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Paying down the Civil Justice Data Deficit: Leveraging Existing National Data Collection

Rebecca L. Sandefur

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**PAYING DOWN THE CIVIL JUSTICE DATA DEFICIT: LEVERAGING
EXISTING NATIONAL DATA COLLECTION**

Rebecca L. Sandefur

American Bar Foundation and University of Illinois at Urbana-
Champaign

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I. INTRODUCTION

In the arena of civil justice, we face a severe data deficit. The kinds of fundamental data infrastructure that exist in our country today for major social institutions such as education,¹ family and population,² labor markets,³ health,⁴ and criminal justice⁵ simply do not exist for civil justice.

1. For example, the Schools and Staffing Survey is a periodic survey of schools, districts, teachers, and principals producing data on “a wide range of topics from teacher demand, teacher and principal characteristics, general conditions in schools, principals’ and teachers’ perceptions of school climate and problems in their schools, teacher compensation, district hiring and retention practices, to basic characteristics of the student population.” NAT’L CTR. FOR EDUC. STATISTICS, SCHOOLS AND STAFFING SURVEY, <https://nces.ed.gov/surveys/sass/> (2015-16).

2. For example, the National Survey of Families and Household is a multi-wave study of American households and families that began in 1987. A National Survey of Families and Households, UNIV. OF WISCONSIN (June 15, 2005), <http://www.ssc.wisc.edu/nsfh/home2.htm>. See also U.S. CENSUS BUREAU, DECENNIAL CENSUS (2016) (a decennial census conducted every ten years used to apportion state representation and spending, as well as to provide basic information about the US population) [hereinafter DECENNIAL CENSUS]. See also the AMERICAN COMMUNITY SURVEY (2015) [hereinafter AMERICAN COMMUNITY SURVEY].

3. For example, the Current Population Surveys, periodic surveys of labor force activity that is a joint project of the U.S. Bureau of Labor Statistics and the U.S. Census

So, for example, we can estimate with good accuracy the rate at which unemployed job seekers find employment, but we have no information to do the same for the rate at which victims of wage theft either recognize their situation, seek assistance or find relief. Similarly, we can estimate with good accuracy how high school dropout rates vary across communities and groups in the population, but we cannot do the same for the risk of foreclosure, the experience of eviction, or victimization by consumer fraud. We confront enormous knowledge gaps, with little ability to fill them. Neither the public nor policy makers nor civil society groups can know many basic facts about the workings of civil justice in the United States.

This Article identifies a possible solution for the data deficit, exploring opportunities for small investments in existing data infrastructure that can pay big dividends in our understandings of the workings of civil justice. In turn, better understanding in these areas could inform the construction of rational and effective social policies and service delivery programs. The plan of the Article is as follows. Part II briefly describes the civil justice data deficit. Part III proposes one possible approach to paying down the civil justice data deficit: focusing on the experiences of the American public and leveraging existing data infrastructure to collect information about those experiences. Part IV identifies opportunities to use existing data collection efforts to pursue that approach, some of which are—encouragingly—already underway.

II. THE CIVIL JUSTICE DATA DEFICIT

One of the most striking facts about civil justice in the United States is how few solid representative facts we have about it. This lack of knowledge is revealed starkly when we compare our information resources in this field

Bureau. *See* DECENNIAL CENSUS, *supra* note 2; U.S. CENSUS BUREAU, ECONOMIC CENSUS (2016).

4. For example, the public health data and statistics collected, compiled, and distributed by the federal Centers for Disease Control and Prevention, and the National Longitudinal Study of Adolescent Health study of a nationally representative sample of adolescents who have been followed since the 1994–95 school year. CTRS. FOR DISEASE CONTROL AND PREVENTION, DATA & STATISTICS (2016); Carolina Population Ctr., ADD HEALTH, <http://www.cpc.unc.edu/projects/addhealth> (last visited Feb. 1, 2017).

5. For example, the Uniform Crime Reports compiled and published by the Federal Bureau of Investigation and the Census of Jail Facilities conducted by the U.S. Bureau of Justice Statistics. UNIFORM CRIME REPORTING, U.S. DEP'T OF JUSTICE (2016); JAMES STEPHEN & GEORGETTE WALSH, U.S. DEP'T OF JUSTICE, CENSUS OF JAIL FACILITIES, 2006 (2011).

to our resources of information about other important social and economic activities. For example, imagine if we had no way of knowing about the health of the economy other than our own experiences. We would know, for example, that we ourselves were out of work, but we would not know whether that was a common experience or peculiar just to us and our friends. We might believe that the bread and milk and gasoline that we ourselves bought seemed to cost more than they used to, but we would not know whether this was just our perception, or if everyone's dollars were actually worth less than they used to be. It might seem to us that it was difficult to get a mortgage, but we would not know whether that was because we ourselves were not attractive borrowers, or because systemic processes like discriminatory lending practices or a global recession were in operation. It would be difficult for policy makers to create informed policies that responded to the actual dynamics of the economy because policy makers could not know what these dynamics actually are. It would likewise be hard for investors to make informed decisions about where to put their money because they would have little information to assess returns or make forecasts. Similarly, voters would find it challenging to gauge the likelihood that the proposals of competing candidates would remedy economic problems because they could not know with clarity even what those problems were. Many would be blundering in the dark.

We are in a position much like this when it comes to information about the functioning of civil justice in the United States. To take just a few examples: We do not and cannot presently know how many civil cases are filed in the United States in a given year.⁶ And if we cannot know even that, we of course also cannot know clearly what groups in the population are involved in which types of cases, how the cases are resolved, and with what outcomes for whom.⁷ We do not and cannot know how many people experience common and potentially consequential civil justice problems—such as unfair work discipline, or eviction, or wrong denial of insurance

6. The Court Statistics Project of the National Center for State Courts and the Conference of State Court Administrators is working to compile available data from state court systems and to assist states in developing comparable reporting practices. Even this impressive effort is only a partial picture, as different jurisdictions collect different information, record the same information in ways that make comparisons difficult, and many still do not keep sufficiently detailed electronic case records. *See* NAT'L CTR. FOR STATE COURTS, COURT STATISTICS PROJECT, <http://www.courtstatistics.org> (last visited Jan. 19, 2017).

7. *See id.* (explaining variations in reporting due to court structure, case definitions and counting practices, court rules, statutes, or terminology).

coverage.⁸ We do not and cannot know how many people who have civil justice problems actually get help for them—from anyone.⁹ We have some spotty knowledge about what kinds of help seem to be useful in specific contexts but no systematic understanding of who needs help with what kinds of problems, what kind of help they need, and how to reach them to give it.¹⁰ And if we do not and cannot know even these basic facts with decent confidence, we certainly cannot know with any precision how access to justice differs in different kinds of communities, or different regions of the country, or across racial, or gender, or economic groups.¹¹

We also do not know how much we spend on this activity. Together, local, state, and federal government, along with organized and individual private philanthropy provide well over one billion dollars worth of civil legal aid to eligible populations,¹² but many other civil legal assistance services—court-based self-help, Court Navigators, family court facilitators—exist around the country and are funded on many balance sheets, including those of philanthropy, government, and clients themselves.¹³ We cannot know at the present time how much money is actually spent providing and consuming these services. Field professionals, policy makers, and funders working in this space must often make choices using largely their own impressions and experiences because they have very little in the way of systematically collected, broadly representative facts and little capacity for learning them. We face a serious data deficit.¹⁴

The deficit persists despite a growing recognition of the pervasiveness and significance of civil justice problems. Research reveals that civil justice

8. The last nationally representative survey of the civil justice experiences of the full United States' population was conducted in the 1970s. BARBARA A. CURRAN, *THE LEGAL NEEDS OF THE PUBLIC: THE FINAL REPORT OF A NATIONAL SURVEY 1* (1977).

9. Rebecca L. Sandefur, *What We Know and What We Need to Know About the Legal Needs of the Public*, 67 S.C. L. REV. 443, 453 (2016).

10. *Id.* at 444.

11. See Rebecca L. Sandefur, *Access to Civil Justice and Race, Class, and Gender Inequality*, 34 ANN. REV. SOC. 339, 339–52 (2008) (reviewing empirical social science literature on inequality and access to justice).

12. Alan W. Houseman, *Ctr. for Law and Soc. Policy, Civil Legal Aid in the United States: An Update for 2013*, at 2, CLASP (2013), <http://www.clasp.org/resources-and-publications/publication-1/CIVIL-LEGAL-AID-IN-THE-UNITED-STATES-3.pdf>

13. See Rebecca L. Sandefur & Thomas M. Clarke, *Designing the Competition: A Future of Roles Beyond Lawyers: The Case of the USA*, 67 HASTINGS L.J. 1467, 1471 tbl.1 (2016).

14. I adopt this very appropriate phrase from Lisa Moore, *The Data Deficit: The Case For Improving Court Records For Future Access to Justice Research*, CANADIAN FORUM ON CIVIL JUSTICE (2016), <http://www.cfej-fejc.org/a2jblog/the-data-deficit-the-case-for-improving-court-records-for-future-access-to-justice-research>.

problems are common experiences in the United States, affecting one half to two-thirds of the population at any given time.¹⁵ We know from a smattering of studies here and more developed streams of research abroad that experience of these problems can have wide-ranging and powerful impacts on core areas of life such as livelihood, shelter, the care and custody of minor children and dependent adults, neighborhood safety, and environmental conditions.¹⁶ These consequences can create large human, social, and monetary costs both for the individuals directly affected and for society at large.¹⁷ Yet, we lack systematic information in the U.S. context about these consequences and their collateral costs. The vast majority of civil justice problems do not reach the formal justice system, nor do people seek legal advice about them, nor are they reported to regulatory agencies, elected government, or other authorities.¹⁸ Thus, existing administrative records and court files tell us about only the tip of a very large iceberg of civil justice experiences.¹⁹ Nonetheless, every one of those experiences is

15. For example, the ABA's 1992 survey of low- and moderate- income households found that about half of households experienced at least one civil justice problem in the year prior to the survey, ABA, *LEGAL NEEDS AND CIVIL JUSTICE: A SURVEY OF AMERICANS* (1994), while a 2013 representative survey of a mid-sized American city found that two-thirds (66%) of a random sample of adult respondents had civil legal issues arising in the 18 months before the survey. Rebecca L. Sandefur, *Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study*, ABA, at 3 (2014), http://www.americanbarfoundation.org/uploads/cms/documents/sandefur_accessing_justice_in_the_contemporary_usa_aug_2014.pdf.

16. See Pascoe Pleasence et al., *Reshaping Legal Assistance Services: Building on the Evidence Base: A Discussion Paper*, SYDNEY, AUSTRALIA: LAW AND JUSTICE FOUND. OF NEW SOUTH WALES (2014) (documenting the multifaceted and complex civil justice problems experienced by individuals in Australia and across the world and reviewing evidence from the research literature about strategies for effective outreach and service delivery).

17. Pascoe Pleasence et al., *Mounting Problems: Further Evidence of the Social, Economic and Health Consequences of Civil Justice Problems*, in PASCOE PLEASENCE ET AL., *TRANSFORMING LIVES: LAW AND SOCIAL PROCESS* 67–92 (London 2007); Sandefur, *supra* note 15, at 9–10 (describing some of the consequences people in the United States report as a result of contact with civil justice problems).

18. See Sandefur, *supra* note 9, at 443–44 (noting that many civil justice situations will never involve contact with an attorney or a court).

19. This fact has long been recognized, but puzzlingly often unremarked in conversation about access to civil Justice. See generally William L.F. Felstiner et al., *The Emergency and Transformation of Disputes: Naming, Blaming, Claiming . . .*, 15:3/4 L. & SOC'Y. REV. 631, 631–32 (1980–81) (noting that records of cases and disputes are not reflective of the full breadth of individual experiences). See also Richard E. Miller & Austin Sarat, *Grievances, Claims, and Disputes: Assessing the Adversary Culture*, 15:3/4 L. & SOC'Y. REV. 52, 53 (1980) (observing that in our society individuals often will not exercise their rights to defend their interests). See also DAVID ENGEL, *THE MYTH OF THE LITIGIOUS SOCIETY: WHY DON'T WE SUE?* 1 (2016) (noting that “most injury victims make no attempt to hold the injurer responsible—in court or anywhere else”).

justiciable: it has legal aspects and raises issues in law, and one or more parties to it can take action about it under law.²⁰ The lawful resolution of these problems, either inside or outside the formal legal system, is part of how our country maintains rule of law. Knowing what actually occurs with these problems is essential to knowing who has access to justice and how healthy is the rule of law.

III. PAYING DOWN THE CIVIL JUSTICE DATA DEFICIT

The approach to paying down the data deficit advocated here starts with the idea that tracing the experiences of those governed by a justice system can reveal important insights into the functioning of that whole justice system. This approach to understanding civil justice shares characteristics with strategies that have been effective in other important policy areas. For example, to understand how education works in this country, we survey students and their families about their schools and what happens in them,²¹ as well as about outcomes that may be related to their schooling experiences, such as their test scores, later employment, and subsequent earnings.²² By examining the experiences of the people who move through the institution of education, we learn about how that institution actually works. A similar approach could richly inform our understanding of civil justice.

The approach advocated here takes public experiences as markers that reveal the structure and workings of the institution of civil justice. To pursue this approach, we would need specific kinds of information about public experiences. At the least, we would need systematically collected, broadly representative information about:

- *what happens*: what justiciable events do people experience; how do they respond to them? This is activity that the civil law

20. See HAZEL GLENN, *PATHS TO JUSTICE: WHAT PEOPLE DO AND THINK ABOUT GOING TO LAW* 12 (1999).

21. See NAT'L CTR. FOR EDUC. STATISTICS, *NATIONAL EDUCATION LONGITUDINAL STUDY OF 1988* (1988) (“[a] nationally representative sample of eighth-graders were first surveyed in the spring of 1988. A sample of these respondents were then resurveyed through four follow-ups in 1990, 1992, 1994, and 2000. On the questionnaire, students reported on a range of topics including: school, work, and home experiences; educational resources and support; the role in education of their parents and peers; neighborhood characteristics; educational and occupational aspirations; and other student perceptions. Additional topics included self-reports on smoking, alcohol and drug use and extracurricular activities. For the three in-school waves of data collection (when most were eighth-graders, sophomores, or seniors), achievement tests in reading, social studies, mathematics and science were administered in addition to the student questionnaire.”).

22. See, e.g., *id.* (discussing the National Education Longitudinal Study of 1988, which surveys a range of topics).

constitutes as legal and potentially actionable, whether or not people recognize it is as such or turn to law to try to handle it.

- *with what consequences*: How do these problems affect the lives of the people who experience them; how do different response strategies shape the outcome of these problems; what collateral consequences do these experiences have for those who face these problems, for their communities, and for society at large? The consequences of public experience with civil justice problems tell us about not only the institution's impact on specific people facing specific kinds of justice problems, but also about how the institution shapes broader social outcomes—for example, poverty, employment, and homelessness—through its impact on people who encounter justiciable problems.²³
- *to whom*: at what rates do diverse groups in the broader population experience different kinds of problems, exhibit different response strategies, and evidence different kinds of outcomes and effects of their experiences with justiciable events? The distribution of experiences with civil justice problems and their consequences tells us about how civil justice as a social institution equalizes or stratifies groups in society—for example, men, women and transgender, the elderly and the young, the well-off and the poor, and the diverse racial and ethnic groups that constitute our society.²⁴

If we wanted to use this information about *what happens*, *to whom* and *with what consequences* to inform policy, we would also need to know

- *when in history these experiences occurred*. The information would need to be updated regularly over time, using comparable measures and methodologies in each collection, though modified as knowledge grows. Regular, consistent collection of this information would give us the opportunity to explore how policy and other changes may shape how the institution of civil justice works.

As we saw above, we cannot learn this information by hanging out in courtrooms or lawyers' offices or reading through their files, because most civil justice problems never make it to formal bodies that are part of the

23. See Sandefur, *supra* note 11, at 339–52 (discussing access to civil justice and race, social class, and gender inequality).

24. *Id.* See also Rebecca L. Sandefur, *Fulcrum Point of Equal Access to Justice: Legal and Nonlegal Institutions of Remedy*, 42 *LOY. L.A. L. REV.* 949, 949 (2009) (exploring how justice institutions shape inequality in access to justice).

legal system—whether courts, or administrative agencies, or any kind of legal services provider. Because explicit, formal contact between law and the activity it governs is relatively unusual, to understand this activity we have to move our focus up-stream, to civil justice problems as they emerge in people’s lives—whether or not people recognize them as legal and whether or not they ever take legal or other formal action to try to resolve them. Representative population surveys that track both the incidence and the conduct of civil justice problems are the only way to learn this information, and are essential to understanding how civil justice as a social institution actually works and assessing the American public’s access to it. There are multiple routes to getting this information.

One route is to fund and field representative population surveys that are specifically focused on people’s civil justice experiences. Unlike the United States, other countries have invested in the data infrastructure necessary to have this fundamental information about the workings of civil justice. The most notable example is England and Wales, which for over a decade fielded the Civil and Social Justice Surveys:²⁵ large-scale, repeatedly administered population surveys that have allowed policy makers, law makers, and civil society groups to track the incidence and prevalence of specific kinds of civil justice problems, the services used in their resolution (or failure to resolve), their consequences for the people who experienced them, and the collateral costs of those consequences. The surveys collected rich demographic information, permitting comparisons across social classes, racial and ethnic groups, and other major social groups, as well as types of communities and areas of the country. Because broadly comparable surveys were repeatedly administered, it was possible to investigate changes in these experiences over time as policies and service delivery practices changed. This survey project, like the U.S. Bureau of Justice Statistics’ National Crime Victim Survey, was a project of central government.

Similarly, survey-based efforts to improve *global* measurement of access to justice have begun. Under the Sustainable Development Goals, the Open Society Justice Initiative (OSJI) and the World Justice Project (WJP) are collaborating to explore meaningful indicators that capture people’s lived justice experiences. As a component of its annual Rule of Law Index, WJP conducts national polls delivered to 1,000 individuals in the three largest cities of more than 100 countries, including the United States. This small survey explores specific experiences of the general population in each

25. See, e.g., English and Welsh Civil and Social Justice Panel Survey: Waves 1-2, 2010-2012, UK DATA ARCHIVE SN 7643, http://doc.ukdataservice.ac.uk/doc/7643/mrdoc/pdf/7643_csjps_wave_one_report.pdf (last visited Feb. 4, 2017).

country. In 2016, for the first time, WJP introduced a module to map legal issues faced by respondents and take into account the possibility of using multiple methods of resolution for the same dispute. The module will explore peoples' subjective assessment of the process of resolution, whether this resolution occurred in a formal or informal court system. This will generate—for the first time—globally comparable data on experiences of legal need and effective access to dispute resolution. A second aim of the project is to explore whether a focused, but adaptable, access to justice survey module could be used in multiple national contexts in a range of different kinds of surveys.²⁶

However, efforts to pay down the access to justice data deficit need not exist only in the form of stand-alone data collection efforts. The U.S. government already fields a number of representative population surveys to which civil justice modules could be added. In the next section of the Article, I provide examples of existing survey efforts that could be leveraged to increase our understanding of civil justice experiences.

IV. LEVERAGING EXISTING NATIONAL DATA COLLECTION

A range of existing survey efforts could be leveraged to learn about civil justice and access to it through understanding the civil justice experiences of the public. Various arms of the federal government fund and field representative population surveys to learn about many areas of policy interest and public experience that intersect with civil justice, including consumer finance, experiences of crime, education, employment, income and poverty, and more. The existing surveys most useful for learning about civil justice will have three qualities. First, the samples they employ will represent with reasonable accuracy the entire national population. Second, they will be conducted on a regular basis. Third, they will collect key

26. The description of the World Justice Project (WJP) access to justice survey module and its aims was written by Peter Chapman, for a brief concept paper we together produced for the Civil Society Consultation on Goal 16 A2J Indicators, September 15, 2016. See *Recommended Access to Justice Indicators for Implementation of Goal 16 of the UN 2030 Sustainable Development Agenda in the United States*, COLUMBIA LAW SCHOOL HUMAN RIGHTS INST. & NAT'L CTR. FOR ACCESS TO JUSTICE AT FORDHAM LAW SCHOOL, at 92–93 (Dec. 1, 2016), <http://ncforaj.org/wp-content/uploads/2016/12/NCAJ-CHRI-9-15-16-Recommended-AtJ-National-Indicators-12-1-16-final.pdf>. See Nigel J. Balmer, Pascoe Pleasence, & Rebecca L. Sandefur, *Paths to Justice: A Past, Present and Future Roadmap*, CTR. FOR EMPIRICAL LEGAL STUDIES (Aug. 2013), <http://discovery.ucl.ac.uk/1432348/2/PTJ%20Roadmap%20NUFFIELD%20Published.pdf>, for a review and assessment of standard practices for inquiring about public experience with civil justice problems.

information necessary to permit *comparisons* across different groups in the population, such as age, race, gender, nativity, poverty status, employment status, occupation, size of place, region of residence, and disability and veteran status.

Use of existing survey efforts to learn about civil justice could take one or both of two approaches. One would be *justice-focused*, and would expand current justice data collection efforts to include more information specifically about civil justice. The other would be *problem-focused*, and would expand current data collection efforts in specific policy areas to include information specifically about the public's civil justice experiences in those policy areas. Either approach can be guided fruitfully by insights from the literature on *how* to ask people about their experiences with civil justice problems, which is well-developed.²⁷

A. Leveraging existing justice-focused data collection efforts

Justice-focused data collection efforts would start with existing surveys of people's justice experiences. The premiere federal producer of this kind of information is the United States Bureau of Justice Statistics, a major statistical agency of the federal government that collects a range of information about justice activity in the United States.²⁸ Currently, most of the information it collects is about criminal justice—for example, censuses of prisons and jails, statistics on recidivism, and a major annual survey of the public about their experiences of victimization by crime: the National Crime Victimization Survey (NCVS).²⁹ The NCVS has many of the qualities identified above as necessary to help us learn about the justice experiences of the public: the sample employed represents the nation; the survey collects important demographic information that permits different groups' experiences to be compared; the sample size is large enough to permit many of those comparisons to be robustly estimated; and, it is repeatedly administered. As the Bureau of Justice Statistics describes it, the National Crime Victimization Survey

is the nation's primary source of information on criminal victimization. Each year, data are obtained from a nationally representative sample of about 90,000 households, comprising

27. *Recommended Access to Justice*, *supra* note 26, at 92.

28. U.S. BUREAU OF JUSTICE STATISTICS, <https://www.bjs.gov/> (last visited Feb. 5, 2017) [hereinafter JUSTICE STATISTICS].

29. BUREAU OF JUSTICE STATISTICS, DATA COLLECTION: NATIONAL CRIME VICTIMIZATION SURVEY (2017).

nearly 160,000 persons, on the frequency, characteristics, and consequences of criminal victimization in the United States. The NCVS collects information on nonfatal personal crimes (rape or sexual assault, robbery, aggravated and simple assault, and personal larceny) and household property crimes (burglary, motor vehicle theft, and other theft) both reported and not reported to police. Survey respondents provide information about themselves (e.g., age, sex, race and Hispanic origin, marital status, education level, and income) and whether they experienced a victimization. For each victimization incident, the NCVS collects information about the offender (e.g., age, race and Hispanic origin, sex, and victim-offender relationship), characteristics of the crime (including time and place of occurrence, use of weapons, nature of injury, and economic consequences), whether the crime was reported to police, reasons the crime was or was not reported, and victim experiences with the criminal justice system.³⁰

Now imagine if we were to extend this effort to include a parallel set of questions about civil injuries, such as wage theft in the form of unpaid overtime or being denied appropriate disability accommodations at work or school. We would be able to begin to develop a nationally representative portrait of public experience with civil justice problems, to compare the experiences of different groups, and to track changes over time. Happily, the NCVS is already moving somewhat in this direction and will now be collecting information on Americans' victimization by financial fraud.³¹

B. Leveraging existing problem-focused data collection efforts

Federal statistical agencies working in other areas of contemporary policy interest collect a range of information that can inform their specific domains, including the economy, personal and household income and finance, housing, and transportation. These data collection efforts inform us about social problems such as unemployment, poverty, transportation shortages, and substandard or overcrowded housing. Many opportunities to leverage current data collection exist. I will highlight two as examples, in the areas of employment and housing.

Employment. In a 2013 survey of residents of a middle-sized city in the Midwest, fully a quarter of adult residents reported justiciable problems

30. *Id.*

31. See BUREAU OF JUSTICE STATISTICS, RESEARCH AND DEVELOPMENT (2016).

related to employment—including unpaid overtime, unfair work discipline, and wrongful dismissal.³² This finding suggests that civil justice problems involving employment are probably very common in the contemporary United States. However, while a one-time survey of the residents of a single city can teach us many useful facts about civil justice, it cannot provide a portrait that describes the nation or permits us to compare experiences across its diverse population. As in the justice policy area, however, there already exist large national surveys about employment experiences to which questions about civil justice experiences could be added. Perhaps the most useful for this approach would be the Current Population Survey.

The Current Population Survey is a large (approximately 50,000-60,000 households)

monthly survey of households conducted by the Bureau of Census for the Bureau of Labor Statistics. It provides a comprehensive body of data on the labor force, employment, unemployment, persons not in the labor force, hours of work, earnings, and other demographic and labor force characteristics.³³

The CPS is the source of many prominent pieces of information about labor markets, including the standard estimates of unemployment that many are familiar with from media reports.

The CPS currently includes two supplements that collect additional information from studied households. For example, one of these supplements, the “October” supplement, collects information about the educational attainment and school participation of the households surveyed about their employment experiences. One benefit of collecting information about education in a survey that collects information from the same people about their employment experiences is that the data then allow us to relate participation and experiences in school to employment experiences and vice-versa. For example, we can answer questions like, who is most likely to lose their jobs in a recession: high school drop outs or high school graduates? Or, what proportion of currently unemployed people is enrolled in higher education that could potentially be training them for a new career? And more. Specifically, the October supplement

32. See REBECCA L. SANDEFUR, ACCESSING JUSTICE IN THE CONTEMPORARY USA 7 (2014).

33. BUREAU OF LABOR STATISTICS, LABOR FORCE STATISTICS FROM THE CURRENT POPULATION SURVEY (2017).

is designed to collect information on the school enrollment of household members in any type of public, parochial, or other private school in the regular school system. Such schools include nursery schools, kindergartens, elementary schools, high schools, colleges, universities, and professional schools.... [Information collected has included] the school enrollment status and educational attainment of household members 3 years old and over, including highest grade completed, level and grade of current enrollment, attendance status, number and type of courses taken, degree or certificate objective, and type of organization offering instruction for each member of the household. A dozen core questions in the interview instrument for the October Supplement have remained unchanged since 1967. Since 1987, additional questions have been included on business, vocational, technical, secretarial, trade, and correspondence courses; on the grade the student was attending in the previous year; on the calendar year that the student received his or her most recent degree; on whether or not the student completed high school by means of an equivalency test (such as a General Educational Development [GED] credential); and on whether or not children ages 3 to 5 are enrolled in any kind of nursery school, kindergarten, or elementary school. From time to time, additional items address such topics as private school tuition, adult education, vocational education, computer and internet use, language proficiency library use, disability status, and student mobility.³⁴

We could imagine a parallel supplement that would add to the basic questions asked in the CPS about employment and unemployment, questions about specific justiciable problems related to employment, such as problems securing unemployment benefits, unpaid overtime, being fired, and the like. This information would permit us to learn about the prevalence and distribution of employment-related justice problems. For example, are people working in particular industries or members of particular racial or ethnic groups more likely than others to experience wage theft or what they perceive as unfair work discipline? How do different groups respond to these experiences? Such data could also permit us to begin to explore how civil justice problems are affected by employment experiences and how employment may be affected by contact with specific kinds of civil justice problems.

34. NAT'L CTR. FOR EDUC. STATISTICS, CURRENT POPULATION SURVEY (CPS) – OCTOBER SUPPLEMENT (2016).

Housing. Homelessness and its frequent prelude eviction have long been recognized as significant social problems.³⁵ As noted above, we do not currently have information that would let us say with confidence on a national scale how frequently eviction occurs, to whom, how people respond, or what the consequences are. We do know, though, that the consequences can be substantial, including homelessness, exacerbation of existing health problems, new health problems, and greater risk of victimization by crime.³⁶ The American Community Surveys (ACS), a project of the U.S. Census Bureau, each year queries Americans about a range of facts about their lives, including employment, the languages they speak at home, family structure, citizenship status, and housing characteristics.³⁷ Starting in 2017, the ACS will begin asking additional questions about experiences of eviction and housing insecurity. For example, the ACS will ask about whether households have experienced formal eviction by a marshal through a legal process, and whether they have experienced informal eviction by a landlord operating outside the bounds of the legal system.³⁸ For the first time, it will be possible to estimate with precision how commonly eviction happens in this country, where, and to whom.

The examples presented here are only the beginning. There are many opportunities in existing national data collection efforts to learn crucial information about the workings of civil justice.

35. See, e.g., PETER H. ROSSI, *DOWN AND OUT IN AMERICA: THE ORIGINS OF HOMELESSNESS* (1991) (providing a picture of eviction and homelessness in America). See MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* (2016), for a more recent portrait of eviction's impact.

36. *Id.*

37. *American Community Survey: Questions on the Form and Why We Ask*, U.S. CENSUS BUREAU (2016), <http://www.census.gov/acs/www/about/why-we-ask-each-question/>.

38. See Richard Zorza, *Getting ATJ Statistics into Census Data Collection - The Eviction Example Highlighted on fivethirtyeight.com*, RICHARD ZORZA'S ACCESS TO JUSTICE BLOG (Sept. 15, 2016), <https://accessstojustice.net/2016/09/15/getting-atj-statistics-into-census-data-collection-the-eviction-example-highlighted-on-fivethirtyeight-com/>.

V. CONCLUSION

The situation is one of great promise; and, with some hard work, we can realize it. The first steps already taken at the Bureau of Justice Statistics and the U.S. Census are a wonderful start, and show clearly that this can be done. Leveraging existing data collection efforts will not answer all of our questions, but it will begin to pay down a civil justice data deficit that severely impairs our understanding of this important policy area. The United States has a strong federal data infrastructure that includes a range of existing data collection efforts that can be leveraged to provide new information about civil justice. We are fortunate that a solid body of research already shows us how to do this. Other nations have invested in this research activity. Their experiences, combined with a burgeoning field of academic scholarship, provide valuable insights about how to use surveys to explore the civil justice experiences of the public. We are in the enviable position of *not* needing to invent the wheel, but we do need to put our shoulders to it.

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