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***SUPREME COURT TASK FORCE
ON
MINORITY CONCERNS***



**DIFFERENTIAL USE OF COURTS BY
MINORITY AND NON-MINORITY POPULATIONS
IN NEW JERSEY**

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TABLE OF CONTENTS

Table of Contents		1
List of Figures		iii
Executive Summary		v
Chapter 1.	The Differential Use of Law and Courts: Introduction and Overview	1
	a. Introduction	1
	b. Organization of Report	3
Chapter 2.	Previous Research on Use of Law and Courts	8
	a. Survey Studies of Legal Use	8
	b. Problems in Earlier Research	12
	c. Ethnographic Studies of the Social Meanings and Uses of Law	16
Chapter 3.	Research Design and Survey Sample	21
	a. Data Collection	21
	b. Interview Format and Content	23
	c. The Survey Sample	25
Chapter 4.	Legal Need	38
	a. Number of Problems	39
	b. The Character of Legal Need: Type of Problems Reported	46
	c. Summary	55
Chapter 5.	Turning to the Law	58
	a. Citizen Responses to Problematic Situations	59
	b. Differential Use of Law	60
	c. Legal Competence and Legal Experience	72
	d. Reasons for Turning to Law	75
	e. Other Court Experience	80
	f. Jury Duty	81
	g. Other Legal Experience	82

Chapter 6.	Perceptions of Law and Courts	86
	a. Perceptions of Law and Courts	87
	b. Self-descriptions in Relation to New Jersey Courts	92
	c. Willingness to Use Law: Hypothetical Situations	97
	d. The Relationship between Perceptions of law and Legal Experience	99
 Chapter 7.	 Summary and Conclusions	 105
	 Bibliographic References	 110

LIST OF FIGURES

Figure 1:	Percentage Breakdown of Respondents . . .	27
Figure 2:	Median Family Income in New Jersey . . .	28
Figure 3:	Family Income: 1980 Census, 1990 Census, Sample	29
Figure 4:	Gender: 1980 Census, 1990 Census, Sample	30
Figure 5:	Occupations: 1980 Census, 1990 Census, Sample	31
Figure 6:	Educational Attainment: 1980 Census, 1990 Census, Sample	32
Figure 7:	New Jersey State Population by Race According to 1980 Census, 1990 Census, and Sample	33
Figure 8:	Race: 1980 Census, 1990 Census, Sample	35
Figure 9:	Hispanic Origin: 1980 Census, 1990 Census, Sample	36
Figure 10:	Racial and Spanish/Hispanic Origin Composition of Sample	37
Figure 11:	Racial/Ethnic Composition of Sample After Recoding	37
Figure 12:	Discrete Problems	40
Figure 13-1:	Frequencies of Problems Reported	44
Figure 13-2:	Frequencies of Problems Reported by Race/Ethnicity, Gender, and Family Income	45
Figure 14:	Most Frequently Identified Problems . . .	47
Figure 15:	Reported Problems Significant by Race/Ethnicity	50
Figure 16:	Reported Problems Significant by Gender	56
Figure 17:	Reported Problems Significant by Socioeconomic Status	57

Figure 18:	Actions Taken in Response to Problems	61
Figure 19:	Percentage of Legal Actions Taken in Response to Discrete Problems	62
Figure 20:	Percent of All Actions by Race/Ethnicity	70
Figure 21:	Percent of All Actions by Gender	71
Figure 22:	Percent of All Actions by Socio-economic Status	72
Figure 23:	Mean Scores on Objective Legal Knowledge Index for Entire Sample and by Race/Ethnicity	74
Figure 24:	Subjective Legal Knowledge for Sample and by Race/Ethnicity	75
Figure 25:	Reasons Given for Action, Entire Sample	78
Figure 26:	Reasons Given for Action by Race/Ethnicity	79
Figure 27:	Reasons Given for Action by Socioeconomic Class	79
Figure 28:	Reasons Given for Action by Gender	80
Figure 29:	Legal Experience by Race/Ethnicity	84
Figure 30:	Respondents Who Have Been the Victim of a Crime by Race/Ethnicity	85
Figure 31:	Respondents' Responses to Victimization by Race/Ethnicity	85
Figure 32:	Indices of Respondents' Perceptions of Law and Courts	90
Figure 33:	Perceptions of Law and Courts by Race/Ethnicity	91
Figure 34:	Respondents' Self-Reported Relationship to the Law and Courts	94
Figure 35:	Respondents' Rating of Their Own Willingness and Ability to Use Law and Courts	96
Figure 36:	Respondents' Self-Reported Willingness and Ability to Use Law and Courts	98

Figure 37:	Relationship Between Willingness to Use Law and Courts and Perceptions	98
Figure 38:	Respondents' Willingness to Take Legal Action in Response to Hypothetical Problems	99
Figure 39:	Perceptions by Court Experience	101

EXECUTIVE SUMMARY

In 1985, Chief Justice Wilentz of the New Jersey Supreme Court established the Task Force on Minority Concerns to address directly the goal of equal justice under law within the New Jersey court system. Specifically, the Task Force was asked to identify problems faced by minorities that are within the scope of the Judiciary, to undertake a critical examination of the concerns of minorities in their treatment in and by the courts, and to propose solutions to the identified problems that the Judiciary could implement. Under the guidance of the Task Force, a study was developed to test the hypothesis that minorities utilize the courts differently from the majority. This report describes the results of the study of "differential court usage."

- This research asked citizens about the kinds of problems they experience and what they did about them, and about their legal experiences more generally.

- The final complete survey provided 403 useable/codeable surveys with a sample population approximating well the demographic characteristics of New Jersey.

- The average number of problems reported (any one of which could theoretically become the subject of some form of legal intervention) was fourteen, and that number did not vary significantly by race/ethnicity. While there is no significant variation in the number of problems, there is variation in the frequency with which different racial/ethnic groups reported having experienced certain problem situations.

- The data show that approximately 14% of the time people turn to the law (initiate action with a lawyer, court, or other govern-

ment official) to remedy or resolve their problems. We found no evidence of any significant variation by race/ethnicity in the degree to which people use law as a response to particular problematic situations.

- Approximately 80% of the sample reported that they had been in a United States court. White and African-American respondents were more likely to have been in court than Hispanic and Other respondents.

- Use of attorneys varied by race and ethnicity; non-white respondents were less likely to have consulted a lawyer.

- Victimization by crime did not vary but the willingness to call the police after being a victim did vary significantly by race/ethnicity with Black respondents significantly less willing to call the police.

- Respondents generally rated the legal system highest in terms of its effectiveness to resolve problems. Respondents' evaluations of the accessibility of courts and their ability to deal fairly with cases were lower, although still relatively positive. African-American respondents rated the legal system more negatively with regard to its effectiveness and its ability to deal fairly with litigants.

- Despite these variations among racial/ethnic groups, however, the ratings overall were relatively positive. Although the law is perceived to be sometimes unjust and unresponsive, it is still perceived to operate as an effective instrument for resolving problems.

- Black and Hispanic respondents reported themselves as preferring to use formal institutions rather than informal means to

handle their problems. Overall, and according to a variety of measures, non-white respondents were consistently more likely to describe themselves as being more willing than white respondents to use the courts in New Jersey.

- Comparing attitudinal responses with actual experience, we found that experience within a court does not have a simple or unidirectional effect on attitudes toward courts: in regard to some matters, experience enhances assessments, in regard to others, it lowers assessments. Citizens do not experience the courts as remote, nor as needlessly complicated; at the same time, the courts may not be particularly accommodating to an individual's desire to tell his/her story or provide extensive information.

- It appears that legal experience in general, not simply court experience, affects legal attitudes by eroding citizens' faith in the fairness as well as responsiveness of courts and court personnel. It does not, however, erode their view of courts as useful or effective problem-solving institutions.

- Throughout this analysis, it was often the case that there was as much variation among minority groups as there was between whites and "non-whites." In regard to some issues, Black respondents were indistinguishable from white respondents while Hispanics constituted a separate category, often distinctive by virtue of their willingness to use the law despite their relative legal inexperience.

- This research reveals a picture of a population willing and able to mobilize the courts but somewhat cynical about some of the claims to fairness and justness, in short, of a legally active but critical citizenry.

CHAPTER 1

THE DIFFERENTIAL USE OF COURTS:

INTRODUCTION AND OVERVIEW

a. Introduction. The fundamental premise of our legal system is that all citizens be governed by the same laws in the same way. In a nation committed to "equal justice for all," discriminatory practices and unequal access pose serious threats to government's integrity and legitimacy. Although the courts have been the primary vehicle through which barriers to equal access and treatment have been challenged, few believe that all the obstacles to complete equality have been removed, or that the courts are as accessible as they should be.

In 1985, Chief Justice Wilentz of the New Jersey Supreme Court established the Task Force on Minority Concerns to address directly the goal of equal justice under law within the New Jersey court system. Specifically, the Task Force was asked to identify problems faced by minorities that are within the scope of the Judiciary, to undertake a critical examination of the concerns of minorities in their treatment in and by the courts, and to propose solutions to the identified problems that the Judiciary could implement. By 1989, the Task Force had completed a survey of New Jersey judges and court managers (Chambliss and Taylor, 1989), organized study groups, and conducted public hearings (Interim Report, 1989:5-6, 23-24, 33-34, 115-116; Final Report, 1992:5-6, 40, 70, 146, 278). A considerable body of information was collected and areas of concern isolated. Although definitive conclusions on the status of discrimination in the New Jersey

courts remain open, important questions were raised by this research.

The literature describing practices in other legal settings offers ambiguous and conflicting results. Some evidence indicates considerable discrimination at different points in the court system, although other evidence challenges claims of discrimination. For example, in his study of criminal sentencing, Blumstein et al. argue that although the minorities are disproportionately sentenced to prison (the national ratio of minorities to whites in prison is seven to one), this ratio is no greater than the proportion of minorities involved in crime (Blumstein, Cohen and Nagin, 1978). These findings are questionable, however, because they do not differentiate involvement in crime from involvement in the criminal justice system, which may disproportionately select some populations and criminal behaviors for control. Furthermore, other research on this topic finds that discrimination occurs unevenly in the criminal justice system, at different stages of the criminal justice process, among different types of crimes, and in different locales. For example, Bridges and Crutchfield (1988) reported significant discrimination in some counties in Washington state but not in others.

The Task Force concluded from its preliminary research that it would be able to determine whether there is discrimination, and if there is, how it takes place and is distributed in the court system, only after a thorough and detailed study that examines the entire legal system from the initiation of legal process to the termination of a case. This study of "differential court usage" is a piece of that larger project.

b. Organization of Report. Chapter 2 describes the scholarly context for contemporary studies of the differential use of law and courts by minority and non-minority populations. Major survey projects have reported low level of legal use and need for minority populations, while small scale intensive ethnographic studies have described forms of cultural resistance to the resort to law among some population groups. For the most part, the studies have been flawed by conceptual and methodological problems.

Chapter 3 describes the design of this research, data collection instruments, and the characteristics of the resulting survey sample. This research collects data through a lengthy survey that self-consciously attempts to avoid the biases and oversights of earlier surveys. In addition to asking citizens about the kinds of problems they experience and what they did about them, respondents were asked about their legal experience more generally, whether they had ever been a juror, or observer in court, for instance. Additional questions were designed to measure legal knowledge, and to assess citizens' attitudes toward courts and legal services generally.

Chapter 3 also describes the demographic profile of the resulting sample of respondents and compares the sample to the New Jersey population in 1980 and 1990. The final complete survey provided 403 useable/codeable surveys with a sample population approximating well the demographic characteristics of New Jersey.

Chapter 4, "Legal Need," describes the legal needs of our respondents as measured by their responses to an extended inventory of problems, any one of which could theoretically become the subject of some form of legal intervention. The average number of

problems reported was fourteen, and that number did not vary significantly by race/ethnicity.¹ This is, of course, an important finding because, by showing the number of problems to be the same, it confirms our original assumption and working hypothesis that previous research has systematically underestimated the legal needs of minority populations. While there is no significant variation in the number of problems, there is variation in the frequency with which different racial/ethnic groups reported having experienced certain problem situations.

Chapter 5, "Turning to Law," describes the responses of our respondents to the situations they identified as problems. The data show that approximately 14% of the time people turn to the law to remedy or resolve their problems. Because we are interested in describing differential use of the legal system, we define "the law" broadly so as to capture the variety of responses and actions taken by citizens. To this end, we operationalized legal action as any effort to consult or mobilize any legal agent or agency, including, but not limited to, the courts. For instance, calling the police, consulting an attorney, or contacting a regulatory agency all constitute a form of legal action according to this definition. Whenever we are discussing or describing the use of a particular legal body, such as the courts, this is specifically noted. While it is clear that the law is by no means the most common response to daily situations and problems, at the same time it constitutes an important part of people's repertoire of actions.

¹For this report, "race/ethnicity" refers to the distribution of persons among the following groups: whites, Blacks, Hispanics, and Other (Native Americans and Asians combined). See page 33, infra, for details.

We found no evidence of any significant variation by race/ethnicity in the degree to which people use law as a response to particular problematic situations.

We found that approximately 80% of the sample reported that they had been in a court in the United States; this measure of legal use did, however, vary by race and ethnicity. Use of attorneys also varied by race and ethnicity. Victimization of crime did not vary by race or ethnicity but the willingness to call the police after being a victim did vary significantly by race with Black respondents being significantly less willing to call the police.

If, as we have shown in Chapters 4 and 5, recourse to law is not a product of differential need, citizens' mobilization of law may reflect their attitude toward and expectations about the legal system and legal actors which is the subject of Chapter 6, "Perceptions of Law and Courts." Respondents were asked to rate the legal system in terms of its effectiveness, accessibility, and fairness. Respondents generally rated the legal system the most positively in terms of its effectiveness to resolve problems. Respondents' evaluations of the accessibility of the legal system, including courts, and its ability to deal fairly with cases were lower, although still relatively positive. Here we found some racial/ethnic variation. African-American respondents rated the legal system more negatively with regard to its effectiveness and its ability to deal fairly with litigants. They are less likely than other racial/ethnic groups to see the law operating in a fair and unbiased way. Despite these variations among racial/ethnic groups, however, the ratings overall were relatively positive.

This leads us to conclude that despite the fact that the law is perceived to be sometimes unjust and unresponsive, it is still largely perceived to operate as an effective instrument for resolving problems.

In addition, Black and Hispanic respondents indicated a preference for using formal institutions such as police and courts rather than informal means to handle their problems. Overall, non-white respondents were more likely to describe themselves as being more willing than white respondents to use the courts in New Jersey. Using a variety of measures of willingness, we consistently found that non-white respondents reported themselves more willing to use law and courts. Comparing these attitudinal responses with actual experience, we found that experience within a court does not have a simple or unidirectional effect on attitudes: in regard to some matters, experience enhances assessments, in regard to others, it lowers assessments. Citizens seem to learn that while the law may be neither remote nor needlessly complicated, they may still not be particularly accommodating to individuals' desires to tell their story or provide extensive information. When we look at more than court experience, the picture sharpens. It appears that legal experience in general, not simply court experience, affects legal attitudes by eroding citizens' faith in the fairness as well as responsiveness of legal institutions and actors. It does not, however, erode their view of the law and legal bodies as useful or effective problem-solving instruments.

Throughout this analysis when we found differences in the use of the law by race/ethnicity, it was often the case that there was

as much variation among minority groups as there was between whites and "non-whites." In regard to some issues, for instance, Black respondents were indistinguishable from white respondents while Hispanics constituted a distinctive category, differentiated by their willingness to use the law despite their relative legal inexperience. The variation that exists among Blacks, Hispanics, and Other racial/ethnic groups makes problematic the unreflective use of labels such as "minorities" or "non-whites" insofar as these labels obscure this variation. Throughout this text, we have remained attentive to this variation in our analysis and language, referring to each racial/ethnic group separately wherever differences exist.

This research reveals a picture of a population willing and able to mobilize the legal system but somewhat cynical about some of its claims to fairness and justness, in short, of a legally active but critical citizenry.

CHAPTER 2

PREVIOUS RESEARCH ON USE OF LAW AND COURTS

This research is part of a larger body of research on the differential use of courts and other legal agencies. That literature begins with the assumption that the law is a powerful, and potentially empowering, resource for citizens. As such, the law has historically provided an arena in which persons voice grievances, stake claims, assert rights, and seek protection. This particular project contributes to this growing body of research on the use of law and courts by asking how citizens use courts, why they use them, and why they may not turn to law or courts in situations of trouble, grievance, or dispute.

a. **Survey Studies of Legal Use.** The most prominent picture that emerges from the previous research on legal usage has been that the poor, and racial and ethnic minority citizens, use courts and law less often than do middle-class or white citizens, and thus have been correspondingly disempowered (Carlin, Howard and Messinger, 1966; Mayhew and Reiss, 1969; Galanter, 1974, 1975; Silberman, 1985; Miller and Sarat, 1980-1981; Goodman and Sanborne, 1986). The most common explanation for this difference has been that these citizens have fewer legal needs than wealthier citizens.

This "observed" differential use of legal resources has often been explained by what is essentially an economic or social structural model. Citizens with greater resources of education, income, or familiarity, which is often a consequence of education or income, are more likely to use law as a means of dispute resolution (Carlin, Howard and Messinger, 1966; Mayhew and Reiss,

1969; Galanter, 1974, 1975; Silberman, 1985). Because minority populations deploy disproportionately fewer social resources of education, income, status, and power, they are less likely to turn to the law or the courts with their troubles. Thus race and income interact to explain differential use of law and courts.

Indeed, prior survey research in New Jersey produced results consistent with this consensus in the literature. The survey of judges and court personnel supports the hypothesis that racial, ethnic (Hispanic) and linguistic minorities are less likely to use the courts than are whites (Chambliss and Taylor, 1989; New Jersey Task Force, 1989). Moreover, in a survey of a smaller subset of professionals in the court system, respondents suggested that the relative degree of inclination to use the courts would also vary, with whites being most inclined, Blacks second, Hispanics (who speak English) third, and linguistic minorities last (Bey and Lee, 1988). Asian Americans were thought to be differentially inclined depending upon the type of case.

Other research suggests, however, that the question is somewhat more complicated than a simple correlation among socioeconomic status, race or ethnicity, and court usage. Although research continually documents the fact that poor people make less use of lawyers, and racial and ethnic minorities are more likely to be poor and thus also less likely to use lawyers or turn to the courts, it is not poverty per se, or the interaction between poverty and race/ethnicity alone, that creates barriers to use of the law. Since the 1960s, and since the institution of public legal services, research has repeatedly confirmed the observation that it is the kind of problems people have rather than their income,

education, race, or ethnicity that influences their recourse to law (Mayhew and Reiss, 1969; Miller and Sarat, 1980-81; Engel, 1984; Silberman, 1985). In one of the most extensive examinations of disputing behavior in the United States, conducted at the University of Wisconsin under the title "The Civil Litigation Project,"¹ researchers again reported that the willingness to use law and courts for dispute resolution was more dependent upon the nature of the problem than upon income or ethnicity. Miller and Sarat (1980-81:550) report that, with the exception of a limited number of problems including discrimination, the standard descriptive variables (age, income, education, ethnicity) "were poor predictors of rates of grievance experience, perception, or acknowledgement" of grievance.²

Although demographic variables do not seem to have much impact on grievances in general, they do have consequences for some classes of grievances. It appears that racial minorities are less likely to assert claims in consumer and tort areas than whites, but are significantly more likely to assert discrimination claims (Miller and Sarat, 1980-81:552). Nonetheless, researchers argue that, with the exception of torts and discrimination issues, the

¹The Civil Litigation Project was a multi-million dollar research effort coordinated at the University of Wisconsin, Institute for Legal Studies, to study patterns of disputing and litigation in five federal court districts. Its work is described in Joel Grossman, ed., Law and Society Review, Volume 15, No.3-4 (1980-81); "Litigation in America", UCLA Law Review, Volume 31, October 1983, No. 1; Trubek, Felstiner, Grossman, Kritzer and Sarat, Civil Litigation Research Project: Final Report (March 1983), University of Wisconsin Law School.

²Grievances are understood as the beginnings of disputes; a grievance is an individual's belief that he or she (or a group or organization) is entitled to a resource which someone else may grant or deny (Ladinsky and Susmilch, 1980:5).

probability of making claims and asserting rights is more dependent upon "problem-specific factors than on claimants' capacities" or characteristics (Miller and Sarat, 1980-81:555).

The Civil Litigation Project reported that over all problem areas "rates of claiming and disputing are substantial. Over 70 percent of those who experience problems make claims for redress, and almost two-thirds of these claims lead to disputes," that is, denials or challenges to these claims (Miller and Sarat, 1980-81:561). Studies of consumer complaining report similar figures with a range from 70% to 81% of citizens filing complaints when they are dissatisfied with a product or service (McGuire and Edelhertz, 1980; Ladinsky and Susmilch, 1981; Silbey, 1984: 429ff.). In sum then, if the literature describes differential use of law depending primarily upon the nature of the problem, it nonetheless describes a generally active and assertive citizenry, and a widespread willingness to turn to third parties, law, and courts when citizens perceive problems and grievances.

Studies in New Jersey, however, challenged this picture of an active and litigious citizenry. Local research by legal aid agencies had suggested that problems ripe for grievance, claims, and intervention exist across all social categories, although the perception of problems and the response differ by a variety of social factors, including income and race or ethnicity. In a 1986 study of "The Legal Needs of the Poor in New Jersey," Goodman and Sanborne (1986) reported that although 68% of the families surveyed reported circumstances that constituted, by professional assessment of those circumstances, grounds for legal action, only 26% of those problems were acted upon, or taken to a third party. Of those

taken to a third party, 51% sought governmental or private legal help. Thus, in a universe of potential legal claims, only 13.25% of the sample surveyed turned to law or the courts for remedy, while national cross-class surveys had usually found a response rate of at least 70%. These reported disparities seemed to demand further research.

b. Problems in Earlier Research. Many studies have been unable to capture the differential use of law and courts by racial and ethnic minorities, or resolve discrepancies in the data, because they have inadequately conceptualized the problem. First, the role of law, and government, in the life of minority and poorer citizens may also be substantially different from its role in the life of the majority of citizens. While many middle class citizens develop careers working in and administering the law, the poor develop careers maneuvering within and among legal agencies and legal bureaucracies. For the former, a career is a means of forging a professional identity, being a member of community, and earning a relatively secure living; for the latter, the time and expertise required to negotiate through bureaucratic offices also constitutes a career, but offers no socially acceptable identity, no community membership, no independence or comfort; it is, instead, often a means of physical survival (Goodman and Sanborne, 1986:2). If many poor citizens, and minority citizens, develop careers in law, it is not as disputants but as supplicants.³

³Almond and Verba (1965:138, 168-169) describe administrative or subject competence as distinguished as an ability to appeal to government responsiveness on the basis of existing policy; they contrast this with political competence which they define as the ability to demand participation in the making of governmental rules. Cf. Carlin, Howard, and Messinger, 1966:69.

Second, the legal needs of racial and ethnic minorities, and the poor who are disproportionately minorities, may be "fundamentally different in character and in quantity from the legal needs of other classes" (Goodman and Sanborne, 1986:1), and may have been inadequately identified in many of the studies of disputing and use of law.

Poor people's legal problems arise mainly in the context of interactions with institutional elements of the community. In these interactions and exchanges, the poor, almost by definition, are both needy and disadvantaged. These are not the circumstances that typically attend the emergence of legal problems of the middle classes. Therefore, from a middle class point of view, it may be difficult to see that the legal problems of the poor extend far beyond the familiar and conventional matters of estate planning, divorce, commercial contracts, incorporation, real property, and inheritance. It may also be difficult to understand the issues that arise from dependence on officialdom and on markets that specialize in low-income trade (Goodman and Sanborne, 1986:2).

Because the problems and grievances, and thus potential disputes, of poor and minority populations are fundamentally different from both minority and non-minority middle and upper classes, it is not surprising that in many of the studies those problems have been ill-conceived and therefore unlikely to be recorded and measured.

Almost without exception, legal need was assessed in these studies by presenting respondents with a list of problems or situations, any of which could potentially lead to some legal action, and asking which, if any, of these situations a person might have experienced. The point of this inventory was not to determine the soundness of a person's legal case—not to assess the facts of the case—but simply to determine whether a respondent had experienced the type of situation, or dispute, that could poten-

tially or theoretically become the subject of legal services. Those legal services included a range of actions such as calling the police, contacting a lawyer, or actually suing another party.

Using this methodology, most studies had found that poor citizens are less likely to experience the type of problems that are potentially courtworthy or that would require legal services. In addition, these studies concluded that minority citizens, because of disproportionate poverty, were less likely to use the law than were white citizens. In drawing this conclusion, much of the research has relied on a relatively narrow definition of legal need. In almost all of these studies, the list or inventory of problem situations was constructed by including only those kinds of problems that upper courts routinely handled, more serious legal issues. The result was a list of problems biased toward the conventional, middle class matters involving property. Not surprisingly, using such an inventory, poorer citizens were found to have fewer legal needs when it was, in fact arguable that the level of reported legal need reflected more about the biases of the measurement device than the actual experiences, life situations, or perceptions of poorer and minority citizens.

Third, the research on citizen participation in the legal system has, for the most part, "derived from a model of disputing as a form of rational optimizing behavior most prominently, but not exclusively, associated with economic transactions" (Merry and Silbey, 1984:155), and most often associated with middle and upper-class values and less often with working and lower classes, or racial and ethnic minorities (Baumgartner, 1984; Merry and Silbey, 1984; Sennett and Cobb, 1973). In the large scale surveys,

disputants are perceived as making rational decisions between alternative courses of action on the basis of the stakes, costs and anticipated outcomes. To some extent, the focus on economic reasoning is dictated by the nature of the cases being studied ... the result [however] is a characterization of dispute and a model of disputing in terms of instrumental, optimizing decision strategies. (Merry and Silbey, 1984:157)

Thus, researchers describe the "opportunity costs" associated with going to court (Steadman and Rosenstein, 1973; Moulton, 1969; Yngvesson and Hennessey, 1975), and litigation is described as an investment of time, money, and skill.⁴ This model underestimates, as it devalues, the role of cultural norms in the dispute process. It fails to incorporate those circumstances and values which more adequately capture the common life experiences of racial and ethnic minorities by defining economic transactions and rational calculation as the modal category of dispute behavior.

Fourth, the conventional studies of disputing often use methods of analysis which disaggregate social action into component variables which are measured independently and then re-aggregated through complex statistical procedures (e.g., see Miller and Sarat, 1980-81). These approaches are unable to access the complex meanings of events which vary by race and ethnicity as well as by social class. In other words, the most common research methods and measures systematically exclude just those phenomena which distinguish and define race and ethnicity, i.e., variations in meaning systems and values.

⁴Although little research has attempted to measure the consequences of variations in investments of time for disputing or legal transactions, socioeconomic status has been used as a surrogate measure for describing citizens' variable investment of money and skill, as well as knowledge and experience and the effects on disputing behavior.

As a result, there is a need for research which can compare and distinguish the use of courts and law by poor, minority, and middle class populations. This research would need to: (1) distinguish the problems and situations of poor and minority populations which might call for legal action from those of the middle class; (2) conceive of social action and use of law as more than a product of rational cost-benefit analyses; (3) use a range of methodologies able to access and describe the cultural norms, values, and habits of action that promote or inhibit use of courts in a variety of social groups; and, (4) establish the relationship between legal organization and the culture of a variety of population groups.

c. **Ethnographic Studies of the Social Meanings and Uses of Law.** In response to this bias problem, the next wave of research expanded the operational definition of legal needs, and looked at a wider, and less slanted, array of issues and events that might prompt people to turn to law, not just estates and wills, or property sales, but issues such as neighborhood conflicts, rental disputes, evictions, or problems with local schools or governmental officials, to name just a few. This next wave of research demonstrated that the legal needs of the poor are different, but not necessarily, fewer than the needs of middle class citizens.

This work uses ethnographic and qualitative methods of analysis, intensive interviewing, and observation, to study disputes and dispute behavior. It seeks out the aspect of "party capability" or "legal competence" that has been overlooked in many studies of differential use of law: litigant dispositions, values, and inclinations. "Whether and how people participate and use

legal processes results, in large measure, from the way law is represented in and through cultural systems in which citizens are embedded" (Sarat, 1986:539).

The "legally competent person", that is, a person, according to Carlin, Howard and Messinger (1966:71) who is both aware and assertive, "has a sense of himself as a possessor of rights and he sees the legal system as a resource for validation of these rights." This sense of the self, and these sets of dispositions and perceptions are cultural products learned, shaped, and framed by interactions in specific social locations. Although these perceptions may be understood as matters of skill associated with social class, they have an important and independent normative dimension. The legally competent subject

will see assertion of his interests through legal channels as desirable and appropriate. This is not to say the he will view law as omni-relevant, as a sort of all-purpose tool. He will be aware of the limits of law. But it is important to stress that he will not be hostile to the extension of the rule of law. When he believes it proper, he will make an effort to bring his interests under the aegis of authoritative rules. This will call for a 'creative act of influence' that will affect the content of official decisions. It is implicit in what we have said that the competent subject will have a sense of himself as a possessor of rights, and in seeking to validate and implement rights through law he will be concerned with holding authorities accountable to law. (Carlin, Howard, and Messinger, 1966:70)⁵

In other words, legal competence, or the willingness to use law and courts, includes "an ideological or normative dimension, which may

⁵"As we see him, the competent subject will see law as a resource for developing, furthering, and protecting his interests. This is partly a matter of knowledge. The competent subject will be aware of the relation between the realization of his interests and the machinery of law making and administration. He will know how to use this machinery and when to use it" (Carlin, Howard, and Messinger, 1966:70).

operate to inhibit participation for those otherwise seemingly capable of participating" (Sarat, 1986:539).

Ethnographic studies have been able to capture, in ways inaccessible to large surveys of disputing, the variable meaning of events, grievances, disputes, and law, in the lives of citizens, neighborhoods, and communities. This research paints a very different picture of citizens' responses to grievances and perceptions of law. The studies confirm the fact that all social groups experience grievances that could become claims and disputes. They also demonstrate that citizens perceive these events differently and respond to them in culturally specific and variable ways; moreover, they argue that these differences cannot be adequately described by an economic, cost-benefit, or rational calculus that has characterized most of the studies of disputing (Merry and Silbey, 1984).

Disputes are cultural events, evolving within a framework of rules about what is the normal or moral way to act, what kinds of wrongs warrant action, and what kinds of remedies are acceptable and appropriate.

Ideas about how to respond to grievances are linked with socially constructed definitions of normal behavior, respectability, responsibility and the good person ... Rules about how to fight or whether to fight, how to respond to insults and grievances, how to live with one's neighbors are parts of elaborate and complex belief systems which may vary between social groups.... In other words, dispute behavior reflects community evaluations, moral codes, and cultural notions, learned but not entirely chosen, of the way-people of virtue and integrity live. (Merry and Silbey, 1985:157, 176)

Research on the cultural conditions of disputing indicates that American citizens prefer to handle problems by themselves, by talking with the other party, or by avoiding the situation or the

person. In some cases, this reluctance derives from a fear of "making trouble" (Merry and Silbey, 1984), or being perceived as litigious and greedy (Engel, 1984) by turning to third parties. In other communities, the resistance to law derives from deeply held religious principles (Greenhouse, 1986). For these people, invoking the law or litigating requires a submission to civil, as opposed to, religious authority. Conflict and authority are perceived as sinful evidence of a fall from God's grace. According to Bumiller (1987), victims of discrimination often also refuse to turn to law. This group avoids litigation because they believe that courts rob them of being in control of their lives and isolate them from their communities at a time when they are most in need of support. Bumiller's respondents resisted what she described as a "double victimization"; first in becoming an "object" of discrimination, and second, in becoming "a case" in law.

Typically, only when problems seemed intractable, unavoidable, and intolerable do litigants seek help. In these cases, it requires an extraordinary effort to overcome the routine reluctance, and necessitates the development of principled arguments to justify the action. Only when differences and disputes have reached the point where they are interpreted as conflicts of principle do citizens feel comfortable turning to law (Merry and Silbey, 1984).⁶ When surveyed, these communities and groups registered an abnormally low court usage. The courts and the law are avoided not because the citizens do not know how to use the courts; nor do they always lack the financial resources to invoke

⁶See Galanter (1983) for a significant challenge to the notion of a litigation crises and the pervasiveness of a culture of litigiousness.

its agency. By rejecting the courts' purposes and authority, nonetheless, these citizens appear to lack what we have been referring to as legal competence.

While these studies describe forms of avoiding law that might explain the low rate of complaining observed among the poor in New Jersey, none of these pictures is flat or simple, and few suggest that they can be reliably generalized outside of the limitations of the communities and situations studied. This body of research depicts variability influenced by local situations, norms, and customary ways of doing things. Cumulatively, these works suggest a complex picture of citizens' differential use of law. These uses can be described strategically, but the tactics and uses are framed not solely by economic, informational or instrumental concerns, but by moral and normative systems of meaning as well. Moreover, these meanings vary by geographic locations, as well as by racial, ethnic and class distinctions. By recognizing the fit, or lack thereof, between legal organization and both the norms and interests of particular groups or classes, this body of research suggests ideological and cultural explanations for the display of avoidance or pragmatic and skeptical involvement in law by subordinate social groups (cf. Doo, 1973; Merry, 1979, 1985).

The problem with the data generated by this recent research, however, is that the results have, for the most part, been based on small, non-random samples. Consequently, the results—while suggestive of a larger level and different character of need—could not be extended to minority or poor populations generally.

CHAPTER 3

RESEARCH DESIGN AND SURVEY SAMPLE

It was with this body of research in mind that we designed the current study. Our explicit research goals were first, to describe the number and kinds of potentially legal problems people experienced; second, to identify what people did about these situations, specifically to determine the role of the law in citizens' repertoire of responses to these problematic events; and third, to see if there were differences by race/ethnicity in either the number and kinds of problems people experienced, or their use of legal services.

We constructed a lengthy survey that self-consciously avoided the biases and oversights of earlier surveys. In addition to asking citizens about the kinds of problems they experienced and what they did about them, we asked about their legal experience more generally, whether they had ever been a juror, or observer in court, for instance. We included questions that were designed to measure legal knowledge, and questions to assess citizens' attitudes toward courts and legal services generally.

a. **Data Collection.** The study design used in-depth, face-to-face, interviews with 150 persons in each of four New Jersey counties (total N=600). The counties were selected for variation in racial/ethnic composition, population density, and socioeconomic status. Using the U.S. Census data for 1980, four counties in New Jersey were identified: Bergen, Camden, Essex, and Hudson. Bergen and Essex are the largest and most densely populated New Jersey counties with approximately 850,000 persons in each county. They

vary significantly, however, by the percentage of the population which is non-white or Hispanic. Bergen has less than 4% African American and less than 4% Hispanic; Essex county has over 37% African-American population and 9% Hispanic, as well as communities with the highest and lowest median incomes. Hudson and Camden counties are moderate sized (with approximately 500,000 persons) but with varied minority populations and local cultures. Camden county is in the southern part of the state, removed from the culture of metropolitan New York, with a mix of both urban and rural communities. Hudson county has the largest Hispanic population in the state in both proportion and number.

The data set was created using multi-stage cluster sampling. Within each county, census blocks, stratified by race and ethnicity were randomly selected. From these clusters of census blocks, households were randomly selected for interviewing.

Interviews were conducted in person, usually in the respondent's home, by an ethnically and racially diverse team of male and female field-workers. The interview instrument was translated into Spanish by an accredited translator, pretested in Spanish, and administered upon request to twelve respondents who requested it in Spanish. The field-workers were selected after personal interviews, extensive training, and trials in the field. Interviewers were instructed about the theoretical background of the project, the relationship to earlier research, and the specific design of the interview schedule. Training time was devoted to practice interviewing and probing techniques. Because each interview was both written and tape recorded, interviewers were instructed in listening and note-taking techniques, how to ask questions, how to

recognize openings in the conversation, and how to ask for more information without projecting "right" or "interesting" responses. Instruction was provided on how to offer encouraging, yet non-evaluative responses, and thus how to develop a repertoire of probes and nondirective feedback.

We created additional quality control checks. Interviewers were closely monitored and supervised. First, each completed interview schedule was read by a research assistant who was trained for this task. This person's entire, full-time occupation was oversight of the logistics of data collection. Second, the first two to three interviews conducted by each interviewer were listened to in their entirety. In addition, at least one other interview by each interviewer was transcribed and read by the principal investigators. We provided both written and oral responses to interviewers on the quality of the interviews. Third, interviews were coded to include not only demographic information about the respondent but information about the interviewer as well. Data were analyzed to determine if there were systematic responses by interviewer, race, or gender. There were none. Finally, we collected samples of handwriting for a standard paragraph so that coders would have less difficulty interpreting individual handwriting.

b. Interview Format and Content. The interview schedule was developed to examine the relationship between race and ethnicity to court use. To what degree are minorities less likely to use the courts and what accounts for this variation? How much is a product of skill, information, or socioeconomic resources (opportunity costs/legal capability)? How much is a product of cultural

perceptions, norms, and values (dispositions/legal competence)? How much of the variation is a product of previous experience with courts? And, how much of this variation is group specific or individual?

The interview schedule was designed by synthesizing both the methods and substantive foci of previous studies of legal mobilization, attitudes, and consciousness. It specifically replicated portions of the instruments used by the Civil Litigation Project, Tyler (1990), Lind and Tyler (1988), Merry and Silbey (1984), Bumiller (1987), Sarat (1986), Mayhew and Reiss (1969), Goodman and Sanborne (1986), and Yankelovich et al. (1978). Respondents were asked about ordinary, daily events and transactions, what they perceived as disruptions in those exchanges, and how they responded. We inquired about a range of situations and relationships including consumer purchases and sales, housing, neighborhood and community matters, medical services, relations with educational and public institutions, work and employment, as well as family and emotional connections. Questions included standardized indexes used to measure knowledge of law, experience, and familiarity with courts and legal institutions, perceptions of legal authorities and legal procedures, mastery of English, and basic demographic data.

Open-ended questions were placed throughout the interview, beginning with inquiries about respondents' attachments to their local community. We asked respondents to indicate ways in which they are the same or different from their neighbors and to name what they like or dislike about the community in which they live. Here, respondents were able to place themselves within a set of values and life styles, and to approve and disapprove of different

ways of doing things. These questions were followed by a series of probes about ordinary events (e.g., neighborhood problems, membership in clubs or local organizations, rental of housing, consumer purchases, interactions with educational and medical institutions), whether the respondent has been troubled by any of these or any like those named, how often and when they happen, what the respondent did or did not do, the relationships between the parties, the circumstances, and the outcomes. When respondents asked what we meant by "trouble" or "bother," interviewers were instructed to reply, "Anything that was not as you would have liked it to be, or thought it should be." In each instance, respondents were asked to account for their actions and to interpret the situation and their own and others' responses. This part of the interview is followed by a more in-depth conversation about one particular incident. Respondents were also asked to describe in detail their experiences and reactions to any encounters with legal actors or other third party counselors or interveners. The interviewers asked respondents to describe events, to assess responsibility, to suggest motives, to identify grievances, to interpret their own and others' actions, and to make judgments about typicality and variance. Importantly, we used non-analytic, colloquial terms throughout.

The resulting survey was extensive and comprehensive; the interview booklet ended up being over eighty pages and the interview itself took an average of two hours to complete.

c. **The Survey Sample.** In defining and selecting a sample, care was taken to ensure that the results of the research would approximate the demographic composition of the state. Because the

Task Force was specifically interested in how race and class operated to affect legal usage, the sample had to include sufficient numbers of racial and ethnic minority citizens to be able to make racial and ethnic comparisons. With these goals in mind, the 1980 census was used to create a multi-stage, stratified cluster sample.

The final complete survey sample provided 403 useable/codeable surveys. The population surveyed approximates well the demographic characteristics of New Jersey.

The completed sample is represented on Figure 1, Percentage Breakdown of Respondents, which shows the percentage breakdown within the sample by residence in the four New Jersey counties. Due to higher response rates, Camden and Essex Counties are disproportionately represented. Sixty-three percent of the respondents come from the two more heterogeneous counties (Camden and Essex), with the remaining thirty seven percent divided between the more homogeneous counties (Bergen and Hudson). Since these particular four counties were selected, in part, to insure a racially and ethnically diverse sample, and since the final sample composition reproduced well the racial/ethnic composition of the state as a whole, the underrepresentation of Bergen and Hudson is less problematic than it might otherwise be.

Figure 2, Median Family Income in New Jersey, displays the income composition of the sample. This figure shows that there is a good correspondence between the survey population and the New Jersey population in terms of median income, with the population surveyed falling somewhere between the median incomes reported in the 1980, 1990 censuses. Figure 3, Family Income: 1980 Census,

FIGURE 1
PERCENTAGE BREAKDOWN OF RESPONDENTS

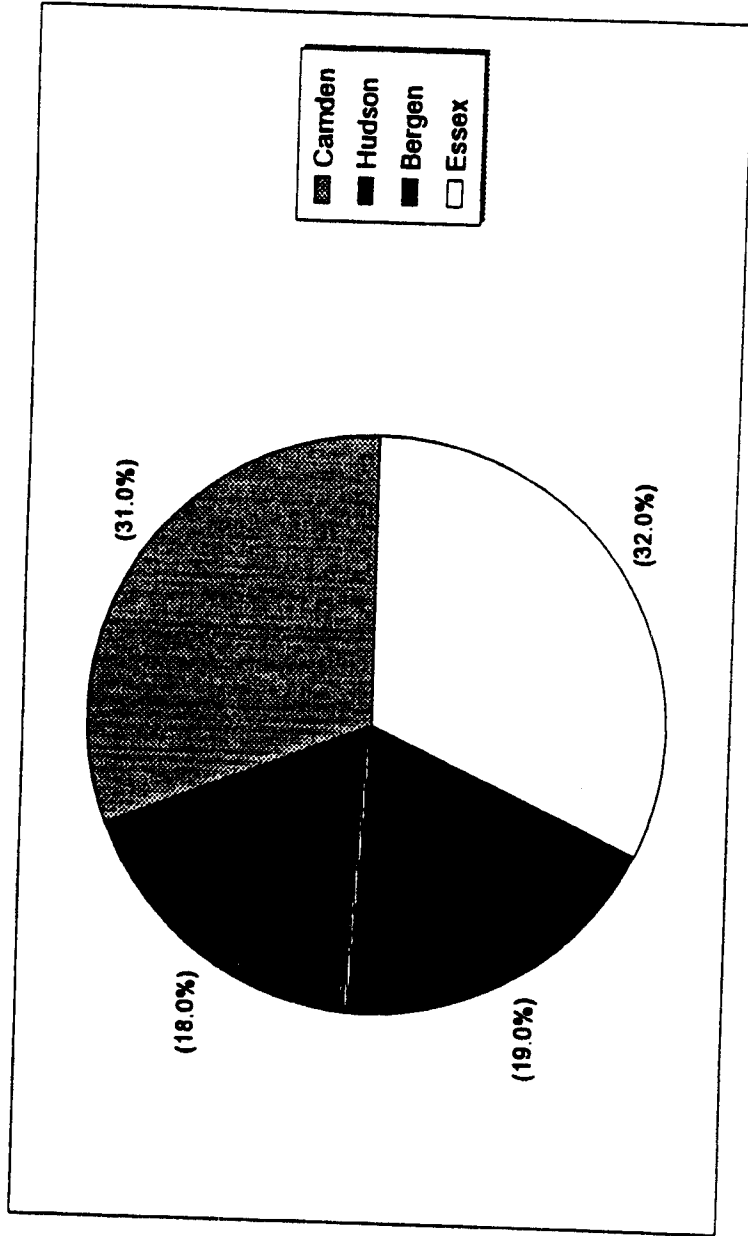
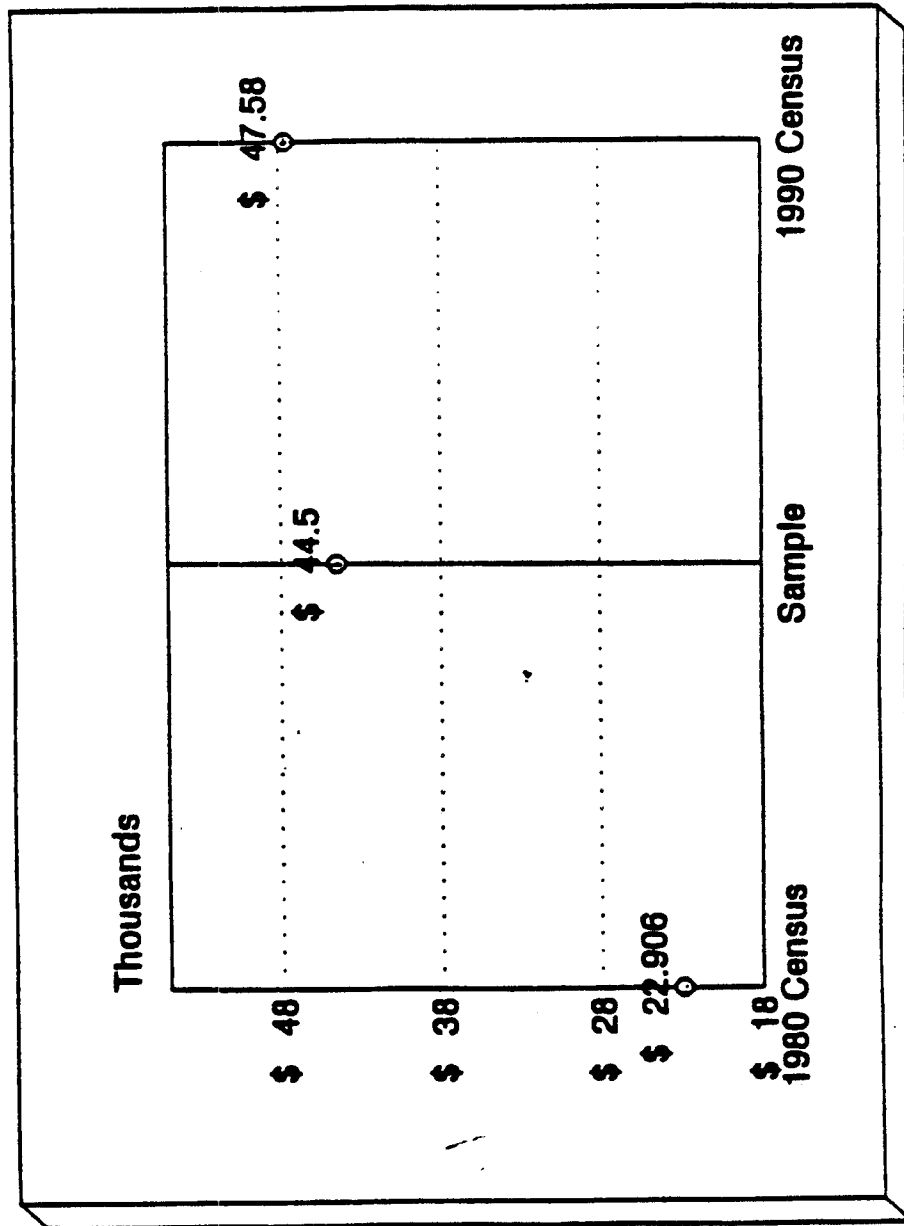


FIGURE 2
MEDIAN FAMILY INCOME IN NEW JERSEY



*Sample median represents midpoint of the income category

1990 Census, Sample, lists the actual population numbers for the sample and the 1980 and 1990 censuses.

FIGURE 3

FAMILY INCOME: 1980 CENSUS, 1990 CENSUS, SAMPLE

CENSUS YEAR/ SAMPLE	STATE	COUNTY			
		BERGEN	CAMDEN	ESSEX	HUDSON
1980*	\$22,906	\$27,517	\$20,998	\$19,931	\$17,659
1990	\$47,589	\$57,640	\$41,961	\$42,150	\$32,250
Sample**	\$40,000- 49,999	\$60,000- 74,499	\$40,000- 49,999	\$50,000- 59,000	\$35,000- 39,000

* Census data based on median income

** In the survey, respondents were not asked to indicate the exact dollar amount of their income but, instead, to indicate the category within which their income fell. Therefore, the sample data are based on these categorical ranges. For the state, for instance, the median income fell within the category of \$40,000 to \$49,999.

Figures 4-6 describe the gender, occupation, and educational attainment profiles of the respondents and compare the sample to the New Jersey population in 1980 and 1990. Although the population we were sampling may be better described by the 1990 census, we relied on information from the 1980 census when constructing the survey because the 1990 census was not yet available to us in 1989.

Figure 7, New Jersey State Population by Race, specifically compares the sample with the population in terms of race. We can see from this graph that our sample also conforms by race to the New Jersey population. In fact, our sample contains a slightly higher proportion of non-white respondents than are represented in

the state population. Figure 8, Race: 1980 Census, 1990 Census, Sample, provides the numbers that were more boldly displayed on the bar chart.

FIGURE 4
GENDER: 1980 CENSUS, 1990 CENSUS, SAMPLE

CENSUS YEAR/ SAMPLE	STATE	COUNTY			
		BERGEN	CAMDEN	ESSEX	HUDSON
Women					
1980	--	52.0	52.3	53.4	52.7
1990	52.7	52.0	51.9	52.7	51.5
Sample	47.4	51.9	46.3	49.6	40.5
Men					
1980	--	48.0	47.7	46.6	47.3
1990	48.3	48.0	48.1	47.3	48.5
Sample	52.6	48.1	53.7	50.4	59.5

FIGURE 5

OCCUPATIONS: 1980 CENSUS, 1990 CENSUS, SAMPLE

CENSUS YEAR/ SAMPLE	STATE	COUNTY			
		BERGEN	CAMDEN	ESSEX	HUDSON
Profes- sional					
1980	25.8	30.9	25.6	24.7	17.5
1990	32.7	35.7	28.9	28.2	24.1
Sample	37.7	44.2	34.1	36.7	39.2
Non-Pro- fessional					
1980	74.2	69.1	74.4	75.3	82.5
1990	67.3	64.3	71.1	71.8	75.9
Sample	62.0	55.8	65.9	63.3	60.8

FIGURE 6

EDUCATIONAL ATTAINMENT: 1980 CENSUS, 1990 CENSUS, SAMPLE

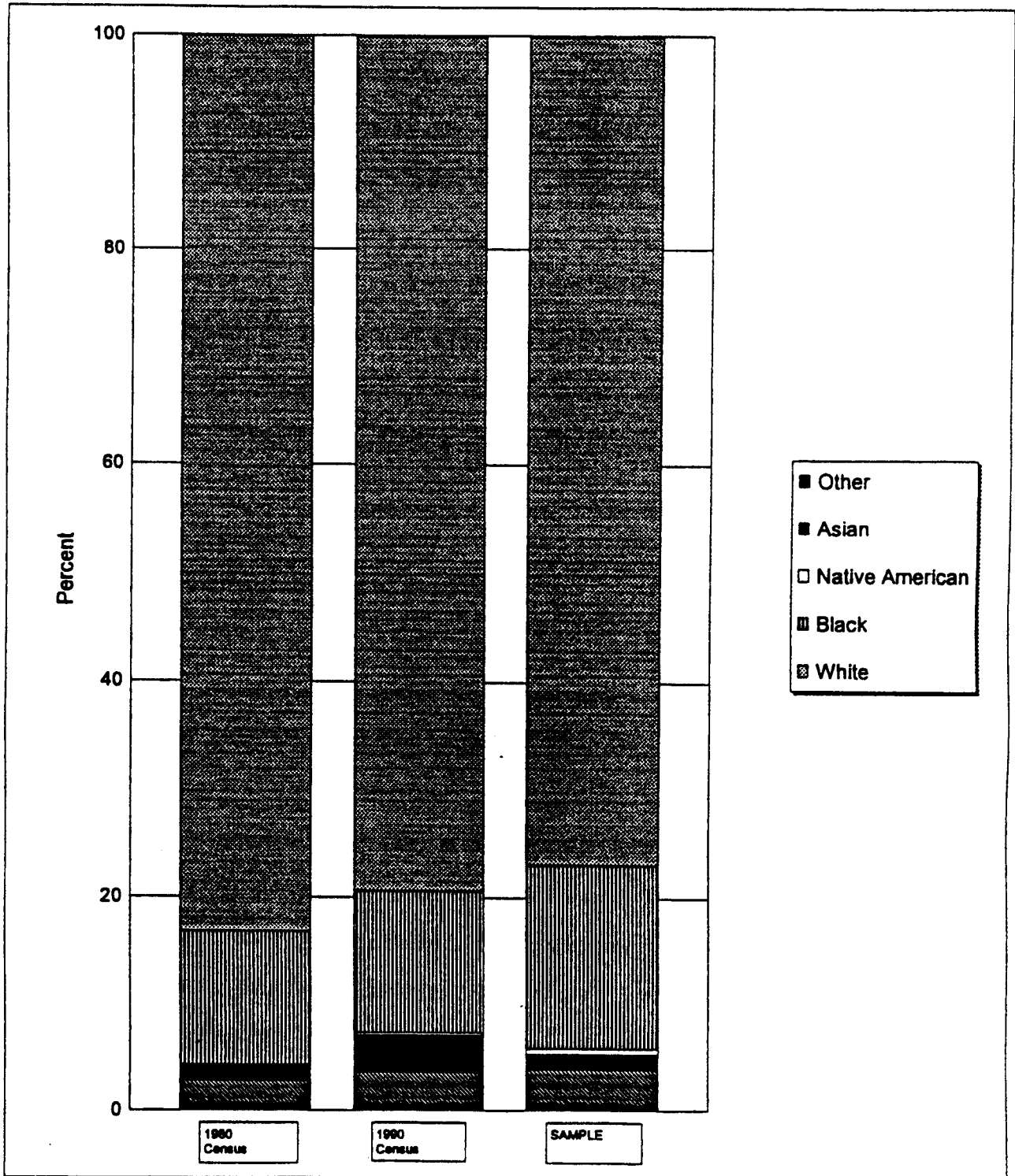
CENSUS YEAR/ SAMPLE	STATE	COUNTY			
		BERGEN	CAMDEN	ESSEX	HUDSON
EDUCATION 0-8 YEARS					
1980*	17.7	14.4	16.9	21.0	29.9
1990**	8.5	7.2	7.7	11.0	15.5
Sample***	5.0	3.9	5.7	4.0	6.9
SOME HIGH SCHOOL					
1980	14.9	11.9	17.6	16.2	18.5
1990	14.5	10.7	17.0	18.5	19.3
Sample	5.8	0.0	6.5	6.3	9.7
HIGH SCHOOL DIPLOMA					
1980	35.9	35.3	36.8	32.4	31.5
1990	31.4	29.4	34.0	28.3	28.8
Sample	19.6	16.9	24.4	23.0	8.3
SOME COLLEGE					
1980	13.2	14.6	12.5	12.5	9.0
1990	22.6	22.8	21.9	20.8	17.6
Sample	18.6	16.9	23.6	15.9	16.7
COLLEGE DEGREE OR MORE					
1980	18.3	23.8	16.2	18.0	11.2
1990	23.1	30.0	19.4	22.0	18.7
Sample	51.0	62.3	39.8	50.8	58.3

* 1980 data reports educational attainment of persons 25 years and older

** 1990 data reports educational attainment of persons 18 years and older

*** Sample data reports educational attainment of persons 18 years and older

FIGURE 7
NEW JERSEY STATE POPULATION
BY RACE ACCORDING TO
1980 CENSUS, 1990 CENSUS, AND SAMPLE



For this report, race/ethnicity is reported in a single measure that combines the two characteristics. In the interview schedule, that is in collecting data, Hispanic was not counted among the racial categories. People were asked to check the racial group with whom they identified. They were also asked, in a separate question, to check whether they had Spanish or Hispanic background or origin. The questions were asked and coded separately. Figure 9, Hispanic Origin: 1980 Census, 1990 Census, Sample, displays the percentage of Hispanic respondents in the sample and compares that to the census reports for 1980 and 1990. The sample is slightly lower than the population reported in the census.

For purposes of data analysis, however, we constructed a racial/ethnic variable that included Hispanic as a value in addition to white, and Black. This recoding was prompted by two considerations. First, of the thirty respondents who identified themselves as Hispanic, twenty-one also identified themselves as white in terms of race. Had the Hispanic and racial variables not been combined, these twenty-one persons would have been counted as white. Subsequent analysis shows that this would have buried and obscured important differences between non-Hispanic whites and Hispanic whites. Thus, it seemed more descriptively accurate to separate out Hispanic as a distinct population group.

Second, this recoding of Hispanic into a separate racial/ethnic category seemed culturally appropriate. Although "Hispanic" is not technically a racial category, in American society, it often functions as a racial category in the extent to

FIGURE 8

RACE: 1980 CENSUS, 1990 CENSUS, SAMPLE

CENSUS YEAR/ SAMPLE	STATE	COUNTY			
		BERGEN	CAMDEN	ESSEX	HUDSON
RACE WHITE					
1980	83.2	92.8	81.3	56.7	76.4
1990	79.3	87.0	76.6	51.1	68.8
Sample	76.9	93.5	82.1	63.6	70.3
BLACK					
1980	12.6	3.9	14.3	37.2	12.6
1990	13.4	4.9	16.2	40.6	14.4
Sample	17.3	0.0	15.4	29.5	16.2
NATIVE AMERICAN					
1980	0.1	0.1	0.1	0.1	0.1
1990	0.2	0.1	0.2	0.2	0.3
Sample	0.5	1.3	0.8	0.0	0.0
ASIAN					
1980	1.4	2.3	1.1	1.3	2.7
1990	3.5	6.6	2.3	2.7	6.6
Sample	1.5	2.6	0.8	0.8	2.7
OTHER					
1980	2.7	0.5	3.3	4.8	8.2
1990	3.5	1.4	4.6	5.3	9.8
Sample	3.7	2.6	0.8	3.9	9.5

FIGURE 9

HISPANIC ORIGIN: 1980 CENSUS, 1990 CENSUS, SAMPLE

CENSUS YEAR/ SAMPLE	STATE	COUNTY			
		BERGEN	CAMDEN	ESSEX	HUDSON
1980	6.7	3.4	4.4	9.0	26.1
1990	9.6	6.0	7.2	12.6	33.2
Sample	7.4	2.6	3.3	7.0	20.3

which it reflects differences in power, resources, and status. These differences and their significance in understanding legal usage seemed to warrant separate accounting in this research which would have been obscured by lumping Hispanic respondents into the global categories of white and non-white, or minority and non-minority. Figure 10, Racial and Spanish/Hispanic Origin Composition of Sample, displays the racial and ethnic variation of the sample as the data were collected in response to the separate questions about racial identification and Hispanic origins. Figure 11, Racial/Ethnic Composition of Sample after Recoding, displays the racial/ethnic variation of the sample after recoding, and the percentages used throughout the remainder of this report. With the creation of new racial/ethnic variable, 71% of the sample is white, 17% African American, 7% Hispanic, and 5% were categorized as Other. In this breakdown, Other includes six Asian Americans and two Native Americans.

FIGURE 10

RACIAL AND SPANISH/HISPANIC ORIGIN COMPOSITION OF SAMPLE
(N=403)

RACIAL/SPANISH-HISPANIC ORIGIN	NUMBER	PERCENT
RACE		
White	307	76.2
Black	69	17.1
Asian	6	1.5
Native American	2	0.5
Other	15	3.7
No Answer	4	1.0
SPANISH-HISPANIC ORIGIN		
Mexican-American	2	0.5
Puerto Rican	8	2.0
Cuban	6	1.5
Other Spanish/Hispanic	14	3.5
Not Spanish/Hispanic	337	83.6
No answer	36	8.9

FIGURE 11

RACIAL/ETHNIC COMPOSITION OF SAMPLE AFTER RECODING
(N=403)

RACE/ETHNICITY	NUMBER	PERCENT
White	286	71.0
Black	67	16.6
Hispanic	30	7.4
Other	18	4.5
No answer	2	0.5

CHAPTER 4

LEGAL NEED

One of the principal goals of this research was to generate an estimate of the legal needs of citizens that would be free of both racial/ethnic and class bias. Since legal need must be conceptualized and measured independently from legal experience, need is typically assessed by presenting respondents with a list of events, experiences, or problems that theoretically could become the subject of some form of legal intervention or remedy. This measure seeks to establish legal need by determining the number of potential legal problems a respondent had experienced within a given time frame (in this research, the last five years), regardless of whether the respondent defined the situation as legal, ever sought any sort of legal remedy, or the case would have been successfully litigated had he or she pursued it. Assessing need in this way allows for an examination of the relationship between legal need and how people define and respond to situations.

As was mentioned earlier, previous research that had reported differential legal need among racial/ethnic and class groups was often based on an inventory of problem situations that over-represented the experiences of middle class citizens. The resulting inventories, then, tended to consistently underestimate the legal needs of lower and working class citizens. Recognizing this problem, in developing the inventory of problem situations for this study, we included a far-ranging list of problems and situations that was intended to be as reflective of the lives and experiences of lower and working class citizens as it was of middle

and upper class citizens. The resulting list of over 100 situations ranged from noisy neighbors to family violence and fell into eight general categories, including neighborhood, consumer transactions, housing, employment, medical, public organization and government programs, discrimination, and family. See Figure 12, *Discrete Problems*, for a complete list of situations about which we inquired.

a. **Number of Problems.** Of the 100 issues or situations we asked about, people reported that they had experienced an average of fourteen problems, with the number ranging from zero to sixty-two (Figure 13-1, *Frequencies of Problems Reported*).

The average number of problems reported by our respondents did not vary significantly¹ by race/ethnicity. Whites and Blacks each reported an average of fifteen problems, Hispanics reported thirteen problems and racial/ethnic groups categorized under the Other category reported twelve problems. Figure 13-2, *Frequencies of Problems Reported by Race/Ethnicity, Gender, and Family Income*, displays the average number of problems by family income and shows,

¹Statistical significance indicates the probability that a relationship between two variables (such as in this case Race/ethnicity and the Number of Problems) would be observed in the data where, in fact, no relationship existed. A significance level of .05, for instance, indicates that in five out of 100 hypothetical samples we might expect to observe such a relationship where none actually existed. Since this is a relatively low probability, it indicates that the two variables are probably related. A significance level equal to or less than .05 is conventionally interpreted as a statistically significant relationship, something unlikely to occur unless the variables are in fact related. The smaller the number, the more confident we are in concluding that two or more variables are connected. Significance levels that are statistically significant are indicated by the notation "p <" (probability as less than). N.S. indicates that a relationship is not statistically significant.

FIGURE 12

DISCRETE PROBLEMS

I. Neighborhood Problems

Have you ever been bothered by:

- Noise from neighbors?
- Kids playing or fighting?
- Problems with other people's dogs or pets?
- Adults who bother your children, scold or harass them?
- Problems about cars or parking?
- Vandalism to your house, car, hallways, graffiti, breaking things?
- Problems with fences?
- Things you loaned to neighbors that have not been returned?
- Disputes in your church, club, or neighborhood association?
- Neighbor's garbage or trash?
- Are there any other problems you have experienced in this neighborhood?

II. Consumer Problems

Have any of the following things ever happened to you?

Someone who sold you an appliance or car and refused to make repairs promised by the warranty?

You bought something because of an advertisement that turned out to be false?

You went to buy an advertised product and were told it was sold out and that only a more expensive item was available?

You bought something by mail that never arrived, or was not the same as was advertised?

You bought something from a door-to-door salesperson that was not delivered or was not what you expected?

You tried to return something but the seller would not take it back?

You have been charged for something on credit that you either returned or never purchased in the first place?

You were charged by a repair or service person more than you had originally agreed?

You had insurance problems during the last five years?

You were denied credit for what you consider unfair reasons?

You had problems with creditors?

You had difficulty cashing checks?

Concerning utilities:

Has your electricity, gas, heat or telephone ever been shut off?

Have you had errors in your bills?

Have you had any other problems with utilities, gas, electricity, heat or telephone service?

III. Renter and Home Owner Issues

Have any of these problems happened to you while renting?

- The owner did not make repairs or provide services?
- The owner has not kept what you would consider undesirable people out of the building?
- The owner claimed that you damaged the property?
- The owner claimed that you owed him/her property?
- The owner claimed that you owed him/her money?
- Have you ever had problems with your lease being canceled, or rent raised unfairly?
- Did the owner ever try to have you evicted?
- Did you ever have to move because the place you lived was taken over for some other use?
- Did an owner ever withhold a security deposit?
- Have you ever found yourself without a place to live?
- Are there any other problems that you may have had with your housing?

Have you had any of these problems while owning a house or apartment in the last five years?

- Have you ever had problems with your assessments?
- Have you ever had problems with tax bills?
- Had problems with violations of zoning ordinances?
- Had problems with the housing code?
- Did a bank or loan company ever give notice that your mortgage was in default or going to be canceled?
- Has an insurance company ever canceled your insurance?
- Have you ever had any other problems associated with housing that we may not have mentioned?

IV. Employment Issues

Have you ever had any problems getting your benefits, such as sick leave, health insurance, vacations?

Have you ever been paid less than other workers who did the same job and worked there about the same length of time?

- Has your employer ever owed you back pay or overtime that was not paid?
- Have you ever been threatened because you belong to or tried to join a union?
- Have you ever filed a grievance against your employer?
- Were you ever laid off or fired for what you thought were unfair reasons?
- Have you ever been injured on the job?
- Were you ever sexually harassed by other workers?
- Were you ever sexually harassed by your superiors at work or at school?

V. Medical Problems

Have you or anyone in your household:

- Ever been charged by a doctor or hospital for services you did not receive?
- Ever been refused treatment by a hospital or a doctor?
- Ever been given medical treatment (an operation or drugs or hospitalization) you did not think you needed?
- Had any problems with doctors, dentists, hospitals, health insurance?

VI. Education

Have you or someone in your household:

- Ever been denied access to a child's school record when you asked to see it?
- Found problems or inaccuracies in your child's record?
- Applied for a placement or class for your child or had it denied?
- Any child in your household suspended or expelled from school?
- Have you had any problems with the availability of bilingual education?
- Do you have a child who is handicapped and has been denied special services, or for whom the services provided were inadequate?
- Has a child been put in a class or program that was below his/her natural ability?
- Have you had problems because the school system did not acknowledge and teach about your culture?
- Have you ever had any other problems with the public school system that we have not mentioned (such as school teachers or disciplining)?

VII. Public Organization and Government Programs

Have you had any problems in dealing with federal, state, or local government agencies?

- Have you ever had a problem getting benefits you deserve like pensions, medical care, home loans, educational benefits, psychiatric care, etc., or anything else of that sort?
- Have you ever failed to receive a check from some public agency to which you are entitled, such as AFDC (Aid to Families with Dependent Children - welfare), Social Security, Veterans' Benefits, or general assistance or Medicare?
- Have you ever been cut off or had your benefits changed without notice?
- Have you had troubles with social workers, welfare officials or veteran administrators?
- Have you ever had a problem with the government over your income tax return?
- What about problems because the city ignored your complaints or call for services, such as street cleaning or repair, or garbage collection?
- Have you ever had problems about the quality and level of police protection in your neighborhood?
- Have you ever had problems with police harassment?
- Have you ever had problems with the division of motor vehicles or traffic court?
- Have you ever had any other problems with local, state or federal government officials that we have not mentioned?

VIII. Discrimination

Since living in New Jersey, have you been treated unfairly because of your age, sex, race, religion or nationality?

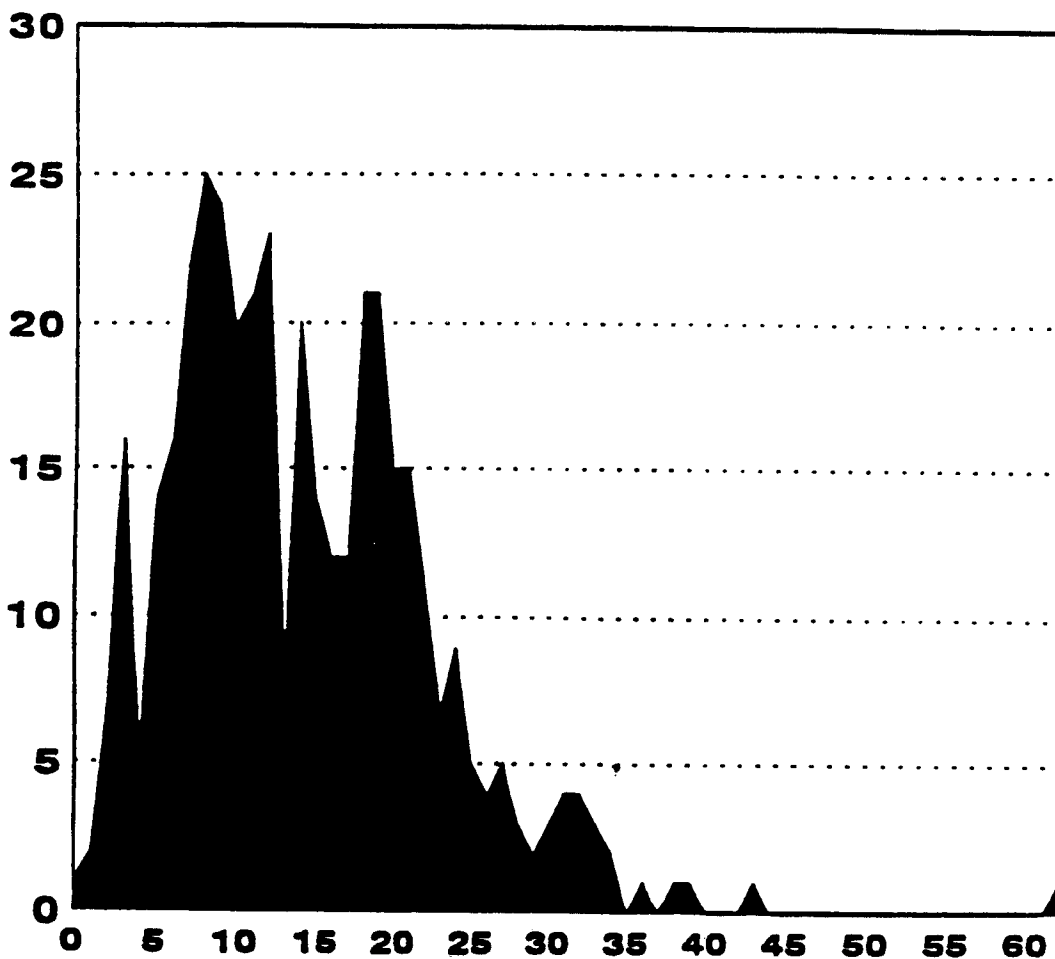
- In getting a job or being promoted on a job?
- Joining a club or organization?
- Buying a house?
- Renting an apartment?
- Getting service in a restaurant or hotel?
- Participating in some social or community activities?
- Is there any other way you have been treated unfairly because of your age, sex, race, religion, or nationality?

IX. Family Issues

Within your household or family, do you now, or have you ever had, a problem with:

- Taking care of and disciplining children?
- Drinking?
- Hitting or physical abuse of a spouse, child, or elderly person?
- Responsibility for household chores?
- Money and how to spend it?
- Disputes within the family about who your children play with?
- Because someone in the household is unemployed?
- Someone wants to work but the other thinks he/she shouldn't?
- Someone in the household working too much or too many hours?
- Time spent away from the home?
- Problems in the immediate family because of in-laws and relatives?
- Extra-marital sexual affairs?
- Has anyone tried to take your child from you, adopt your child, or place your child in another's care?
- Have you ever had a problem with juvenile court, child protection services or some agency for children?
- Have you ever had trouble getting support of alimony payments?
- Have you tried to get anyone else's visitation right limited?
- Have you had any child custody problems?
- Have you had any problems with alcohol or drugs?

FIGURE 13-1
FREQUENCIES OF PROBLEMS REPORTED
(N=403)



Mean Number of Problems Reported = 14

White	= 15
Black	= 15
Hispanic	= 13
Other	= 12
Not Significant	

FIGURE 13-2

FREQUENCIES OF PROBLEMS REPORTED
 BY RACE/ETHNICITY, GENDER, AND FAMILY INCOME
 (N=403)

GROUP	MEAN NUMBER OF PROBLEMS REPORTED	STATISTICAL SIGNIFICANCE
RACE/ETHNICITY		
White	14.6	N.S.*
Black	14.5	
Hispanic	12.9	
Other	12.0	
GENDER		
Male	13.0	p < .001
Female	15.8	
FAMILY INCOME		
\$0.00-\$29,900	14.0	N.S.
\$30,000-59,900	15.2	
\$60,000 or more	14.0	
* N.S.=The results were not statistically significant.		

as with race/ethnicity, no significant relationship. The lack of a relationship between race/ethnicity or income and legal need confirmed our original assumption and working hypothesis that previous research had systematically underestimated the legal needs of poor or minority populations. More importantly, it demonstrated that whatever differences might be found to exist in legal use could not be attributed to differences in need.

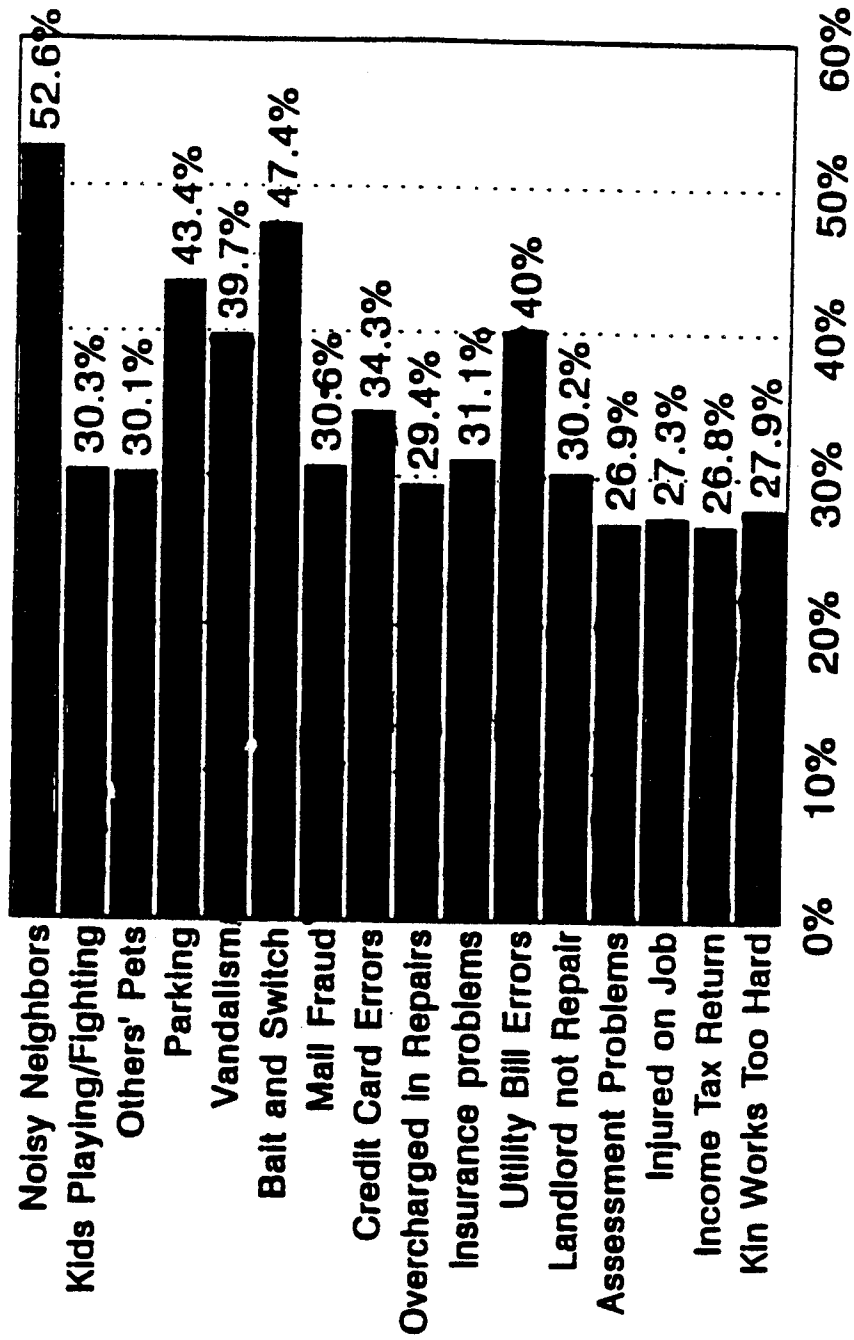
The only variable that was shown to be significantly related to legal need, measured in terms of the number of problems

reported, was gender. Females reported on average sixteen problems, while males reported only thirteen problems. This difference in number of problems is also reflected in differences in the types of problems reported by men and women and will be discussed below.

b. The Character of Legal Need: Type of Problems Reported. The overall number of problems reported by our respondents can be used as a global measure of legal need. However, relying on this single measure may obscure important information regarding the character of that need. The specific type of problems and situations that people experience and report, not simply the total number of problems, is particularly relevant in assessing the responsiveness of legal institutions to the needs of citizens. With this in mind, Figure 14, Most Frequently Identified Problems, displays the most frequently reported problems for the entire sample.

The sixteen problems shown in Figure 14 represent all of those situations that at least 25% of our sample reported having experienced. The resulting list of problem situations confirms the importance of expanding the inventory of types of situations about which we inquired. With a few notable exceptions, the most frequently reported situations concern the recurring, mundane interactions and disputes that punctuate daily life. In other words, conspicuously absent from the list are the kinds of problems that are likely to involve large sums of money or property, and, therefore, are likely to end up in general jurisdiction courts. In fact, the single most frequently reported problem involved noisy neighbors, with over half of our sample relating some experience

FIGURE 14
MOST FREQUENTLY IDENTIFIED PROBLEMS
(N=403)



with this problem. The second most frequently reported problem involved consumer bait and switch practices where a business "baits" the consumer with advertised bargains which are not available when the consumer reaches the store; the consumer interest is then "switched" to another product usually at a higher price than the advertised "bait." Clearly, the list is comprised of those sorts of problems that reflect the dullness of ordinary citizens' lives.

It is important to point out, however, that while it is true that these problems may not involve large amounts of money or property, we cannot dismiss them as not court-worthy or not potentially the subject of legal action; nor can we dismiss these problems as trivial from the point of view of citizens seeking relief or remedy from these situations. Lower courts, small claims courts, arbitration boards, and various other legal services exist for the purpose of processing precisely these kinds of disputes and problems. They are the kind of problems about which Roscoe Pound wrote, at the turn of the century, when he first articulated the fear that accumulating and unremedied little injustices erode citizens' faith in law and the legal system (Pound, 1906). Any regular participant or observer in the nations' more than 18,000 limited jurisdiction courts can attest to the fact that neighborhood, consumer and family troubles are often the sources of persistent feuding, as well as aggressive and violent exchanges, that form the bulk of the non-traffic cases in these courts.

Interestingly, and in keeping with our hypothesis, while there is no significant variation in the number of problems among different racial/ethnic groups, there is variation in the frequency

with which different racial/ethnic groups reported having experienced specific problem situations. What the data show is that for most problem situations, there was no significant variation in the frequency with which the problems were reported. However, for twenty out of the 100 problems significant racial/ethnic variation did exist. Figure 15, Reported Problems Significant by Race/Ethnicity, displays those problem situations whose occurrence was reported differently by racial and ethnic groups.

In general, minorities were significantly more likely than whites to experience poor police protection, police harassment, housing problems, problems involving children, as well as problems with insurance, utilities and creditors. Not surprisingly, minorities were also more likely than whites to report problems with schools failing to teach about their culture. Finally, as Chart 5 of Figure 15 shows, minorities are more likely to experience and report discrimination in hotels, restaurants, renting apartments, buying homes, and getting jobs. Notably, the two problems that were reported more frequently by white respondents (assessment problems and credit card errors) involved property transactions of some sort.

Women (see Figure 16, Reported Problems Significant by Gender) were more likely to report problems about noise in the neighborhood, fights among children, inability to obtain access to a child's school record and having a child expelled from school, as well as differences with spouses about child rearing practices, alimony, being hit by a spouse, and drug use in the family. Women also reported significantly more consumer problems such as not being able to return purchases, having problems with mail order

FIGURE 15
REPORTED PROBLEMS SIGNIFICANT
BY RACE/ETHNICITY

