lawyers].” Sara Sternberg Greene, *Race, Class, and Access to Civil Justice*, 101 *IOWA L. REV.* 1263, 1269 (2016).

<sup>5</sup> *Id.* at 1290 (“Scholars who study the legal system typically fall into one of two broad camps: those who study the civil legal system and those who study the criminal legal system. These two groups rarely come together at academic conferences; rarely work together on research projects; and, for the most part, see themselves as studying two very distinct systems and bodies of law. While this may be true from a legal

focused on, and in some cases have excluded, those in contact with the criminal justice system.<sup>6</sup> Yet that group presents an important and unique opportunity for learning about how low-income individuals interact with and experience the civil legal system.

By definition, public defender clients — who are the subject of this study — are indigent.<sup>7</sup> Thus, with the exception of LSC-funded providers who are restricted from providing services to incarcerated individuals — or within periods that clients interviewed for this study were not incarcerated — the individuals in this group are likely eligible for civil legal services.<sup>8</sup> Additionally, indigent criminal defendants have had contact with the legal system, and therefore have some basis to be familiar with lawyers and legal processes.<sup>9</sup> Thus, this

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standpoint, for most poor respondents there is little difference between the two systems. Court is court. The law is the law. Lawyers are lawyers. Judges are judges.”).

<sup>6</sup> This is due in part to LSC restrictions on serving those who are incarcerated and the fact that those enmeshed with the criminal justice system can be a hard-to-reach population — particularly when incarcerated — to which access is sometimes limited. See *About Statutory Restrictions on LSC-funded Programs*, LEGAL SERVS. CORP., <https://www.lsc.gov/about-statutory-restrictions-lsc-funded-programs> (last visited Feb. 14, 2019) (citing Appropriations Act of 1996, Pub. L. 104-134, 110 Stat. 1321) [hereinafter *Statutory Restrictions on LSC-funded Programs*].

<sup>7</sup> The majority of felony defendants in state court (approximately eighty percent) cannot afford an attorney. Alexandra Natapoff, *Misdemeanors*, 85 S. CAL. L. REV. 1313, 1344 n.165 (2012) (citing CAROLINE WOLF HARLOW, BUREAU OF JUSTICE STATISTICS, SPECIAL REPORT: DEFENSE COUNSEL IN CRIMINAL CASES 1 (2000), <http://bjs.ojp.usdoj.gov/content/pub/pdf/dccc.pdf>).

<sup>8</sup> Federal law prevents LSC-funded programs from working on criminal cases (except for cases in Indian tribal courts) and representing prisoners or people who are being evicted from public housing because they face criminal charges of selling or distributing illegal drugs. *Statutory Restrictions on LSC-funded Programs*, *supra* note 6. A recipient may engage in any type of civil legal service on behalf of a formerly incarcerated individual as long as the representation is consistent with other LSC requirements. Part 1637 only limits a recipient from providing certain legal services to incarcerated individuals. Organizations that do not receive LSC funding — of which there are some in Atlanta (e.g., AVLf) — are not subject to the same restrictions.

<sup>9</sup> As Austin Sarat has described, for many living in poverty, “the law is all over.” Austin Sarat, “. . . *The Law Is All Over*”: *Power, Resistance and the Legal Consciousness of the Welfare Poor*, 2 YALE J.L. & HUMAN. 343, 345 (1990). “Law is, for people on welfare, repeatedly encountered in the most ordinary transactions and events of their lives.” *Id.* at 344. For public defender clients, law is very much a part of ordinary life — it pervades their neighborhoods, their schools and, for many of them, their means of survival (food and housing). To provide just one example from the interviews, one public defender described a typical interaction that might take place in the school context: “The school can either take a child into custody, bring them here to court in handcuffs, yes, and an intake officer here will do this kind of checklist score thing to see if they should be released to their parent or if they should be held.” Interview with

group of individuals is not one for which law and lawyers exist in a “separate sphere from ordinary life.”<sup>10</sup> Because indigent defendants are already in contact with the legal system, their situation is ripe for intervention. There are clear entry points in the course of their experience with the criminal justice system for actors in that system (or others, if allowed access) to provide knowledge or services as needed. Last, interventions made in this context to address civil legal issues have the potential not only to improve clients’ overall well-being, as with the provision of civil legal services more generally, but also to impact the adjudication of their criminal cases and improve their criminal justice outcomes.

Although this group presents a rich opportunity to gather information about access to civil justice, indigent defendants’ voices and experiences have largely been absent from that discussion. To address that gap, we conducted an exploratory qualitative study based on forty-six interviews with public defender clients, lawyers, and social workers employed by public defender offices. In particular, we wanted to explore whether public defender clients were experiencing or had experienced problems — either in the present, or at other points over the course of their lives — that might benefit from civil legal assistance. If they had experienced such problems, we also sought to discover how they attempted to address them. In doing so, we did not limit our focus to civil issues or legal needs tied to possible conviction or generated by interaction with the criminal system, but instead cast a much wider net, asking about a range of issues, including but not limited to, housing, education, family and domestic matters, employment, public and veterans’ benefits, and consumer issues.

The study revealed that, like many low-income individuals, a majority of those interviewed had experienced problems in their lives that may have benefited from some form of legal assistance. Many clients, however, did not have any familiarity with civil legal services providers and were unaware that they could benefit from such assistance for free. Most clients had never sought out civil legal assistance, and of those that did — only twenty percent — none had received such assistance. Clients interviewed demonstrated an openness toward receiving such assistance but were understandably skeptical of how or whether they could obtain it and whether

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Max, Att’y, Pub. Def. Off. (May 18, 2017) (notes on file with the author).

<sup>10</sup> See PATRICIA EWICK & SUSAN S. SILBEY, *THE COMMON PLACE OF LAW: STORIES FROM EVERYDAY LIFE* 47 (1998) (describing one of many ways people may relate to the law, whether consciously or subconsciously).

assistance that comes at no cost is as of much value as paid legal help. The study also identifies and describes significant barriers public defender clients face in attempting to address civil legal problems or related issues on their own, including: limited education and literacy, limited mental and emotional bandwidth, complex administrative processes that make it difficult to obtain benefits, and background conditions such as homelessness and time served in custody that create added difficulties to following such processes through consistently.

While civil and criminal service providers have long held anecdotal understandings of some of the above, our findings provide rare qualitative documentation and analysis of the obstacles public defender clients face in navigating the civil legal system at various points in their lives. The issues we identify suggest numerous possibilities for intervention and a critical lens through which to view broader discussions about civil justice reform. Our hope is that by including the experiences of indigent criminal defendants in the discussion of access-to-justice reform, we can encourage more inclusive solutions and expand the notion of what it means to provide access to justice for all.

Part I of the Article provides an overview of existing research in areas that bear on the questions asked in this study — for example, civil legal needs of the general population, legal consciousness, and holistic defense. Part II describes the study design and methodology. Part III describes the findings emerging from the study and themes grounded in the interview data. These themes are grouped into four categories: (1) information scarcity; (2) procedural barriers; (3) structural barriers; and (4) legal assistance — valuable but unreliable. Part IV explores the implications of those findings for those engaged in access to justice reform and identifies directions for future research.

## I. BACKGROUND: EXISTING RESEARCH

This study fills a critical gap in existing literature regarding experiences with civil legal problems. While there has been some research regarding the civil legal needs of low-income individuals as a whole, none of that literature has focused on people actively engaged with the criminal justice system. Very little of the literature surrounding legal consciousness is grounded in empirical research. And, although there is a growing recognition that criminal legal service providers must be mindful of and take steps to address possible civil consequences of conviction, there is little research on the subject; that which does exist is different in its focus.



### A. Civil Legal Needs of Low-Income Individuals

People facing civil justice issues have no federal constitutional right to counsel and often have no alternative basis for a right to counsel in state or local law.<sup>11</sup> As a result, millions of Americans are unable to afford or access legal assistance to address their civil legal needs.<sup>12</sup> Many of the civil issues Americans face involve “bread and butter issues” found at the core of contemporary life, affecting livelihood, shelter, or the care and custody of dependents.<sup>13</sup> In Georgia, the most recent survey of civil legal needs across the state is included in a 2009 report titled *Civil Legal Needs of Low and Moderate Income Households in Georgia*.<sup>14</sup> According to that report, the most prevalent needs found among low-income Georgia residents include problems involving consumer, housing, health, employment, public benefits, education, and family.<sup>15</sup> These issues can substantially impact people’s lives, regardless of their economic status.<sup>16</sup> The impact of civil legal issues on low-income individuals and families can be direct — such as losing a home, dealing with debt, or managing a health issue — or indirect, like developing mental health conditions, such as anxiety or depression, due to stress caused by the underlying problems.<sup>17</sup>

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<sup>11</sup> See REBECCA L. SANDEFUR & AARON C. SMYTH, AM. BAR FOUND., ACCESS ACROSS AMERICA: FIRST REPORT OF THE CIVIL JUSTICE INFRASTRUCTURE MAPPING PROJECT 2 (2011), [http://www.americanbarfoundation.org/uploads/cms/documents/access\\_across\\_america\\_first\\_report\\_of\\_the\\_civil\\_justice\\_infrastructure\\_mapping\\_project.pdf](http://www.americanbarfoundation.org/uploads/cms/documents/access_across_america_first_report_of_the_civil_justice_infrastructure_mapping_project.pdf). The National Coalition for a Civil Right to Counsel (NCCRC) has detailed information available about the situations in which individual jurisdictions have chosen to create a right or provide access to counsel in civil cases. See Status Map, National Coalition for a Civil Right to Counsel, at <http://civilrighttocounsel.org/map>.

<sup>12</sup> See Steven Seidenberg, *Unequal Justice: U.S. Trails High-Income Nations in Serving Civil Legal Needs*, A.B.A. J. (June 2012), [http://www.abajournal.com/magazine/article/unequal\\_justice\\_u.s.\\_trails\\_high-income\\_nations\\_in\\_serving\\_civil\\_legal\\_need](http://www.abajournal.com/magazine/article/unequal_justice_u.s._trails_high-income_nations_in_serving_civil_legal_need).

<sup>13</sup> Rebecca L. Sandefur, *What We Know and Need to Know About the Legal Needs of the Public*, 67 S.C. L. REV. 443, 443 (2016) [hereinafter *What We Know*]. Professor Sandefur writes, “[A]t present, we have no idea of the actual volume of legal need and no idea of the actual volume of unmet legal need.” *Id.* at 453.

<sup>14</sup> COMM. ON CIVIL JUSTICE, CIVIL LEGAL NEEDS OF LOW AND MODERATE INCOME HOUSEHOLDS IN GEORGIA 7-8 (2009), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ATJReports/ls\\_GA\\_clns\\_2008.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ATJReports/ls_GA_clns_2008.pdf) [hereinafter *GEORGIA CIVIL LEGAL NEEDS*]. For purposes of this report, “low income” was defined as 150% of the Federal Poverty Level or below (\$30,000 or less for a household of four in 2007), and “moderate income” as 150 to 300% of the Federal Poverty Level (\$60,000 or less for a household of four in 2007). *Id.* at v.

<sup>15</sup> *Id.* at 1-2.

<sup>16</sup> See LEGAL SERVS. CORP., THE JUSTICE GAP, *supra* note 1, at 25.

<sup>17</sup> See *id.*

Some of the most recent information regarding situations that could raise civil legal issues comes from an American Bar Foundation study conducted by sociologist Rebecca Sandefur.<sup>18</sup> The study, based on 2013 survey results from randomly selected adults in a mid-sized Midwestern city, revealed that two-thirds of respondents had experienced at least one such situation in the last eighteen months.<sup>19</sup> Nearly half of those civil justice situations resulted in negative consequences, such as adverse health effects, a loss of income, or physical violence.<sup>20</sup> However, the same respondents described only nine percent of these situations as “legal,” and described four percent as “criminal.”<sup>21</sup>

Although civil justice issues are quite common in the United States, using the legal system to try to handle them is not.<sup>22</sup> Civil justice situations are typically not seen as legal issues,<sup>23</sup> but instead as bad luck, a part of life, or “part of God’s plan.”<sup>24</sup> Thus, individuals and families faced with these challenges often use non-legal methods to address them, such as handling the issue themselves, seeking assistance from third parties within their social network, seeking assistance from third party advisors or representatives, or doing nothing at all.<sup>25</sup>

Current research shows that low-income individuals fail or are unable to seek legal assistance in handling their civil issues for a variety of reasons.<sup>26</sup> Among these reasons are the cost of third-party assistance and the notion that the problem resolved itself or was expected to resolve itself without getting the advice of a third party.<sup>27</sup>

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<sup>18</sup> REBECCA L. SANDEFUR, AM. BAR FOUND., ACCESSING JUSTICE IN THE CONTEMPORARY USA: FINDINGS FROM THE COMMUNITY NEEDS AND SERVICES STUDY (2014), [http://www.americanbarfoundation.org/uploads/cms/documents/sandefur\\_accessing\\_justice\\_in\\_the\\_contemporary\\_usa\\_aug\\_2014.pdf](http://www.americanbarfoundation.org/uploads/cms/documents/sandefur_accessing_justice_in_the_contemporary_usa_aug_2014.pdf) [hereinafter ACCESSING JUSTICE].

<sup>19</sup> *Id.* at 3-5.

<sup>20</sup> *Id.* at 3.

<sup>21</sup> *Id.* at 14.

<sup>22</sup> Sandefur, *What We Know*, *supra* note 13, at 447.

<sup>23</sup> *Id.* at 448.

<sup>24</sup> SANDEFUR, ACCESSING JUSTICE, *supra* note 18, at 14. Some of these situations are also considered private matters or matters that should be dealt with within the family or community, making third party involvement seem inappropriate. *Id.*

<sup>25</sup> *Id.* at 11-12.

<sup>26</sup> See Sandefur, *What We Know*, *supra* note 13, at 450.

<sup>27</sup> SANDEFUR, ACCESSING JUSTICE, *supra* note 18, at 12. A Canadian study from 2006 found that the decision to do nothing under such circumstances had little to do with financial costs, but instead was driven by uncertainty about one’s rights, the belief that nothing could be done, or the thought that resolving the problem would take too much time. See Ab Currie, *The Legal Problems of Everyday Life*, 12 SOC. OF CRIME, LAW,

In some cases, the individual felt that they did not need advice, or that the advice would not make a difference in the outcome of the situation.<sup>28</sup> In Sandefur's study, the most common reason reported for not seeking help was some variant of "I don't need any."<sup>29</sup> Thus, many people fail to seek legal assistance with civil justice issues due to a lack of understanding that the problem presents a legal issue or because they do not understand how such assistance could solve their problem.<sup>30</sup> Others fail to seek advice because they do not know where to go or what to do to get advice.<sup>31</sup>

Of all the possible options, the most common way of handling civil issues is taking action on one's own, without any assistance from a third party.<sup>32</sup> At times, people are able to, "without the assistance of lawyers, acquire the information they need to understand their rights and possible remedies, make informed decisions between different courses of action, and take the necessary actions to enact their rights under law or otherwise solve their problems in ways that are consistent with the law."<sup>33</sup> The danger of such an approach is that "[l]ay people can be poor judges of whether they have enacted their rights, because they may well have no idea what their rights are and what remedies are actually available to them."<sup>34</sup>

Seeking assistance from their immediate social network is the second most common way in which people respond to civil justice situations.<sup>35</sup> The LSC's *Justice Gap* report revealed that in thirty-three percent of such instances, individuals encountering civil justice problems confided in non-legal professionals, including friends or family members; in thirteen percent of cases, people looked to the Internet; and in eight percent of cases, people engaged in some

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8& DEVIANCE 1, 13 tbl. 5 (Rebecca L. Sandefur ed., 2009).

<sup>28</sup> SANDEFUR, ACCESSING JUSTICE, *supra* note 18, at 12-13.

<sup>29</sup> Sandefur, *What We Know*, *supra* note 13, at 450.

<sup>30</sup> See SANDEFUR, ACCESSING JUSTICE, *supra* note 18, at 13-14.

<sup>31</sup> *Id.* at 13. Although not emphasized in the literature, others may be aware of services but decide not to pursue them given limited faith in the effectiveness of the intervention or a belief that it is simply not worth the effort.

<sup>32</sup> *Id.* at 11.

<sup>33</sup> Sandefur, *What We Know*, *supra* note 13, at 452.

<sup>34</sup> *Id.* at 453. Consequently, without counsel, many pro se defendants face tremendous obstacles to defend their rights, do not fare well in the court process, and are often unsuccessful in defending against claims. See JUDICIARY COMM., CONN. GEN. ASSEMBLY, REPORT OF THE TASK FORCE TO IMPROVE ACCESS TO LEGAL COUNSEL IN CIVIL MATTERS 13-14 (2016), [http://www.rc.com/upload/O-Hanlan-Final-Report-of-CT-Leg-Task-Force-12\\_2016.pdf](http://www.rc.com/upload/O-Hanlan-Final-Report-of-CT-Leg-Task-Force-12_2016.pdf).

<sup>35</sup> SANDEFUR, ACCESSING JUSTICE, *supra* note 18, at 11.

combination of both methods.<sup>36</sup> At times, such individuals also connect with other third-party assistance outside of their immediate social network. To do so, they use “a wide range of sources, including churches, housing counselors, social workers, city agencies, national membership organizations, the Better Business Bureau, and their elected representatives” to help resolve their issue.<sup>37</sup>

Last, many low-income individuals do nothing at all to address the civil legal issues they face.<sup>38</sup> Some of the reasons given for not taking action range from not realizing the legal nature of the problem, the belief that nothing could be done about the problem, not wanting the hassle, and not knowing where to get help.<sup>39</sup> Other reasons include the concern for the cost of seeking help, not having time to handle the issue, and fear of pursuing legal action.<sup>40</sup> Shame and embarrassment can also play a role, as can feelings of insufficient power to resolve the situation favorably.<sup>41</sup> Past experiences with the system — particularly those resulting in frustration — can also lead people to simply resign themselves to their present situation.<sup>42</sup>

Other barriers to accessing civil legal justice identified in the 2009 Georgia report include the low level of awareness of resources available to help resolve civil legal issues, the lack of internet use to access online resources, and the lack of legal resources connected through family.<sup>43</sup> A key obstacle identified by court personnel is how little awareness Georgians have of the resources available to help resolve their legal problems.<sup>44</sup> For example, the report demonstrated that fewer than twenty percent of respondents knew about mediation

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<sup>36</sup> LEGAL SERVS. CORP., *THE JUSTICE GAP*, *supra* note 1, at 33.

<sup>37</sup> Sandefur, *What We Know*, *supra* note 13, at 448.

<sup>38</sup> COMM. ON CIVIL JUSTICE, *GEORGIA CIVIL LEGAL NEEDS*, *supra* note 14, at 27.

<sup>39</sup> *Id.* at 28.

<sup>40</sup> LEGAL SERVS. CORP., *THE JUSTICE GAP*, *supra* note 1, at 34.

<sup>41</sup> Rebecca L. Sandefur, *The Importance of Doing Nothing: Everyday Problems and Responses of Inaction*, in *TRANSFORMING LIVES: LAW AND SOCIAL PROCESS* 112, 123-24 (Pascoe Pleasence et al. eds., 2007) [hereinafter *The Importance of Doing Nothing*].

<sup>42</sup> *Id.* at 127. In a small focus group study — twenty-nine people in one Midwestern city — Sandefur explored why some low-income individuals are resistant to seek help specific to money and housing problems. *Id.* at 117-19. Her findings suggest that “it is primarily past experiences with the specific parties or issues involved in the current legal issue that affect decision-making.” Greene, *supra* note 4, at 1275 (citing Sandefur, *The Importance of Doing Nothing*, *supra* note 40, at 123-26). Sara Sternberg Greene’s scholarship expands on this conclusion, suggesting that “past experiences and perceptions of criminal justice events and circumstances” can also be a key factor in civil justice decision-making. *Id.* at 1275.

<sup>43</sup> COMM. ON CIVIL JUSTICE, *GEORGIA CIVIL LEGAL NEEDS*, *supra* note 14, at 34-36.

<sup>44</sup> *Id.* at 34.

services, and almost half were not aware of how to find an attorney, either through a legal services program or a referral service.<sup>45</sup> Additionally, many low-income individuals faced with civil legal issues are not aware of the rapidly expanding availability of self-help materials posted on court or attorneys' websites.<sup>46</sup> Although many (sixty-six percent) of the low-income Georgia households surveyed had Internet access,<sup>47</sup> over ninety-four percent of those households reported not using the Internet to access legal forms.<sup>48</sup> Finally, low-income individuals' ability to secure civil legal assistance is often reliant on a connection to legal resources through family, social or services networks.<sup>49</sup> Almost two thirds of low-income households secured legal representation through "word of mouth from friends, relatives, or co-workers (forty-one percent), referral from a legal aid office or clinic (twelve percent) or referral from a government, community or charitable organization (twelve percent)."<sup>50</sup> These data suggest that a low-income individual's connection to networks that contain legal resources plays a significant role in the ability to obtain legal help.<sup>51</sup>

The above studies provide a baseline for the civil legal problems low-income individuals experience and how they respond to such problems. As researchers in the access to civil justice field have recognized, however, there is much more work to be done in understanding civil legal needs.<sup>52</sup> While we have some sense of how people engage with such issues, effective intervention will require a deeper understanding of the reasons for their responses and the barriers to other approaches. In addition, with one partial exception,<sup>53</sup>

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<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 36.

<sup>47</sup> *Id.* A recent survey of Georgians revealed that sixteen percent of the state's citizens have no broadband access. HOUSE OF REPRESENTATIVES RURAL DEV. COUNCIL, RECOMMENDATIONS OVERVIEW 5 (Ga. 2017), [http://www.house.ga.gov/Documents/CommitteeDocuments/2017/HouseRuralDevelopmentCouncil/2017\\_FINAL\\_Recommendations.pdf](http://www.house.ga.gov/Documents/CommitteeDocuments/2017/HouseRuralDevelopmentCouncil/2017_FINAL_Recommendations.pdf) (basing its findings on a survey by the Carl Vinson Institute of Government).

<sup>48</sup> COMM. ON CIVIL JUSTICE, GEORGIA CIVIL LEGAL NEEDS, *supra* note 14, at 36.

<sup>49</sup> *See id.* at 35.

<sup>50</sup> *Id.*

<sup>51</sup> *See id.*

<sup>52</sup> *See Sandefur, What We Know, supra* note 13, at 453 ("[A]t present, we have no idea of the actual volume of legal need and no idea of the actual volume of unmet legal need.").

<sup>53</sup> Greene's work made the connection — for the first time — that people's negative experiences with the criminal justice system may influence their decision to seek help for civil justice problems. Greene, *supra* note 4, at 1266-67. However, her research does not focus on individuals who are currently incarcerated or who have

there has been no research specific to individuals engaged with the criminal justice system to understand their experiences and how their life circumstances might affect their ability to address civil legal problems.

### B. Collateral Consequences and Holistic Defense

In the criminal context, discussion of civil legal needs has often focused on addressing civil legal issues that arise in the context of criminal representation, typically tied to the criminal charges or possible conviction.<sup>54</sup> The understanding that these two areas are interrelated has gained traction in the criminal defense field in the form of “holistic defense,” sometimes known as “community oriented defense,” or “comprehensive defense representation.”<sup>55</sup> While practitioners may have slightly different ideas of what holistic defense entails, it often includes an interdisciplinary approach to client representation,<sup>56</sup> access to social services to address client needs, and a greater understanding of collateral consequences that might stem from a possible conviction and other legal issues that may arise in the context of representation.<sup>57</sup> As Robin Steinberg, former Executive

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been in contact with the criminal justice system. *See id.* at 1283. To the contrary, for reasons she explains in her article, she excluded some individuals with criminal history (convicted felons). *Id.* at 1283 n.128. Fewer than half of the individuals she interviewed (forty-six percent) had direct experience with the criminal justice system, either themselves or through family. *Id.* at 1293.

<sup>54</sup> For this reason, this study is unique in the criminal context in its focus on civil legal needs unrelated to the criminal case and which may have arisen prior to arrest. We have identified one legal needs assessment tool developed by public defenders in Louisiana, which appears to have focused on social service needs (distinct from civil legal needs). *See* MELANCA CLARK & EMILY SAVNER, BRENNAN CTR. FOR JUSTICE, COMMUNITY ORIENTED DEFENSE: STRONGER PUBLIC DEFENDERS 37-38 (2010), <https://www.brennancenter.org/publication/community-oriented-defense-stronger-public-defenders>.

<sup>55</sup> Cynthia G. Lee et al., *The Measure of Good Lawyering: Evaluating Holistic Defense in Practice*, 78 ALA. L. REV. 1215, 1216, 1218 (2015) (describing “[h]olistic defense, also known as problem-solving lawyering, community oriented defense, therapeutic defense, holistic advocacy, or integrated service representation”).

<sup>56</sup> This can be achieved by utilizing, for example, teams of lawyers (both criminal and civil), social workers, investigators, and support staff to work on criminal cases. Robin G. Steinberg, *Beyond Lawyering: How Holistic Representation Makes for Good Policy, Better Lawyers, and More Satisfied Clients*, 30 N.Y.U. REV. L. & SOC. CHANGE 625, 631 (2006) (“Depending on the individual needs of each client, the team may also add psychologists, job developers, youth program personnel, and community organizers.”).

<sup>57</sup> *See* Lee et al., *supra* note 55, at 1216-17; *see also* Nadine Frederique et al., *What Is the State of Empirical Research of Indigent Defense Nationwide? A Brief Overview and*

Director of The Bronx Defenders has written, “[t]he burgeoning movement toward holistic defense represents a powerful response to the daily realities facing poor clients. It is a model that responds to the needs of poor communities by unifying advocates in the shared desire to truly make a difference in the cases and lives of poor people.”<sup>58</sup>

The concept of holistic defense suggests that “in order for indigent defenders to be truly effective they must address both the collateral consequences of criminal justice involvement as well as the underlying issues that play a part in driving clients into the criminal justice system.”<sup>59</sup> Such areas may involve: employment, housing/eviction, child custody and welfare, driving privileges, public benefits, student aid eligibility, and immigration status.<sup>60</sup> Because it attempts to address underlying social, environmental, and legal issues that contribute to a client’s involvement in crime (or potential for successful re-entry), holistic defense may lead to decreased rates of recidivism.<sup>61</sup> It also views the criminal case not as an isolated issue, but instead as part of a larger web of factors in a client’s life. A recent study by the RAND Corporation and the University of Pennsylvania Law School suggests that the provision of holistic defense services reduces the likelihood and amount of time that criminal defendants will spend in custody, both pre-trial and post-conviction.<sup>62</sup>

Compared to other areas of indigent defense research, research on holistic defense is “sparse.”<sup>63</sup> On both sides of the debate, most of the evidence “consists almost entirely of normative arguments and anecdotal information.”<sup>64</sup> And while programs engaging in holistic defense like The Bronx Defenders and Neighborhood Defender Service of Harlem in New York have undertaken evaluation of their own

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*Suggestions for Future Research*, 78 ALA. L. REV. 1317, 1336 (2015) (discussing four pillars of holistic defense). For a discussion of the role social work practice plays in holistic defense, see generally Sarah Buchanan & Roger M. Nooe, *Defining Social Work Within Holistic Public Defense: Challenges and Implications for Practice*, 62 SOC. WORK 333, 333-39 (2017).

<sup>58</sup> Steinberg, *supra* note 56, at 634.

<sup>59</sup> Frederique et al., *supra* note 57, at 1335-36.

<sup>60</sup> See Lee et al., *supra* note 55, at 1226.

<sup>61</sup> *Id.* at 1216-17. But see James M. Anderson et al., *The Effects of Holistic Defense on Criminal Justice Outcomes*, 132 HARV. L. REV. 819, 869 (2019) (suggesting that “holistic representation does not measurably reduce recidivism”).

<sup>62</sup> Anderson et al., *supra* note 61, at 823.

<sup>63</sup> See Frederique et al., *supra* note 57, at 1340. One article published in 2015 observed that “few empirical studies have attempted to evaluate the success of holistic defense programs” and noted that at least three were underway at the time of the article’s publication. Lee et al., *supra* note 55, at 1232-33.

<sup>64</sup> Lee et al., *supra* note 55, at 1217.

programs, in addition to providing technical assistance to other service providers, there is still much to be learned about the scope of the problems faced by broader indigent defendant populations. Much of the current research on holistic defense is focused not on the set of needs it intends to serve, but on its effectiveness — for example, its role in preventing recidivism.<sup>65</sup>

### C. Legal Consciousness

Legal consciousness literature explores how ordinary people “think about the law and how their understanding of legal institutions and legal rules affects their day-to-day lives.”<sup>66</sup> Those interested in legal consciousness study “not only . . . how people think about the law (consciousness about law) but also the ways in which largely unconscious ideas about the law can affect decisions they make” and “the body of assumptions people have about the law that are simply taken for granted.”<sup>67</sup>

In *The Common Place of Law*, Patricia Ewick and Susan Silbey describe three different ways in which people may relate to the law, depending on the context: “before the law,” “with the law,” or “against the law.”<sup>68</sup> They explain that people’s willingness to turn to the law as a problem-solving tool — or their desire to avoid the law, viewing it as a source of problems — relates closely to their understanding of and relationship to the law.<sup>69</sup> While their work is important in providing an overall framework for how people understand and respond to the law, it is not intended to be empirical in nature, nor does it provide an explanation for why a given group would adopt one of the above frames over another.

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<sup>65</sup> See, e.g., Anderson et al., *supra* note 61 (evaluating the impact of holistic defense on criminal justice outcomes).

<sup>66</sup> Laura Beth Nielsen, *Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens About Law and Street Harassment*, 34 *LAW & SOC’Y REV.* 1055, 1058 (2000).

<sup>67</sup> *Id.* at 1058-59.

<sup>68</sup> See EWICK & SILBEY, *supra* note 10, at 47-49.

<sup>69</sup> Kathryn M. Young, *Rights Consciousness in Criminal Procedure: A Theoretical and Empirical Inquiry*, 12 *SOC. CRIME L. & DEVIANCE* 67, 69 (2009); see also, e.g., SALLY ENGLE MERRY, *GETTING JUSTICE AND GETTING EVEN: LEGAL CONSCIOUSNESS AMONG WORKING-CLASS AMERICANS* 37 (1990) (noting that “[b]efore a person can bring a problem to court, he or she must conceptualize it as something that ‘law,’ whatever it is thought to be, can help”).



Some have noted that Ewick and Silbey's work gives inadequate attention to marginalized populations.<sup>70</sup> The nature of the group to whom similar questions are directed will, for obvious reasons, bear strongly on the answers provided. For example, Sally Engle Merry conducted an in-depth study on the legal consciousness of working-class Americans in eastern Massachusetts in the early 1980s. She found that those she studied had a sense of entitlement based on a broad sense of rights.<sup>71</sup> Merry's study group was comprised primarily of white working-class Americans, and mostly women. Given the stark demographic contrast to the respondents in our study — primarily African-American males engaged in the criminal justice system — it is unsurprising that respondents in our study would be less likely to share the same sense of entitlement.

While there have since been studies conducted that focus on other marginalized populations,<sup>72</sup> none specifically address the populations and questions involved in this study.

#### D. *Transference and the Civil and Criminal Justice Systems*

Although the legal system typically operates in a siloed fashion, separating the civil from the criminal, many low-income individuals subject to the system do not perceive or experience it in that way. Their view of the legal system is inevitably colored by all of their interactions with it, as well as what they observe — and their experiences with one system bleed over to influence their views of the other.

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<sup>70</sup> See, e.g., Greene, *supra* note 4, at 1272 n.46.

<sup>71</sup> See MERRY, *supra* note 69, at 2. Merry observed that most of the plaintiffs bringing cases to court in her study were women; she ascribes their greater tendency to turn to the court in part to a feeling of powerlessness those women experience relative to men, a reluctance to engage in violence to resolve conflicts, and their relative economic disadvantage. *Id.* at 62. To the extent female litigants dominate civil legal settings, it may also then be unsurprising that the largely male respondent pool in our study had less experience with the civil justice system; many of those who referenced interaction with that system mentioned doing so through a family member, often a mother or grandmother. See generally Kathryn A. Sabbeth, *Housing Defense as the New Gideon*, 41 HARV. J.L. & GENDER 55 (2018) (regarding black women and eviction court).

<sup>72</sup> See, e.g., Kay Levine & Virginia Mellema, *Strategizing the Street: How Law Matters in the Lives of Women in the Street-Level Drug Economy*, 26 LAW & SOC. INQUIRY 169, 180, 197 (2001) (studying women involved in selling drugs on the street and finding that the law does not function as a structural constraint or a tool for empowerment given the predominance of considerations necessary for their survival); Nielsen, *supra* note 66, at 1055 (studying variations across racial and gender groups in beliefs about offensive speech and attitudes toward speech regulation).

Sara Sternberg Greene's article, *Race, Class, and Access to Civil Justice*, touches on how attitudes of poor and minority groups toward civil justice problems — and their decisions about whether to seek help for such problems — are informed by their experiences with the criminal justice system.<sup>73</sup> Greene's work was based on interviews with residents of public housing in Cambridge, Massachusetts. By definition, her study did not include anyone convicted of a felony,<sup>74</sup> and forty-six percent of respondents in her study did not have direct experience with the criminal justice system, either themselves or through family.<sup>75</sup> Yet, the findings from her study are instructive and provide a thought-provoking data set to compare and contrast with the findings described in this Article.

Key findings from Greene's study include: (1) most respondents did not understand the difference between the criminal and civil justice systems,<sup>76</sup> and their negative views of and experiences with the former negatively impacted their willingness to seek help with civil problems; (2) respondents' belief that legal help is effective only when provided by a paid (expensive) lawyer;<sup>77</sup> (3) negative and dehumanizing experiences with public institutions more broadly made respondents hesitant to engage in interactions that would result to similar feelings;<sup>78</sup> and (4) seeking help from the legal system ran counter to respondents' personal narratives regarding self-sufficiency and their desire to stay "out of trouble."<sup>79</sup>

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<sup>73</sup> Greene, *supra* note 4, at 1265-68.

<sup>74</sup> As Greene notes, convicted felons are not permitted to live in public housing and, for reasons explained in her article, she intentionally omitted them from her sample. *Id.* at 1283 n.128.

<sup>75</sup> *Id.* at 1293.

<sup>76</sup> For example, when asked about seeking a lawyer for assistance with an eviction, many respondents stated "they would have to seek help from a public defender." *Id.* at 1289. Most respondents in Greene's study believed that they were entitled to a lawyer for any legal problem they may have. *Id.* at 1290.

<sup>77</sup> Many respondents believed that "free lawyers are not good lawyers." *Id.* at 1291.

<sup>78</sup> See *id.* at 1297-98. While Greene found many similarities in the responses of black and white respondents with respect to their use or avoidance of legal services, their views diverged with respect to trust and corruption. *Id.* at 1301. Overall, black respondents expressed higher levels of distrust regarding courts, which led to a lesser tendency to seek assistance from the legal system when dealing with civil justice issues. See *id.* at 1309. Many black respondents associated going to court and making contact with the law with a certain level of "risk." *Id.* at 1311.

<sup>79</sup> *Id.* at 1289.

## II. STUDY DESIGN AND METHODOLOGY

This exploratory qualitative study<sup>80</sup> was organized around anonymous client, attorney, and social worker interviews conducted throughout the latter half of 2017. Attorneys and social workers were employed by, and the clients were represented by, two public defender offices responsible for representing indigent criminal defendants in Atlanta, Georgia. The Office of the Public Defender for the Atlanta Judicial Circuit — often referred to as the Fulton County Public Defender — serves Fulton County and handles only felony cases. The office employs ninety-five attorneys and eleven social workers in addition to administrative and support staff.<sup>81</sup> In fiscal year 2016, the office provided legal representation in 11,705 cases.<sup>82</sup> The Office of the Public Defender for the Stone Mountain Judicial Circuit — often referred to as the DeKalb County Public Defender — serves DeKalb County and handles both felony and misdemeanor cases. The office employs fifty-six attorneys and four social workers in addition to administrative and support staff.<sup>83</sup> In 2016, the office closed a total of 12,592 cases, ranging from traffic tickets to murder.<sup>84</sup>

### A. *Sampling and Data Collection Procedures*

The focus of this study was to assess the civil legal needs of public defender clients. Thus, the design for the study — and the selection of the relevant population — was purposive, rather than random. Given the access we were able to secure to what is otherwise a hard-to-reach population, and the relative availability of civil legal services in Atlanta (in comparison to the rest of the state),<sup>85</sup> we focused only on two public defender offices in Atlanta — DeKalb and Fulton. The study was intended to be exploratory, and set the groundwork for further, more in-depth research; therefore, while the results may be suggestive of the larger public defender client population, they are not intended

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<sup>80</sup> This study was originally contemplated as following a sequential exploratory mixed methods design, through which this first phase would unearth relevant findings and serve to inform the development of a survey tool to be used to collect quantitative data from a larger group. While there still may be a subsequent quantitative phase of the project, this paper reviews only the findings from the initial qualitative phase.

<sup>81</sup> OFFICE OF THE PUB. DEF., ATLANTA JUDICIAL CIRCUIT, FY 2016-17 ANNUAL REPORT 7 (2017) (on file with author).

<sup>82</sup> *Id.* at 19.

<sup>83</sup> E-mail from C. Saari to R. Richardson (Sept. 14, 2017) (on file with author).

<sup>84</sup> *Id.*

<sup>85</sup> See Lisa R. Pruitt, Amanda L. Kool, Lauren Sudeall et al., *Legal Deserts: A Multi-State Perspective on Rural Access to Justice*, 13 HARV. L. & POL'Y REV. 15 (2018).

to be generalizable. The client sample from the Fulton County public defender office was comprised of those facing felony criminal charges, as the office represents only defendants facing felony charges. The client sample from the DeKalb County public defender office was comprised of both those facing misdemeanor and felony criminal charges. However, within our sampling framework there were no exclusions made based on gender, race, or age. Although not generalizable, the study is representational in the sense that the sample does reflect the larger reality of demographics regarding incarceration in Atlanta and Georgia, which are predominantly black and male.<sup>86</sup>

This study included prisoners and thus adhered to federal human research guidelines for working with prisoner populations, as approved by the Georgia State University Institutional Review Board (“IRB”).<sup>87</sup> To adhere to relevant federal guidelines, prisoner participant selection procedures remained free of arbitrary intervention and potential subjects were free to make truly voluntary and uncoerced decisions as to whether or not to participate.

The recruitment process was as follows: The chief public defender of each office sent an office-wide email asking attorneys to give their clients the opportunity to participate in the research by reading them a prepared written description of the study and providing them with a card and envelope that allowed clients to signal their willingness to participate (or not) without the attorney knowing their response.<sup>88</sup> Attorneys were not aware whether or not their clients ultimately chose to participate. The chief public defender of each office also asked attorneys and social workers on staff to contact the researchers should they be willing to participate as interviewees.

Following collection of the client cards, visits were scheduled. All of the clients interviewed were people who had been charged, but whose cases were not resolved. Indigent clients who were incarcerated were interviewed at both the Fulton County and DeKalb County jails. Clients out on bond were interviewed in a safe environment of their

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<sup>86</sup> See *Georgia Profile*, PRISON POLY INITIATIVE, <https://www.prisonpolicy.org/profiles/GA.html> (last visited Dec. 30, 2018) (demonstrating that black prisoners constitute fifty-eight percent of the prison and jail population in Georgia but only thirty-one percent of the state population).

<sup>87</sup> See 45 C.F.R. § 46.305 (2018); OFFICE OF RESEARCH INTEGRITY, GA. ST. UNIV., INSTITUTIONAL REVIEW BOARD POLICIES AND PROCEDURES FOR FACULTY, STAFF, AND STUDENTS 124-27 (2016), <http://ursa.research.gsu.edu/files/2016/02/Revised-IRB-Manual-Jan-2016.pdf>.

<sup>88</sup> Participants checked “yes” or “no” on the card, which was then placed in an envelope and sealed, collected with other cards, and delivered back to the researchers.

choosing. We reviewed the study thoroughly with each potential participant and answered any questions asked by the potential participant. Once a determination was made that the participant would like to proceed, we reviewed with him or her the consent form and answered any additional questions or concerns on the part of the potential participant. If the client ultimately agreed to participate, we turned on a digital recorder and obtained verbal consent, therefore eliminating the need for any written documentation of the client participating in the study (and the possibility of identifying participants). Interviews with social workers and attorneys were held at their offices. They were given written consent forms and provided with a copy to retain.

We communicated to participants that there would be no advantage or disadvantage to participating or not participating in the study.<sup>89</sup> All interviews conducted were completely voluntary and anonymous, digitally recorded, and pseudonyms were used in lieu of actual names for all interviewees (clients, attorneys, and social workers) in their recorded interviews and transcripts. The recordings were password-protected and deleted after being transcribed and verified within six months of the interview. Confidentiality of all participants' identities was maintained to assure that there would be no impact on participants' pending criminal cases.<sup>90</sup>

We ultimately conducted forty-six semi-structured interviews of thirty public defender clients, eight attorneys and eight social

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<sup>89</sup> In other words, there will be no advantages accrued relating to "general living conditions, medical care, quality of food amenities and opportunity for earnings in prison" that would impair the prisoner's ability to "weigh the risks of the research against the value of such advantages" and the "risks involved in the research are commensurate with the risks that would be accepted by non-prisoner volunteers." OFFICE OF RESEARCH INTEGRITY, *supra* note 87, at 125.

<sup>90</sup> From the total number of client cards received (sixty), two potential participants had been released, and one had a disciplinary charge and therefore was not permitted to speak to the researcher. Three people declined when they heard more about the study: two younger men did not see how the study would benefit them, and an older gentleman only wanted to discuss reclaiming land that his brother had stolen from him while he was in jail. One woman who was out on bond did not have time to complete an interview. Another person out on bond did not turn up at the designated time and place. One person declined due to being kept waiting too long in the holding cell at DeKalb County Jail. Only one person refused to be part of the study after completing an entire interview. He did not give a reason, nor was he upset, but he simply changed his mind and his interview was deleted immediately. The remainder of potential participants who were not interviewed indicated on the client card that they did not wish to participate.

workers.<sup>91</sup> Interviews ranged from forty-five minutes to three hours in length. Analysis of the data collected was an ongoing, iterative process to the point at which we felt we had reached saturation;<sup>92</sup> we then began the process of more in-depth coding.<sup>93</sup>

### B. Interviews

The client interviews were more highly structured and specific than might be expected for this type of research. The reason for this is practical: Having the support and permission of the public defenders to speak to their clients without attorneys is rare. To be able to record interviews is also a break from normal practices. Moreover, the ability to conduct the interviews in a contact visit setting (i.e., no glass between interviewer and participant) is not often granted. For these reasons, it was critical to the process to collect as much information as possible during the interviews allowed. It is very unlikely we would get another chance to continue or follow up on the interview given limited access to participants and jail regulations.

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<sup>91</sup> Given the smaller numbers of social workers, we were careful not to identify those interviewed by office, race, or any other characteristic, so as not to reveal their identities.

<sup>92</sup> Best practice mandates that grounded theory studies identify the point at which saturation is achieved. KATHY CHARMAZ, *CONSTRUCTING GROUNDED THEORY: A PRACTICAL GUIDE THROUGH QUALITATIVE ANALYSIS* 113 (2006) [hereinafter *CONSTRUCTING GROUNDED THEORY*]. According to LaRossa, theoretical saturation has occurred when no new information or insights are generated; this is the point at which you have a “well grounded concept.” Ralph LaRossa, *Grounded Theory Methods and Qualitative Family Research*, 67 *J. MARRIAGE & FAM.* 837, 841 (2005). Others, like John Creswell and Cheryl Poth, have offered more specific guidelines, recommending twenty to thirty interviewees in grounded theory studies. JOHN W. CRESWELL & CHERYL N. POTH, *QUALITATIVE INQUIRY & RESEARCH DESIGN: CHOOSING AMONG FIVE APPROACHES* 159 (4th ed. 2018). The number of completed interviews for this project is forty-six, which includes thirty public defender clients, eight attorneys and eight social workers. We are confident that a sufficient degree of saturation has been achieved, while at the same time, divergent opinions were present indicating diverse perspectives were included. See LaRossa, *supra*, at 841.

<sup>93</sup> Qualitative research often relies on smaller sample sizes than quantitative research. See, e.g., MICHÈLE LAMONT & PATRICIA WHITE, *WORKSHOP ON INTERDISCIPLINARY STANDARDS FOR SYSTEMATIC QUALITATIVE RESEARCH* 4 [https://www.nsf.gov/sbe/ses/soc/ISSQR\\_workshop\\_rpt.pdf](https://www.nsf.gov/sbe/ses/soc/ISSQR_workshop_rpt.pdf) (“Qualitative research stresses in-depth contextualization, usually with small sample size.”) (last visited Dec. 30, 2018); CHARMAZ, *CONSTRUCTING GROUNDED THEORY*, *supra* note 92, at 18 (noting that “small samples . . . do not pose problems because grounded theory methods aim to develop conceptual categories and thus data collection is directed to illuminate properties of a category and relations between categories”); see, e.g., MERRY, *supra* note 69, at 40 (observed twenty-nine mediation cases).

The semi-structured client interview guide was derived from checklists and resources used in the civil context to identify possible legal needs, with input from several practicing civil legal aid attorneys. Following a warm-up conversation with the participant, obtaining verbal informed consent, adoption of a pseudonym, and additional explanation of the study, the guide started with collection of basic demographic data. It then progressed through a number of substantive topics covering basic background characteristics and experiences. These subject areas included housing, family situation, safety and security, general financial information, benefits and subsidies, health, mental health, military, education, and employment.<sup>94</sup> In each area, the guide also explored how participants responded to particular experiences and whether they sought any help (including from a lawyer). Questions were also asked regarding factors that may bear on broader questions of access (e.g., transportation, internet, driver's license, etc.), voting registration, and general questions regarding people's experiences with legal aid and lawyers more broadly (not including the public defender). To protect clients' anonymity, throughout the interview participants were reminded not to provide the names of others referenced or any information that could identify the participant or others. There were no references to any of the criminal charges facing the client, nor was the name of the client or their family members associated in any way with the results.

The attorney and social worker interviews were conducted to provide insight into how these professionals comprehend the various civil legal needs of their clients, and how they perceive the impact of those needs. Throughout these interviews, cases and clients were primarily discussed in the aggregate, without reference to specific cases or clients.

### C. *Data Management and Analysis*

Once recorded, digital audio recordings of all interviews were password-protected, transcribed, and verified. The principal student investigator was responsible for data-cleaning and preparing the final datasets for analysis and developing a respondent matrix. To analyze the data, we utilized NVivo — a computer-assisted qualitative data analysis software — in conjunction with manual coding. The data was

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<sup>94</sup> Here, we attempted to describe civil justice “situations” like those referenced in Sandefur’s 2014 ABF study. See SANDEFUR, ACCESSING JUSTICE, *supra* note 18, at 5. Knowing that these individuals would likely not identify issues as legal on their own, we asked them about other experiences that would likely benefit from legal assistance.

coded independently by two individuals and later merged into one common data set.<sup>95</sup>

Analysis of the data collected for this project is inductive in that we do seek to generate new concepts. It is also deductive in that the data to some extent will support existing general conceptualizations and explanations regarding the reality of indigent access to civil legal services.<sup>96</sup> Grounded theory methodology was applied to analyze the data and identify emerging themes.<sup>97</sup>

The use of semi-structured interview guides provided the initial descriptive framework for analysis. Through the identification of categories and subcategories, we identified themes emerging from the data.<sup>98</sup> For our purposes, the terms category, concept, and theme are distinct and not interchangeable. Category is descriptive; a priori categories were deployed in the interview guides, and new categories were developed as part of the analysis. Data selected verbatim through an iterative process were continually compared to identify relationships and potential areas of integration, while “concept” is applied to a more abstract level of coding.<sup>99</sup> For purposes of this study, themes are used to describe textual elements and the analysis of connections between them. Although the themes identified do not necessarily directly reflect questions used in interviews or the initial coding frame, they are interpretations of patterns observed in the data

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<sup>95</sup> Descriptive categories were deployed a priori in the interview guides and used for initial interview coding; new categories and concepts (more abstract in nature) were later developed as part of the coding process.

<sup>96</sup> See MICHAEL QUINN PATTON, *QUALITATIVE RESEARCH & EVALUATION METHODS* 542 (4th ed. 2015) (“*Inductive analysis* involves *discovering* patterns, themes, and categories in one’s data. Findings emerge out of the data through the analyst’s interactions with the data. In contrast, when engaging in *deductive analysis*, the data are analyzed according to an existing framework.”).

<sup>97</sup> Grounded theory involves separating, sorting, and synthesizing data through qualitative coding. CHARMAZ, *CONSTRUCTING GROUNDED THEORY*, *supra* note 92, at 3 (“Coding means that we attach labels to segments of data that depict what each segment is about. Coding distills data, sorts them, and gives us a handle for making comparisons with other segments of data.”). For a general description of grounded theory and how it guides the data collection and analysis process, see Kathy Charmaz, *Grounded Theory*, in *QUALITATIVE PSYCHOLOGY: A PRACTICAL GUIDE TO RESEARCH METHODS* 53, 53-84 (Jonathan A. Smith ed., 2015).

<sup>98</sup> See generally Pat Bazeley, *Analysing Qualitative Data: More Than ‘Identifying Themes,’* 2 *MALAYSIAN J. QUALITATIVE RES.* 6 (2009) (discussing theme identification as a strategy that supports qualitative data research); Virginia Braun & Victoria Clarke, *Using Thematic Analysis in Psychology*, 3 *QUALITATIVE RES. PSYCHOL.* 77 (2006) (defining thematic analysis and its role in qualitative studies).

<sup>99</sup> Bazeley, *supra* note 98, at 6. One example of a concept might be the impact of structural issues, such as homelessness. See *id.*



and remain strongly linked to the data collected specifically for the assessment of indigent client civil legal needs.<sup>100</sup>

We are aware that our personal professional experiences shape our interpretation of the data and they rely upon reflexivity to identify the ways in which this informs outcomes. As sociologist Kathy Charmaz has written, “No qualitative method rests on pure induction — the questions we ask of the empirical world frame what we know of it.”<sup>101</sup>

### III. STUDY FINDINGS

Below we provide a brief overview of client participants in the study, in part to provide a better sense of their demographics, life experiences, and available resources. We then present themes that emerged from all of the interviews conducted — among public defenders, social workers, and their clients.

Themes from the study include: (1) *Information Scarcity* — clients do not have access to information about the availability and scope of legal services, or to substantive and procedural legal information relevant to their life experiences; (2) *Procedural Barriers* — procedural complexity, logistical difficulties, and limited education and literacy make it difficult for clients to navigate the system and access benefits or legal solutions; (3) *Structural Barriers* — poverty and its attendant challenges limit the time, ability, and bandwidth public defender clients have available to resolve civil legal problems (or criminal ones); and (4) *Legal Assistance: Valuable but Unreliable* — while clients’ view of lawyers was not unduly negative, and they expressed openness to additional legal assistance, their perceptions and experiences with the justice system and with lawyers, both criminal and civil, left some doubt as to whether lawyers would have a significant impact on their unaddressed needs.

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<sup>100</sup> See, e.g., JOHN W. CRESWELL, RESEARCH DESIGN: QUALITATIVE, QUANTITATIVE, AND MIXED METHODS APPROACHES 199-200 (4th ed. 2014) (describing how coding of the data can be used to generate themes); PATTON, *supra* note 96, at 542 (same); Braun & Clarke, *supra* note 98, at 79 (describing thematic analysis as a “method for identifying, analysing and reporting patterns (themes) within data”).

<sup>101</sup> Kathy Charmaz, *Grounded Theory in the Twenty-First Century: Applications for Advancing Social Justice Studies*, in THE SAGE HANDBOOK OF QUALITATIVE RESEARCH 507, 509 (Norman K. Denzin & Yvonna S. Lincoln eds., 3rd ed. 2005).

### A. Overview of Clients Interviewed

Almost all participants interviewed were male (only two were female), and most self-identified as black or African-American.<sup>102</sup> Client interviewees ranged in age from eighteen to seventy-one. Approximately one-third of those interviewed had graduated from high school, and another few had obtained their general education diploma (“GED”).<sup>103</sup>

Only twenty percent of those interviewed had ever sought civil legal assistance. Although most of the clients had little experience with legal aid or civil legal assistance more broadly, many had prior life experiences suggesting that they may have benefitted from it, or at least may have had some need — including, for example, potential needs relating to housing or school suspension or expulsion. Attorneys spoke to additional needs they witnessed that may be going unaddressed — for example, issues with securing benefits for oneself or one’s children. Thirty-seven percent of participants had experienced eviction,<sup>104</sup> many of them as children — it was not clear in many of these cases whether appropriate legal procedures had been followed. Approximately forty percent of those interviewed were homeless at the time of arrest<sup>105</sup> and sixty-seven percent said that they have experienced homelessness.<sup>106</sup> Forty percent of participants had been expelled from school and sixty-three percent had been suspended from school; only thirty percent had not had either experience.<sup>107</sup>

<sup>102</sup> The study included five white males and two black females.

<sup>103</sup> Of the thirty clients interviewed, thirty-seven percent had graduated from high school. Eighty percent of the white clients had graduated from high school while only twenty-eight percent of the black clients had graduated from high school.

<sup>104</sup> This included both women interviewed. *Cf.* Sabbeth, *supra* note 71, at 89-90 (regarding housing court’s disproportionate involvement of/impact on black women).

<sup>105</sup> Of the black clients interviewed, thirty-two percent were homeless at the time of arrest, while eighty percent of the white clients interviewed were homeless at the time of their arrest.

<sup>106</sup> Of the black clients interviewed, sixty percent had experienced homelessness; among the white client group, one hundred percent had previously experienced homelessness.

<sup>107</sup> A 2018 report by the U.S. Government Accountability Office emphasized the longer-term effects school discipline can have on the individual and on society:

Research has shown that students who are suspended from school lose important instructional time, are less likely to graduate on time, and are more likely to repeat a grade, drop out of school, and become involved in the juvenile justice system. The effects of certain discipline events, such as dropping out, can linger throughout an individual’s lifetime and lead to

Fifty-seven percent of respondents did not have health insurance, and seventy-six percent of those without health insurance stated that they have an existing medical condition (including mental health issues). Nearly two-thirds of those interviewed self-identified as having an existing mental health condition or diagnosis, and half reported that they had issues with addiction.

As to the question of how study participants might access such services: half of those interviewed did not have access to a computer, but nearly all have at least intermittent access to a smartphone (when not incarcerated). Many did not have a driver's license (forty percent) or had a suspended license (another thirty-seven percent). Twenty-seven percent did not have any form of valid identification.

This study was conducted at two urban public defender offices in Georgia and therefore is limited to the experience of a small group of public defenders, social workers, and indigent clients.<sup>108</sup> As such, the results are not generalizable across these offices or the state. Nevertheless, the project is representational<sup>109</sup> and the first of its kind to use in-depth interviewing to provide qualitative data on the civil legal needs of indigent criminal defendants.

## B. Themes

### 1. Information Scarcity

One theme emerging from the interviews was that many public defender clients are not aware of civil legal service providers or that they exist as a possible resource to address problems they have experienced. Respondents conveyed unawareness not only with respect to the resources available to address civil legal needs, but also the substantive law relevant to the problems underlying those needs

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individual and societal costs [such as] lost wages and tax revenue, increased crime, and higher welfare and health costs.

U.S. GOV'T ACCOUNTABILITY OFFICE, K-12 EDUCATION: DISCIPLINE DISPARITIES FOR BLACK STUDENTS, BOYS, AND STUDENTS WITH DISABILITIES 1-2 (Mar. 2018), <https://www.gao.gov/products/GAO-18-258> (footnote omitted). In addition, the report's findings reveal that "[b]lack students, boys, and students with disabilities were disproportionately disciplined in K-12 public schools . . ." *Id.* at 12.

<sup>108</sup> It should also be noted that the two offices that were the subject of this study are rare within the state as to their inclusion of full-time social workers on staff. To the best of our knowledge, the only other public defender offices with social workers on staff are the Western Judicial Circuit Public Defender Office in Athens and the state's Capital Defender Office.

<sup>109</sup> See *Georgia Profile*, *supra* note 86 and accompanying text.

(e.g., eviction) and the procedures required to address legal issues or to obtain benefits.

When asked if they had ever attempted to obtain legal assistance from local legal aid providers, such as the Atlanta Legal Aid Society, Georgia Legal Services Program, or the Atlanta Volunteer Lawyers Foundation, many participants said that they had never heard of the organizations or were not aware they could receive assistance from them.<sup>110</sup> One participant after another (some excerpts provided here as examples) said that no one had ever made them aware of the availability of such services:

“Well, nobody ever asked me about doing it.”<sup>111</sup>

“I wasn’t really aware that I could access those.”<sup>112</sup>

“I’ve never even heard of them.”<sup>113</sup>

“I mean — they don’t have it to where you know those things. It either has to be, like, word of mouth. Or you just have to know what you know.”<sup>114</sup>

“She [my mother] didn’t know. She wasn’t educated enough to know — to think to go that route.”<sup>115</sup>

Even when there was some level of awareness, there seemed to be a disconnect in how to actually get and benefit from assistance. One client who had unsuccessfully sought out civil legal assistance said:

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<sup>110</sup> Given that participants qualified for services from the public defender, it is likely that they would also qualify for civil legal aid. *See Who We Are*, LEGAL SERVS. CORP., <https://www.lsc.gov/about-lsc/who-we-are> (last visited Feb. 13, 2018) (LSC-funded programs help people who live in households with annual incomes at or below 125 percent of the federal poverty guidelines.). Under Georgia law, indigent defendants are defined for purposes of receiving public defender services as follows: for those charged with misdemeanors, less than 100 percent of the federal poverty guidelines; for juveniles, those whose parents earn less than 125 percent of the federal poverty guidelines; and for those charged with felonies, less than 150 percent of the federal guidelines. GA. CODE ANN. § 17-12-2(6) (2019). At least one client expressed uncertainty as to whether he would qualify for services from legal aid.

<sup>111</sup> Interview with John, Client, Cty. Jail 2 (Oct. 3, 2017) (notes on file with author).

<sup>112</sup> Interview with Draco, Client, Cty. Jail 1 (Oct. 14, 2017) (notes on file with author).

<sup>113</sup> Interview with Constantine, Client, Cty. Jail 2 (June 17, 2017) (notes on file with author).

<sup>114</sup> Interview with Teresa, Client, Atlanta, Ga. 21 (Sept. 7, 2017) (notes on file with author).

<sup>115</sup> Interview with Niles, Client, Cty. Jail 21 (Sept. 6, 2017) (notes on file with author).

When you want to contact them, you can't get to them. They put the flyers out. They say that they're there, but you know, you can't really actually talk to anyone about it. And that was the most disappointing part about that that I experienced . . . . [They're saying] "We're there to help you. We want to help you," but at the same token, how can you help me if I can't get in touch with you? And that's where the disappointment of that came. It's always out there, but it's hard getting in touch with them.<sup>116</sup>

There did appear to be some confusion — even for those who were not aware of the services and who had not availed themselves of them — as to what their relationship to such services might be, and some possible conflation of their legal rights under the civil and criminal systems.<sup>117</sup> For example, one client stated that he "had not really been made aware of the legal services that [he was] entitled to,"<sup>118</sup> suggesting a parallel right to counsel that does not exist in most civil cases.<sup>119</sup> The same participant was shocked to know that assistance with certain civil issues — like bankruptcy — could be obtained for free ("They can help? For free?"). Another client echoed this same understanding, stating that "when you deal with an [civil] attorney, you've got to pay them."<sup>120</sup>

Another source of possible confusion was the role that the law might play in situations lacking the formality often associated with court procedures. One client distinguished the procedures by which his suspension decisions were made from more official court processes, where formal rules, like hearsay, might apply: "That ain't like court, you know?"<sup>121</sup> The same client mentioned that no one ever

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<sup>116</sup> Interview with Michael, Client, Cty. Jail 3 (July 8, 2017) (notes on file with author).

<sup>117</sup> Some attorneys and social workers relayed that their clients did not understand the difference between the civil and criminal justice systems. *E.g.*, Interview with Minerva, Soc. Worker, Pub. Def. Office 7 (May 31, 2017) (notes on file with author); Interview with Sylvia, Att'y, Pub. Def. Office 7 (June 16, 2017) (notes on file with author); Interview with Tequila, Soc. Worker, Pub. Def. Office 6 (July 6, 2017) (notes on file with author).

<sup>118</sup> Interview with Fred, Client, Cty. Jail 2 (June 16, 2017) (notes on file with author).

<sup>119</sup> See Sandefur & Smyth, *supra* note 11, at 2.

<sup>120</sup> Interview with Constantine, *supra* note 113, at 24. Yet another client (Albert) said: "I tried to file for it [disability], but you have to have attorneys and stuff to do that, and I can't afford one." Interview with Albert, Client, Cty. Jail 29 (July 4, 2017) (notes on file with author).

<sup>121</sup> Interview with Constantine, *supra* note 113, at 7.

questioned his suspensions, even though he believed improper evidence had been considered and that many of the suspensions were unjustified.<sup>122</sup>

In addition to a general unawareness of legal aid and its capacity for assistance, study participants understandably lacked substantive legal knowledge that would bear on many of the issues they raised. For example, many individuals who had experience with school disciplinary hearings (some ultimately resulting in suspension or expulsion) were not aware of the ability to have an attorney present during such hearings. Nor were they (or their parents or legal guardians) aware of the procedures required by due process to remove a child from school. One of the attorneys said that, to her knowledge, the child (and his/her parent) is unrepresented by counsel in almost every case, and is at a significant disadvantage given their lack of knowledge about the process and the fact that the opposing side does have such expertise.<sup>123</sup> She went on to explain that even if school personnel do not have a lawyer present, they are familiar enough with the process to have “an edge up on the parents.”<sup>124</sup> In contrast, she explained, the parents are often not informed about the procedures and what they might do to prepare. For example, they often are not told they can bring witnesses to testify on their behalf.<sup>125</sup> It is worth noting that, in several cases — particularly in the education context — clients relayed that they not only lacked the assistance of a lawyer but did not have any assistance at all.<sup>126</sup>

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<sup>122</sup> See *id.* at 5-14. As Rebecca Sandefur has observed, unlike the middle class, which possesses a “sense of entitlement” that “the rules and procedures governing their experiences and the consequences of their actions [should be] explained to them and, more importantly, customised to their needs,” the poor and working class are more typically characterized by a “sense of constraint” and tend to demand less of systems and sources of authority. Sandefur, *The Importance of Doing Nothing*, *supra* note 41, at 116-17.

<sup>123</sup> See Interview with Bailey, Att’y, Pub. Def. Office 60 (July 13, 2017) (“I mean 99 percent of the time it’s a parent. Who’s taking time out of work — knows nothing about the process. And then the school has, you know, sometimes they’ll have a lawyer representing them there, and then there’s — the hearing officer is a lawyer.”) (notes on file with author).

<sup>124</sup> *Id.* at 60.

<sup>125</sup> *Id.* They are also required to provide advance notice if a child will be represented so that they the school attorney can be present. *Id.* at 59.

<sup>126</sup> Several clients reported not having any assistance with respect to suspension decisions, often because the parent or legal guardian was unavailable or unable to make it from work. E.g., Interview with Constantine, *supra* note 113, at 1-2 (“No, ma’am. My mom was working.”); Interview with Niles, *supra* note 115, at 9.

In the housing context, many individuals experienced poor conditions and the inability to get the landlord to make necessary repairs. For example, one client did not have heat or air conditioning for a year.<sup>127</sup> Others had experienced malfunctioning appliances, utility cutoffs (attributable to the landlord, not to nonpayment of bills), and rodent and insect infestations. In many cases, participants' parents or families refused to pay rent when landlords failed to make necessary repairs. Another client explained that he was living with his mother in a place where the toilets were not working properly: "She said that she wasn't going to pay the rent until they came and fixed the toilets, and they just evicted us."<sup>128</sup> In another case, a client explained of his mother:

She wouldn't pay rent, and she would take pictures of everything, and then she would go to court, and she wouldn't pay rent for about a year, year and a half, and then when they finally say, "Okay, well you need to pay this money back now," she's stacked up a couple of thousand.<sup>129</sup>

None of those individuals seemed to be aware that under Georgia law, tenants are not authorized to withhold rent under such circumstances — instead, there is a specific "repair and deduct" procedure that must be followed.<sup>130</sup> Many tenants are also unaware that landlords cannot engage in "self-help" evictions outside of the normal court process: they are required to follow the procedures prescribed by Georgia law,<sup>131</sup> otherwise the eviction is considered illegal and could lead to

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<sup>127</sup> Interview with Ben, Client, Cty. Jail 38 (July 1, 2017) (notes on file with author).

<sup>128</sup> Interview with Bobby, Client, Cty. Jail 16 (June 17, 2017) (notes on file with author).

<sup>129</sup> Interview with Percy, Client, Cty. Jail 18 (June 28, 2017) (notes on file with author).

<sup>130</sup> While a tenant cannot withhold rent in response to a landlord's failure to address certain issues, Georgia law does provide for a "repair and deduct" remedy. GA. DEP'T OF LAW, GEORGIA LANDLORD TENANT HANDBOOK: A LANDLORD-TENANT GUIDE TO THE STATE'S RENTAL LAWS 10 (Dec. 2017), [http://www.consumer.ga.gov/uploads/pdf/GA\\_Landlord\\_Tenant\\_Handbook\\_2017.pdf](http://www.consumer.ga.gov/uploads/pdf/GA_Landlord_Tenant_Handbook_2017.pdf). Under this procedure, a tenant must first give notice to the landlord of her intent to use this remedy if repairs are not made in a reasonable amount of time (reasonable under the circumstances). *Id.* She must then wait to see if the deadline is met, complete the repairs before withholding and deduct the costs from subsequent rent payments, including the related receipts in place of — or along with the reduced — rent payment. *Id.* at 7-8.

<sup>131</sup> The summary proceedings provided by Title 44 of the Georgia Code describe the only lawful process by which a tenant may be evicted. *See Ralls v. E.R. Taylor Auto Co.*, 202 Ga. 107, 109 (1947); *see also* GA. CODE ANN. §§ 44-7-49-59 (2019).

additional affirmative legal claims, including breach of contract and affirmative intentional tort claims.<sup>132</sup> None of the interviewees seemed to parse the legality of evictions they had experienced. One social worker observed: “They [clients] don’t always understand how to — that they can talk to someone about their child’s custody or their eviction that was inappropriate . . . they don’t have any clue what to do with that information.”<sup>133</sup>

One public defender described her understanding of her clients’ awareness regarding civil legal assistance as follows:

I think there’s a significant level of uneducated — people are not in the know. The people that we work with and that we help do not have the same level of access to information. They don’t typically have internet access, and any internet access they have is limited. They grew up in an environment where the information is not passed from person to person . . . . And so there’s none of the knowledge of it, and if they get evicted, that’s just something that happens to me because some landlord’s an asshole. Not because there was something I could’ve done to prevent that from happening . . . . I don’t think people understand that having assistance processing through that stuff can help you as much as having assistance when you’re processing through the criminal justice system. I think people should take it as the same, but they don’t. And they don’t understand. They just have no awareness of that at all.<sup>134</sup>

## 2. Procedural Barriers

Another theme centered on the processes people must navigate in order to receive any type of assistance or benefits. Often, these processes are quite complex, and resolving one issue can require hundreds of steps.<sup>135</sup>

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<sup>132</sup> When the landlord fails to follow the required process for eviction, possible causes of action may include trespass and interference with the tenant’s right of quiet enjoyment. *See* *Swift Loan & Fin. Co. v. Duncan*, 394 S.E.2d 356, 358 (Ga. Ct. App. 1990). If personal property is taken or destroyed, conversion may be an included claim, and a claim based on abuse of the dispossessionary process may also be available. *See id.* at 557.

<sup>133</sup> Interview with Tequila, Soc. Worker, *supra* note 117, at 6-7 (notes on file with author).

<sup>134</sup> Interview with Michelle, Att’y, Pub. Def. Office 8-9 (May 16, 2017) (notes on file with author).

<sup>135</sup> *See* Ronald W. Staudt and Paula L. Hannaford, *Access to Justice for the Self-Represented Litigant: An Interdisciplinary Investigation by Designers and Lawyers*, 52



Obtaining benefits such as supplemental security income (SSI) or housing assistance and valid identification (often a prerequisite to other benefits in the civil and criminal contexts) can require multiple appointments, the ability to complete forms, and a reliable address at which to receive information. As a result, they require time — often lots of it.<sup>136</sup> Many clients interviewed shared experiences of applying for housing or financial benefits many times — in some cases, as many as eight or nine times — and being denied, even when they had been approved elsewhere. One client said of applying for food stamps: “It’s a terrible process, honestly. They seem to deny every single request off the chart by rote. And then you have to petition, petition, petition for more benefits.”<sup>137</sup> With few available sources for guidance, clients struggle to obtain accurate information:

Client 1: Well, they told me — for food stamps, you get denied the first time. They always deny you the first time. It’s not like they —

Interviewer: Who told you that?

Client 1: The people at the food stamp place.<sup>138</sup>

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Client 2: They said I didn’t qualify for it based on income, and I asked the lady, and she was like, “Some people just don’t qualify.” [And I said:] “What is the qualifications because I need to know.”<sup>139</sup>

Some clients do not have the necessary cognitive abilities to successfully navigate these processes. For example, one client explained that he had never applied for housing vouchers or subsidies

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SYRACUSE L. REV. 1017, 1027 (2002) (identifying nearly two hundred discrete tasks self-represented litigants must perform in civil cases); *see also* Interview with Rhonda, Soc. Worker, Pub. Def. Office 22 (July 14, 2017) (notes on file with the author) (“Yeah. And then if they even get an application in, a lot of times they’re denied the first time or the second time or the third time, and understanding, you know, how to get to a disability attorney and that whole process, it’s just — so complicated.”).

<sup>136</sup> *E.g.*, Interview with Draco, Client, *supra* note 112, at 22 (one client relayed: “And I waited at the [Division of Family and Children Services] office. I had to run at 9 a.m. They open at 8 or something like that. Or 8:30. I arrived at 9 a.m., the line was already outside through the door; and I was there until about 4 p.m.”).

<sup>137</sup> *Id.* at 5.

<sup>138</sup> Interview with Chris Smalls, Client, Cty. Jail 32-33 (July 4, 2017) (notes on file with author).

<sup>139</sup> Interview with Teresa, Client, *supra* note 114, at 28.

due to an inability to access the system: “I can’t read and write, and I need help.”<sup>140</sup> Another client spoke to the difficulties those with drug problems may experience: “They don’t know nothing about the law. They ain’t good at reading and writing. And they don’t understand.”<sup>141</sup> One of the social workers explained how such limitations can have serious consequences in clients’ lives: “[They need] [s]omeone to really help them get their benefits or to not get kicked out of housing because they don’t understand that the guy said that you have to pay me \$500 but that your paperwork says you only have to pay him \$16. Because you can’t read.”<sup>142</sup>

For those clients who can read and write, the process can still be overwhelming, given the information and logistical coordination required:

[A] lot of times our clients don’t really even know how to get that process [to obtain financial benefits and subsidies] started, especially the ones that really, really need it. They don’t really know where to start. They don’t know that you need to go and get a diagnosis, and then if you go and get the diagnosis, that you need to keep up with those mental health appointments. Or they don’t have access to keep up with those mental health appointments. They don’t have the transportation or — just the support system or address or stability to be able to do that on an ongoing basis in order to qualify for the assistance.<sup>143</sup>

I don’t know what the applications look like or how many appointments you go to. But just based on what they’ve [clients] told me, I know that it’s long. I know that it’s complicated. I know there’s really — my impression is that there’s no room for error.<sup>144</sup>

One client expressed similar frustration with the process in his attempt to apply for SSI:

I applied online, and it said that I was denied. I answered all their questions and stuff and then I got a call back that said,

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<sup>140</sup> Interview with Wes, Client, Cty. Jail 19-20 (June 17, 2017) (notes on file with author).

<sup>141</sup> Interview with Tony, Client, Cty. Jail 6 (June 17, 2017) (notes on file with author).

<sup>142</sup> Interview with Tequila, Soc. Worker, *supra* note 117, at 79.

<sup>143</sup> Interview with Rhonda, Soc. Worker, *supra* note 135, at 22.

<sup>144</sup> Interview with Jessica, Soc. Worker, Pub. Def. Office 14 (July 12, 2017) (notes on file with author).

“Maybe if you get a doctor to look at you and then come back, you might be able to get it then,” but I was like, “Why do I have to have someone else say about what I feel or what I know about myself since 8 years old. Bring me in. Set up an interview and let me come in and show it to you.”<sup>145</sup>

In several instances, clients referenced the inability to obtain benefits or employment because they lacked the necessary identification or documentation:

[A]fter my license got suspended, I applied to Checkers for a general management position. When they saw my background, they hired me on the spot . . . . I started to fill out the paperwork, and she said, “I need to see your ID. I need to see your driver’s license.” I said, “I don’t have a driver’s license; I have a Georgia ID.” She stopped the paperwork right there. It was a company requirement by Checkers. You have to have a valid driver’s license to be a manager . . . . I’ve got no identification . . . . With me not having an ID, whenever I couldn’t find side work, under the table work, I’d have to either stand on an exit ramp and hold a sign up . . . . I couldn’t get the food stamps . . . because I didn’t have the ID and stuff.<sup>146</sup>

One client said that he was unable to obtain food stamp benefits while homeless, even though he had been able to secure benefits in another state: “[W]ell, here, when I was in a homeless shelter, they didn’t give it to me. Which I thought was weird. I was homeless.”<sup>147</sup>

The added complication of being in and out of criminal custody can make certain processes even more difficult to complete:

And, you know, my clients, they’re in and out of jail a lot . . . . [I]f they miss one appointment, I know it sets them back.<sup>148</sup>

You have to go to this appointment and that appointment, then this hearing and then that hearing. This can take two years. They already have been hospitalized, incarcerated. They can’t make it. Or they finally get a hearing, and then they’re in

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<sup>145</sup> Interview with Percy, Client, *supra* note 129, at 25.

<sup>146</sup> Interview with Elliott, Client, Cty. Jail 19-26 (Oct. 14, 2017) (notes on file with author).

<sup>147</sup> Interview with Teddy, Client, Cty. Jail 11 (June 28, 2017) (notes on file with author).

<sup>148</sup> Interview with Jessica, Soc. Worker, *supra* note 144, at 14.

jail . . . [I]f someone on the thing sees you're in custody, they don't know how to function.<sup>149</sup>

[F]rom what I understand, I was scheduled for a phone interview, and I was incarcerated, so I did not [receive benefits].<sup>150</sup>

Well, actually, I sent off for the birth certificate, and before my birth certificate get back, I'm arrested, and by the time I get out, either the person I was with has moved or . . . there's always something in the way.<sup>151</sup>

### 3. Structural Barriers

In addition to procedural and administrative barriers inherent in the system, there are a number of structural barriers — relating to poverty and its attendant challenges, including a lack of stability — that impact the time and bandwidth clients have available to address their problems, including any that may be civil or legal in nature. As one attorney remarked: “They're raised in, ‘How do we get food on the table and a roof over our head today? We'll worry about tomorrow tomorrow. Let's worry about today today.’”<sup>152</sup>

This is likely evidence of a broader phenomenon affecting those of few financial means. Research by Sendhil Mullainathan and Eldar Shafir demonstrates how people living in poverty “spend an inordinate amount of energy, attention, and mental bandwidth dealing with their impoverished state.”<sup>153</sup> The intense use of mental capacity needed to address immediate needs — finding and maintaining food, shelter and employment — leaves little room to focus on other issues.<sup>154</sup> As a result, such individuals often suffer from limited bandwidth and have lower “ability to perform the basic functions that underlie higher-order behavior and decision-making.”<sup>155</sup>

<sup>149</sup> Interview with Tequila, Soc. Worker, *supra* note 117, at 27-29.

<sup>150</sup> Interview with Draco, Client, *supra* note 112, at 20.

<sup>151</sup> Interview with Jon, Client, Cty. Jail 29-30 (June 17, 2017) (notes on file with author).

<sup>152</sup> Interview with Michelle, Att'y, *supra* note 134, at 9.

<sup>153</sup> D. James Greiner et al., *Self-Help, Reimagined*, 92 IND. L.J. 1119, 1128 (2017) (citing SENDHIL MULLAINATHAN & ELДАР SHAFIR, SCARCITY: WHY HAVING TOO LITTLE MEANS SO MUCH (2013)).

<sup>154</sup> See SENDHIL MULLAINATHAN & ELДАР SHAFIR, SCARCITY: WHY HAVING TOO LITTLE MEANS SO MUCH 29 (2013) (describing how “scarcity causes us to *tunnel*: to focus single-mindedly on managing the scarcity at hand.”).

<sup>155</sup> Frank Schilbach, Heather Schofield & Sendhil Mullainathan, *The Psychological*

Many of the providers — attorneys and social workers — emphasized how, for many of their clients, homelessness is an ever-present and sometimes inevitable possibility. Many of those fortunate enough to have housing at the time of the arrest will lose that home by the time their case is resolved. In some cases, they will also lose all of their belongings — sometimes because the landlord has simply deposited them on the street.

Almost all of my clients are homeless. And if they weren't homeless when they got arrested, when they get out, they will be because they've lost the little bit they had.<sup>156</sup>

I've had clients like that. Their stuff was sitting outside, and I have called the property manager to say, "What can I do? This is all this person has." "Well, their stuff is out. They haven't paid their rent." And I'm like, "They're incarcerated. What do I do?" And that's it. They lose everything.<sup>157</sup>

I've actually asked clients — I told them, "I can't get everything. Is there something that you need?" And I've had a client say, "There's a picture of" — you know? And I've gone through the stuff before and just gotten it. Or they'll say, "My Bible that was handed down in my family. Can you just get that?"<sup>158</sup>

One attorney described the frequency with which such arguments are made in court (typically in the context of bond hearings):

[A]t least once to four times a day, we make the argument that this person will lose their house if they do not get out. They will lose their job and will be evicted. And then, if we're making that argument continuously for the same people, the argument changes: "He's lost his job. He's been evicted. He now has no place to go. We are asking for a signature bond. He's literally lost everything."<sup>159</sup>

Public defenders — and to some extent the social workers — relayed how unresolved issues in clients' lives resulted in their inability to focus on the matter at hand. In their experience, clients were often distracted by outstanding issues — for example, problems relating to

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*Lives of the Poor*, 106 AM. ECON. REV.: PAPERS & PROC. 435, 435 (2016).

<sup>156</sup> Interview with Tequila, Soc. Worker, *supra* note 117, at 20.

<sup>157</sup> Interview with Minerva, Soc. Worker, *supra* note 117, at 11.

<sup>158</sup> *Id.* at 12.

<sup>159</sup> Interview with Michelle, Att'y, *supra* note 134, at 17.

custody and mental health. Many of the structural barriers described by attorneys also affected the representation of their clients. For example, they explained that unaddressed needs and resulting instability contribute to defendants' tendency to prioritize getting out of custody over any other consideration, including possible collateral consequences.<sup>160</sup> These decisions are based on fear of losing housing, a job, or benefits like disability or SSI. One lawyer relayed:

In my experience, getting out of jail is the absolute number one priority, and people don't look at the situation with a long-term view about what pleas will do to them in the next year, like what consequence there is to them beyond that immediate, how it's going to affect them. Because people who are the poorest — yeah, they don't think about it.<sup>161</sup>

In making such decisions, clients often have little choice but to place short-term goals before longer-term objectives. This aligns with research demonstrating that people who are detained pre-trial are more likely to plead guilty — even if they are innocent — simply to get out of jail.<sup>162</sup> One attorney expressed some frustration that the clients' focus on getting out is seen by many as lawyers pushing clients to take a plea: “And because we're part of the system, they see it as us saying — ‘My attorney encouraged me to take the plea.’”<sup>163</sup>

Public defenders also referenced life circumstances that disadvantaged clients in litigating their criminal cases. For example, evidence of steady employment and an employer who can testify that the client will have a job upon release can help the defender negotiate for a better outcome.<sup>164</sup> In contrast, one defender stated that those

<sup>160</sup> One attorney explained that clients will often take a guilty plea to go back to work because even though the conviction may cause problems down the road, the current job will not fire them because of the guilty plea. Interview with Chris, Att'y, Pub. Def. Office 37 (May 23, 2017) (notes on file with author). Other interviews suggested that for other employers, any entanglement with the criminal justice system might result in termination of the client's employment. See, e.g., Interview with Michelle, Att'y, *supra* note 134, at 17.

<sup>161</sup> Interview with Steve, Att'y, Pub. Def. Office 50 (May 18, 2017) (notes on file with author).

<sup>162</sup> See, e.g., Paul Heaton, Sandra Mayson & Megan Stevenson, *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 STAN. L. REV. 711, 714-17 (2017) (discussing the negative impacts of incarceration and the incentives of accepting a plea deal).

<sup>163</sup> Interview with Michelle, Att'y, *supra* note 134, at 19.

<sup>164</sup> E.g., Interview with Pinetree, Att'y, Pub. Def. Office 42 (June 6, 2017) (notes on file with author) (According to one attorney: “[Y]our negotiation or ability to negotiate is increased significantly when a person has a steady job where they have

defendants who are not working are sometimes punished more severely because the assumption is that they don't want to work or that they will get into more trouble because they can't find a job.<sup>165</sup> Another attorney mentioned that certain things — like having valid identification — can be critical to getting a case dismissed or being placed into a diversion program.<sup>166</sup> The inflexibility and tenuous nature of the jobs that clients or their family members have can also make it difficult for them to attend hearings — particularly those who work on an hourly basis. Other obstacles can include difficulty in simply getting oneself to the courthouse or to report for probation. One attorney described (in the parent's voice) how some clients' parents struggle to help them meet their criminal case obligations: "I can't keep coming back to court with you. I can't keep bringing you to meet with your probation officer . . . I can't do that. I don't have enough time. I can't get here. I don't have a car."<sup>167</sup>

The number of barriers that low-income people, and criminal defendants in particular, face in their daily lives can easily snowball and become overwhelming.<sup>168</sup> One attorney explained how this "death spiral"<sup>169</sup> can lead clients to a place where they have no choice but to act in ways that may place them in future legal danger:

Once you accumulate those fees and you can't pay those fees and you start driving with license suspended or you start

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somebody at that job that can vouch for them being a good worker . . .").

<sup>165</sup> Interview with Sylvia, Att'y, *supra* note 117, at 53-54.

<sup>166</sup> Interview with Chris, Att'y, *supra* note 160, at 43 (In addressing the possible benefits of civil legal assistance, one public defender responded: "Giving [my clients] the ability to properly prioritize their criminal case. But then also sometimes to give them the ability to do things that would reduce the charges or get the charges dismissed or those kinds of things as well. Sometimes, in a diversion program, and again, this ties directly into that, but, 'If you get your ID and do community service and do this other thing, then we're going to dismiss the case against you.' 'Great! Best outcome I could hope for.'").

<sup>167</sup> Interview with Max, Att'y, *supra* note 9, at 21.

<sup>168</sup> E.g., Interview with LaToya, Soc. Worker, Pub. Def. Office 93-94 (Aug. 15, 2017) (notes on file with author) (One social worker explained: "[T]hat's overwhelming. Your livelihood being affected in any way, be it your roof, feeding your kids, being able to provide clothing and shelter for them, being able to make sure they get an education, all of that stuff is your life — and to have somebody help you when those issues arise, that's huge. Because that's a lot. That's a lot, a lot, a lot. And then not knowing if my child is kicked out — I don't have a place for them to go, and then I get in trouble for educational neglect, and then I get locked up, and then none of my kids have anybody looking out for them, and now I don't have a job, so that when I get out of jail, I've got to — that's huge. That's too much.").

<sup>169</sup> Interview with Steve, Att'y, *supra* note 161, at 58.

doing whatever else, and you start going down that spiral, and there's nothing that can get you out . . . I don't know any way to avoid having to pay those reinstatement fees to get your license back. Like, you're an otherwise law-abiding citizen, but you just have driven — you drive a car with a suspended license. You pay insurance on the car. You pay registration on the car . . . You have to make choices. The choice is, like, "This is your second charge in 5 years, so there's not really a defense to it, but you are the sole breadwinner of your family and you live 30 minutes by car to the job that provides for yourself and your children and your spouse." You drive the car.<sup>170</sup>

#### 4. Legal Assistance: Valuable but Unreliable

Respondents in our study had mixed views toward lawyers, but generally placed value on legal assistance.<sup>171</sup> In the abstract, clients seemed to believe that many lawyers are well-intentioned. Yet, due in part to certain structural disadvantages, they saw unpaid, public lawyers as less effective. Their attempts to reach out to and obtain legal assistance in the civil setting were often unsuccessful, typically resulting in no assistance at all.

When asked about their views on lawyers generally, many clients expressed that some lawyers were good, many mean well and many try their hardest in advocating for their clients:

When I was younger, I wanted to be a lawyer. So I like lawyers. I know that it's a lot of work and really it's probably more paperwork than I'd like to deal with, but I like lawyers. I like people that defend justice and are for justice.<sup>172</sup>

Lawyers generally — lawyers, they try. They try to do the best they can most of the time.<sup>173</sup>

You have some ones that'll put up a fight for you. Some lawyers are good.<sup>174</sup>

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<sup>170</sup> *Id.* at 58-59.

<sup>171</sup> In interviewing participants, we asked them specifically to refrain from commenting on their views regarding their public defender or their pending criminal case.

<sup>172</sup> Interview with Teddy, Client, *supra* note, 147 at 3.

<sup>173</sup> Interview with Ben, Client, *supra* note 127, at 3.

<sup>174</sup> Interview with Reggie, Client, Cty. Jail 2 (July 3, 2017) (notes on file with author).



I mean that's really all I've ever had is public defenders, and they've always seemed to do a good job.<sup>175</sup>

They try to get to know you before they get your case, so that way everything can go smoothly.<sup>176</sup>

On several occasions, clients recognized the value of being represented by a lawyer. For example, one client said (of the education context): “[O]nce you’re suspended as a student, you really don’t have a say so at the end of the day. Unless you have representation.”<sup>177</sup> Other client statements reflected more ambivalence: “Well, I never get in a situation where I need a lawyer, but I guess they’re all right if you need them.”<sup>178</sup>

In other cases, attorneys were perceived as “lazy,” too quick to resolve the case, or as spending inadequate time on the case.<sup>179</sup> Most of the negative comments about lawyers distinguished between those who are paid or private and those who are not (with the latter being perceived more negatively). This was true even for interviewees who had no personal experience with a private or paid attorney.

You’ve got a very, very good chance if you have a private attorney. Public defenders do do their jobs, but it’s — you know, it’s like a guinea pig to them, you know.<sup>180</sup>

You know, you got some lawyers who will work for you some and depending on how you pay them, so it’s pretty much how they going to do for you, you know what I mean? Some — the majority of lawyers going to pretty much do for what you pay for.<sup>181</sup>

I think that they do their best, but you know, if you’re not paying for counsel, if you’re not really paying for counsel —

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<sup>175</sup> Interview with Elliott, Client, *supra* note 146, at 2.

<sup>176</sup> Interview with Chris Smalls, Client, *supra* note 138, at 2.

<sup>177</sup> Interview with Morgan, Client, Cty. Jail 6 (Oct. 3, 2017) (notes on file with author).

<sup>178</sup> Interview with John, Client, *supra* note 111, at 2.

<sup>179</sup> See, e.g., Interview with Bobby, Client, *supra* note 128, at 3 (“You know, they just make you take the easiest way out, so they can spend the shortest amount of time on your case.”).

<sup>180</sup> Interview with Constantine, Client, *supra* note 113, at 2.

<sup>181</sup> Interview with Tommy, Client, Cty. Jail 3 (June 28, 2017) (notes on file with author).

and you've got to really pay for good counsel — you're not going to get a fair shake.<sup>182</sup>

The only difference is with a lawyer that I know of is that they're going to work for their money. The more money you pay them, the more they're going to work.<sup>183</sup>

Well, see, most lawyers, I feel like, you know, if you're not paying them, like I tell a lot of guys, they don't have your best interest.<sup>184</sup>

One client expressed that the system was skewed in favor of those with private attorneys: “[Those with private attorneys] get a better chance, better sentence, better — you know — even the judge will make it better for them defending you.”<sup>185</sup>

Some respondents acknowledged the outside pressures public defenders in particular might face: “I know that the public defenders are overwhelmed, and their caseload is unbelievable . . . . Unfortunately, the caseloads are just overwhelming; and, usually, the burnout rate is very high.”<sup>186</sup> Others saw similar pressures, but connected them to less effective lawyering:

I feel like they are under a lot of pressure from the DA. The DA department. They seem like they can't really, really do their job. If they really, really do their job, it's going to cause rhetoric between them [sic] [the defense attorney] and the DA office. Because you're not really listening to your defendant's side of the story.<sup>187</sup>

When discussing civil issues, respondents in this study did not seem to suggest a reluctance to ask for help based on negative perceptions of lawyers or the court or based on their experiences with the criminal system. To the contrary, clients repeatedly expressed an openness to civil legal assistance and any help or information about services that may be available.<sup>188</sup> Many respondents either were unaware such assistance was available, see Part III.B.1 above, or took matters into

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<sup>182</sup> Interview with Michael, Client, *supra* note 116, at 8.

<sup>183</sup> Interview with Niles, Client, *supra* note 115, at 4.

<sup>184</sup> Interview with Tony, Client, *supra* note 141, at 5.

<sup>185</sup> Interview with Constantine, Client, *supra* note 113, at 4.

<sup>186</sup> Interview with Draco, Client, *supra* note 112, at 2.

<sup>187</sup> Interview with Michael, Client, *supra* note 116, at 7.

<sup>188</sup> E.g., Interview with Draco, Client, *supra* note 112, at 1 (“[A]s a veteran, I know I have some services available there; but I just didn't know about any[thing] outside.”).

their own hands, either attempting to fix the problem themselves or accepting it as unresolvable and seeking an alternative solution (like moving).<sup>189</sup> In one case, a client's heat and air were not working and even after repeated contacts, it took the landlord roughly a year to make the repair. In the interim, the respondent's family continued to make rent payments.<sup>190</sup> In another instance, the same respondent reported that after the landlord failed to repair a malfunctioning sink, a family member fixed it. The respondent relayed that when these types of issues happened, his mother and grandmother often handled them on their own, not thinking to ask for help. Another client explained that, like many public housing residents, he had gained a fair amount of plumbing and electrical experience in the process.<sup>191</sup> Other respondents — including one who dealt with a rodent infestation for about a year<sup>192</sup> — simply decided to leave the property and find another place to live.

While clients were open to civil legal assistance, they also appeared to be open to self-help tools that would provide them with information they could use to address situations more effectively on their own. For example, one client relayed:

I mean, I just feel like — it's certain stuff — like, we hear the bad about these — about legal aid organizations, lawyers, like all of the bad things. But if we actually had something or someone that we could actually go to to get the real know [sic] facts, I think a lot of stuff would be different with this

...

Like just — basically the basic information, like just a starting point, like point me to the right direction.<sup>193</sup>

Several respondents' views were influenced by failed attempts to obtain legal assistance.<sup>194</sup> These views were often informed not just by

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<sup>189</sup> See Interview with Tequila, Soc. Worker, *supra* note 117, at 7-9 (“They get screwed, they just keep going because that’s what life does to you.” The same social worker later relayed the sentiments of her clients: “I’ve been evicted. I got screwed over by the apartment complex because they used some loophole. I go to legal aid. They don’t deal with that. Who am I going to call? That person’s never going to help me. Fuck it. I’m out.”).

<sup>190</sup> Interview with Ben, Client, *supra* note 127, at 38-39.

<sup>191</sup> Interview with Michael, Client, *supra* note 116, at 22.

<sup>192</sup> Interview with Albert, Client, *supra* note 120, at 12-13.

<sup>193</sup> Interview with Teresa, Client, *supra* note 114, at 57.

<sup>194</sup> Both lawyers and clients discussed instances in which clients wished to pursue civil actions against other actors, including law enforcement. E.g., Interview with

clients' own experiences, but also by common perceptions, or the word on the street.

When clients reached out to legal service providers beyond their public defender, they often struggled to get a satisfactory response.<sup>195</sup> Of the six people who had reached out to legal aid or similar civil providers for assistance, three received no response<sup>196</sup> and one “tried, but . . . didn’t really pursue it”<sup>197</sup> because he felt he didn’t qualify under the relevant criteria. Another had reached out to legal aid to assist him in addressing a work injury.<sup>198</sup> He reported that they “weren’t interested” and that he was “dragged around, so [got] discouraged and left it alone.”<sup>199</sup> The last person attempted unsuccessfully to obtain assistance (while living in New York City) in filing a federal lawsuit challenging his illegal incarceration.<sup>200</sup> Even though they may not have had a positive experience, many of these individuals continue to believe that lawyers offer important or valuable assistance under the right circumstances. One client said: “Some of them — some of these attorneys are serious and some that are on the clock and some, they’re serious, they throw themselves all into it, helping you. And make you feel more comfortable when they

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Steve, Att’y, *supra* note 161, at 12 (one attorney identified several civil legal issues that his clients wanted to pursue including public benefits, bankruptcy, child custody, and police brutality). Although no one seemed to dispute that this is something outside of the scope of the public defender’s legal representation, it may have also contributed to clients’ more general impression that the law has limited utility to address perceived wrongs. *See, e.g.*, Interview with Niles, Client, *supra* note 115, at 2-3 (one client said he wrote to a legal services organization for assistance with a child custody issue, but that he had not heard back).

<sup>195</sup> Like public defenders, legal aid offices are typically under resourced and overburdened. *See* AM. BAR ASS’N, GIDEON’S BROKEN PROMISE: AMERICA’S CONTINUING QUEST FOR EQUAL JUSTICE 17-18 (2004) (noting that many public defenders take on caseloads that exceed national standards); Deborah L. Rhode & Scott L. Cummings, *Access to Justice: Looking Back, Thinking Ahead*, 30 GEO. J. LEGAL ETHICS 485, 488-89 (2017) (noting that “a majority of those who seek help from federally funded civil legal aid programs are turned away due to lack of resources” and that the “grossly inadequate resources [that are available] are not equally distributed”). Many of the inquiries legal aid lawyers field are also ones they cannot address due to restrictions in their service area or their substantive practice areas. *See id.* at 488-89.

<sup>196</sup> *See* Interview with Albert, Client, *supra* note 120, at 2; Interview with Morgan, Client, *supra* note 177, at 2; Interview with Niles, Client, *supra* note 115, at 2.

<sup>197</sup> Interview with Michael, Client, *supra* note 116, at 1.

<sup>198</sup> *See* Interview with David, Client, Cty. Jail 2 (Sept. 6, 2017) (notes on file with author).

<sup>199</sup> *Id.*

<sup>200</sup> *See* Interview with Percy, Client, *supra* note 129, at 2.

do.”<sup>201</sup> And, when asked about his general views on lawyers, another client said, simply, “They’re the best thing that you could possibly imagine.”<sup>202</sup>

One client who had reached out for civil legal assistance — he was referred by a program in which he was enrolled knew others who had received assistance from the same organization — was seeking help in being legitimized as his children’s father. “I felt like maybe they were just too busy. Maybe they didn’t get the letter. Maybe I misspelled something. I don’t look at them no differently. I know they’re helpful, and that’s the reason why I wrote it.”<sup>203</sup> To his credit, he said he had not been deterred, and might try to reach out again.

Many clients relied on the impression they were given by family or friends who had negative interactions with such providers. For example, one client shared a friend’s experience: “Didn’t return her calls. Didn’t lead her to the right person that she was trying to — what she was actually trying to talk to someone about.”<sup>204</sup> As a result, she concluded: “They won’t be able to help me.”<sup>205</sup> Some clients had the impression — likely from conventional wisdom in their communities — that they and their issues were not of sufficient importance to be addressed by legal aid providers: “You’ve got to be a big case for them to profile to come and see you.”<sup>206</sup>

Another client questioned his ability to be successful: “I had thought about it, but I just didn’t have much faith that I’d be able to prove anything.”<sup>207</sup> One social worker relayed: “Why are you going to seek assistance from a system that has screwed you and your family? It’s hard for them to go out and ask for help of a group of people that they don’t believe are going to help them.”<sup>208</sup> She later relayed her own perception of the difference in optics for civil and criminal proceedings, and what that may suggest about who is entitled to representation in the two settings:

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<sup>201</sup> Interview with David, Client, *supra* note 198, at 4.

<sup>202</sup> Interview with Morgan, Client, *supra* note 177, at 3.

<sup>203</sup> Interview with Niles, Client, *supra* note 115, at 3.

<sup>204</sup> Interview with Teresa, Client, *supra* note 114, at 2.

<sup>205</sup> *Id.*

<sup>206</sup> See Interview with Tony, Client, *supra* note 141, at 2. This attitude reflects Austin Sarat’s observation of welfare recipients’ legal consciousness: “Decisions about whether to help, according to welfare recipients, are made on the basis of an assessment of their character, whether they are a ‘nobody,’ rather than the merits of their claims or the extent of their needs.” See Sarat, *supra* note 9, at 354.

<sup>207</sup> See Interview with Teddy, Client, *supra* note 147, at 16.

<sup>208</sup> Interview with Tequila, Soc. Worker, *supra* note 133, at 8.

To be clear, between civil and criminal court, when I walk into the courtroom, I can tell you what we're having. . . . I can walk in and go, "Are those civil cases? Because that's a whole bunch of white dudes in really nice suits in the front." . . . So these clients of ours can't afford those lawyers. And I can walk in the courtroom and tell you if it's civil or criminal based on what they're dressed like up front.<sup>209</sup>

Given their vulnerable position, clients often deal with actors who understandably inspire skepticism of the legal profession. For example, attorneys and social workers referenced civil attorneys who sometimes work with their client base to help them obtain Supplemental Security Income (SSI)<sup>210</sup> on a contingency fee basis — after securing the benefit, the attorney would take a cut of the check. One social worker emphasized the particular vulnerability of the client population: "[T]hey work — they prey on that population in the jail. So that's their main clientele."<sup>211</sup> Although those familiar with the practice seemed skeptical of the attorneys' decision to claim such a significant portion — as high as forty or fifty percent, based on one attorney's understanding — they also seemed to acknowledge that their clients would have a hard time securing SSI on their own.<sup>212</sup>

#### IV. IMPLICATIONS AND FUTURE RESEARCH

There are a number of implications that could follow from the above findings, including suggestions for criminal justice or court reform.

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<sup>209</sup> *Id.* at 78.

<sup>210</sup> Supplemental Security Income (SSI) is a federal income supplement program designed to assist aged, blind, and disabled people with little or no income, and provides cash to meet basic needs for food, clothing, and shelter. *Supplemental Security Income Home Page*, SOC. SECURITY ADMIN., <https://www.ssa.gov/ssi/> (last visited Dec. 28, 2018).

<sup>211</sup> Interview with Rhonda, Soc. Worker, *supra* note 135, at 23.

<sup>212</sup> See Interview with Tequila, Soc. Worker, *supra* note 133, at 31; see also Interview with Michelle, Att'y, *supra* note 134, at 4 ("[The attorneys] typically take anywhere from 40% to 50% of the SSI payout."). Tequila reported that in her experience, clients needed family members to help them complete the necessary paperwork. Interview with Tequila, Soc. Worker, *supra* note 133, at 31. ("Our clients have their family help them. They can't fill out a Social Security application."). We appreciate the observation that one might view this model as making legal services available to those who would otherwise be unable to obtain assistance — because they have some money at stake and can use that as leverage to connect with private legal services. While in the abstract, such a model certainly has potential, the interviews raised some understandable concerns about the fees requested as part of such an arrangement.

For purposes of this Article, we focus on how they might inform access-to-justice reforms capable of reaching those in contact with the criminal justice system. The ideas discussed below do not constitute an exhaustive list. Rather, the hope is to illuminate some ways in which the findings gleaned from our study of indigent criminal defendants might support or contrast with existing ideas for civil justice reform.

In thinking about the implications of our findings, it is worth highlighting a meta observation about the data, which is that the individuals we interviewed suggest that this population cannot be viewed as monolithic and are, in contrast, quite diverse in their views of and approach to civil legal needs and the legal profession. It is diverse in terms of capability — some individuals will be able to benefit greatly from additional information or self-help tools, while others will require at least limited assistance and yet others will need to be led through the entire process. There is also diversity in terms of the levels of trust and confidence in law and in lawyers. While some have had negative experiences and retain mistrust or cynicism toward the system, others remain very open to the idea of legal assistance and would welcome greater access to it. Given the population's variation in needs and abilities, and in attitudes toward the legal profession, solutions will need to be similarly textured and adaptable in their application.<sup>213</sup>

Another point we wish to emphasize at the outset is the role choice — and the use of language invoking or implying choice — plays in the discussion of addressing civil legal needs and the differences in mindset that often exist for those operating at high levels of poverty. For public defender clients, the issue is not whether one would *choose* to seek out or utilize legal services, but whether: (1) they present as a possible option, or (2) cognitive, structural, and cultural barriers make it impossible or infeasible to do so. Such barriers might include the pressure imposed by an inflexible work schedule and the inability to miss a day's pay, the inability to get oneself physically to an office or courthouse, limits on the clientele legal services organizations can serve, or simply the belief that those services do not or cannot address you or your needs.<sup>214</sup>

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<sup>213</sup> See, e.g., PASCOE PLEASANCE ET AL., LAW & JUSTICE FOUND. OF NEW SOUTH WALES, RESHAPING LEGAL ASSISTANCE SERVICES: BUILDING ON THE EVIDENCE BASE 154-57 (2014) (Aus.) (describing the need to tailor legal services to client needs and capability).

<sup>214</sup> This includes the fact that, while incarcerated, this population is legally excluded from services funded by the Legal Services Corporation. *Statutory Restrictions on LSC-funded Programs*, *supra* note 6.

Many of the clients interviewed have an outlook understandably cultivated through their own and others' experiences that precludes them from conceiving of the law as something that is available to affirmatively address the obstacles they face on a day-to-day basis.<sup>215</sup> While the law is familiar, their understanding of its role is inseparable from their perception, based on experience, that the law is more often a force that works *on* them rather than *for* them. To be effective for everyone, interventions designed to increase access to legal services must not only make mechanisms for access increasingly available, but also overcome the significant hurdles described above.

#### A. *Addressing Information Gaps*

The findings above suggest that many public defender clients lack not only procedural and substantive legal knowledge that might bear on their life events and experiences, but also a thorough understanding of what types of issues might benefit from legal assistance and where and how they might secure such assistance. While this is not unique to individuals enmeshed with the criminal justice system, the fact that they are in contact with the legal system may provide a unique opportunity for intervention.

One clear potential intervention lies in identifying and utilizing untapped and possibly more effective entry points to relay information about civil legal services to public defender clients. There is little doubt that public defender clients would be well served by having better information about what legal aid does, what types of issues might constitute legal problems, what types of assistance are available, and how they can avail themselves of that assistance. One obvious point for this intervention would be at the courthouses, government agencies, and public defender offices that individuals like those we interviewed inevitably encounter in their lives and in the process of adjudicating their criminal cases.

One obstacle standing in the way of that opportunity is the siloed nature of the legal system itself. In many cases — particularly in larger court systems that warrant segmentation — civil and criminal personnel and service providers do not engage in cross-

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<sup>215</sup> This finding is analogous to what Austin Sarat wrote of welfare recipients: "Because welfare recipients are trapped or 'caught,' because they are involved in an ongoing series of transactions with officials visibly engaged in the interpretation and use of rules, the welfare poor have access to inside knowledge not generally available to those whose contacts with law are more episodic or for whom law is less visible. This inside knowledge means . . . that they have few illusions about what law is or what it can do." Sarat, *supra* note 9, at 346.



communication, and relevant resources are only provided to people already in the right silo. We must begin to think about the issues that public defender clients and other low-income individuals face less in terms of the mechanisms used to address them and instead from the perspective of those who experience them.

Some access-to-justice literature suggests that clients do not understand the difference between the civil and criminal justice systems.<sup>216</sup> Perhaps unsurprisingly, some attorneys and social workers in our study echoed that same view. Yet others suggested that clients' perception of the boundaries between the civil and criminal systems may prevent them from raising issues unrelated to their criminal case, precluding an opportunity for intervention: "I feel like a lot of them don't bring up their civil legal issues with me because they know that I'm working on their criminal case, and that's it, but I think if I were able to tell them that there are these other resources that they can look to, I think a lot of those issues that I otherwise don't hear about but are definitely impacting their lives could be addressed."<sup>217</sup> This suggests another point of diversity — and the divergent need to both funnel client issues into the appropriate silo and, at the same time, recognize when and where the silos must break down to allow for client issues to be treated holistically and most effectively.

We also must be mindful of presumptions we make about how those in need of legal services access information. Consider, for example, the recent push toward technology-based access-to-justice solutions.<sup>218</sup> There has been some recognition that low-income people interact with technology differently and may not have access in the same ways — for example, their primary mode of access may be via mobile device rather than computer, and that mode of access can be limited given

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<sup>216</sup> See, e.g., Greene, *supra* note 4, at 1289 ("Respondents were asked a specific question about the differences between the civil and criminal justice system, and [seventy-eight percent] of the respondents said they did not know.").

<sup>217</sup> See Interview with Jen, Att'y, Pub. Def. Office 32 (June 6, 2017) (notes on file with author).

<sup>218</sup> See, e.g., LEGAL SERVS. CORP., REPORT OF THE SUMMIT ON THE USE OF TECHNOLOGY TO EXPAND ACCESS TO JUSTICE 2 (2013) ("Technology can and must play a vital role in transforming service delivery so that all poor people in the United States with an essential civil legal need obtain some form of effective assistance."); J.J. Prescott, *Improving Access to Justice in State Courts with Platform Technology*, 70 VAND. L. REV. 1993 (2017) (exploring the use of an online portal to resolve legal disputes). See generally BENJAMIN H. BARTON & STEPHANOS BIBAS, REBOOTING JUSTICE: MORE TECHNOLOGY, FEWER LAWYERS, AND THE FUTURE OF LAW (2017) (exploring how information technology can expand access to justice). For an overview of the issue, see generally James E. Cabral et al., *Using Technology to Enhance Access to Justice*, 26 HARV. J.L. & TECH. 241 (2012).

reliance on prepaid and pay-as-you-go plans.<sup>219</sup> But there may be other assumptions we are making about people's technological literacy or their readiness to turn to certain sources for guidance (impacted perhaps by the mental bandwidth issues discussed above) and mistakenly concluding that it is only a matter of making the information available or providing them with that access. As one public defender remarked:

[W]e make assumptions sometimes about people's access to technology. . . . I have clients all the time that are like, "Well, I didn't have your phone number." It's like, "You could look it up on the internet!" But they don't do that. They don't realize that or they don't do it for whatever reason.<sup>220</sup>

Given the difficulties in identifying, seeking out, and getting to service providers, those seeking to increase access to justice — and those who might benefit from increased access — would be well served by interventions that meet people where they are, rather than putting information out there and assuming they will find it. The issue is not just conveying information or creating tools, but ensuring that people know those tools exist, know how they relate to the needs they experience, and will want to use them. We suggest that an increased focus on place and community-based services, as discussed in Part IV.B below, can be extremely effective in this regard.

One concern about making information available — particularly to audiences that have been relatively untapped — is that the resources to provide assistance are already extremely limited.<sup>221</sup> Indeed, there may be fewer incentives for some attorneys to widely advertise their services when they are already overwhelmed by unmet demand. The findings above suggest, however, opportunities for intervention short

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<sup>219</sup> See, e.g., Monica Anderson, *Digital Divide Persists Even as Lower-Income Americans Make Gains in Tech Adoption*, PEW RES. CTR. (Mar. 22, 2017), <http://www.pewresearch.org/fact-tank/2017/03/22/digital-divide-persists-even-as-lower-income-americans-make-gains-in-tech-adoption/> (demonstrating that of those with household incomes of \$30,000 or less, only sixty-four percent own a smartphone, fifty-six percent own a desktop or laptop computer, and only thirty-two percent own a tablet computer).

<sup>220</sup> Interview with Bailey, Att'y, *supra* note 123, at 22.

<sup>221</sup> See Rhode & Cummings, *supra* note 195, at 488 ("The number of lawyers working in legal services organizations . . . is substantially lower than necessary to meet the estimated legal needs of the poor. In 1998, the LSC funded just 3,590 attorneys. By 2015, that number had grown to only 5,000 attorneys, for a nation with over sixty million low-income individuals eligible for assistance. Funding for direct legal services comes out to just \$5.85 per eligible person per year." (footnotes omitted)).

of full representation. For many clients, more information about the process and simply where to start would be a welcome development. Providing this type of information through vehicles presented by the criminal context — and making clients aware of self-help resources that already exist or designing self-help mechanisms tailored to them — would capture an audience likely to need such services in the future and allow them to address some issues preventatively.<sup>222</sup>

Interventions to address knowledge gaps need not be limited to clients. Perhaps due in part to the siloed nature of the system, we found there was a lack of clarity throughout the criminal realm — on the part of social workers, and even some of the public defenders — as to the issues legal aid can address and what self-help resources may be available. While these providers need not take responsibility for addressing these issues themselves, a better understanding of available resources and their capabilities would enable anyone providing services to low-income individuals to identify relevant issues and make referrals as appropriate.

### B. *Overcoming Procedural and Structural Barriers*

Our findings suggest that some indigent criminal defendants have a difficult time navigating complex and time-intensive procedures. The number of steps involved, and a lack of clarity about the order in which to take those steps can lead to frustration and the inability to obtain desired results.

Some approaches advocated by civil access-to-justice scholars have potential to address the issues raised above. One of those approaches is aptly named “simplification.” Richard Zorza describes simplification in the legal context as “radically simplify[ing] the legal dispute

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<sup>222</sup> See Lois R. Lupica et al., *The Apps for Justice Project: Employing Design Thinking to Narrow the Access to Justice Gap*, 44 *FORDHAM URB. L.J.* 1363, 1366 (2017) (“[M]uch of the emphasis on the delivery of legal services that have been historically available for low-income individuals and families are *ex post* and litigation-focused. Even if a low-income person is able to access professional assistance, that person will likely contact a lawyer after the problem arises, when it is too late to take preventative measures.” (footnote omitted)). The authors also point out that users in their study wanted information on additional topics not traditionally addressed as part of self-help materials, including housing discrimination. See *id.* at 1396 (“Similarly users asked for more information or dedicated apps addressing lease terms, public and subsidized housing, courtroom and legal procedure, resources for immigrants, and additional tools to use for seeking other forms of help, such as more links to local charities, aid organizations, and state agencies.”). Those designing self-help materials should be mindful of including what clients feel they need and not just what the providers believe is most important.

resolution system so it becomes much more accessible and so the costs of accessing and operating the system dramatically decrease.”<sup>223</sup> Guiding principles of simplification include collecting information only if and when needed, at a point of convenience, from the person most easily able to provide it; minimizing the number of steps in a given process and the number of people involved in each step; and using technology to predict what is needed for a given case and contextualize information that has already been gathered.<sup>224</sup> A key element of the simplification approach, Zorza explains, is “having a system in which tasks needed for resolution can be performed by those able to perform them most efficiently and appropriately.”<sup>225</sup> This may suggest having courts take responsibility for completing tasks or aspects of tasks previously assigned to self-represented litigants.

Similarly, Jessica Steinberg has advocated for a “demand side” approach to access-to-justice reform, suggesting that rather than focusing exclusively on “supply side” fixes like the provision of counsel, we should also consider overhauling court systems themselves to better accommodate self-represented litigants.<sup>226</sup> Measures Steinberg recommends include: requiring courts rather than litigants to ensure compliance with procedural rules (e.g., by standardizing and simplifying forms, automating certain processes, and scheduling hearings and notifying parties when further action is required); altering evidence rules to privilege weight and reliability over technical admission requirements; and requiring judges to assume a more active role in developing cases.<sup>227</sup> She cautions against conflating her approach with informalism, suggesting that informal rule regimes offer little guidance to judges about how to best serve pro se litigants.<sup>228</sup>

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<sup>223</sup> Richard Zorza, *Some First Thoughts on Court Simplification: The Key to Civil Access and Justice Transformation*, 61 *DRAKE L. REV.* 845, 847 (2013).

<sup>224</sup> *Id.* at 868-72.

<sup>225</sup> *Id.* at 861.

<sup>226</sup> Jessica K. Steinberg, *Demand Side Reform in the Poor People’s Court*, 47 *CONN. L. REV.* 741, 744-46 (2015).

<sup>227</sup> *Id.* at 795-802.

<sup>228</sup> *Id.* at 802-03. Such regimes would also be less predictable to self-represented litigants who are not repeat players and lack knowledge and familiarity with practices that may have been adopted but not formally documented. *See id.* at 803-04. In addition, it is worth noting that some procedural protections are put into place specifically to preserve fairness and accuracy. It should also not be assumed that simpler proceedings will value any less from legal representation than more complex cases. At least one study has shown that “representation by a lawyer played the largest role in affecting case outcome, not when the case was more complicated, but rather

The reforms advocated by Steinberg and Zorza have potential to address some of the procedural and structural barriers discussed above. Having courts and agencies assume more responsibility for shepherding claims through the system — and minimizing the number of steps involved in any given process — would address the confusion many public defender clients face in attempting to handle such issues on their own and effectively counter the bandwidth limitations they may experience as a result of intense poverty.<sup>229</sup>

Many of the barriers public defender clients face in securing legal or other assistance to address their claims would be overcome by providers seeking out the clients rather than requiring that clients seek out relevant providers. To the extent there were any instances of clients connecting with civil legal services providers, those examples involved place-based services — arrangements through which those services were brought to clients or offered in a place that clients already frequent (rather than relying on clients to seek out, identify, and travel to the relevant service provider).<sup>230</sup> For example, one client mentioned he had received services through a neighborhood-based non-profit.<sup>231</sup> He explained that various forms of assistance are offered through the organization, including help with securing identification, birth certificates, food stamps, and even lawyers to assist with SSI.<sup>232</sup>

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when a tribunal handled cases in a routine, 'perfunctory' manner or often violated its own procedures." Laura K. Abel, *Evidence-Based Access to Justice*, 13 U. PA. J.L. & SOC. CHANGE 295, 301 (2010) (citing Rebecca L. Sandefur, *Elements of Expertise: Lawyers' Impact on Civil Trial and Hearing Outcomes* 13-14 (Mar. 26, 2008) (on file with the author)). This may be due to the "role a lawyer's presence plays both by requiring the tribunal to adhere to its own rules and predisposing the judge to believe that the client's case has merit because the lawyer took the case." *Id.*

<sup>229</sup> See *supra* text accompanying notes 154-55; see also MULLAINATHAN & SHAFIR, *supra* note 154, at 157 ("[A]n overtaxed bandwidth means a greater propensity to forget . . . [T]hings that fall under what psychologists call prospective memory — memory for things that you had planned to remember, like calling the doctor or paying a bill by the due date.").

<sup>230</sup> Cf. Greiner et al., *supra* note 153, at 1123 ("Until now, the primary focus of the bench, the bar, and the academy has been on access [as opposed to deployment]. Currently, many types of self-help materials are readily available to those who seek them.").

<sup>231</sup> See Interview with Tobias, Client, Cty. Jail 20 (Oct. 3, 2017) (notes on file with the author). Emmaus House is a non-profit organization in the Atlanta neighborhood of Peopletown that "provides education, opportunity, assistance, and advocacy" in partnership with its neighbors. *About Emmaus House*, EMMAUS HOUSE, <https://www.emmaushouseatlanta.org/about-emmaus-house/> (last visited Dec. 28, 2018).

<sup>232</sup> Interview with Tobias, Client, *supra* note 231, at 21.

Another effective mechanism identified as part of the study included a partnership (in conjunction with the Atlanta Legal Aid Society) with the Georgia Department of Behavioral Health and Developmental Disabilities (DBHDD). One social worker explained that, through this program, people who are incarcerated are able to apply for SSI prior to release. DBHDD provides a Medicaid eligibility specialist who visits the jail, or visits clients in the hospital, to help them start the application process.

These two anecdotes suggest that an expansion of place-based services might be an effective way to overcome the barriers that prevent some people from thinking about or attempting to secure civil legal assistance.<sup>233</sup> Given the tendency toward inaction — or perhaps the inability to secure the time and resources to seek help that is not easily or locally accessible — Sandefur echoes this idea, suggesting that effective policy solutions “meet people where they are, either by changing the way problems’ solutions are institutionalised or by aggressively seeking out people with problems and marketing existing solutions to them.”<sup>234</sup> Providing services to those who are incarcerated gives them a step-up in the process and addresses the problem of clients being in and out of jail and having to restart the process on repeated occasions.

Embedding lawyers in the community and increasing the frequency of their interactions — including those in familiar settings, outside of court — has the potential to not only alter the perception of lawyers and their role, but also to increase the likelihood that issues will be identified as legal and then referred to an appropriate provider for assistance. It is also possible in such settings that more informal types of legal assistance can be deployed. This is not a novel idea — medical-legal partnerships have already recognized the benefits of placing lawyers in hospitals to address underlying legal issues that may lead to health problems (for example, a landlord’s failure to address a moldy apartment may cause or exacerbate a child’s

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<sup>233</sup> This aligns with recommendations made by other experts in the field, who have suggested in the Canadian context that “legal services need to be more proactive in targeting and reaching their clients.” See PLEASENCE ET AL., *supra* note 213, at 166. This may involve, the authors write, “joining up . . . legal services with other legal and non-legal human services,” which may be done “formally or informally, episodically or continuously, horizontally or vertically, within sectors or between sectors, visibly or invisibly, physically or remotely, voluntarily or forcibly.” *Id.* at 167. This can be done to various extents across a continuum spanning information exchange, coordination, cooperation, collaboration, all the way to fully integrated service provision. See *id.*

<sup>234</sup> Sandefur, *The Importance of Doing Nothing*, *supra* note 41, at 127.

asthma).<sup>235</sup> Another new model recognizes that when faced with a problem, many people turn to their place of worship. The Tennessee Faith and Justice Alliance operates from this premise and “was created to align needs seen at the local house of worship level with possible legal resources that are nearby, perhaps even within the same congregation.”<sup>236</sup> As described on the website, the idea behind the program “is to connect with people in need in a place they already go to seek help with a problem. That place is quite often their place of worship.”<sup>237</sup>

The recently launched Standing with Our Neighbors Program of the Atlanta Volunteer Lawyers Program is another example of effective community and place-based lawyering.<sup>238</sup> Designed to address housing instability issues, including high eviction rates that were resulting in school enrollment turnover, the program places lawyers and community advocates in schools within the Atlanta public school system.<sup>239</sup> As a result, community members become more familiar with the providers (and vice versa), creating a more fluid construct to identify when an issue might have a legal aspect. The providers are also able to use their familiarity with relevant actors and their relative authority to informally resolve issues without resorting to formal legal action.

In addition to hospitals, places of worship, and schools, public defender offices, criminal court, and the jails where defendants are held in custody are obvious places to identify and provide an intervention for, or at the very least information to, those with unaddressed civil legal needs.

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<sup>235</sup> See Bharath Krishnamurthy et al., *What We Know and Need to Know About Medical-Legal Partnership*, 67 S.C. L. REV. 377, 379 (2016) (“Through the medical-legal partnership approach, hospitals and health centers partner with civil legal aid resources in their community to: (1) train staff at the hospitals and health centers about how to identify health-harming legal needs; (2) treat health-harming legal needs through a variety of legal interventions; (3) transform clinic practice to treat both medical and social issues that affect a person’s health and well-being; and (4) improve population health by using combined health and legal tools to address wide-spread social problems, such as housing conditions, that negatively affect a population’s health and well-being.”).

<sup>236</sup> *The Tennessee Faith & Justice Alliance Program Overview*, JUSTICE FOR ALL, <http://justiceforalltn.com/i-can-help/faith-based-initiative> (last visited Dec. 29, 2018).

<sup>237</sup> *Id.* (explaining that the program “operates on a referral model that is designed to pair volunteer lawyers with congregants in need”).

<sup>238</sup> See *Standing with Our Neighbors*, ATLANTA VOLUNTEER LAWYERS FOUNDATION, <https://avlf.org/programs/standing-with-our-neighbors> (last visited Dec. 30, 2018).

<sup>239</sup> *Id.*

### C. *Thinking Beyond Lawyers*

Just as with the general population, it is unlikely that every public defender client who could benefit from civil legal services will actually be able to obtain that assistance.<sup>240</sup> Therefore, in addition to the various actors who can assist public defender clients, it is also important to recognize the importance of self-help. One public defender spoke about the importance of empowering clients with knowledge and a better sense of their own power:

[O]ne of the things that I like to give my clients is knowledge on how to make their own decisions about their criminal stuff. And I do my best to advise them on the little bits of the civil stuff that I know and to give them knowledge and awareness on that. I think having the knowledge and awareness of how to proceed through and being able to reach out to the right people and know what their power is, I think, is huge. And so if you understand what you have control over and what you don't have control over, I think that goes a long way to making things a little bit easier, and so I think that is what would be beneficial to me. It's just making sure they're educated and kind of like having awareness of what it is that's available.<sup>241</sup>

As one article recently pointed out, self-help is already the dominant means by which low-income individuals receive assistance with their civil legal problems.<sup>242</sup> However, there is much to be learned about how to make self-help mechanisms more accessible and most effective. James Greiner, Dalié Jiménez and Lois Lupica have headed down this path, engaging in research to explore how lay-people can successfully

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<sup>240</sup> See Greiner et al., *supra* note 153, at 1122-23 ("It is unlikely that there will be sufficient public and private funding to provide free or low-cost civil legal services to the poor via the traditional method of an individual attorney-client relationship. Other market-based solutions, such as limited license legal technician (or, more generally, nonlawyer assistance) and unbundled legal services, are an important part of a comprehensive solution to the civil justice gap. Adjudicatory-system reform is similarly essential. But these markets are accessible only to those with income and assets sufficient to pay for the services offered, and adjudicatory-system reform depends on the idea that lay individuals will find and be able to use the information needed to navigate reformed, but still alien and probably alienating, tribunals." (footnotes omitted)); see also *Statutory Restrictions on LSC-funded Programs*, *supra* note 6 (discussing the limitations imposed on organizations funded by the Legal Services Corporation regarding the clients they can and cannot serve, such as incarcerated individuals).

<sup>241</sup> Interview with Michelle, Att'y, *supra* note 134, at 57.

<sup>242</sup> Greiner et al., *supra* note 153, at 1121.



use self-help materials to advance their cause.<sup>243</sup> Acknowledging that barriers to effective deployment include overtaxed bandwidth,<sup>244</sup> feelings of anxiety,<sup>245</sup> and unfamiliarity with basic details about how the formal legal system works,<sup>246</sup> they have made a host of specific recommendations spanning format, language, use of visuals, and organization that can help individuals use self-help tools more effectively.

While we asked clients about a number of issues that certainly *could* involve legal remedies, it is likely in many cases that the law would not offer a satisfying fix. For example, tenants facing eviction may be able to use the law to secure a delay in their removal or to reduce the amount of back rent owed, but because there is no right to shelter, they cannot secure a legal remedy that will address their underlying need to safe, affordable housing.<sup>247</sup> Some of the issues raised in the interviews were beyond the scope of civil legal assistance or would not constitute a legal defense (for example, nonpayment of rent or termination of benefits resulting from engagement in criminal activity). Yet some of those situations could still benefit from civil legal expertise,<sup>248</sup> including ensuring that appropriate procedures were followed (e.g., avoiding illegal evictions) or using a lawyer to apply pressure in cases of bad behavior, even if not illegal. The key will be figuring how to best capture that expertise and apply it in the moments when it is needed most. The study also provides a reminder about the importance of non-legal solutions and providers, including social workers who bring a unique perspective to their clients' needs and expertise about the resource networks that might address them. Law cannot wholly resolve the problems poor people face, but there is still much progress to make in exploiting its capabilities.

#### D. Directions for Future Research

The findings in this study provide an important starting point, but much more research is needed to understand how indigent criminal

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<sup>243</sup> See generally *id.*

<sup>244</sup> *Id.* at 1128-29.

<sup>245</sup> *Id.* at 1129-30.

<sup>246</sup> *Id.* at 1130.

<sup>247</sup> See Sandefur, *The Importance of Doing Nothing*, *supra* note 41, at at 116.

<sup>248</sup> For example, for a discussion of how the implied warranty of habitability is underused both affirmatively and defensively by tenants to address landlords' failure to maintain suitable housing, see Paula A. Franzese et al., *The Implied Warranty of Habitability Lives: Making Real the Promise of Landlord-Tenant Reform*, 69 RUTGERS U. L. REV. 1, 3-5 (2016).

defendants experience civil legal needs and how they might most effectively address those needs.

This study did not attempt to draw causal relationships between the types of needs identified here and the likelihood of engaging with the criminal justice system. Future research might explore how the failure to address these needs — or the ability to do so effectively — impacts clients' criminal cases or criminal justice outcomes more generally.<sup>249</sup> Some attorneys and social workers interviewed seemed to draw a direct connection between the two, suggesting that unaddressed needs may lead to additional contact with the criminal justice system. One social worker relayed: "I believe the civil needs precipitate why my clients are in jail. If you don't have a place to lie down and take your meds, you end up in jail."<sup>250</sup> They also suggested that addressing such needs might affect re-entry and recidivism, in addition to improving clients' overall well-being. Providing clients with the resources they need when they are released and ensuring they have the necessary elements to secure other services<sup>251</sup> are critical to preventing the otherwise inevitable cycling in and out of the criminal justice system.<sup>252</sup> Future research could investigate the causal connections

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<sup>249</sup> This might include how civil legal needs may influence clients' decision-making processes and the factors that influence how defendants make choices about how to resolve their criminal case.

<sup>250</sup> Interview with Tequila, Soc. Worker, *supra* note 133, at 7. Although this study does not purport to draw any specific causal connection between civil legal needs and initiation of contact with the criminal justice systems, there was certainly recognition throughout the interviews that a relationship exists between the two.

<sup>251</sup> See Interview with Minerva, Soc. Worker, *supra* note 117, at 6 ("Social Security and health insurance, those are the two huge civil needs that I come into contact with and sometimes can't do much with them because they don't have one or the other.").

<sup>252</sup> Another group of recent studies exploring the relationship between health care and crime support this point. These studies demonstrate that the presence of local substance abuse facilities and Medicaid expansion both lead to a reduction in crime rates. See, e.g., Hefei Wen et al., *The Effect of Medicaid Expansion on Crime Reduction: Evidence from HIFA-Waiver Expansions*, 154 J. PUB. ECON. 67, 78-79 (2017) (finding that when Medicaid expanded, both violent and property crime rates decreased); Samuel R. Bondurant et al., *Substance Abuse Treatment Centers and Local Crime* 3-4 (Nat'l Bureau of Econ. Research, Working Paper No. 22610, 2016), <http://www.nber.org/papers/w22610> (demonstrating that an increase in the number of treatment facilities causes a reduction in both violent and financially motivated crime); Jacob Vogler, *Access to Health Care and Criminal Behavior: Short-Run Evidence from the ACA Medicaid Expansions* (Nov. 1, 2018), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3042267](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3042267) (finding that Medicaid expansions have resulted in a 3.3 percent reduction in annual crime). These studies add to previous findings that substance abuse and mental health treatment improve individual well-being by demonstrating that the same programs also lead to better community well-being by reducing violent and property crime. See Jennifer L. Doleac,

between the provision of such services, whether in the form of legal representation or self-help materials, and level of (future) interaction with the criminal justice system.

Similarly, future research could examine connections between the various needs indigent criminal defendants experience, in part to determine whether any of those events tend to trigger others and identify the most effective points for intervention. Social science research has shown that justiciable problems tend to occur not in isolation, but in clusters, often appearing in patterns.<sup>253</sup> For example, family law issues and domestic violence are often connected, as are homelessness and police action.<sup>254</sup> Economic issues, such as consumer, employment, and debt problems, also tend to surface in conjunction with one another.<sup>255</sup> Mapping of the data in our study revealed similar overlap — for example, seventy percent of those clients identified as having possible housing civil legal needs were also identified as having educational civil legal needs. In respondents' view, it is often the case that one problem serves as the trigger for another.<sup>256</sup> One social worker described the troubling scenario facing clients who can't pay rent while incarcerated and for that reason, or for other reasons, are evicted or foreclosed on while in custody. As a result, they literally lose everything.<sup>257</sup> In addition, justiciable problems that could be addressed by legal services often give rise to other social, health and emotional problems, and vice versa.<sup>258</sup> This culmination of problems — both legal and non-legal — can lead to “social exclusion.”<sup>259</sup>

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*New Evidence that Access to Health Care Reduces Crime*, BROOKINGS (Jan. 3, 2018), <https://www.brookings.edu/blog/up-front/2018/01/03/new-evidence-that-access-to-health-care-reduces-crime/>. Similarly, one might presume, legal service providers that are able to connect low-income people with critical health benefits might also indirectly lower crime rates.

<sup>253</sup> Currie, *supra* note 27, at 24-25.

<sup>254</sup> *Id.* (citing PASCOE PLEASANCE ET AL., *CAUSES OF ACTION: CIVIL LAW AND SOCIAL JUSTICE* (2006)); *see also id.* at 23 fig.4.

<sup>255</sup> *Id.* at 23-24.

<sup>256</sup> *Id.* at 25.

<sup>257</sup> *See* Interview with Minerva, Soc. Worker, *supra* note 117, at 11.

<sup>258</sup> *See id.* This relationship is bi-directional: certain social issues can also lead to justiciable issues. For example, relationship breakdown can lead to housing problems and domestic violence can have long term employment-related effects. Pascoe Pleasence et al., *Mounting Problems: Further Evidence of the Social, Economic and Health Consequences of Civil Justice Problems*, in *TRANSFORMING LIVES: LAW AND SOCIAL PROCESS* 67, 68 (Pascoe Pleasence et al. eds., 2007).

<sup>259</sup> Pleasence et al., *supra* note 258, at 67-68.

Other areas we have identified for possible future research include further exploration of how race, gender, and age affect indigent criminal defendants' views and experiences in this realm. More in-depth qualitative research would also be valuable, in part to better understand the life experiences of those in the criminal justice system, and how those experiences relate to one another.

Additionally, it would be helpful to engage in quantitative research around the same set of questions. While qualitative data "focus on discovering and understanding the experiences, perspectives, and thoughts of participants,"<sup>260</sup> quantitative research data "attempt to maximize objectivity, replicability, and generalizability of findings."<sup>261</sup> Thus, with more quantitative study of public defender clients' civil legal needs, we would have a better sense of whether these experiences are common among the group as a whole, and of the bases for any variation within the group.

We hope this study will encourage those engaged in research on the civil legal needs of low-income people to be more mindful of those engaged with the criminal justice system, including those who are incarcerated, and to include exploration of that group in future studies.

#### CONCLUSION

Given the dearth of information in this area, we envisioned this study as exploratory — a first step down a path toward a better understanding of how low-income individuals who come into contact with the criminal justice system experience and respond to civil legal needs. Thus, the findings we have described here are designed not to necessarily dictate specific interventions, but to bridge the gap between civil and criminal legal service providers and provide a foundation for merging conversations about indigent criminal defense and civil legal needs.

We would be remiss to end without mentioning that there are success stories — moments where lawyers and social workers in the public defender offices have been able to collaborate with legal aid offices to have a meaningful impact in their clients' lives.<sup>262</sup> One of the

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<sup>260</sup> Michael R. Harwell, *Research Design in Qualitative/Quantitative/Mixed Methods*, in *THE SAGE HANDBOOK FOR RESEARCH IN EDUCATION: PURSUING IDEAS AS THE KEYSTONE OF EXEMPLARY INQUIRY* 147, 148 (Clifton F. Conrad & Ronald C. Serlin eds., 2d ed. 2011).

<sup>261</sup> *Id.* at 149.

<sup>262</sup> Fulton County has had recent success hosting expungement summits that bring

social workers interviewed provided one poignant example of how legal aid provides critical assistance to her clients:

[W]e've referred several kids to them, and they actually go to the IEP [Individualized Education Program] meetings with these kids . . . . [T]hey fight for those kids. And they represent these kids. Because they tried — this kid was about to be 17, and they were trying to kick him out of school. They were trying to kick him out of school, and Legal Aid stepped in and was like, “No, no, no, no, no. You're not going to do that. You're not going to do that. This kid is under an IEP. We need to make sure that every single one of his needs is addressed in his IEP. Every single one of these needs have interventions. And you need to make sure you're doing it.” And he finished the whole school year last year. He's also 17 years old and in the ninth grade. . . . [E]very single IEP meeting, they sent a representative. And they're there to help him. And that helped a lot.<sup>263</sup>

We are not aware of how common such collaboration is across the state and, as mentioned earlier in the article, it bears repeating that the two public defender offices involved in this study are rare in Georgia for their inclusion of full-time social workers. Collaborations like those described above, and also the presence of social workers in public defender offices to address the host of needs that arise for clients, are critical.

For public defender clients, the law and the legal system are incredibly familiar. Their experience using it as a tool to attain justice is less so, particularly in the civil sphere. Many of these clients will continue to address their civil legal problems issues on their own as they arise. But they can do so better informed about the law, better informed about the process, and knowing where and how to access

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together multiple providers in the community, including prosecutors, defenders, and legal aid attorneys. However, only those with a felony or misdemeanor arrest that did not result in a conviction, who were convicted of certain misdemeanors under the age of twenty-one, or who have completed certain pre-trial programs or processes are eligible to have their criminal history cleared. See *Fulton County Record Restriction Summit*, FULTON COUNTY, <http://www.fultoncountyga.gov/recordrestriction> (last visited Jan. 20, 2019); see also Becca J.G. Godwin, *Fulton Holding Another Event to Help People Expunge Arrest Records*, ATLANTA J.-CONST. (July 20, 2018), <https://www.ajc.com/news/local/fulton-holding-another-event-help-people-expunge-arrest-records/bjmcxT7EY77en203TXjTOM/> (“In October 2016, at Fulton County's, first-ever record restriction summit, [seventy-five] percent of people who attended had one or all of their arrests cleared from their records . . .”).

<sup>263</sup> Interview with LaToya, Soc. Worker, *supra* note 168, at 92.

help if they want it. While the barriers they face to accessing justice are significant, achieving a deeper understanding of those obstacles is critical to any strategy for overcoming them.