

# **Lack of Access to Justice**

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## LACK OF ACCESS TO JUSTICE

Lack of access to justice or equal representation is a form of injustice and discrimination against the poor. Most citizens have the understanding that they have the right to an attorney, and that the poor will be appointed one when they cannot afford it. Hadl (1965) tells us that “the Sixth Amendment to the Constitution provides in all criminal prosecutions, the accused shall enjoy the right to have the Assistance of Counsel for his defense”. Gross (2013) recalls that as a result of the case *Gideon v. Wainwright* the Supreme Court ruled that defendants must be provided legal counsel when they cannot afford it. In this case Gideon was being tried for burglary, and was denied legal counseling since he was not being accused of committing a capital crime. Gideon was found guilty but after appealing the case, it was found that the defendant had the right to an attorney. The court mentioned that defendants should not be discriminated based on their level of income, the same way they are not discriminated based on their race. It was concluded that without the opportunity to receive legal counseling, a defendant could not be guaranteed a fair trial.

As a result of *Douglas v. California*, the court ruled that defendants must also be provided legal counseling for appeals when they cannot afford it. According to Gross (2013), a problem that is often encountered by those who cannot afford legal representation is that they may not be considered “poor enough” by the Federal Poverty Guidelines, these guidelines may have been the result of the increasing costs of providing indigent defendants with counseling. This means that the defendant still has the right to counsel, but if they cannot pay for an attorney and do not meet certain criteria, they cannot be provided one. The accused must exhaust all financial sources and prove that they are unable to pay for legal counseling and support themselves and their dependents.

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Gross (2013) mentions that the court failed to establish an objective definition of what it means to be an indigent. A defendant is considered indigent when a financial situation does not allow the defendant to be fairly tried and exercise his or her rights, which is more based on the accused ability's to participate rather than income. This means a defendant may be considered too poor to afford private counseling, but may be denied the opportunity if he or she is considered to have the ability to participate and exercise his or her rights.

Twenty-eight states follow specific federal poverty guidelines when determining free counseling eligibility while twenty-two states do not use specific guidelines and allow the courts to use discretion. The typical process involves collecting a defendant's private and public financial information. A court will investigate a defendant's monthly income, bills they must pay, whether they have a job, any property such as a home, or vehicle and all other sources of income such as child support. The court will investigate public information and a defendant must disclose any private information that the court needs.

In order for a defendant to be considered indigent in Ohio, one's monthly income must be 125% or less of the federal poverty level, for example if one lives alone he or she must make \$1226 or less to be indigent, this number increases if the number of household members is more. One who makes more than 187.5% of the Federal poverty level is considered to be ineligible for free or even discounted counseling. In this case a defendant living alone would be making at least \$1839 per month. As mentioned before, each state sets different standards and this example reflects Ohio's guidelines.

Federal Poverty Guidelines may show that one is not eligible for free counseling if they have disposable income after meeting their necessities. A problem with this is that the amount of disposable income is not considered and often times may not be enough to obtain private legal

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representation. For example, if one living alone makes \$1900 a month, but after paying rent, utilities, and other living expenses one may not be left with nearly enough money to afford a private attorney. In this case since the defendant makes more than 187.5% of the federal poverty level income, the defendant is not eligible to even receive partial assistance in Ohio. Those who have a higher income than 125% but below 187.5% of the poverty level in Ohio are eligible for partial financial assistance.

Gross (2013) argues that it is crucial to consider how obtaining private counsel will negatively impact a defendant's life. He also finds it illogical that a defendant is denied free counseling because it is likely that the accused will have access to other public benefits such as food stamps as a result of exhausting all his or her finances to obtain private counseling. Gross (2013 refers to this as a "bad public policy" (p. 1218), and concludes that these poor practices by the court will ultimately turn poor working citizens into unemployed citizens receiving other federal and state aid. In California, the average annual cost to incarcerate an individual has increased by almost \$20,000 making the approximate yearly cost of keeping a single inmate incarcerated \$47,000. This average cost differs in each state but it is higher than what someone living in poverty would need to live for a year. This is because the cost of incarcerating includes security and other things that the defendant may be able to pay for outside of prison with what they have.

The poor are often denied access to justice and often times providing low income citizens with legal aid continues to result in unfair treatment. As it was mentioned, a defendant who receives free counseling is unlikely to have a legal representative as efficient as one who can afford one which may lead to a harsher treatment and sentencing by the legal system. Those with lower incomes will struggle to get access to justice, if the court cannot provide it for them, and

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then the defendant may believe that efforts to obtain legal counseling may not be worth the troubles.

The federal poverty guidelines are used to determine eligibility for many assistance programs, but they do not take expenses related to housing, health care, transportation, or income changes into consideration. Those who are not considered “poor enough” might endure hardships in order to obtain legal counseling and may not be able to retain their attorney throughout all the stages of the legal process. Not being able to retain legal representation is a problem since only New Jersey and West Virginia take this factor into consideration when free counseling is requested. Gross (2013) states that those with lower income are likely to endure hardships in court whether they are found guilty or not. These hardships may result from a defendant being required to sell his or her meager assets to offset the costs of an attorney, even after taking these actions a defendant may not be able to afford legal representation for the entire legal process.

If someone truly cannot afford legal assistance but they do not meet the guidelines to receive free counseling then they will not go through a fair trial, and they are likely to receive a harsher sentence than a wealthy person who is accused of the same crime. McMahon (2010) agrees by arguing that “Without counsel, one is left with questionable “access” and certainly not meaningful access to justice” (p. 206). Gross (2013) mentions that even intelligent and well educated people may not be knowledgeable in the field of law. Without legal counsel, defendants may not know if decisions are fair, and if innocent they may not be able to prove this due to the lack of proper guidance. This shows that even the rich need legal assistance, without it, they may not be tried and sentenced fairly.

Fennel (2010) notes that “studies also make it clear that those who did receive legal assistance are much more satisfied with the court system and the outcome than those who did

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not” (p.619). Defendants may not feel that they were treated unfairly if they are given the opportunity to be legally represented. As we have learned before, lack of trust and tensions are major issues that do not allow the rich and poor to come together. It has also been noted that in order for this society to function better and succeed everyone must come together and create relationships. This is one of the reasons providing legal counseling to those in need is so important.

Providing equal access to justice may be a good way to show fairness and respect towards the poor. By making them feel more satisfied, those with low-income would trust others around them whether they are rich and powerful or equally poor. Fennel (2010) found that some low-income citizens are worried about costs or do not believe they can be helped so they fail to seek legal help. As we have seen before, when the poor receive free counseling they are more satisfied, but those in need must feel that they can be helped without worrying about possible barriers. It might seem that every single person will have the opportunity to be legally represented in court, but many are denied this opportunity.

Another issue is that even when the poor is appointed an attorney by the court, they may still not have a fair trial compared to a person who can afford his or her own lawyer. Gross (2013) talks about the case known as *Ross v. Moffitt*, in which the court ruled that an indigent defendant does not necessarily need to have the best attorney. This means that while a defendant may be able to receive free legal counseling, the outcomes and procedures may still be unfair compared to those of a wealthy person. Gross (2013) mentioned that simply because having a better lawyer may be beneficial it does not mean it is required, this example shows that even when provided with counseling, those with lower incomes are discriminated in court. Lower income citizens may be provided less efficient counseling.

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Another issue that the poor face even when eligible for free counseling is that there are a low number of resources compared to the number of applicants. McMahon (2010) states that “our staff attorneys cannot possibly meet this demand,” (p. 206) he adds that the number of available attorneys is a small fraction compared to the number of applicants who are eligible for free legal aid. Fennel (2010) supports this by telling us that despite all the efforts being made to legally assist the poor, the increasing poverty level has made this a nearly impossible task. According to Hadl (1965), the poor are at a disadvantage from the very beginning of the legal process. He states that the poor are unlikely to be able to afford bail while the wealthy are able to. Those who can pay bail are able to go out to prepare and find better resources for court.

According to Fennel (2010), research has shown that low income citizens in need of legal aid is increasing, and points out that poor families have been found to have approximately 1-3.5 legal assistance needs in criminal cases and civil cases such as divorce. However, studies have also found that less than twenty five percent of those needing free legal assistance receive it. Rhode (2001) notes that there is one public defender for every 4300 citizens living in poverty. Fennel (2010) found that family law has been found to be a major issue contributing to the increasing demand for free legal assistance. The main issues that often require low-income families to receive legal were found to be child support and domestic violence problems.

It was found by Fennel (2010) that family law issues accounted for half of those who chose to seek legal help. Rhode (2014) tells us that one the U.S. spends much less in providing legal aid to those in need than other similar economies. Rhode (2014) informs us that America spends less than one percent of its budget on legal representatives which is approximately a tenth of what needs to be invested in legal aid. This suggests that the lack of proper funding is likely the result of limited legal representatives for those in need. As result of this, many Americans fail

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to take action when facing legal problems. Rhode (2014) argues that funds are limited due to increasing problems in our economy such as unemployment, foreclosures, and reduction in legal services.

It was mentioned earlier that most are aware that counseling may be provided when income becomes an issue. This is not always the case, Fennel (2010) “informs us that studies have found that low-income families simply do not know that free legal assistance might be available” (p.623). Clearly this is a barrier that can prevent the poor from being tried fairly which is why raising awareness is important. Rhode (2001) states that many Americans fail to recognize that this is an issue, as mentioned before many people still have the understanding that legal aid is easily available to those that are unable to pay for it. In other words, some believe that the poor are automatically entitled to free legal guidance and representation. The reason awareness is a problem is because many Americans have not experienced the way the system attempts to assist or fails to assist those in need.

Other barriers that the poor are believed to encounter when in need of legal assistance are lack of transportation, immigration status and inability to fluently speak English. Increasing awareness among those who are able to provide assistance is also important. Another barrier identified by Rhode (2014) is that low-income families may not have access to legal services due to their location. Free legal services may not be available in some areas which prevents access to justice even when one is eligible for assistance. To support this argument Rhode (2014) tells us that in Georgia, seventy percent of attorneys are located within the Greater Atlanta area but nearly three fourths of the poor live outside of that area.

The Legal Services Corporation is an example of an organization that serves the common good by helping provide legal assistance to the poor across the country. This non-profit

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organization can be considered similar to other religious based organizations that help the poor by providing them a better quality of life, education, jobs and other basic needs. This organization helps low-income citizens obtain legal aid in family law, foreclosure cases, employment related issues, and even responding to natural disasters. One major issue this organization has encountered is the high demand for legal aid compared to the limited number of resources available.

Although this organization helped almost two million Americans in 2013, nearly 64 million people were not only in need of free legal aid but eligible to receive it. Despite its limitations, The Legal Services Corporation serves the common good by assisting the poor. Although organizations such as this one cannot assist everyone who needs it and eliminate the problem, they do what is within their reach and make a difference. As a non-profit organization, it suggests that its purpose is to do what is right and not to grow and gain power. Once again, they cannot help every single person in need, but it incorporates preferential option for the poor.

Although the government assists millions of people every year, our economy may suggest that the government does not incorporate preferential option for the poor. According to Catholic Social Teaching, everyone has the right to necessities such as food, healthcare shelter and education which the poor often do not have access to. Although justice is not directly mentioned, Catholic Social Teachings state that it is our responsibility to protect and promote the good of society as a whole. In addition, the government is responsible for promoting the good and protecting its society as a whole. The inequality that exists in our economy might suggest that the government is not promoting the good for our whole society. The wealthier part of our society seems to be well taken care of while the poorest people are not made a priority when this

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should be the case. By continuing to deny legal assistance to millions in need, the government is not protecting or providing justice to this part of our society.

As we have learned, the economy will function better if we are able to trust each other and come together as one. This is no different from religious issues. Dalai Lama mentioned that we can either come together as one and succeed, or perish separated as fools as a result of religious tensions. Although the Legal Services Corporation is not affiliated with any religion, it is not very different from religious organizations that serve the common good by providing education, shelter, etc. to the poor. These religious organizations cannot eliminate an issue, but their priority is the poor's needs and they make a difference. It is necessary to provide the poor with equal justice to earn their trust and come together as one and give them the opportunity to contribute to the economy as much as the wealthy. This would reduce any tensions that exist within the country and among social classes.

We have learned that growing inequality is an issue, mainly due to the unfair treatment of the poor. Inequality can be considered injustice when we have people struggling to get the most basic necessities to live and support a family while others not only have more than enough to live but they continue to get more. Those with low income are victims of injustice, and do not get the same opportunities and treatment as the rich. Often times the poor possess the necessary skills and work ethic to have a better life, but they are denied the opportunity. In many cases, some may feel that it may not even be worth making efforts to live a better life. Treatment of the poor by our legal system is very similar.

Although there are many ideas for possible solutions to this problem, they are difficult to achieve. Fennel (2010) concludes that without being aware of the poor's limitations and needs it will be impossible to provide access to justice to more people who need it. Rhode (2014) agrees

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that raising public awareness on this issue is important to achieve reform, and adds that providing legal assistants that cost significantly less than lawyers may be effective. Practice by non-lawyers has been prohibited and prosecuted, but these affordable forms of legal assistance may need to be permitted and only prosecuted in cases of personal injuries. It is mentioned that courts have begun taking steps towards a reform by accommodating defendants who represent themselves in court.

A solution to this problem may be to begin by only considering a defendant's amount of disposable income after all living expenses. If a defendant on Ohio barely earns 187.5% of the federal poverty level, then their disposable income will be much less than someone making ten times as much and it is unlikely that it will be enough to afford a private lawyer. In the end, those who are not eligible for free counseling may be eligible for other assistance programs as a result of being denied access to justice. The benefit of providing legal assistance to those who need it is that defendants will not lose their job, or be incarcerated which would cost the economy.

Another solution to this problem may be to increase the amount of money that the government spends in providing legal assistance to the poor. As mentioned before, the U.S. spends a very small portion of its budget on legal services for the poor; the percentage spent is much smaller than other similar economies and not nearly enough. This may be achieved by cutting expenses in other areas. We have learned that adult intervention programs tend to be ineffective and the return on investment is not high. California spends over \$1500 annually in rehabilitating services for each inmate. Perhaps cutting costs in areas that cost more than they bring in would be a good start. If one percent of the U.S. budget is enough to provide legal assistance to millions then 1.5% or more may make a notable difference.

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It is also important to mention that maintaining people in prison hurts the economy due to the high costs of maintaining inmates. Without legal aid, indigent defendants are at a higher risk of wrongful conviction. Other issues that may hurt the economy as a result of this are increased unemployment, inequality, and number of people receiving other forms of government aid due to loss of housing and income. No matter what is done, it is unlikely that every single person will be wealthy, or have access to justice but it should not be impossible to achieve or have the opportunity to be equal. In addition to hurting the economy, this issue may affect entire families. If a family's breadwinner is wrongly accused or harshly sentenced this will likely affect other household members. Children may be directly affected by their parents' struggles, loss of income, and even separation from their family.

It is an injustice when the poor believe that their destiny is "set in stone" due to their socioeconomic status and when they cannot even attempt to change this without losing more than they can possibly get. Giving low income defendants harsher sentences may take them away from the job that provides their basic necessities. We have seen that this can contribute to unemployment rates. If the legal system that is to provide justice and equal treatment does not do so, then those living in poverty have no reason to trust their government. Being treated poorly by the justice system and denied opportunities may create tensions and lead the poor to separate from the rich. This separation may be due to the fact the rich have been known to "scratch each other's back" which is the reason they tend to have better lives, opportunities and in this case justice.

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